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Dispute and the Involvement of the United States
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Abstract English

The dispute between the People's Republic of China and Japan over the Senkaku/Diaoyu Islands has drawn increasing international attention and raised concerns of military escalation in the region. Over the last decades, the two countries have developed policies and claims which did not but exacerbate the dispute. This study aims at comprehensively presenting the main historic and legal features of the disagreement, as well as the main geopolitical implications, including the involvement of the United States of America. The research was conducted through careful analysis of policy papers, previous studies on the matter as well as official documents from the countries involved.

From the historic perspective, the thesis will outline the key defining moments on the dispute, from the Sino-Japanese war at the end of the XIX century to the Second World War and the subsequent American administration over Japan's territories, until the last decades of the XX century and the renovated Chinese ambitions. From the legal point of view, the thesis will sketch the main international sea law provisions (focusing mainly on UNCLOS), and will read them through the lenses of the legal arguments presented by the main actors in the dispute. The study will then focus on the geopolitical implications of the dispute and on the involvement of the United States, and will try to show how Washington has played a very significant role, despite the officially neutral stance on the dispute itself. The thesis will look carefully at the U.S. policy in the region and argue that from a political perspective the claimed 'neutrality' has in fact been an active strategic choice in line with its interests in the region. With fast-changing economic as well as political dynamics in East Asia, rising powers may be tempted to try to shift the balance of power in the region, and the Senkaku/Diaoyu Island dispute may very well represent a useful instrument to this aim.

Abstrakt Deutsch

Der Streit um die Seegrenzen der Senkaku/Diaoyu-Inseln zwischen der Volksrepublik China und Japan hat zunehmend internationale Aufmerksamkeit erregt und die Besorgnis über eine militärische Eskalation in der Region hervorgerufen. In den letzten Jahrzehnten haben die beiden Länder Strategien entwickelt und Forderungen gestellt, die die Streitigkeiten weiter intensivierten.

Die vorliegende Arbeit hat als Zielsetzung, die wichtigsten historischen und rechtlichen Merkmale des Konflikts darzustellen, sowie die wichtigsten geopolitischen Auswirkungen, unter Einbeziehung der Rolle der Vereinigten Staaten von Amerika, zu analysieren. Die Forschungsergebnisse wurden mittels einer sorgfältigen Analyse der Strategiepapiere, einschlägiger Studien sowie offizieller Dokumente der beteiligten Länder erzielt. Aus historischer Sicht wird die vorliegende Arbeit die entscheidenden Momente des Disputes umreißen: vom chinesisch-japanischen Krieg am Ende des 19. Jahrhunderts, über den Zweiten Weltkrieg und der anschließenden amerikanischen Verwaltung der Gebiete Japans, bis in die letzten Jahrzehnte des 20. Jahrhunderts mit neuen Ambitionen Chinas. Aus rechtlicher Sicht wird die Arbeit die wichtigsten Bestimmungen des internationalen Seerechts skizzieren (mit Schwerpunkt auf UNCLOS) und diese durch die Linsen der rechtlichen Argumente der Hauptakteure des Streits lesen.

Die Arbeit wird sich dann auf die geopolitische Dimension des Streits unter Einbeziehung der Vereinigten Staaten konzentrieren und wird versuchen zu zeigen, dass Washington trotz der offiziell neutralen Haltung im Streit eine sehr wichtige Rolle eingenommen hat. Die Arbeit wird sich eingehend mit der US-Politik in der Region befassen und argumentieren, dass aus politischer Sicht die behauptete „Neutralität“ als eine aktive strategische Entscheidung im Einklang mit den geopolitischen und regionalen

Interessen der Vereinigten Staaten zu lesen ist. Angesichts der sich rasch ändernden wirtschaftlichen und politischen Dynamik in Ostasien könnten die regionalen Mächte versuchen, das Kräfteverhältnis in der Region umzuformen und die Senkaku/Diaoyu-Inseln könnten durchaus ein nützliches Instrument für dieses Ziel darstellen.

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1. Introduction

While being uninhabited and at first glance somewhat insignificant, the Senkaku/ Diaoyu Islands have attracted over the past decades a great deal of attention. This rocky archipelago in the East China Sea finds itself in the midst of an increasingly important geopolitical dispute over the sovereignty that is to be exercised on it, between some of the main actors in Eastern Asia and in the world. Both the People's Republic of China¹ and Japan have presented, argued and defended claims of sovereignty over the islands.

The dispute over the Senkaku/Diaoyu Islands encompasses a very wide range of issues in terms of their specific strategic interest. Studies have shown that the sea area around the islands contains rich stock of hydrocarbons and fisheries, which obviously represent a potentially appealing asset considering the rising demand in the region. Another relevant factor in the dispute is the importance of controlling the East China Sea trading routes, making the islands a core national interest for both Japan and China. Finally, as it is often the case with territorial disputes, also symbolic reasons and nationalistic feelings among the population (often arbitrarily and openly exploited by the respective leaderships) play their role in fixing and reinforcing mutually-contrasting positions.

Mirroring major historical developments in the region throughout the second half of the XX century, the tensions over the islands have increased several times since 1970, when the Japanese government opposed the bids of its neighboring countries to explore the water around the islands. This action led both the People's Republic of China and the Republic of China's to proclaim these territories for themselves, and since then tensions over the control of the islands have only sharpened. Recent

¹ Peoples Republic of China (PRC) from here on to be referred to as "China", unless stated otherwise. For the sake of analyzing this bilateral dispute, the position of the Republic of China (Taiwan), which is largely coinciding with the one presented by Beijing, will be left out of this analysis.

developments have shown that relations between Beijing and Tokyo are more and more constrained and that this dispute is a potential hotspot for tensions in the Asia-Pacific region. These developments have caused international attention and concerns. Particularly, one international actor is marked as being obliquely involved in the dispute – the United States of America.

While Washington's policy has been to remain neutral on the dispute, the U.S. in fact is bound by the U.S.-Japan Security Treaty, which seems to cover these islands as well. In the treaty, first signed in 1951 and then revised in 1960, the United States are committed to "meet the common danger" of an armed attack on "the territories under the Administration of Japan". And with the Okinawa Revision Agreement (1971), the Senkaku/Diaoyu Islands have been brought back to full administration of Japan.

This thesis will analyze how the dispute emerged, and it will give an historic overview of the parties' involvement, as well as their claimed rights, their legal and historic arguments and their concerns. The work will then elaborate on the involvement of the United States of America, both from an historic and from a political perspectives, and it will present a set of risks and broader geopolitical considerations emerging from this dispute. While not attempting to put a last word of what has been and remains a complex and controversial issue, the thesis aims at providing a comprehensive overview of the situation and at stimulating further debate and analysis.



Figure 1: Position of the Senkaku/Diaoyu Islands.²

2. History of the Dispute

The islands known as Senkaku in Japan and Diaoyu in China are a group of eight uninhabited islands, encompassing five small volcanic islands and three rocky outcroppings with a total area no more than 6.32 square kilometers of land. Located in the East China Sea, the islands are situated approximately 200 kilometers northeast of Taiwan and 300 kilometers west of Okinawa.³ After the 1968-issued report by the United Nations Economic Commission for Asia and the Far East (ECAFE), indicating that there might be hydrocarbon reserves under the East China Sea, including

² Source: Stratfor, Feb 12, 2014. Retrieved from: <https://worldview.stratfor.com/article/interpreting-chinese>. [06.12.2019].

³ The Sasakawa Peace Foundation, The Senkaku Islands: Location, Area, and Other Geographical Data, Review of Island Studies, February 17 (2015).

the seabed around the Diaoyu/Senkaku Islands, the islands have become of increasing public interest for more than one neighboring state of Japan. Although the People's Republic of China had previously not disputed Japan's claims over the territory, it soon started making strong public claims to these five small islands and a few rocky extensions.

2.1. Late XIX – Early XX Century

The Japanese government formally claimed ownership of the islands on 14th January 1895, before the end of the Sino-Japanese War and the Treaty of Shimonoseki (April 17th 1895) that concluded it.⁴ Japan has always claimed that the islands were not part of the Treaty, but rather have been part of the Nansei Shoto Islands altogether.⁵ Earlier that same year, the Japanese Government conducted a research on the islands. Throughout this survey, no evidence of the Island being inhabited was found, nor was found any sign that the islands were under control of any other nation. It was based on these findings that the Japanese Government decided to formally incorporate the Senkaku Islands into the territory of Japan by erecting markers on the islands. According to Japanese officials, these measures as well as the incorporation were carried out in accordance with the internationally accepted means of acquiring territorial sovereignty under international law (occupation of terra nullius).⁶ In 1900, an attempt by a Japanese entrepreneur to use the Islands for commercial purposes failed and the islands remained uninhabited ever since.

Until mid-XX century and the Second World War, there were few historical records mentioning the islands. Three of the Senkaku Islands, namely Kuba-shima, Taisho-jima and Uotsuri-shima, were mentioned in the travel

⁴ Valencia, Mark J, "The East China Sea disputes: history, status, and ways forward," Asian Perspective (2014), p. 189.

⁵ The Sasakawa Peace Foundation, The Senkaku Islands: Location, Area, and Other Geographical Data, Review of Island Studies, February 17 (2015).

⁶ Ibid.

accounts of the Chinese envoys sent by the Ming Dynasty.⁷ The Envoys usually reached the Ryukyu Islands from Fuchou, nowadays Fujian Province via Taiwan and the islets Tiaoyutai, Huangweiyu, and Chihweiyu located to the northeast of Taiwan. According to some scholars the Tiaoyutai (Taiwanese for Senkaku/Diaoyu) were then considered the boundary separating Taiwan from the Ryukyu Islands.⁸ After China's defeat in the Sino-Japanese War, Taiwan was -under the mentioned Treaty of Shimonoseki of May 1895- officially ceded to Japan. Article 1 of the Treaty of Shimonoseki stated that:

China cedes to Japan in perpetuity and full sovereignty the following territories, together with all fortifications, arsenals, and public property thereon:—

(a) The southern portion of the province of Fêngtien

(b) The island of Formosa, together with all islands appertaining or belonging to the said island of Formosa.

(c) The Pescadores Group, that is to say, all islands lying between the 119th and 120th degrees of longitude east of Greenwich and the 23rd and 24th degrees of north latitude.⁹

The same year the Japanese government, prior to the signing of the treaty and by the aforementioned Cabinet Decision, erected markers on the Senkaku Islands and thus formally incorporated them into Yaeyama County, Okinawa Prefecture. The islands have, since 1896, been a part of Ishigaki City.¹⁰

⁷ Lee, Seokwoo, "The 1951 San Francisco peace treaty with Japan and the territorial disputes in East Asia," *Pac. Rim L. & Pol'y J.* 11 (2002), p. 88.

⁸ *Ibid.* p. 88.

⁹ Treaty of Shimonoseki, Retrieved from: Taiwan Documents Project

¹⁰ Lee, Seokwoo, "The 1951 San Francisco peace treaty with Japan and the territorial disputes in East Asia," *Pac. Rim L. & Pol'y J.* 11 (2002), p. 89.

2.2. WWII and its Aftermath

Analyzing the different claims and historical documents, it seems evident that much of the territorial disputes in the East China Sea come as a by-product of immediate post-World War II decisions and territorial dispositions.¹¹

During its expansion conquest in the Second World War, Japan further detained control over the islands as a strategic outpost.

While fighting was ongoing, the Allied forces met several times to discuss the war strategy, but also the post-war order. In November and December of 1943, Franklin D. Roosevelt met with British Prime Minister Winston Churchill and Chinese President Chiang Kai-shek in Cairo, Egypt, to discuss the progress of the war against Japan and the future of Asia. As a result of the meeting, formally known as The Cairo Conference, they issued a Statement that paved the way for China's status as one of the four allied Great Powers by agreeing that the territories taken from China by Japan would be returned to the control of the Republic of China after the conflict ended.

On September 2, 1945 Japan accepted the terms of the Cairo Declaration by signing the Potsdam Declaration on board of the USS Missouri in Tokyo Bay.¹² Consequently, Manchuria, Taiwan, and the Pescadores were returned to China.¹³ The San Francisco Peace Treaty, officially signed on September 8, 1951 by 48 nations¹⁴ and marking the end of imperial Japan, compelled the country in addition to returning all the seized territories, to put certain territories under U.S. administration.

The peace treaty marked the beginning of peaceful relations between Japan and the Allied Powers. The disposition of territories in the Pacific

¹¹ Ibid., p. 89.

¹² Japanese Instrument of Surrender, National Archives Foundation, Washington, DC. (1945).

¹³ The Cairo Conference (1943), U.S. Department of State Archives 2001-2009.

¹⁴ Price, John, "Cold War Relic: The 1951 San Francisco Peace Treaty and the Politics of Memory," Asian Perspective (2001), p. 34.

region changed dramatically, and yet – to remain specifically focused on the subject being analyzed within this thesis, the Allied Powers did not specifically mention the status of the Senkaku/Diaoyu Islands, neither in the territorial clause of the San Francisco Peace Treaty nor in the aforementioned declarations and terms of surrender. Nonetheless, the U.S. Government implicitly decided to place the islands under U.S. administration. This was set by the Article 3 of the treaty, which stated that:

“Japan will concur in any proposal of the United States to the United Nations to place under its trusteeship system, with the United States as the sole administering authority, Nansei Shoto south of 29 north latitude (including the Ryukyu Islands and the Daito Islands), Nanpo Shoto south of Sofu Gan (including the Bonin Islands, Rosario Island and the Volcano Islands) and Parece Vela and Marcus Island. Pending the making of such a proposal and affirmative action thereon, the United States will have the right to exercise all and any powers of administration, legislation and jurisdiction over the territory and inhabitants of these islands, including their territorial waters.”¹⁵

According to some scholars¹⁶ the U.S. Naval Military Government of the Ryukyu Islands may have, back in 1945, associated the Senkaku/Diaoyu Islands with the Okinawa ken (prefecture). Records of the U.S. Civil Administration of the Ryukyu Islands have shown that the Military Government commenced surveys and investigation operations within which they were instructed “to extend Military Government operations so as to include the Northern Ryukyus south of the 30th parallel North and to include Sakishima Gunto [which includes the Diaoyu Islands], which includes *all of the islands of the Ryukyus south of Okinawa* (emphasis added).”¹⁷

¹⁵ Treaty of Peace with Japan, United Nation Treaty Collection No 1832 (1951).

¹⁶ Blanchard, Jean-Marc F, "The US role in the Sino-Japanese dispute over the Diaoyu (Senkaku) Islands, 1945–1971," in *The China Quarterly* 161 (2000), p.103.

¹⁷ *Ibid.*

Yet, Article 3 of the Treaty did not, to the point of clear understanding, define the territories that were placed within the area of the trusteeship.

Under the terms of Japan's surrender, the island chains surrounding the Senkaku Islands were controlled by the US until 1971, when, in line with the provisions included in the U.S.–Japan revision treaty it was returned to Japan along with Okinawa and other surrounding islands. These circumstances may lead to the conclusion that at the given time the U.S. considered these islands as territory of Japan. With said Treaty, the U.S. under President Richard Nixon renounced all rights regarding the Ryukyus Islands, including the full responsibility and authority for the exercise of administration, legislation and jurisdiction over the islands, which returned back to Japan.

Following the same logic that was applied just above to describe the post 1945 US administration, the boundaries set in the 1971 agreement seem to include the Diaoyu/Senkaku Islands ¹⁸ Despite the Nixon administration's formally neutral stance regarding the island sovereignty, the Japanese continued to view the agreement as a validation of their claims for the territory.¹⁹ These unclear historical circumstances left a void for interpretation of ownership and territorial rights leading to what will become a long lasting dispute over the islands. This void has led to several incidents and diplomatic debates over the years.

2.3. The Dispute After the 1960s

In 1968, a report issued by the United Nations Economic Commission for Asia and the Far East (ECAFE) suggested that there could be hydrocarbon reserves under the East China Sea, including the seabed around the Diaoyu/Senkaku Islands. The report sparked an increasing

¹⁸ Ibid., p. 98.

¹⁹ China's Maritime Disputes . Council of Foreign Relations. A CFR Info Guide Presentation.

strategic attention for these islands from policy makers in the region and beyond.

Following the report, Japan together with South Korea and Taiwan held complex talks on joint energy exploration in the East China Sea, while China proclaimed its own sovereignty over the territory on December 30, 1971²⁰ six months after the the U.S. and Japan signed the "Okinawa Revision Treaty, also known as Okinawa Revision Agreement, which will be discussed again further on in the analysis. Since then, the Dispute over the Diaoyu/Senkaku Islands has attracted a wide range of interest in national as well as international politics with repeated crisis' trough out the years to follow.²¹

In 1970, the Japanese government formally opposed the Taiwanese bids to explore the water around the islands, which led to the ROC (Taiwanese) government planting a flag on the disputed island. Further escalations have risen when in the same year the People's Republic of China started describing the islands as 'sacred territory' giving the whole agenda a nationalistic twist with large scale protest, claiming the islands as historically their own and promising to liberate their territories. The PRC soon started raising this issue among United Nations committees bringing the dispute to the international agenda.

In 1972 the reestablishment of diplomatic relations between China and Japan offered a first (short) de-escalation of the Diaoyu/Senkaku Islands dispute. Beijing, forced by domestic disputes and mass starvation reviewed its policies and turned to Japan for help. This Sino-Japanese reconciliation reflected i.a. the reconciliation between the United States and China. The same year the Nixon administration visited China whilst

²⁰ Wiegand, Krista E, "China's strategy in the Senkaku/Diaoyu islands dispute: Issue linkage and coercive diplomacy," *Asian Security* 5, no. 2 (2009), p. 172.

²¹ Shaw, Han-yi, "The Diaoyutai/Senkaku Islands Dispute: Its history and an analysis of the ownership claims of the PRC, ROC, and Japan," *Maryland Series in Contemporary Asian Studies* 1999, no. 3 (1999), p. 4.

working on their goal to normalize relations with China. New trade deals between Japan and China set the dispute on hold.²²

The positive momentum at the beginning of the decade did not last long. In 1978, the dispute rose again, this time during the Sino-Japanese negotiations over the Treaty of Peace and Friendship. The People's Republic of China sent 80 armed fishing vessels to the islands to show displeasure with some Japanese parliament members who had, during the negotiations, raised the issue of the Diaoyu/Senkaku islands in order to hinder the treaty being signed.²³

The crisis then toned down and the negotiations could resume, but the incident was a sign that the issue was likely there to stay. On August 1978 the Foreign Ministers of both countries met in Beijing to sign the treaty, which stipulated that:

"The Contracting Parties shall develop durable relations of peace and friendship between the two countries on the basis of the Five Principles of Peaceful Co-Existence; The Contracting Parties affirm that in their mutual relations, all disputes shall be settled by peaceful means without resorting to the use or threat of force; The Contracting Parties shall endeavor to further develop their economic and cultural cooperation and to promote exchanges between the people of the two countries. The two parties declare in the Treaty that neither of them should seek hegemony in the Asia-Pacific region or in any other regions and that each was opposed to efforts by any other country or group of countries to establish such hegemony."

The Treaty also stipulates in explicit terms, that *"the present Treaty shall not affect the position of either Contracting Party regarding its relations with their countries"*.²⁴

²² Ibid.

²³ Blanchard, Jean-Marc F, "The US role in the Sino-Japanese dispute over the Diaoyu (Senkaku) Islands, 1945–1971," in *The China Quarterly* 161 (2000), p. 99.

²⁴ Sino-Japanese Treaty of Peace and Friendship, Ministry of Foreign Affairs of the People's Republic of China (1974).

Nevertheless, after signing in 1978, new problems appeared soon after. In 1979, the Japanese government decided to deploy a survey team of what seemed to be 31 scientists on the disputed territory, as well as to construct a heliport.²⁵

Further on, in 1990 media reports claimed that Japan's Maritime Safety Agency would recognize a lighthouse in the Islands as an official navigation marker. The Chinese Ministry was quick to react, claiming that such events marked a clear violation of Chinese sovereignty including sovereignty over the disputed piece of land. In 1992, China passed a law carving out its territorial waters and their surrounding zones including the disputed islands. The law included a provision specifying that China maintained the right to use military force to prevent any violations of its waters.²⁶

During the late 1990s, a tidal wave of nationalistic actions was registered, such as setting and removing national flags on the islands, activists visiting the territory as well as large scale national protest in The People's Republic of China, Republic of China and Japan alike, with the public opinions growing increasingly aware and committed to the cause.

After a failed attempt in 2011 of Japanese nationalist to purchase the islands²⁷ the central government stepped in and formally nationalized the islands on 11 September 2012, by purchasing three of the five islands in the disputed area from a private owner in the same year.²⁸ While Japan claimed it did so in order to stop further nationalist tendencies, Beijing reacted by accusing Japan of unrightfully annexing the territory and

²⁵ Blanchard, Jean-Marc F, "The US role in the Sino-Japanese dispute over the Diaoyu (Senkaku) Islands, 1945–1971," in *The China Quarterly* 161 (2000), p. 99.

²⁶ *Ibid.*, p. 100.

²⁷ Green, Michael, Kathleen Hicks, Zack Cooper, John Schaus, and Jake Douglas, "Countering coercion in maritime Asia: The theory and practice of gray zone deterrence," Rowman & Littlefield (2017).

²⁸ *Ibid.*

therefore disconcerting the status quo regarding the ownership of the islands.²⁹

The new century has brought little to no change. With the dispute remaining unresolved, it emerges the importance to further analyze the standing points, the arguments of the parties involved, as well as the means and instruments by which the debate is regularly addressed.

3. UNCLOS and the Legal Framework

A key instrument in analyzing this dispute is certainly the international legal framework. In the case of maritime issues, many attempts to internationally standardize procedures and laws have been made. The most prominent ones being the 1958 Convention of the Continental Shelf and the 1982 United Nations Convention on the Law of Sea (UNCLOS). This latter is a comprehensive treaty that created a legal regime governing the peaceful use of the ocean and its resources, whilst providing guidance on various maritime matters such as environmental protection, law of sea and resources rights.³⁰ It also includes international provisions concerning islands and maritime law, once the issue of sovereignty has been settled. However, when it comes to cases of settlement of maritime territorial disputes, such as the Senkaku/Diaoyu dispute, no clear guidelines have been set up as for how to assess the value of one nation's claim of sovereignty over another nation's competing claim.³¹

²⁹ Blanchard, Jean-Marc F, "The US role in the Sino-Japanese dispute over the Diaoyu (Senkaku) Islands, 1945–1971," in *The China Quarterly* 161 (2000), p. 109.

³⁰ Geng, Jing, "The legality of foreign military activities in the exclusive economic zone under UNCLOS," *Merkourios-Utrecht J. Int'l & Eur. L.* 28 (2012), p. 23.

³¹ Harry, R, "A Solution Acceptable to All-A Legal Analysis of the Senkaku-Diaoyu Island Dispute," *Cornell Int'l LJ* 46 (2013), p. 655.

3.1. Exclusive Economic Zones

One of the major issues when it comes to claiming sovereignty rights on an island is the Exclusive Economic Zone (EEZ) around the island itself. By the United Nations Convention on the Law of the Sea, that both the PRC and Japan ratified back in 1996, every State has an Exclusive Economic Zone (EEZ) of 200 nautical miles or 370 km from shore. The UNCLOS Article 55 clarifies the specific legal regime of the Exclusive Economic Zone as following:

“The exclusive economic zone is an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention.”³²

The coastal nations in possession of the land have i.a. jurisdiction over natural resources in these 200 nautical miles. This includes the right to exploit and regulate fisheries and use the waters for producing energy.³³ Since the East China Sea is not more than 400 nautical miles wide between Okinawa and mainland China, the Exclusive Economic Zones of the two countries overlap considerably.

Japan and China have a different approach when it comes to determining the Exclusive Economic Zone. On one side, Japan has demanded the application of the “equidistance approach”. This approach has been used in most agreements concerning maritime delimitation and basically implies that the maritime boundaries between two disputing nations should adapt to a median line that is equidistant from the shores of the neighboring nation. Such approach is defined under Article 15 of the 1982 UNCLOS that states:

³² United Nations Convention on the Law of the Sea (1982) (UNCLOS).

³³ UNCLOS (1982).

*“Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured. The above provision does not apply, however, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith.”*³⁴

China on the other hand has insisted on the application of the principle of the natural prolongation of the continental shelf. UNCLOS (III) Article 76 explains the principle as following:

*“The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured (...).”*³⁵

A graphic scheme may prove useful to summarize what has been presented so far in this section:

³⁴ Article 15, UNCLOS (1982).

³⁵ Article 76, UNCLOS (1982).

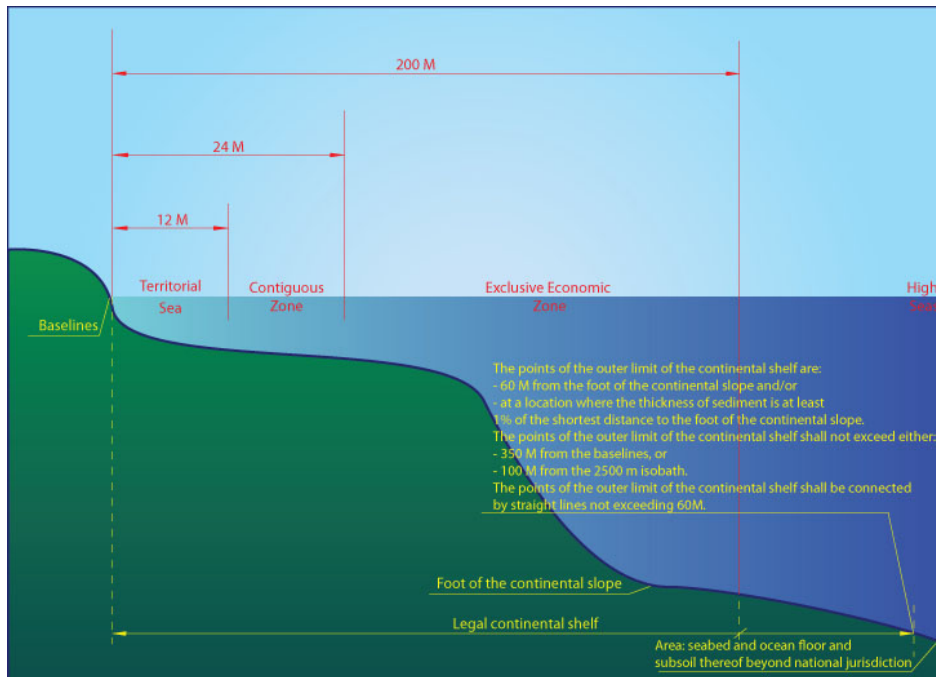


Figure 2: The definition of the continental shelf and criteria for the establishment of its outer limits.³⁶

Based on this approach, China would have claims up until 350 nautical miles from the coast extending until the Okinawa trough. China's point of view therefore implies that continental shelves of China and Japan are not connected as well as that the Okinawa trough serves as a boundary between them. Japan has claimed that the trough is just a subsidiary depression in a continental margin between the two countries and should therefore not be considered in determining the 200 nautical miles Exclusive Economic Zones.³⁷

This submerged prolongation of the land territory of the coastal state enables the state to claim mining rights in these waters. Taking into consideration that the East China Sea is in most parts rather shallow, with depths less than 200 meters, whilst the Okinawa trough is more than 2,300 meters deep, it could quite possibly be richer in natural resources such as gas and oil.

³⁶ Source: Division for Ocean Affairs and the Law of the Sea. Retrieved from: https://www.un.org/Depts/los/clcs_new/marinezones.jpg. [06.12.2019].

³⁷ Ji, Guoxing, "Policy Paper 19: Maritime Jurisdiction in the Three China Seas," (1995), p. 10.

Following China's principle of prolongation, its claims would reach all the way to the Okinawa trough, which is very close to Japan's Ryukyu Islands, and lies on the Japanese side of the Japanese-proposed median line. Japan argues that the Exclusive Economic Zones of both sides overlap due to the East China Sea being less than 400 nautical miles wide, which is why according to Japan the median or equidistant line should be drawn through the overlapping area and serve as a maritime border.³⁸ Analyzing these claims, it appears that the two countries differ even in the view of what the disputed area is. For China it seems to be the area between the median line and the Okinawa Trough, whilst for Japan it is the overlapping area of 200 nautical miles Exclusive Economic Zone. While the Chinese principle favors Chinese interest, Japan-proposed median line is of advance for Japan, taking into consideration that the line would be drawn westward of the Senkaku/Diaoyu islands.³⁹ The Senkaku/Diaoyu island dispute shows very clearly that the international legal framework can too often be used instrumentally by competing Powers to reinforce their respective arguments over delicate controversial political issues.

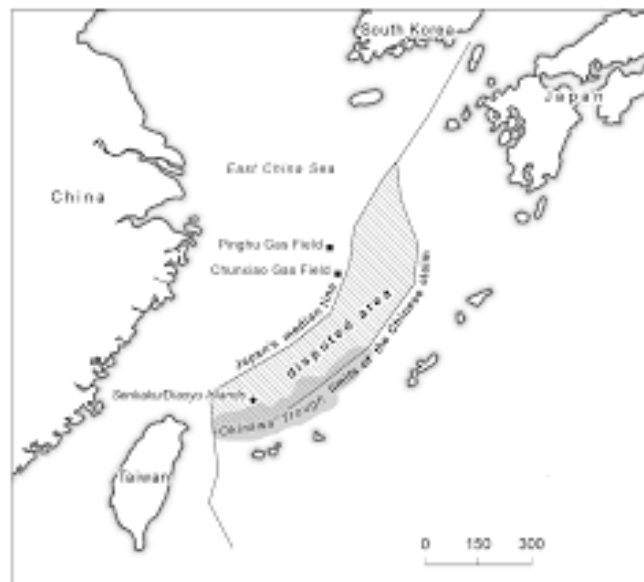


Figure 3: Overlapping Exclusive Economic Zones of China and Japan.⁴⁰

³⁸ Drifte, Reinhard, "Japanese-Chinese territorial disputes in the East China Sea—between military confrontation and economic cooperation," (2008), see: section "b. Disputed maritime border in the ECS".

³⁹ Ibid.

⁴⁰ Manicom, James, "Sino-Japanese cooperation in the East China Sea: limitations and prospects," *Contemporary Southeast Asia: A Journal of International and Strategic Affairs* 30, no. 3 (2008), p. 467.

The dispute over the Senkaku/Diaoyu islands is clearly linked to the disputes about the maritime borders in the East China Sea. And in order to draw a line or come to an agreement on the maritime border, the status of the ownership of the islands must be clarified, as well as whether or not the islands can be used to even claim a continental shelf.

The UNCLOS Article 121 deals with the regime of islands and should provide guidelines on whether or not an island, mass of land surrounded by water, has the right to claim an Exclusive Economic Zone. According to the above-mentioned article, "Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf."⁴¹ While both countries agree that the islands instigate the right to a territorial water zone and a contiguous zone of 12 nautical miles, only China applies UNCLOS Article 121 (3) and therefore denies the islands the right to an Exclusive Economic Zone and/or continental shelf. Japan on the other hand upholds the abovementioned claims, stating that the islands could sustain human life and have throughout history been used by Japanese entrepreneurs.

Despite the differing views going in favor to the claims made, they also rely upon the basic interpretation of the right of sovereignty. Whilst China claims that the islands have been used as markers for shipping routes, dating back to the Quing Dynasty, Japan claims the territory has been discovered and used by Japanese citizens as of 1885.⁴² The matter of sovereignty and claims shall thus be analyzed further in the paper.

Whilst the legal framework helps to understand the possibilities for a peaceful and mutually beneficial evolvement of the disputes, so far both countries have not taken the matter to international courts. China has been reluctant in this regard not to allow any outside factors determine any aspect of this matter. On the other hand, Japan has not acted with the aim of taking the matter to international courts because it has not

⁴¹ Article 121, UNCLOS (1982).

⁴² Ji, Guoxing, "Policy Paper 19: Maritime Jurisdiction in the Three China Seas," (1995), p. 11.

acknowledged that a territorial dispute over the islands even exists.⁴³ In the held diplomatic talks, the two countries mostly tried to shelve the issue, in order to find an agreement on more important matters, such as the determination of Exclusive Economic Zones and joint development of the area.

A significant number of national and international scholars have analyzed the historical evidence and claims without a clear and/or really neutral outcome. According to some scholars, if the issue regarding the EEZ came to arbitration, it would be unlikely that the median line would be imposed as it is now.⁴⁴ The argumentation is that the principle of proportionality could be applied. In this case, the median line could be used as an initial line but with regards to the above mentioned principle the length of the coastline could be compared to the ratio of allocation.⁴⁵ In other words, taking in consideration the length of China's Coastline in compare to the Japanese Ryukyu Islands the final line of allocation would be somewhere between the natural prolongation lines and the existing median line.⁴⁶

So far it does not seem like the dispute will be resolved by arbitration or other legal instruments of resolutions of dispute.

3.2. Heightened Tensions and Maritime Sensitivities

The dispute over the overlapping EEZs has brought along a sense of threat perceptions and heightened maritime sensitivity in the East China Sea. While the state owning an EEZ has certain sovereign rights over it, it has also obligations toward other states. An EEZ per se is therefore

⁴³ The Basic View on the Sovereignty over the Senkaku Islands, Ministry of Foreign Affairs Japan (2013).

⁴⁴ O'Shea, Paul, "How economic, strategic, and domestic factors shape patterns of conflict and cooperation in the East China Sea dispute," *Asian Survey* 55, no. 3 (2015), pp. 552-553.

⁴⁵ *Ibid.*, p. 552-553.

⁴⁶ *Ibid.*

subject to specific legal rules⁴⁷ due to it not being considered as an inherited marine area like the territorial sea, nor it being viewed as high seas. In line with the UNCLOS Treaty, the rights other states might benefit from are i.a. the freedom of innocent passage, freedom of overflight, freedom to lay submarine cables and pipelines.⁴⁸

While the UNCLOS agreement provides the right to innocent passage,⁴⁹ hence the freedom of transit and overflight in another state's territorial waters and EEZs, the issue remains whether the same rules apply for military activities in a coastal state's EEZ.

Military activities in other countries EEZs were a controversial issue even during the negotiations of the UNCLOS.⁵⁰ According to interpretations of the UNCLOS Article 19, foreign warships may enter the coastal state's EEZ but must follow the conditions of innocent passage.⁵¹ According to the article, the passage is viewed as such as long as "it is not prejudicial to the peace, good order or security of the coastal State" and "such passage (is taking) place in conformity with this Convention and with other rules of international law."⁵² At the same time, though, Article 25 of the treaty allows the coastal state to protect itself and 'take the necessary steps in its territorial sea to prevent passage which is not innocent.'⁵³

Between the territorial rights and the freedom and right applicable in the high seas, lies the EEZ. As it was already largely presented, this is possibly the most complex of the maritime zones in terms of regulation and enforcement of right and laws. Since UNCLOS fails to provide a clear regulation on whether states may unilaterally conduct certain military operations in the EEZ of the other state without permission, it is left to the

⁴⁷ Article 55, UNCLOS (1982).

⁴⁸ Article 58, UNCLOS (1982).

⁴⁹ Article 19, UNCLOS (1982).

⁵⁰ Valencia, Mark J., "The Asian maritime security context," *Adelphi Papers* 45, no. 376 (2005), p. 10.

⁵¹ Geng, Jing, "The legality of foreign military activities in the exclusive economic zone under UNCLOS," *Merkourios-Utrecht J. Int'l & Eur. L.* 28 (2012), p. 24.

⁵² Article 19, UNCLOS (1982).

⁵³ Geng, Jing, "The legality of foreign military activities in the exclusive economic zone under UNCLOS," *Merkourios-Utrecht J. Int'l & Eur. L.* 28 (2012), p. 24.

varying interpretations of each state, thus providing space for further disputes.

With the legality of foreign military activities within a coastal state's EEZ being unclear, some coastal states oppose such maneuvers, whilst others, such as the United States, hold that coastal states according to the UNCLOS treaty cannot impede nor restrict the freedom of navigation or overflight in and over their EEZs, including the conduct of military activities, the latter being interpreted as "internationally lawful uses", as stipulated in the treaty.⁵⁴⁵⁵

It is notable and worrisome that such opposing views might lead to incidents and even to conflicts. One example is clearly the 2001 incident in the South China Sea, when the U.S. navy surveillance aircraft US EP-3E collided with a Chinese fighter. China claimed that the U.S. "spy" aircraft flew over its EEZ and that it was endangering China's security. The United States claimed that the aircraft was flying over international waters and thus enjoyed the freedom of overflight. Incidents like this one show well how potentially fragile the legal framework could be when it comes to particular contested provisions and situations.

3.3. ESC Air Identification Zones

China, being one of the states that does not allow foreign military operations in its EEZ, unilaterally declared on 23 November 2013 the establishment of its first air defense identification zone (ADIZ).⁵⁶ An air defense identification zone or ADIZ is an "area of international airspace bordering a state's territorial airspace in which a state specifies additional aircraft identification requirements, presumably to prepare to defend its

⁵⁴ Valencia, Mark J., "The Asian maritime security context," *Adelphi Papers* 45, no. 376 (2005), p. 14.

⁵⁵ Article 58, UNCLOS (1982).

⁵⁶ Valencia, Mark J., "The East China Sea disputes: history, status, and ways forward," *Asian Perspective* (2014), p. 200.

territory from surprise aerial attack”.⁵⁷ According to U.S. federal regulations “Air defense identification zone (ADIZ) means an area of airspace over land or water in which the ready identification, location, and control of all aircraft (except for Department of Defense and law enforcement aircraft) is required in the interest of national security.”⁵⁸ In common understanding, ADIZ refers to an area in national as well as international airspace where military and civil aircraft are subject to notifications of entry and other obligations. The zones are established by coastal states and sometimes extends several hundred kilometers beyond the national mainland and the 12 nautical miles of territorial sea. This means that they extend into international airspace and in some cases can extend into other national airspace or ADIZs. Due to a lack of explicit reference to ADIZ in international treaties, the imposition of reporting as well as the overlapping of zones make this a highly controversial state practice.

The practice of establishing ADIZs occurred for the first time at the beginning of the Cold War. The purpose of establishment was to protect a coastal state from possible threats from the sea.⁵⁹ The national airspace was based on national territory and a three-mile wide strip of territorial waters. The remaining airspace outside the territorial sea held the status of the high seas.⁶⁰ Maritime jurisdiction outside of territorial waters came into consideration in 1950 when the law of the sea underwent gradual changes. With the UNCLOS treaty and various inter-state conflicts upon the division of the sea, maritime law went through a vast reorganization. These far-reaching changes in the law of the sea raise the question of

⁵⁷ Burke, Edmund J., and Astrid Stuth Cevallos, “In Line or Out of Order?: China's Approach to ADIZ in Theory and Practice,” Rand Corporation (2017), p. 1.

⁵⁸ The United States of America Aeronautical Information Publication, Basic Flight Information and Air Traffic Control Procedures, ENR 1.12 National Security and Interception Procedures (2020).

⁵⁹ Stipsits, Stephanie, “Air Defence Identification Zones, Fragen zu Legalität und Ausgestaltungsmöglichkeiten mit Bezug auf maritime Gebietsstreitigkeiten”, Expose unv. Diss., Universität Wien, p. 3, see also: Winkler, David F., and Julie L. Webster, “Searching the skies: the legacy of the United States Cold War defense radar program” No. SR-97-7, (1997), p. 22.

⁶⁰ Ibid., p. 4, see also: Lissitzyn, Oliver J, “The treatment of aerial intruders in recent practice and international law,” American Journal of International Law 47, no. 4 (1953), p. 559.

whether the status of maritime airspace has changed and whether it is possible for states to impose obligations on foreign aircraft outside their territorial airspace. The creation of ADIZ could be seen as a transition between national and international airspace. An area in which states may not enjoy complete control, but at least partially exercise rights, similar to those in the Exclusive Economic Zones of coastal states. The legal basis for creating a defensive zone in disputed or non-territorial waters is highly disputed and leaves the matter to divergent state practices.⁶¹ China's proclamation of an ADIZ in the East China Sea led to increased tension in an already unstable region as well as to raising objections from other states. The zone extends 300 miles from Chinese territory and overlaps with the ADIZ of Japan, Taiwan and South Korea. Furthermore, and key to this analysis, the established ADIZ covers the territory of the disputed Senkaku/Diaoyu islands.⁶²



Figure 4: Air Defence Identification zones overlapping each other in the East China Sea.⁶³

⁶¹ Ibid., p. 4, see also: Jinyuan, *The East China Sea ADIZ and International Law*, p. 273; Almond, *Clearing the Air above the East China Sea*, p.134.

⁶² Almond, Roncevert, "Clearing the Air Above the East China Sea: The Primary Elements of Aircraft Defense Identification Zones," *Harv. Nat'l Sec. J.* 7 (2015), p. 129.

⁶³ Source: Chinese Defense Ministry (as cited in BBC News, November 10, 2014). Retrieved from: <https://www.bbc.com/news/world-asia-pacific-11341139>. [06.12.2019].

China announced the abovementioned AIDZ without prior notification or negotiations with its neighboring countries or the international community. The ADIZ came immediately into force with strict guidelines to follow and an accompanying statement by Geng Yansheng, spokesman for the Ministry of National Defense, asserting that the “Ministry of National Defense of the People's Republic of China is the administrative organ of the East China Sea Air Defense Identification Zone”.⁶⁴ The statement prescribed that any aircraft flying in the East China Sea Air Defense Identification Zone must abide by the given rules, which i.a. includes the provision of a flight plan identification, radio identification, up to a logo identification (to clearly mark their nationalities and the logo of their registration identification). The statement also made clear that China's armed forces would adopt defensive emergency measures to respond to aircrafts that would not cooperate in the identification or refuse to follow the given instructions.⁶⁵ With this, China required that all aircrafts, civil or military, followed instructions and allowed for their identification, monitoring, and control when flying or operating in the ECS ADIZ.

This has left many regional as well as international countries and organizations rather displeased and some of them even challenged the legality of the ECS ADIZ. This may not come as a surprise taking into consideration that the scope of rules imposed by the ESC ADIZ would require military aircraft merely traversing international airspace, without intend to enter Chinese territorial waters, being nonetheless subject to ECS ADIZ requirements. One of the clearest opponents has been the U.S., with the Obama Administration claiming openly how they (the U.S.) “don’t recognize the ADIZ., feel that the way that China did this raises tensions in an already tense region, there was no consultation, this is one of the world’s obviously most geopolitically sensitive areas, and that we don’t believe they should implement it.”⁶⁶

⁶⁴ Xinhua News Agency, Announcement of the Aircraft Identification Rules for the East China Sea Air Defense Identification Zone of the P.R.C., November 23 (2013).

⁶⁵ Ibid.

⁶⁶ Daily Press Briefing, Marie Harf, U.S. Department of State (December 6, 2013).

Other countries such as Australia, Japan as well as the European Union voiced their opposition and criticism towards the Chinese action as undermining the legitimate use of international waters and airspace as well as the conduct of unilateral actions towards changing the status quo in the East China Sea.⁶⁷ The U.S. Military reacted promptly by flying two B-52 bombers over the Senkaku/Diaoyu islands.

China holds its position firmly, presenting the ADIZ in the East China Sea as a measure of national security not much different from other countries ADIZs, whilst emphasizing once more the need for others not to doubt “China's monitoring capabilities in the East China Sea ADIZ” nor “(the) Chinese military's determination and volition to safeguard the security of national territory and territorial airspace”.⁶⁸

4. The Different Claims

The Analysis of the historical background showed how Japan has been insisting that the islands were ‘discovered’, and the annexation has to be seen separately from the military victory over China in the 1894-1895 Sino-Japanese War and the following Treaty of Shimonoseki. China has refused this standpoint and has claimed that the islands were seized as spoils of war.⁶⁹ As it has been presented and will be further developed later in the text, the disputing parties use different principles to support their claims.

Since the reopening of diplomatic relations between the two countries in 1972 up until this day no solution for the territorial dispute over the island has been found. Nonetheless, throughout the early phase of the dispute and the various crises around it, both the Chinese and Japanese

⁶⁷ Almond, Roncevert, "Clearing the Air Above the East China Sea: The Primary Elements of Aircraft Defense Identification Zones," *Harv. Nat'l Sec. J.* 7 (2015), p. 130.

⁶⁸ Defense Ministry spokesman on China's air defense identification zone, Embassy of the People's Republic of China in the United States of America (December 4, 2013).

⁶⁹ Choong, William, "The Senkaku/Diaoyu dispute," *Adelphi Papers* 54, no. 445 (2014), p. 61.

governments have tried to keep a low profile in order to prevent an escalations or wider political problems.⁷⁰ However, the protracted nature of the dispute might have favored the emergence of more serious and complex issues. The historical overview presented in this paper showed indications of the dispute being driven by both economic reasons, with the discovery of energy reserves surrounding the islands, as well as significant political and strategic value, which some observers see as even more relevant than the economic one.⁷¹ For all these complex interests, economic, strategic and ideological, the Senkaku/Diaoyu Islands seem to be a 'barrel of gunpowder'.

In addition, the fact that the dispute has turned into a nationalistic one, with people of both sides involved, cannot and should not be ignored. For the Chinese side, these islands have become some sort of symbol, which reminds them of Japan's military aggressions in the past. Besides that, both parties have pointed out their national pride when it comes to settling the dispute, making it even harder to find a solution especially when it comes to setting aside one's sovereignty claims over the islands.⁷² According to some scholars, this dispute and the narrative it has created, bolstered the Chinese Communist Party's (CCP) nationalist credentials and therefore its legitimacy. At the same time, it has offered Tokyo a valid example to foster the idea of a "China Threat", justifying security policies.⁷³

In order to further analyze the dispute and to possibly come up with suggestions for resolution it is important to take a look at the problem from different perspectives, analyzing the different claims for sovereignty of the territory. With Japan and People's Republic of China being the major focus of the paper, these two perspectives shall be analyzed further.

⁷⁰ Shaw, Han-yi, "The Diaoyutai/Senkaku Islands Dispute: Its history and an analysis of the ownership claims of the PRC, ROC, and Japan," Maryland Series in Contemporary Asian Studies 1999, no. 3 (1999), p. 5.

⁷¹ Acheson, Chris, "Disputed Claims in the East China Sea, An Interview with James Manicom," in Japan-US Discussion Forum (2011), pp.1-2.

⁷² Shaw, Han-yi, "The Diaoyutai/Senkaku Islands Dispute: Its history and an analysis of the ownership claims of the PRC, ROC, and Japan," Maryland Series in Contemporary Asian Studies 1999, no. 3 (1999), pp. 5-6.

⁷³ O'Shea, Paul, "The East China Sea maritime and territorial dispute: a stand-off that suits everybody?," Global Affairs 1, no. 4-5 (2015), p. 456.

4.1. Japan's Claim of Sovereignty

The official position of the Japanese Government on the dispute has been presented on numerous occasions. On March 8th 1972 the government has issued an official statement entitled '*The Basic View of the Ministry of Foreign Affairs on the Senkaku Islands*'⁷⁴, which reads:

*"There is no doubt that the Senkaku Islands are clearly an inherent part of the territory of Japan, in light of historical facts and based upon international law. Indeed, the Senkaku Islands are under the valid control of Japan. There exists no issue of territorial sovereignty to be resolved concerning the Senkaku Islands."*⁷⁵

The Japanese government claims that the Senkaku Islands were *terra nullius* when they were formally incorporated into Japanese territory back in 1895. The Japanese Government states as follows:

*"In January 1895, after having carefully ascertained that there had been no trace of control over the Senkaku Islands by another state prior to that period, the Government of Japan incorporated the islands into the Japanese territory by lawful means under the international legal framework which existed at that time."*⁷⁶

The term *terra nullius* means that the land was without an "owner" and therefore free to occupy. According to principles of international law there are five modes of territorial acquisition: prior occupation (discovery-occupation), cession, accretion, subjugation, and prescription. The principles of occupation are generally explained in Oppenheims International Law as following:

⁷⁴ Shaw, Han-yi, "The Diaoyutai/Senkaku Islands Dispute: Its history and an analysis of the ownership claims of the PRC, ROC, and Japan," Maryland Series in Contemporary Asian Studies 1999, no. 3 (1999), p. 22.

⁷⁵ The Basic View on the Sovereignty over the Senkaku Islands, Ministry of Foreign Affairs Japan (2013).

⁷⁶ Situation of the Senkaku Islands, Ministry of Foreign Affairs Japan (2014).

“Occupation is the act of appropriation by a state through which it intentionally acquires sovereignty over such territory as it is at the time not under the sovereignty of another state. It is therefore an original mode of acquisition in that the sovereignty is not derived from another state....The territory of [another] state... can only be acquired through cession, or, formally, by subjugation.

Theory and practice agree upon the rule that occupation effected through taking possession of, and establishing an administration over, territory in the name of, and for, the acquiring state. Occupation thus effected is real occupation, and, in contradistinction to fictitious occupation, is named effective occupation. Possession and administration are the two essential facts that constitute an effective occupation.

(1) Possession. The territory must really be taken into possession by the occupying state. For this purpose it is necessary that it should take the territory under its sway (corpus) with the intention of acquiring sovereignty over it (animus). This... normally involves a settlement on the territory, accompanied by some formal act which announces both that the territory has been taken possession of and that the possessor intends to keep it under his sovereignty.

(2) Administration. After having taken possession of a territory, the possessor must establish some kind of administration thereon which shows that the territory is really governed by the new possessor. If, within a reasonable time after the act of taking possession, the possessor does not establish some responsible authority which exercises governing functions, there is then no effective occupation, since in fact no sovereignty is exercised by any state over the territory.”⁷⁷

Official statements by the Japanese government also stated that the Islands were made Japanese territory and placed under the administration

⁷⁷ Oppenheim, L. and Lauterpacht, Hersch, “International law, a treatise/by L. Oppenheim”, London:Longman (1955), pp. 221-223.

of Ishigaki Village, Yaeyama District, Okinawa Prefecture in 1896 (following the cabinet's decision from 1895 to erect a marker and –by doing so- formally incorporate the Islands into Japanese territory) based on Imperial Decree No. 13.⁷⁸ These claims and references were used to demonstrate that the occupation of the disputed land was in accordance with international law and further legalized through administration of the land. In international law the claims of occupation become legal when:

*“ (...) a territorial change, provided that the occupation, made with the intention of incorporation the occupied territory into the territory of the occupying States, assumes a permanent character, and that means that the legal order of the occupying State becomes efficacious for the territory in question.”*⁷⁹

The Japanese Government seeks to demonstrate this aspect by claiming the islands were occupied legally and later on (no specific dates mentioned) inhabited.

Reading again the official Japanese Ministry of Foreign Affairs (MFA) statements: *“After the incorporation of the Senkaku Islands into Japanese territory, Japanese civilians settled on the previously uninhabited islands, having obtained permission from the Government. Settlers ran businesses such as dried bonito manufacture and feather collecting. The islands counted more than 200 inhabitants at one point, and taxes were collected from the inhabitants.”*⁸⁰

Furthermore, as it was earlier outlined, Japan has also claimed that the ownership of the islands was not affected by the 1895 Treaty of Shimonoseki, claiming that *“nothing in the negotiation history (or otherwise) supports the interpretation that the Senkaku Islands are*

⁷⁸ Shaw, Han-yi, "The Diaoyutai/Senkaku Islands Dispute: Its history and an analysis of the ownership claims of the PRC, ROC, and Japan," Maryland Series in Contemporary Asian Studies 1999, no. 3 (1999), pp. 23-24.

⁷⁹ Kelsen, Hans, General theory of law and state, Routledge (2017), p. 215.

⁸⁰ Situation of the Senkaku Islands, Ministry of Foreign Affairs Japan (2014).

included in the island of Formosa and the islands appertaining or belonging to it in Article 2b of the Treaty".⁸¹ The Japanese Ministry of Foreign Affairs has regularly referred to the cabinet decision of formally annexing the islands, which had been made before the concluding of the Treaty of Shimonoseki. The islands have been thereon viewed as "*part of Okinawa Prefecture and consistently treated the Islands as part of Okinawa Prefecture, not as an area under the jurisdiction of the Governor-General of Taiwan which was ceded to Japan after the Sino-Japanese War*".⁸²

According to the Japanese side, another proof for these claims is the fact that a resident of Okinawa Prefecture filed an application for the lease of the islands, and approval was granted by the Meiji Government in 1896.⁸³ The approval by the Meiji Government of such lease would demonstrate according to the Japanese the valid and full control over the Islands.

Regarding a later phase of history, and namely the period immediately following WWII, Japan has fully acknowledged the U.S. administrative control over the islands, as part of Nansei Shoto and in accordance with Article 3 of the San Francisco Peace Treaty. However, it has always emphasized that the administrative rights were officially transferred back to Japan on 15 May 1972 with the coming into force of the Okinawa Reversion Agreement⁸⁴ and that in the meantime no foreign state had acquired rights over them, "*with the only exception of the administrative rights which the United States was authorized to exercise over the Islands (...)*" and that the legal status of the island "*was ensured through the valid control by the United States Civil Administration of the Ryukyu Islands and the Government of the Ryukyu Islands*".⁸⁵

Lastly, in addition to the historic claims (re. 'terra nullius') outlined earlier, the Japanese side has referred more and more often to modern history, by

⁸¹ Senkaku Islands Q&A, Ministry of Foreign Affairs Japan (2016), Q.7.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Manyin, Mark E, "The Senkakus (Diaoyu/Diaoyutai) Dispute: US Treaty Obligations," Congressional Research Service Report 42761 (2016), p. 4.

⁸⁵ Ibid., p. 4.

claiming their rights as based in the Okinawa Reversion Agreement between the United States and Japan of 1971, where the administrative rights over the islands were returned to Japan. U.S. administrations have repeatedly stated that the United States take no position on the question of who has sovereignty over the islands, however, the U.S.-Japan Security Treaty from 1960 does cover the islands, according to Japan's reading.⁸⁶

At this point, looking into the U.S. administration of the islands and especially the revision treaty might be important. The U.S. administration began with the end of World War II and ended 1951 with the Treaty of Peace with Japan, above mentioned as the San Francisco Peace Treaty, by which the Allied Powers "recognize the full sovereignty of the Japanese people over Japan and its territorial waters".⁸⁷ Whilst the treaty did not specifically mention the Senkakus/Diaoyu islands it did refer to other locations that had been reverted to China or that China had claimed, including Taiwan and the Pescadores.⁸⁸ Article 3 of the treaty gave the U.S. sole powers of administration of Nansei Shoto south of 29 north latitude (including the Ryukyu Islands and the Daito Islands), Nanpo Shoto south of Sofu Gan (including the Bonin Islands, Rosario Island and the Volcano Islands) and Parece Vela and Marcus Island.⁸⁹

Prior to the signing of the Okinawa Reversion Agreement in 1971 hearings before the United States Senate, Committee on Foreign Relations had been held. Prior to the signing, several State Department officials emphasized "Nansei Shoto south of 29 degrees north latitude" was "understood by the United States and Japan to include the Senkaku Islands."⁹⁰ According to official communications⁹¹ the position of the State Department before the

⁸⁶ Ibid., see: "summary".

⁸⁷ Treaty of Peace with Japan (with two declarations). Signed at San Francisco, on 8 September 1951. United Nations Treaty Collection No 1832.

⁸⁸ Manyin, Mark E, "The Senkakus (Diaoyu/Diaoyutai) Dispute: US Treaty Obligations," Congressional Research Service Report 42761 (2016), see: "summary".

⁸⁹ Treaty of Peace with Japan, United Nations Treaty Collection No 1832 (1951)

⁹⁰ Okinawa Reversion Treaty: Hearings, Ninety-second Congress, First Session, On Ex. J. 92-1, October 27, 28, And 29, 1971. Washington: U. S. Govt. Print. Off. (1971), pp. 90-91, 93, 147.

⁹¹ Okinawa Reversion Treaty: Hearings, Ninety-second Congress, First Session, On Ex. J. 92-1, October 27, 28, And 29, 1971. Washington: U. S. Govt. Print. Off. (1971). p. 147.

signing of the Okinawa Reversion Agreement of June 17, 1971 on the status of the Senkaku/Diaoyu Islands was mentioned as following:

*"The term "Nansei Shoto" was understood to mean all islands under Japanese administration at the end of the war which were not other-wise specifically referred to in the Peace Treaty. The term, as used in the Treaty, was intended to include the Senkaku Islands."*⁹² Further stating that the U.S. *"has consistently maintained that any dispute over sovereignty over the Senkaku Islands should be settled by the parties themselves (or, if they wish, by third party adjudication). Neither the Peace Treaty nor the Reversion Agreement will dispose of such a dispute."*⁹³

In the same hearing the U.S. Senate has been warned about the possibility of both China and Taiwan claiming the islands. The hearing noted the appearance of the name of the islands Tiao-Yu Tai (Diaoyutai) in a Chinese voyage and navigation record, Shun Feng HsiangSung, in 1403 and other reports.⁹⁴

As far as Japanese records go, the islands have been detailed in a Japanese gazetteer published in 1909. In the same gazetteer, the name Senkaku is reported to have been officially registered in Japan in 1900.⁹⁵ Prior to this, Tatsushiro Koga, a Japanese residing in Ryukyu Islands, claimed to have discovered the islands in 1885 and had asked for permission to use them for his business purposes. Interestingly, before the official annexation of the islands, Japanese officials had expressed concerns, arguing that the islands were very close to China and the commentaries of the major Chinese newspapers were accusing the Japanese of territorial expansionist intentions.⁹⁶

As outlined in the previous chapters, it wasn't until 1895 and after the Treaty of Shimonoseki in May of the same year (whereby China ceded Taiwan and its surrounding islands to Japan), that the Japanese Cabinet

⁹² Ibid., p. 147.

⁹³ Ibid.

⁹⁴ Ibid., p. 146.

⁹⁵ Ibid.

⁹⁶ Ibid.

officially annexed the islands. This led modern China to use the argument of the islands being part of Formosa (Taiwan), annexed by Japan and therefore to be returned by the results of terms of Japanese surrender in the Cairo Declaration (1943) and Potsdam Declaration (1945).⁹⁷

4.2. China's Claim of Sovereignty

China's perspective on the dispute has shown a more historical point of view, whereby the focus lies on Chinese Government claiming the island were 'historically' Chinese territory and therefore not to be seen as 'terra nullius' at the point of annexation by Japan.

When it comes to negotiating the dispute, the official position of the Chinese Government has been very clear, at least when it comes to choosing the wording of the argumentation. In September 2012, the State Council Information Office of the People's Republic of China has published a white paper with clear guidance's regarding the People's Republic of China view-points:

*" I. Diaoyu Dao is China's Inherent Territory
II. Japan Grabbed Diaoyu Dao from China
III. Backroom Deals Between the United States and Japan Concerning Diaoyu Dao are Illegal and Invalid
IV. Japan's Claim of Sovereignty over Diaoyu Dao is Totally Unfounded
V. China has Taken Resolute Measures to Safeguard its Sovereignty over Diaoyu Dao".*⁹⁸

The above-mentioned historical point of view, in the Chinese argumentation, should serve as evidence of the Japanese grabbing land and therefore forceful and illegal annexation of Chinese territory - this is

⁹⁸ Special Reports, The Diaoyu Dao Issue, Diaoyu Dao, an Inherent Territory of China, Embassy of the People's Republic of China in the Kingdom of Denmark, (2012).

the starting point of China's claims on the disputed islands. The core argument China (as well as Taiwan/ROC) has been presenting is the claim that the disputed islands had first been discovered, named as well used by the Chinese during the 14th century. Therefore, they could not be seen as 'terra nullius'. Some Chinese scholars have claimed that the island chain was being used by the Ming Government as a coastal defense system against the Japanese pirates, so called Wakou. China has been presenting this as prove of the islands being under China's (Ming Dynasty) jurisdiction.⁹⁹

With the official words of the Beijing's MFA, *"The Diaoyu Island and its affiliated islands have been China's sacred territory since ancient times. This is supported by historical facts and jurisprudential evidence. The Diaoyu Islands were first discovered, named and exploited by the Chinese people. Chinese fishermen had long been engaged in production activities on these islands and in their adjacent waters. The Diaoyu Islands have been put under the jurisdiction of China's naval defense as affiliated islands of Taiwan, China since the Ming Dynasty. The Diaoyu Islands have never been "terra nullius". China is the indisputable owner of the Diaoyu Islands."*¹⁰⁰

In the Chinese reading, the outcome of the First Sino-Japanese War also played a part in the claim of the sovereignty of the islands. China has claimed that with the signing of the Treaty of Shimonoseki the Qing government had to cede to Japan "the island of Formosa (Taiwan), together with all islands appertaining or belonging to the said island of Formosa"¹⁰¹. Then, after the Second World War, in accordance with the Cairo Declaration and the Potsdam Proclamation, China recovered these territories. The Chinese Governments sees the island chain and its affiliated islands as returned to China:

⁹⁹ Special Reports, The Diaoyu Dao Issue, Diaoyu Dao, an Inherent Territory of China, Embassy of the People's Republic of China in the Kingdom of Denmark, (2012), see: point 2.

¹⁰⁰ The Issue of Diaoyu Dao, Statement of the Ministry of Foreign Affairs of the People's Republic of China (September 10, 2012).

¹⁰¹ Ibid.

*“(...) in accordance with the Cairo Declaration and the Potsdam Proclamation. According to international law, the Diaoyu Island and its affiliated islands have already been returned to China. Facts are facts, and history is not to be reversed. Japan's position on the issue of the Diaoyu Island is an outright denial of the outcomes of the victory of the World Anti-Fascist.”*¹⁰²

Japan, on the other hand, has not recognized this argument to be valid, since in the Treaty of Shimonoseki there are no clearly defined geographical limits of the island of Formosa and the islands surrounding or belonging to Formosa.¹⁰³ As it outlined above, Japan's Government has also repeatedly stated that there have been actions prior to the 1885 Treaty of Shimonoseki that would prove the incorporation of the Senkaku Islands into the territory of Japan. Japan has also claimed that during the annexation/incorporation process the Japanese Government had made sure that no state -including the Qing Dynasty of China- had control over the Islands. The Japanese Government has always defended that the islands had never been viewed as part of Taiwan but have always been incorporated into Okinawa Prefecture¹⁰⁴:

*“These facts make it clear that, both before and after the Sino-Japanese War, the Government of Japan has never regarded or treated the Senkaku Islands as part of the island of Taiwan or islands appertaining or belonging to the island of Taiwan, which had been part of the Qing Dynasty of China. Thus, it is evident that the Senkaku Islands could never have been part of the cession made under the Treaty of Shimonoseki.”*¹⁰⁵

¹⁰² Ibid.

¹⁰³ Senkaku Islands Q&A, Ministry of Foreign Affairs Japan (2016), Q. 7.

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

4.3. Hegemony, International Players and Risk of Conflict

The best way for a state to secure its power is to be much more powerful than all other states in a given system, to be a hegemon. The conventional theory reduces the meaning of the term hegemony to a single dimension of dominance based on the economic and military capabilities of states.¹⁰⁶ A broader definition of hegemony delivers neo-Gramscian perspective, where the concept of hegemony is based on consent. The neo-Gramscian perspective, elaborated by Robert Cox, claims that hegemony is to be seen as “expression of broadly based consent, manifested in the acceptance of ideas and supported by material resources and institutions, which is initially established by social forces occupying a leading role within a state, but is then projected outwards on a world scale.”¹⁰⁷

Since this thesis is analyzing the global order and perspectives, the theory of John Mearsheimer will be used. Mearsheimer views that: “A hegemon is a country that is so powerful that it dominates all the other states. In other words, no other state has the military wherewithal to put up a serious fight against it. In essence, a hegemon is the only great power in the system.”¹⁰⁸ The notion of “system” is here intended not necessarily and not only as “global system”, but can be used to describe regional as well as sub-regional systems. Up to the nineteenth century China has been the dominant power in East Asia. The rise of Japan has then interrupted China’s hegemon status in the region, but China’s substantial economic growth and military expansion in the recent decades has once again brought it to a prominent position, reaching far beyond the region. Yet, despite China’s aspirations in the region, it is not quite there on the global scale and perhaps not quite there even in the regional arena. Another hegemon has been present in East Asia and is continuously challenging

¹⁰⁶ Bieler, Andreas, and Adam David Morton, "A critical theory route to hegemony, world order and historical change: neo-Gramscian perspectives in International Relations," *Capital & class* 28, no. 1 (2004), p. 87.

¹⁰⁷ *Ibid.*, p. 87.

¹⁰⁸ Mearsheimer, John J, "The gathering storm: China's challenge to US power in Asia," *The Chinese journal of international politics* 3, no. 4 (2010), p. 387.

China's supremacy. Namely, the United States' military preeminence in the Western Pacific.¹⁰⁹

China's aspirations for hegemony in the East and South China Sea have led to overly aggressive actions and with that many of the neighboring countries have increased their ties with each other as well as with Beijing's most prominent opponent, Washington. The rise of nationalist rhetoric in China as well as the heavy military build-up in the East China Sea make this dispute (truly about the "hegemony" in the region) even more significant for Washington.

5. Geopolitical Implications and Recent Developments

For many years now the diplomatic relations between the People's Republic of China (PRC) and Japan are facing one crisis after the other. The dispute over the Senkaku/Diaoyu islands as well as maritime claims in the East China Sea have triggered much of the worsening. The East China Sea dispute between China and Japan has been escalating frequently and left without settling for about 40 years. The dispute is evolving into a barrel of tensions, nationalism and geopolitical implications. However, while tensions have risen, the disputed countries have managed to avoid armed conflicts.

Historical background and legal status are essential elements for analyzing this dispute, but the question remains of what the main drivers behind the dispute are. Is this a conflict solemnly resting on nationalistic feeling of both parties or is there more to the issue? Surely it can be noted that the dispute fired up during the '70s and since then it has had several revivals, which involved not only the two disputing sides, but also other regional as well as international actors.

¹⁰⁹ Pugh, Jonathan, "Is China the New Hegemon of East Asia?" (2017).

At first sight, the island chain seems to bear no significant value, it is not inhabited nor does it have any form of visible resources that could be used by the country holding the sovereignty over the territory. Studies have shown that the initial 1968 surveys regarding the potential reserves of oil and gas in the underwater area was a rather optimistic one. New studies estimate that there could be no more than one – two trillion cubic feet of gas under the East China Sea.¹¹⁰

Yet, the need to secure natural resources, especially for China, remains high. Driven by shared economic interest, Japan and China have therefore agreed to set aside the sovereignty as well as the boarder delimitation issue.¹¹¹ From the early 1990s, China became increasingly active in exploiting gas from the East China Sea, whilst mainly respecting the median line and Japan's exclusive economic zone. In accordance with the UNCLOS Article 83 (3) which advises that states should not take action that may jeopardize a final agreement, Japan has almost completely refrained from any such actions to the point of turning down applications for exploitation of companies.¹¹² On top of general political considerations, a reason behind Japan's holding back may be among others referred to technical and financial challenges of extraction and transportation of hydrocarbons from the area.

5.1. The Question of Natural Resources

It was not until 2003 that Japan started protesting over China's exploitations in the area. Japan asked China to hand over data on the Chunxiao gas field, a rig located only 4.8 km from the median line, due to suspicions that China might be tapping into Japanese EEZ and therefore Japan's reserves. China ignored the request and acted only upon Japan

¹¹⁰ O'Shea, Paul, "How economic, strategic, and domestic factors shape patterns of conflict and cooperation in the East China Sea dispute," *Asian Survey* 55, no. 3 (2015), p. 555.

¹¹¹ Drifte, Reinhard, "Japanese-Chinese territorial disputes in the East China Sea—between military confrontation and economic cooperation," (2008), see: "Introduction".

¹¹² *Ibid.*, "c. Toward the end game? Negotiations after 2006".

announcing plans to carry out their own geological research of the area. Beijing reaction was prompt, warning Japan to “act in caution” in what it considered to be Chinese EEZ.¹¹³ Nevertheless, in 2004 Japan deployed a research team, to which China answered by sending destroyer ships into the disputed zone as a warning sign. In 2005, the Japanese were driven to react once more, after the discovery that China had secretly allocated 12 additional exploration areas, with some of them being entirely on the Japanese side.¹¹⁴ What followed was a spanned series of threats and negotiations, culminating with the establishment of a 2,700 km² Joint Development Zone (JDZ)¹¹⁵ announced with a joint press statement on June 18, 2008.¹¹⁶ The JDZ was created north of the Chunxiao field (Japanese Shirakaba) and would go through the Japanese median line (see figure below) whilst the details of the joint exploitations of the zone remained unspecific and were referred to as joined development “under the principle of mutual benefit”.¹¹⁷ The agreement remained vague on the division of possible resources, stating that the “specific matter will be decided by the two sides through consultation”.¹¹⁸

¹¹³ Ibid. Section “c. Toward the end game? Negotiations after 2006”.

¹¹⁴ Ibid. Section “c. Toward the end game? Negotiations after 2006”.

¹¹⁵ Ali, Ghulam, Yu Bin, Wang Chengzhi, Chien-peng Chung, Norafidah Ismail, Han Lheem, James Manicom et al. “Multidimensional diplomacy of contemporary China” Lexington Books (2012), p.143.

¹¹⁶ Joint Press Conference by Minister for Foreign Affairs Masahiko Koumura and Minister of Economy, Trade and Industry Akira Amari, Cooperation between Japan and China in the East China Sea. Ministry of Foreign Affairs Japan. June 18, 2008.

¹¹⁷ Ibid.

¹¹⁸ Ibid.

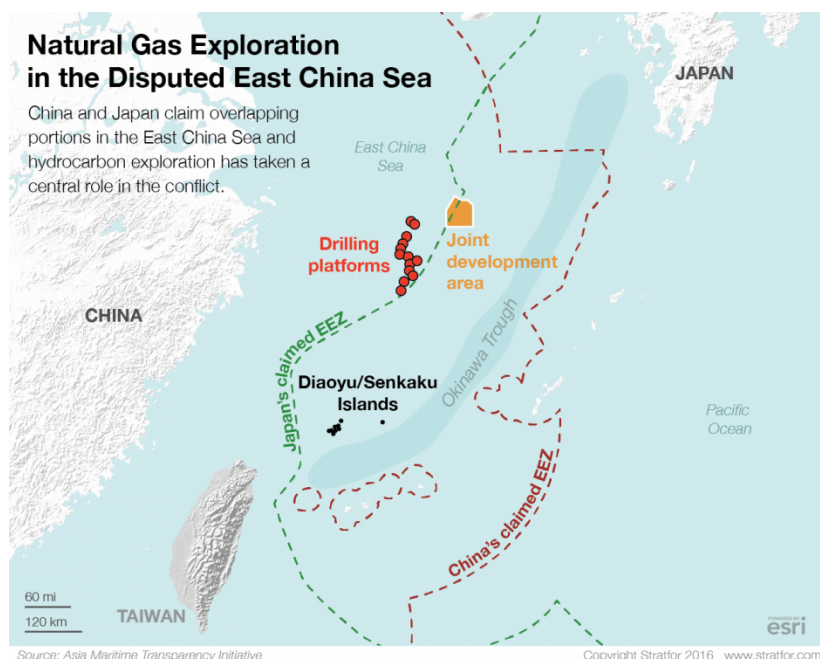


Figure 5: Natural Gas Exploitation in the East China Sea.¹¹⁹

Japan, being worried about the Chunxiao and its surrounding fields, wanted to pursue a JDZ in this region, whilst China aimed at a JDZ to the south, near the Senkaku/Diaoyu islands. Although Japan made it clear that this would not be negotiable, according to some scholars China might push for these in the future, in exchange for Japanese access to other fields at Chunxiao.¹²⁰

History showed that China went on to exploit gas near the Chunxiao field on its own, leaving Japan deeply dissatisfied.¹²¹ Ultimately, the agreement could be interpreted as a step forward, although it failed to lead to the signing of a tangible treaty, nor did it serve as a specific agreement on resource exploitation, and even more importantly it did not lead to an agreement delimiting boundaries in the East China Sea. According to some scholars the agreement was not more than an understanding on the

¹¹⁹ Source: Stratfor, Nov 7, 2016. Retrieved from:

<https://worldview.stratfor.com/article/east-china-sea-china-crosses-line>. [06.12.2019].

¹²⁰ Manicom, James, "Sino-Japanese cooperation in the East China Sea: limitations and prospects," *Contemporary Southeast Asia: A Journal of International and Strategic Affairs* 30, no. 3 (2008), p. 467.

¹²¹ Reuters, "Japan says China oil production in disputed field regrettable," March 9 (2011).

most basic positions of China and Japan.¹²² The final outcome of the agreement left both parties rather unsatisfied. Japan did not get access to any of the other fields at Chunxiao, whilst China did not get access to fields near the Senkaku/Diaoyu Islands. Nonetheless, it showed to some extent China's willingness to be more flexible on the matter of the disputes in the ECS. Throughout the years to follow there were many additional disputes regarding the extraction of natural resources from the area. These events had made it clear that China's interest in the region were not only of economic nature, but also, and perhaps more importantly, strategic. While the East China Sea may be resource-rich and the growing economies of both China and Japan are in need of these resources, pinning the dispute to solemnly economic factors would be misleading.

Along with the economic value of the sea resources, the disputed islands carry a great strategic value. First, this is due to their location near important shipping routes being used for international trade transits. Both countries seem to have become aware of the growing importance of maritime assets, which brought up more active maritime enforcement policies on both sides of the dispute.¹²³ Another factor which should be taken into consideration, is the rising strategic competition among China, Japan and the United States for military supremacy in the Asia-Pacific region.¹²⁴

The evolution in the political and security environment of the 21st century made a solution to the dispute at the same time more urgent and more difficult to reach. On the Chinese side, the need to secure more gas and oil reserves increased the importance of the East China Sea, as well China's desire to create a free passage to the Pacific Ocean. On top of that, Japan's ongoing military cooperation with the USA has prompted

¹²² Manicom, James, "Sino-Japanese cooperation in the East China Sea: limitations and prospects," *Contemporary Southeast Asia: A Journal of International and Strategic Affairs* 30, no. 3 (2008), p. 466.

¹²³ Manicom, James, *Bridging troubled waters: China, Japan, and maritime order in the East China Sea*, Georgetown University Press, (2014), p. 68.

¹²⁴ Roy-Chaudhury, Shantanu, "The Senkaku islands dispute," *International Policy Digest* no. 8 (2016).

China to strengthen its presence in the East China Sea as well as to deploy its growing navy to secure its existing oil and gas platforms.

In addition to these strategic elements, national identities as well as complex historical constraints between the two countries are also significant factors for the dispute and barriers for finding solutions. The historic mutual mistrust is today visible in the militarization efforts of the parties. Furthermore, a significant part of the Japanese political sphere views the Chinese efforts to explore for resources in the East China Sea as part of a “creeping expansionism” strategy, designed to expand Chinese power across the East China Sea and past Japan into the Pacific Ocean.¹²⁵

With China being the world largest net importer of oil and gas¹²⁶, securing natural resources is a high priority for Beijing. Yet, as it was just outlined, the geopolitical stakes grow just in parallel with the need of securing resources. As the Chinese economy grows, so does the need to secure such growth in the future. According to experts, there are far-reaching constituencies within China seeking to expand China’s power and position in the East China Sea and the Pacific. Resource development, military presence and air identification zones could just be the tools to accomplish this. As the national interest turns towards *haiyang quanyi* (海洋权益), commonly abbreviated to *haiquan*, (海权), or China’s “maritime rights and interests”¹²⁷ so does the understanding of China’s Military of the strategic importance to securing Sea Lines of Communication (SLOC) as well as the ability of vessels to move freely towards and through the oceans.

China’s goals in the East China Sea could therefore be summed in three

¹²⁵ Manicom, James, "Sino-Japanese cooperation in the East China Sea: limitations and prospects," *Contemporary Southeast Asia: A Journal of International and Strategic Affairs* 30, no. 3 (2008), p. 460.

¹²⁶ U.S. Energy Information Administration, *Natural Gas Weekly Update*, December 6 (2018), see also: Clemente, Jude, “China Is The World’s Largest Oil & Gas Importer,” *Forbes Magazine*, October 17 (2019).

¹²⁷ Fravel, M. Taylor, and Alexander Liebman, "Beyond the moat: The PLAN’s evolving interests and potential influence," *The Chinese navy: Expanding capabilities, evolving roles* (2011), p. 41.

major points: to defend the eastern coast, including the claimed EEZ and the resources it holds; to preserve the claims to sovereignty over the Senkaku/Diaoyu islands; and to prevent Taiwan (Republic of China) from de jure independence. The securing of these strategic goals would inevitably mean to prevent Japan's rise in the Asian-Pacific or that of other hegemonic structures. The obstacle and objectives to these goals shall be analyzed further in the text.

5.2. Current Events and Developments

In recent years, the disputes escalated even further, resulting in a series of incidents especially in the disputed waters around the islands. Activist as well as patrolling vessels of the People's Republic of China, the Republic of China and Japan have persistently carried out maritime patrols and conducted overflights. One of the major incident happened on September 7th, 2010 when two Japanese Coast Guard Vessels collide with a Chinese fishing boat near the Senkaku/Diaoyu Islands. This resulted in Japan arresting the Chinese crew and with Beijing strongly condemning this move and unofficially enforcing an embargo on Japan and freezing diplomatic relations.¹²⁸

Later on, in September 2012, the Japanese Government decided to purchase three of the Diaoyu/Senkaku Islands from the formal owner, a private Japanese citizen. This move was perceived as a challenge to China. In Beijing, Japan's decision was viewed as a move towards imposing sovereignty over the island and thus changing the status quo of the dispute. Contrarily, the Japanese Government explained the purchase was primarily a preventing measure in order for the island not to fall into the hands of the Japanese far-right political forces. The Japanese Government claimed that the supposed nationalistic forces had aims to do so, which could lead to a further escalations of events. In response, China

¹²⁸ Bradsher, Keith, "Amid tension, China blocks vital exports to Japan," New York Times, September 22 (2010).

froze most of its diplomatic dialogues with Japan, including the ongoing negotiation process regarding the set-up of a maritime communication mechanism. The two parties' omitted bilateral dialogue raised international concerns, particularly with respect to possible escalations of the dispute or more serious collisions.¹²⁹

Despite the establishment of a Joint Development Zone back in 2008, the two countries failed to jointly develop the natural resources and ended with a more restrained mutual relationships. Since 2012 Japan's diplomacy concentrated its efforts on separating the issues around the dispute from other bilateral relation with China. However, Beijing took a somewhat different path, preferring a clear political approach to the dispute, defying security as the ultimate result of and mainly dependent on *the overall state of political relations*.¹³⁰

In November 2013 China took a major step and contested Japan's administration of the Diaoyu/Senkaku Islands, when it announced the creation of an Air Defense Identification Zone (ADIZ) in the East China Sea. The ADIZ cover the airspace zone over China's sea territories, which include the disputed island and overlap with maritime territories claimed by Japan. The dispute and its risks of collision has hence literally moved up, from the sea to the air.¹³¹ China's neighboring countries as well as international players strongly opposed the ADIZ decision, blaming China for further deteriorating an already strained situation.

In 2014 after months of backdoor talks, Japanese Prime Minister Shinzo Abe and Chinese President Xi Jinping met on the margins of the 2014 Asia Pacific Economic Cooperation summit in Beijing. Prior to the meeting the two countries reached a four-point agreement, aiming at improving diplomatic and security ties between the countries. Among other provisions, the agreement also aimed to put in place crisis-management

¹²⁹ Stockholm International Peace Research Institute, SIPRI, "Promoting crisis management in the East China Sea".

¹³⁰ Ibid.

¹³¹ Ibid.

mechanisms to prevent escalations over the disputed territory in the East China Sea.¹³²

In mid-2016, a frigate belonging to the Chinese navy entered the contiguous zone surrounding the Senkaku/Diaoyu Islands of 12 nautical miles Japanese-claimed territorial sea. Various Chinese ships had entered these waters before, but it was the first time a Chinese naval vessel did so. Japanese officials reportedly summoned the Chinese ambassador in Tokyo and formally protested, expressing serious concerns.¹³³

Later that year Japan's Ministry of Foreign Affairs released photos of 16 Chinese rigs in the East China Sea¹³⁴ once again raising concern about China unilaterally exploiting reserves that might tap gas out of undersea structures that extend to Japan's side of the proposed median line.

A step towards peace was made in 2018 with the launching of a hotline to avoid clashes at sea and in air. At a press conference on June 8th 2018 Japanese Defense Minister Itsunori Onodera stated that: "This is an important step forward that will increase mutual understanding and trust between Japan and China. I believe that it is greatly significant, in the sense that it will help us avoid unexpected conflicts between our two countries."¹³⁵ While the newly established communication tool signaled a political intent to prevent clashes, settling of the tensions in the East China Sea did not seem in sight. According to the Japanese ministry of defense, Japan Air Self-Defense Force (JASDF) fighter aircraft were scrambled (act of quickly mobilizing military aircraft) 246 times during the first quarter of 2019, 179 times against Chinese aircraft, with an increase of 6 times compared to the same period of the previous year.¹³⁶ Chinese vessels,

¹³² Council on foreign Affairs, "China's Maritime Disputes" A CFR Info Guide Presentation.

¹³³ Soble, Jonathan, "Japan Summons Chinese Envoy After Naval Ship Nears Disputed Islands," The New York Times, June 9 (2016), see also: "China warship sails near Japan-controlled islands," BBC, January 11 (2018).

¹³⁴ The Current Status of China's Unilateral Development of Natural Resources in the East China Sea, Ministry of Foreign Affairs of Japan, September 27 (2019).

¹³⁵ Press Conference by Defense Minister Onodera, Japan Ministry of Defense (June 8, 2018)

¹³⁶ Joint Staff Press Release, Statistics on Scrambles through the First Quarter of FY2019, Japan Ministry of Defense (July 26, 2019).

including People's Liberation Army Navy (PLAN) vessels have increased presence near the disputed area throughout the recent years, leading to news reports that Japanese government might set up a new police unit specializing in the patrol of the disputed Senkaku/Diaoyu Islands in the East China Sea.¹³⁷

In April 2019, the U.S.–Japan Security Consultative Committee convened in Washington, DC, with the participation of Minister for Foreign Affairs Kono, and Minister of Defense Iwaya with Secretary of State Pompeo. The meeting confirmed once again the U.S.-Japan Alliance and the shared commitment to realize a “free and open Indo-Pacific”, with the “Alliance (continuing) to play an indispensable role in upholding a rules-based international order and promoting the shared values of the American and Japanese people.”¹³⁸ The ongoing degradation of bilateral dialogues between Japan and China resulted in bringing the issue to the international public diplomacy using various diplomacy campaigns against each other and intensifying the territorial disputes.

6. The Involvement of the United States of America in the Senkaku/Diaoyu Island Dispute

The connection between the U.S. and the Senkaku/Diaoyu islands dates back to the World War II. It halted from the U.S. interest in Okinawa, what proofed to be a central element in post war positioning in the region. It was in 1953 that the U.S. gained formal control of Okinawa Prefecture and the surrounding islands, based on the Article 3 of the 1951 San Francisco Peace Treaty:

“Japan will concur in any proposal of the United States to the United Nations to place under its trusteeship system, with the United States as

¹³⁷ Panda, Ankit, “Japan to Set Up New Police Unit for the Senkakus,” The Diplomat, September 03 (2019).

¹³⁸ Joint Statement of the Security Consultative Committee, Ministry of Foreign Affairs of Japan (2019).

*the sole administering authority, Nansei Shoto south of 29deg. north latitude (including the Ryūkyū Islands and the Daito Islands), Nanpo Shoto south of Sofu Gan (including the Bonin Islands, Rosario Island and the Volcano Islands) and Parece Vela and Marcus Island. Pending the making of such a proposal and affirmative action thereon, the United States will have the right to exercise all and any powers of administration, legislation and jurisdiction over the territory and inhabitants of these islands, including their territorial waters.*¹³⁹

An important feature of the above mentioned treaty was the (sovereignty) rights over the islands, which would then be administered by the U.S..

The Ryūkyū Islands reach from the southern end of the Japanese mainland to Taiwan (ROC), extending about 700 miles (1,100 km) southwestward from the southern Japanese island of Kyushu to northeastern Taiwan (ROC). There are 55 islands and islets divided into three major groups (Amami Okinawa and Sakishima).¹⁴⁰ This chain of islands is known to the West as the Ryukyu Islands, while the Japanese use the term Nansei Shoto, which literally translated means “Southwest Islands”. The Japanese divide the geographic term Ryukyu into two (political) subdivisions Kagoshima Prefecture for the northern half of this island chain and Okinawa Prefecture for the southern half. Comprised, in the West the term Ryukyu (Nansei Shoto), is understood in a geographic sense as the whole chain of islands including the largest one, Okinawa.¹⁴¹

¹³⁹ Treaty of Shimonoseki (1895), Taiwan Documents Project, retrieved from: <http://www.taiwandocuments.org/shimonoseki01.htm> (05.02.2020).

¹⁴⁰ Encyclopædia Britannica, Ryukyu Islands (2015).

¹⁴¹ Walker, Robert, “Okinawa and the Ryukyu Islands: the first comprehensive guide to the entire Ryukyu Island chain,” Tokyo:Tuttle Publishing (2014), pp. 4-5.



Figure 6: The Ryukyus, Asia, and the Pacific.¹⁴²

With the Ryūkyū Islands being officially under U.S. administration, the key question emerges on whether or not the Senkaku/Diaoyu Islands were understood to be part of the Ryūkyū and therefore under the U.S. administration. John Foster Dulles, leading the U.S. negotiating team in June 1950, stated at the San Francisco Conference that the Japanese had residual right over the Ryūkyū Islands, Nansei Shoto south of 29 deg. north latitude which according to comments by the State Department were meant to include the Senkaku/Diaoyu islands.¹⁴³ These residual rights meant, according to an official analysis carried out by the U.S. Army, that the United States will not transfer sovereign powers, such as the

¹⁴² Source: Pearson, Richard J. (1969): *Archaeology of the Ryukyu Islands: A Regional Chronology from 3000 B.C. to the Historic Period*. Honolulu, Hawaii: University of Hawai'i Press.

¹⁴³ Blanchard, Jean-Marc F, "The US role in the Sino-Japanese dispute over the Diaoyu (Senkaku) Islands, 1945–1971," in *The China Quarterly* 161 (2000), p. 109.

legislative, administrative and jurisdictional powers over the islands, to any other state than Japan.¹⁴⁴

6.1. U.S. Assumption of Power

When analyzing the claims and negotiations around the dispute, the Ryūkyū Islands were in many instances mentioned. As already stated, together with the Okinawa Prefecture the islands played a crucial role for the U.S. in the aftermath of the Second World War as well as during the Cold War. American forces entered the Ryūkyū Islands on April 1st 1945 and after heavy battles assumed control on June 21st.¹⁴⁵

Shortly after, Japan completely surrendered, leaving the control of Japan's mainland as well as the islands to the U.S. Military. The U.S. moved quickly in gaining control as well as knowledge of the seized territory. In the winter of 1945 the U.S. Naval Military Government of the Ryūkyū Islands commenced wide ranging topographic surveys of Japan's Empire, mainland and islands. On the basis of these surveys, in 1946 the Military Government extended its operations to include the Northern Ryūkyūs south of the 30th parallel North, Sakishima Guntō (including the Senkaku/Diaoyu), and all of the islands of the Ryūkyūs south of Okinawa.¹⁴⁶ This fact seems to prove the linkage between the Ryūkyū and Okinawa, and more specifically it suggests the U.S. were associating the Senkaku/Diaoyu as part of the Ryūkyū. Such linkage will in future serve as a claim for Japan over its right of sovereignty over the islands.

While the State Department had its doubt over annexing the islands, the Military had clear desires to have a trusteeship over the Ryūkyūs, free of UN supervision. The Military was seeking for a trusteeship of the islands in

¹⁴⁴ Ibid.

¹⁴⁵ Ibid., p. 102.

¹⁴⁶ Ibid., p. 103.

order to secure a military base in Okinawa, which was the main goal to further enhance its presence in the region.¹⁴⁷

This presence together with the establishment of a military base will, in the years to come, be of great strategic value to the U.S. Military in fighting the Korean War as well as during the Cold War.

The debate within the U.S. government concerning the separation of Okinawa and Ryūkyū from Japan continued. What might have given the final push for the decision was the ROC government calling in 1948 for the return of the Ryukyu.¹⁴⁸ The U.S. dismissed these call as a 'sign of lively apprehension among many Chinese that the US may be engaged in restoring Japan's military potential'.¹⁴⁹ Four months later and in addition to this, the Central Intelligence Agency published an analysis warning about the ongoing developments in China, suggesting that if the communists won control over it, the return of the Ryūkyūs to China could lead to the Soviet Union having access to them and therefore endanger not only Japan but the entire U.S. Pacific Base System.¹⁵⁰

With the victory of communism in China, the issue of the trusteeship felt even more significant. With the intensification of the Cold War and the beginning of the Korean War, during which the Ryūkyūs island were used as U.S. staging grounds for action, the U.S. Military claims became prompter and more prominent in Washington.¹⁵¹ It wasn't until 1950 that the State Department circulated a draft peace Treaty, which gave -as mentioned earlier- the U.S. "full powers of administration, legislation and jurisdiction" over the Ryūkyū (and therefore the Senkaku/Diaoyu) islands,

¹⁴⁷ Ibid., p. 104.

¹⁴⁸ Loja, Melissa H, "Status Quo Post Bellum and the Legal Resolution of the Territorial Dispute between China and Japan over the Senkaku/Diaoyu Islands," *European Journal of International Law* 27, no. 4 (2016), p. 1000.

¹⁴⁹ Ambassador in China (Stuart) to the Secretary of State, in: *United States Department of State/Foreign relations of the United States, The Far East and Australasia*, vol. 6. Washington, D.C., U.S. Government Printing Office (June 2, 1948), pp. 799–800.

¹⁵⁰ Blanchard, Jean-Marc F, "The US role in the Sino-Japanese dispute over the Diaoyu (Senkaku) Islands, 1945–1971," in *The China Quarterly* 161 (2000), p. 105.

¹⁵¹ Ibid., p. 106.

until an official trusteeship was established with Japan.¹⁵² In the meantime the Joint Chiefs of Staff issued on October 4, 1950, a directive (JCS 1231/14) establishing the U.S. Civil Administration of the Ryūkyūs, claiming that: “As a result of the terms of surrender of the Empire of Japan, and the principles of international law governing the rights and duties of the occupying powers, the Government of the United States is responsible for the civil administration of the Ryūkyū Islands, south of latitude 29 degrees north”¹⁵³ and furthermore stating that the directive “is issued without prejudice to the rights and duties of the United States as an occupying power until such time as the ultimate international status of the islands is determined.”¹⁵⁴ The directive stated also the United States’ aim at retaining the Ryūkyū Islands on a long-term basis, seeing the islands being highly important to the security of the U.S.. The United States Civil Administration of the Ryukyu Islands was established on October 4, 1950.

6.2. Residual Sovereignty

The newly established Administration caused unease in the Japanese general public. The broader political spectrum followed, which resulted in Japan opposing any peace treaty that would lead to surrendering Japanese sovereignty over any islands. Well aware of these circumstances, the State Department became concerned over the possible damage this could do to U.S.-Japan relations. The State Department’s Political Adviser in Japan, William Sebald, recommended in 1950 that the “territorial provisions of the treaty should be most carefully considered”.¹⁵⁵ To avoid the alienation of sovereignty from Japan a temporarily

¹⁵² Ibid.

¹⁵³ Memorandum Approved by the Joint Chiefs of Staff (JCS 1231/14), Directive for United States Civil Administration of the Ryukyu Islands 2, Preamble. Washington, October 4, 1950, in: Foreign Relations of the United States, 1950, East Asia and the Pacific Vol-ume VI. 794C.00/10–4501 (1950), see: “preamble”.

¹⁵⁴ Ibid.

¹⁵⁵ Memorandum by Mr. Robert A. Fearey of the Office of Northeast Asian Affairs to the Deputy Director of that Office (Johnson) Washington (November 14, 1950).

replacement of sovereignty, through a (temporary) trusteeship, was proposed. But the U.S. Military strongly withheld such ideas claiming the islands were a “vital segment of [our] defense line”.¹⁵⁶ Japan continued to raise concerns leading to Jiro Shirasu, aide to Japanese Prime Minister Shigeru Yoshida, telling state department officials in Washington how: „it would be a serious mistake, greatly reducing the benefits which may otherwise be derived from a treaty, to transfer title to the Ryūkyūs and Bonins from Japan. Japan is prepared to give the U.S. all required military rights there for as long as necessary, but the Japanese people will not understand why these peacefully acquired islands, populated, as they consider, by people as Japanese as any other, should be taken from them. Such action would be a continual source of bitterness, a bitterness shared by himself and other educated Japanese no less than by the masses.“¹⁵⁷

In January 1951 a private note was handed over to a member of the Dulles Mission by Prime Minister Yoshida. The note proposed Ryūkyū and Bonin Islands be placed under U.N. trusteeship with the United States as administrating authority. “While Japan is ready to meet in any manner American military requirements, (...) we solicit reconsideration of this proposal in the interest of lasting friendly relations between Japan and the United States.”¹⁵⁸ Points of considerations were made, in the interest of the lasting American-Japanese friendship, including the desire for the islands to be returned to Japan as soon as the need of trusteeship disappeared, and the inhabitants being allowed to retain Japanese nationality.

The State Department began to realize that Japan should be treated as a potential ally and any policies that would hinder this should be avoided. A CIA estimate from 1951 (NIE-19) even concluded that the territorial

¹⁵⁶ Blanchard, Jean-Marc F, "The US role in the Sino-Japanese dispute over the Diaoyu (Senkaku) Islands, 1945–1971," in *The China Quarterly* 161 (2000), p. 107.

¹⁵⁷ Memorandum by Mr. Robert A. Fearey of the Office of Northeast Asian Affairs to the Consultant to the Secretary (Dulles), Tokyo (January 25, 1951).

¹⁵⁸ Ibid.

clauses of Cairo and Potsdam would actually demand the return of the Ryūkyūs to Japan.¹⁵⁹

Japan did not succeed in getting the islands back immediately but one important claim from Japan was taken into the peace treaty. The Japanese government, in response to the proposed draft of the peace treaty, told the State Department Political Adviser Sebald that it would suggest having a phrase revised: „Ryukyu Islands south of 29 degrees north latitude“ to read “Nansei Islands south of 29 degrees north latitude”¹⁶⁰, with the explanation that the Amani island group, which is south of 29 degrees north latitude, does not belong to the Ryukyu, while “Nanseim (south-Western) Islands include both Satsunan and Ryukyu groups, that is, all islands between Kyushu and Formosa”.¹⁶¹

Furthermore, Sebald explained in the memo to the Secretary of State that Okinawa prefecture is understood by the Japanese to include the sub-islands of Okinawa and Sakishima, including the Daito and Sento Island.¹⁶² The Importance of these changes lies with a) Japan claiming ownership over the islands and b) the U.S. acknowledging it.

Secretary of State Acheson instructed his officers to include the change and on September the 8th 1951 he signed the Treaty of Peace with Japan, afterwards known as the San Francisco Peace Treaty. The territorial Clausal of the treaty stated Japan renouncing all rights, titles and claims to i.a. the island of Formosa, whilst Article 3 dealt with the trusteeship system, with the United States.

¹⁵⁹ Blanchard, Jean-Marc F, "The US role in the Sino-Japanese dispute over the Diaoyu (Senkaku) Islands, 1945–1971," in *The China Quarterly* 161 (2000), p. 108.

¹⁶⁰ The United States Political Adviser to SCAP (Sebald) to the Secretary of State, Telegram (Tokyo, April 4, 1951), in *Foreign Relations of the United States, 1951, Asia and the Pacific*, vol. 6, Part 1.

¹⁶¹ The United States Political Adviser to SCAP (Sebald) to the Secretary of State, Telegram (Tokyo, April 4, 1951), in *Foreign Relations of the United States, 1951, Asia and the Pacific*, vol. 6, Part 1.

¹⁶² Ibid.

Article 3 of the Treaty

The key article of the Treaty reads: *“Japan will concur in any proposal of the United States to the United Nations to place under its trusteeship system, with the United States as the sole administering authority, Nansei Shoto south of 29deg. north latitude (including the Ryukyu Islands and the Daito Islands), (...) the United States will have the right to exercise all and any powers of administration, legislation and jurisdiction over the territory and inhabitants of these islands, including their territorial waters.”*¹⁶³

Therefore, the Status of Japan’s right over the “Nansei Shoto south of 29deg. north latitude” was that of “residual sovereignty” in the Ryūkyū Islands.¹⁶⁴ According to the studies conducted for the Okinawa Revision Treaty of 1969, this term meant that: “the United States will not transfer its sovereign powers over the Ryūkyū Islands to any other nation other than Japan.”¹⁶⁵

Nowadays, Japan is claiming its sovereignty over the Senkaku/Diaoyu Islands referring to the agreement between Japan and the United States of America on the Ryūkyū Islands, quoting the Geographical Boundaries mentioned in the Civil Administration Proclamation Nr.27 announced in December 25, 1953.¹⁶⁶¹⁶⁷

¹⁶³ Treaty of Shimonoseki (1895), Taiwan Documents Project, retrieved from: <http://www.taiwandocuments.org/shimonoseki01.htm> (05.02.2020)

¹⁶⁴ Blanchard, Jean-Marc F, "The US role in the Sino-Japanese dispute over the Diaoyu (Senkaku) Islands, 1945–1971," in *The China Quarterly* 161 (2000), p. 109.

¹⁶⁵ *Ibid.*, p. 109.

¹⁶⁶ Civil Administration proclamation No 27, The United States Civil Administration of the Ryukyu Islands, Office of the Deputy Governor, APO 719 (December 25, 1953).

¹⁶⁷ Senkaku Islands Q&A, Ministry of Foreign Affairs Japan (2016), Q. 11.

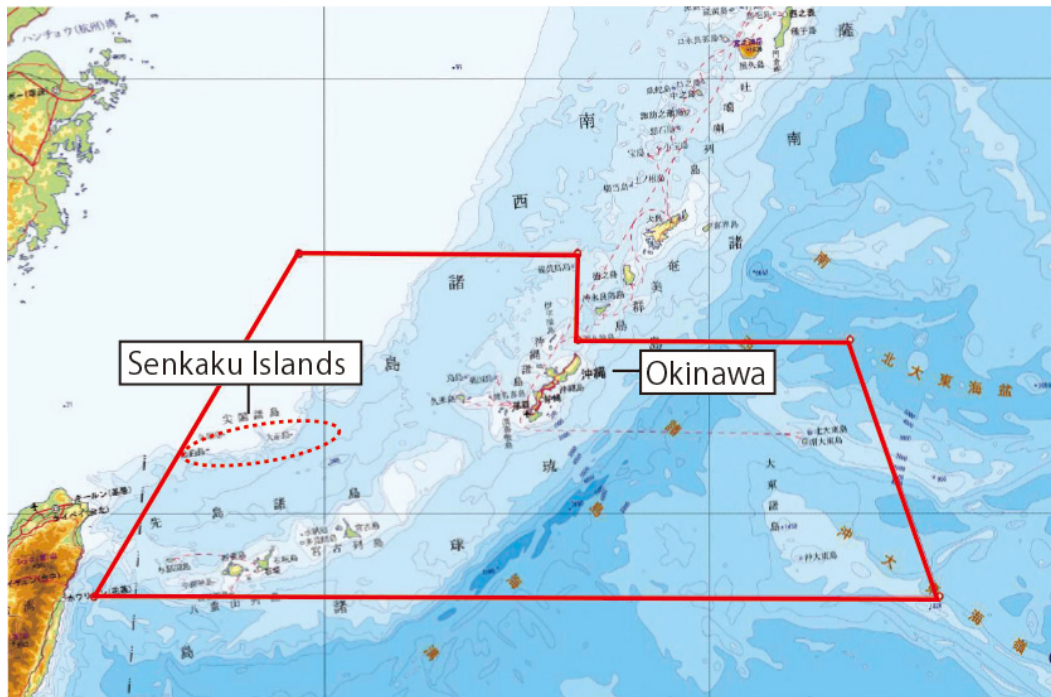


Figure 7: Agreement between Japan and the United States of America concerning the Ryukyu Islands and the Daito Islands.¹⁶⁸

6.3. The Security Treaty Crisis and Return of Administration

Another important document signed in 1951 was the Treaty of Mutual Cooperation and Security Between the United States and Japan. This first Security Treaty between the United States and Japan was signed in 1951 alongside the San Francisco Peace Treaty, which as already pointed out formally ended the Second World War in Asia. The mutual security treaty represented a ten-year, renewable agreement between the two states.

The provisions in the treaty outlined Japan allowing U.S. forces to remain on its soil after Japan regained sovereignty, whilst offering to a demilitarized Japan (some) military protection by the United States, in order for the country to focus on rebuilding its economy. For the United

¹⁶⁸ Source: Japan Ministry of Foreign Affairs - Agreement between Japan and the United States of America concerning the Ryukyu Islands and the Daito Islands (Agreed Minutes). Retrieved from: https://www.mofa.go.jp/region/asia-paci/senkaku/images/qa/img01_1.jpg. [06.12.2019].

States it offered a secured strategic presence in East Asia in a time when this was well needed.¹⁶⁹

The Security Treaty was a whole success for the U.S. with some historians regarding it as Dulles' "most remarkable diplomatic feat", due to enabling Japan's independence, and therefore the U.S. occupation ending whilst at the same time U.S. military powers would remain in Japan, operating under a legal arrangement between two sovereign nations.¹⁷⁰ All of this was securing a strong defensive anchor for U.S. operations in the Far East. However, the initial agreement had come under fire in the late 1950s with the "Security Treaty Crisis".

While some Japanese forces were against the treaty from the very beginning (neutralist-pacifist segment of the public as well as the reformist left),¹⁷¹ other started to raise concerns over the recovery of Japan.

Claims were also made how the Security Treaty was signed only five hours after the Signing of the San Francisco Peace Treaty, with Japan entering into it while still being an occupied nation.¹⁷² The concerns were mostly due to the unilateral character of the treaty. The original version of the treaty gave the U.S. the right to dispose military forces in Japan without commanding any legal responsibility to defend Japan. Furthermore, Japan could be used by the U.S. as a base for offensive operations, while at the same time not being fully protected from counter attacks. This led to extensive demonstrations in Japan.

¹⁶⁹ Maizland, Lindsay and Beina Xu, "The U.S.-Japan Security Alliance," Council on Foreign Affairs (2019).

¹⁷⁰ Packard III, George R. *Protest in Tokyo: The security treaty crisis of 1960*. Princeton University Press, (2015), p. 5.

¹⁷¹ Aruga, Tadashi, "The Problem of Security Treaty Revision in Japan's Relations with the United States: 1951-1960," *Hitotsubashi journal of law and politics* 13 (1985), p. 39.

¹⁷² Packard III, George R. *Protest in Tokyo: The security treaty crisis of 1960*. Princeton University Press, (2015), p. 5.

Both countries started realizing that a further step to prevent political crises needed to be taken, which in conclusion led to the revision of the treaty in January 19th, 1960.¹⁷³

Article 6 of the revised treaty granted the U.S. “the use by its land, air and naval forces of facilities and areas in Japan.”¹⁷⁴ In exchange, Japan got a security alliance with the U.S. and the guarantee that the U.S. will defend Japan in the event of an attack, with the facilities (under U.S. control) being returned to Japan when they are no longer needed.¹⁷⁵ These bases offered the U.S. Military a permanent foothold in Asia.

With the revised treaty and the election of John F. Kennedy in 1960, the Japanese once more tried to gain back the Ryūkyū Islands, which were still under the Administration of the US. However, America’s security concerns in East Asia had not faded and a partial or full revision did not seem to be an option yet. With the strengthening of bilateral ties with Japan, Kennedy issued an Executive Order on March 19th 1962, granting greater autonomy to the local governing forces in Ryūkyū, adding a note claiming: “I recognize the Ryūkyūs to be part of Japanese homeland and look forward to the day when the security interests of the Free World will permit their restorations to full Japanese sovereignty. In the meantime, we face a situation which must be met in a spirit of forbearance and mutual understanding.”¹⁷⁶

Overall, the American interest in the islands remained firm. The Islands played a crucial role in the Vietnam war, during which the Okinawa base was used for air raids, deployment of troops as well as refueling of

¹⁷³ Treaty of Mutual Cooperation and Security between the United States of America and Japan and Status of Forces Agreement with related Documents, Headquarters United States Forces Japan (1960).

¹⁷⁴ Japan-U.S. Security Treaty, Ministry of Foreign Affairs of Japan (1960).

¹⁷⁵ Agreement regarding the Status of United States Armed Forces in Japan, Article 2, Point 3, Ministry of Foreign Affairs of Japan (January 19, 1960).

¹⁷⁶ Blanchard, Jean-Marc F, "The US role in the Sino-Japanese dispute over the Diaoyu (Senkaku) Islands, 1945–1971," in *The China Quarterly* 161 (2000), p. 118.

planes.¹⁷⁷ Therefore, it seemed impossible at that time for any revision of administration to take place.

Yet, the devastating war in Vietnam as well as increasing security concerns of the Japanese people, led to the Japanese government insisting on the return of the islands to full Japanese sovereignty and administration. When in the summer of 1969 the Japanese foreign Minister Kiichi Aichi came to the United States to meet Richard Nixon, he firmly insisted on the issue. Soon after (November 1969), it was announced that consultations on the revision would begin immediately.¹⁷⁸

It was in June 1971 that the U.S. Secretary of State William Rodgers and Japanese Foreign Minister Kiichi Aichi signed an agreement on revision, known as the Okinawa Reversion Agreement.

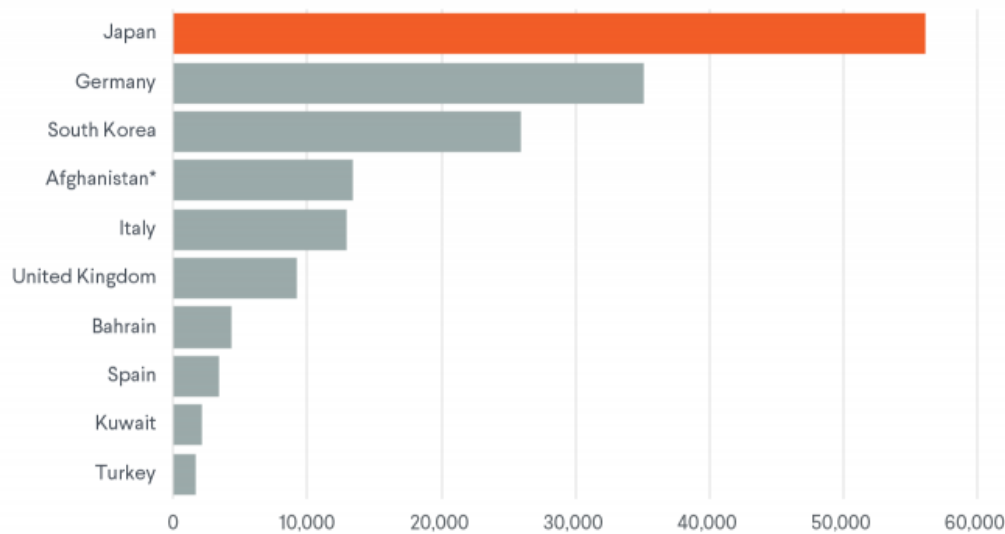
With this revision, the U.S. denounced in favor of Japan all rights under Article III of the San Francisco Peace Treaty, which in the end led to a full revision of the Okinawa and the Ryūkyū. U.S. Military Forces remained stationed in Japan under the revised Security Treaty between the two countries.

¹⁷⁷ Ibid., p. 118.

¹⁷⁸ Ibid., p. 119.

More U.S. Service Members Are Deployed in Japan Than Any Other Country

Number of active-duty U.S. military and civilian personnel, 2019 (top ten countries)



*2017 data

Source: U.S. Office of the Secretary of Defense.

COUNCIL on
FOREIGN
RELATIONS

Figure 8: Number of active-duty U.S. military and civilian personnel deployed in Japan, 2019.¹⁷⁹

Up until this day, the United States Forces are stationed in Japan, operating under USFJ (United States Forces Japan), supporting the U.S. Indo-Pacific Command (USINDOPACOM) with the U.S. – Japan Alliance being defined as a “cornerstone of peace, prosperity, and freedom in the Indo-Pacific region.”¹⁸⁰

Preliminary conclusions

The United States of America administered the Ryukyu Islands up until 1971. The Administration began after World War II as a result of the 1951 peace treaty with Japan. Although the treaty did not specifically mention the Senkaku/Diaoyu Islands, it did refer to the powers of administration of

¹⁷⁹ Source: U.S. Office of the Secretary of Defense (as cited in Council on Foreign Relations. The U.S.-Japan Security Alliance. August 22, 2019). Retrieved from: <https://www.cfr.org/backgrounders/us-japan-security-alliance>. [06.12.2019].

¹⁸⁰ United States Forces Japan (USFJ), see: section “About”.

“Nansei Shoto south of 29 north latitude (including the Ryukyu and the Daito Islands)...”.¹⁸¹ In 1951 the U.S. Civil Administration of the Ryukyus Proclamation 27 (USCAR 27) was issued, claiming that the boundaries of “Nansei Shoto [the southwestern islands] south of 29 degrees north latitude” to include the Senkaku/Diaoyu Islands.¹⁸²

During the period of the U.S. administration of the islands, the U.S. Navy established firing ranges on some of the islands and paid annual rent to the Koga family who had created settlements on some of the islands. After the Okinawa Reversion Treaty on 1971, several State Department officials affirmed that in the Japan Peace Treaty “Nansei Shoto south of 29 degrees north latitude” was “understood by the United States and Japan to include the Senkaku Islands.”¹⁸³ With the Okinawa Revision Treaty, all administrative and jurisdiction powers over the territories mentioned in the treaty have therefore been returned to Japan.

China has described the U.S.-Japan understandings related to the islands as “backroom deals” which are “illegal and invalid.”¹⁸⁴

6.4. Policies and Positions Towards the Dispute

In light of the political challenges of the time, as well as China making ever-louder claims to the islands, at the beginning of the 1970s the U.S. took, despite the return of the Senkaku/Diaoyu to Japanese administration, a suddenly very neutral position in regard to the competing claims of Japan, China, and Taiwan.

The U.S. did not see the reversion of administrative rights to Japan predisposing any sovereignty claims. During the ratification hearing on the

¹⁸¹ Manyin, Mark E, "The Senkakus (Diaoyu/Diaoyutai) Dispute: US Treaty Obligations," Congressional Research Service Report 42761 (2016), p. 4.

¹⁸² Ibid., p. 4, see also: Okinawa Reversion Treaty, pp. 149, 152.

¹⁸³ Ibid., see also: Okinawa Reversion Treaty, pp. 90-91, 93, 147.

¹⁸⁴ Manyin, Mark E, "The Senkakus (Diaoyu/Diaoyutai) Dispute: US Treaty Obligations," Congressional Research Service Report 42761 (2016), p. 4.

revision Treaty in the Senate, Secretary of State Rodgers asserted how “we have made it clear that this [revision] treaty does not affect the legal status of those islands at all. Whatever the legal status was prior to the treaty is going to be the legal situation after the treaty comes into effect.”¹⁸⁵

Furthermore, in a letter from 1971, Acting Assistant Legal Adviser Robert Starr claimed that the revision of the islands to Japan did not predispose anyone’s claims to the islands, stating how: “The United States cannot add to the legal rights Japan possessed before it transferred administration of the islands to us, nor can the United States, by giving back what it received, diminish the rights of other claimants. (...) The United States has made no claim to the Senkaku Islands and considers that any conflicting claims to the islands are a matter for resolution by the parties concerned.”¹⁸⁶

However, the U.S. policy over the Senkaku/Diaoyu Islands in Nixon’s Cabinet, hence at the time of the Okinawa Revision Treaty, changed drastically compared to those of Presidents Eisenhower, Kennedy and Johnson. Before the revision of 1971, there was a clear understanding in the U.S. government of the Senkaku/Diaoyu being part of Okinawa. Yet, the Nixon administration assumed a policy of taking no position on sovereignty whilst only giving back the administrative rights over these islands to Japan, leaving the dispute to be resolved between the two sides. This “position” has raised concerns among the Senate and led to the U.S. Department of Defence (DoD) sending a memorandum to the State Department on March 1971, reminding that the U.S. had recognized and disposed of the islands as part of Okinawa in the past, and stating:

¹⁸⁵ Blanchard, Jean-Marc F, "The US role in the Sino-Japanese dispute over the Diaoyu (Senkaku) Islands, 1945–1971," in *The China Quarterly* 161 (2000), p. 120.

¹⁸⁶ Manyin, Mark E, "The Senkakus (Diaoyu/Diaoyutai) Dispute: US Treaty Obligations," Congressional Research Service Report 42761 (2016), p. 5, see also: Okinawa Reversion Treaty, p. 91.

“Our [DoD's] search has indicated that the coordinates proposed in the cable call for identical points to those found in Civil Administration Proclamation No. 27 of December 25, 1953, and these in turn are found in Army Map Service Gazetteer to Maps of Ryūkyū-Retto and Ogasawara-Gunto, published in October 1944. Moreover, the Gazetteer, which is undoubtedly the source of the Proclamation coordinates refers at this point to the Senkakus as part of the Okinawa prefecture. It would therefore dignify the Japanese claim to the Senkakus, contrary to the neutral position assumed by the United States.... Unquestionably the United States "administered" the Senkaku Islands as part of the Okinawa administration, and such an administration took place (a) without question or issue raised by the United States as to its powers to administer, and (b) apparently without Taiwan making a claim or attempting to claim the Senkaku until oil becomes an issue. Under these circumstances, the United States "position" is not entirely free from an element of recognition (...)"¹⁸⁷

On June 19, 1971 Japanese Foreign Minister Kiichi Aichi even publically stated that the Okinawa Revision Agreement has in the view of both Japan and America settled the sovereignty issue.¹⁸⁸ Therefore it can be concluded that the Nixon administration was well aware of the past reasoning on the issue.

So the question of what caused this shift remains. A prominent opinion is the evolution of U.S.-China relations in the late 1960-es and early 1970-es. With the defeat the U.S. encountered in Vietnam as well as communist

¹⁸⁷ Hara, Kimie, "50 years from San Francisco: Re-examining the peace treaty and Japan's territorial problems," *Pacific Affairs* (2001), p. 377. See Footnote 49: 19 March 1971, Memorandum for Mark Greenwood, Department of State from Harr Almond, Jr., Office of the Assistant General Counsel, International Affairs, Department of Def NND9609043, RG59, Entry 1613, Box 2571, General Records of the Department of State, Su Number Files 1970-73, Political & Defense, From Pol.19 RYU IS 4/1/70 to Pol 19 RY.

¹⁸⁸ Blanchard, Jean-Marc F, "The US role in the Sino-Japanese dispute over the Diaoyu (Senkaku) Islands, 1945–1971," in *The China Quarterly* 161 (2000), p. 120.

China coming to rise, the primary diplomatic agenda of the Nixon administration seemed to be normalizing relations with China.¹⁸⁹

Nixon's "no position"¹⁹⁰ position towards the different claims has remained the official position of the U.S. ever since and throughout different administrations, especially during periods when tensions have flared, as in 1996, 2010, and 2012. Nonetheless, the United States remain involved in the dispute by their partnership with Japan as well as by their political and strategic interests in the region.

6.4.1 The Obama Administration

Since taking office, the Obama Administration firmly guided towards fostering a peaceful diplomatic relationship with China. In 2009 President Obama opened up a two-day meeting in Washington between U.S. and Chinese officials, stating how "the relationship between the United States and China will shape the 21st century, which makes it as important as any bilateral relationship in the world."¹⁹¹ But bilateral relations with China were not the only goal of the administration regarding East Asia.

In 2011, Secretary of State Hillary Clinton wrote an article titled "America's Pacific Century".¹⁹² The article represented a major shift in U.S. foreign policy, emphasizing how the future of international politics will be decided in Asia and that the United States will be right at the center of the action: "As the war in Iraq winds down and America begins to withdraw its forces from Afghanistan, the United States stands at a pivot point."¹⁹³ This Pivot to "new global realities"¹⁹⁴ became the axiom for the new East Asia

¹⁸⁹ Hara, Kimie, "50 years from San Francisco: Re-examining the peace treaty and Japan's territorial problems," *Pacific Affairs* (2001), p. 378.

¹⁹⁰ Romberg, Alan. "American Interests in the Senkaku/Diaoyu Issue," in: CNA Maritime Asia Project: Workshop on Japan's Territorial Disputes Panel on the Senkaku/Diaoyutai Islands Dispute, (2013), p. 3.

¹⁹¹ Hechtkopf, Kevin, "Obama's Speech on U.S.-China Relations," CBS NEWS, July 27 (2009).

¹⁹² Clinton, Hilary, "America's Pacific Century," *Foreign Policy*, October 11 (2011).

¹⁹³ Ibid.

¹⁹⁴ Ibid.

Strategy presented by the Obama Administration. It represented a shift of focus in the foreign policy of the United States, from the Middle East towards the emerging East Asian region.

The priorities of the “Asian Pivot” were never formally put down, so the goals of the new model remained to be interpreted. It could be argued that the goals included the engagement of China, whilst keeping a strong alliance with Japan, addressing the North Korea problem and re-evaluating free-trade agreement with partners in Asia.¹⁹⁵ Yet the U.S. approach to East Asia remained multidimensional and incorporated many economic, diplomatic and military elements to be considered.¹⁹⁶ One of them was and still is the close relationship the U.S. upholds with Japan. Despite several visits to the region by Administration officials and by the President himself, tensions in the East China Sea made it very hard for the administration to achieve the outlined strategic goals.¹⁹⁷

In January 2013, following a meeting of Secretary of State Hilary Clinton with the Japanese Prime Minister Fumio Kishida in Washington, China accused Clinton of presenting a distorted picture about its dispute with Japan over the Senkaku/Diaoyu islands. In the aforementioned meeting, Clinton stated that the U.S. alliance with Japan remained cornerstone of the American engagement in the region. With regards to issues of regional security, the Secretary of State reiterated a longstanding American policy on the dispute: „As I’ve said many times before, although the United States does not take a position on the ultimate sovereignty of the islands, we acknowledge they are under the administration of Japan and we oppose any unilateral actions that would seek to undermine Japanese administration and we urge all parties to take steps to prevent incidents and manage disagreements through peaceful means.“¹⁹⁸

¹⁹⁵ Cha, Victor, “The Unfinished Legacy of Obama’s Pivot to Asia,” *Foreign Policy*, September 6 (2016).

¹⁹⁶ Ratner, Ely, “The U.S. Pivot to the East China Sea,” in: Perason, Richard: *East China Sea Tensions Perspectives and Implications*, The Maureen and Mike Mansfield Foundation, Washington, D.C., (2014), p. 59.

¹⁹⁷ World Trade Organisation, *US files dispute against China on subsidies to the automobile industry*, September 17 (2012).

¹⁹⁸ Remarks with Japanese Foreign Minister Fumio Kishida After Their Meeting,

The Chinese Foreign Ministry replied by saying how Mrs. Clinton “ignores the facts and confuses right and wrong”. Foreign Ministry’s chief spokesman Qin Gang also expressed his opposition to Clinton’s position: “The US has unshrinkable historical responsibility on the Diaoyu Islands issue. The above comments made by the US side disregard the facts and confuse right and wrong. China expresses strong dissatisfaction and resolute opposition to that. We urge the US side to be responsible on the Diaoyu Islands issue, be discreet in word and deed and take concrete actions to safeguard regional peace and stability as well as overall interests of China-US relations so as to win trust from the Chinese people.”¹⁹⁹

Despite the Chinese reactions, Japan as America’s strongest ally in the region remained high on the US agenda. In 2015 President Obama welcomed Prime Minister Abe in Washington. The emphasis was on the strong relations between Japan and the U.S., showing how the two nations “have become not just allies, but true partners and friends.”²⁰⁰ At a joint press conference President Obama made it very clear where his administration stood, ensuring the goal of America gaining a “larger and lasting role in the Asia Pacific” and on this policy being grounded in the treaty alliance with Japan.²⁰¹ With an updated defence cooperation, the alliance with Japan seemed stronger than ever before: “Together, our forces will be more flexible and better prepared to cooperate on a range of challenges, from maritime security to disaster response. Our forces will plan, train and operate even more closely. We’ll expand our cooperation, including on cyber threats and in space. And Japan will take on greater roles and responsibilities in the Asia Pacific and around the world.”²⁰²

Hillary Rodham Clinton, Secretary of State, Washington, D.C. (January 18, 2013).

¹⁹⁹ Foreign Ministry Spokesperson Qin Gang’s Remarks on the US’ Recent Comments on the Diaoyu Islands, Consulate-General of the People’s Republic of China in Johannesburg (January 20, 2013).

²⁰⁰ Remarks by President Obama and Prime Minister Abe of Japan, Joint Press Conference, The White House, Office of the Press Secretary (April 28, 2015).

²⁰¹ Ibid.

²⁰² Ibid.

Besides the rhetorical support for Japan on this dispute, the administration has increased bilateral diplomatic coordination in response to China's actions in the South China Sea. Furthermore the U.S. has increased bilateral security cooperation in order to boost Japan's maritime and island defences. The U.S. has since 2012 increased sales of advanced air and naval equipment to Japan as well as updated the bilateral defence guidelines in 2015.²⁰³

Whilst trying to obtain somehow good diplomatic relationship with China, the Administrations pursued the policy that in order to ensure American military positions in East Asia a strong U.S.-Japan security alliance was essential. Therefore the Administration showed clear support and a strong commitment to the security treaty between the two countries. Decisively, President Obama even emphasized how the Article 5 of the treaty covered "all territories under Japan's administration, including Senkaku Islands."²⁰⁴

After the first major strategic shift in the early '70s by the Nixon Administration, during the Obama years the US tried to recalibrate its strategic friendly position towards Japan (Obama's reported words above are unequivocal) while at the same time creating a greater strategic and economic cooperation with China in order to prevent clashes.

One of the main goals of the "Pivot" was unquestionably securing the U.S. Military presence in the region. In the 2015 National Security Strategy, on the issue of Air and Maritime Security, President Obama emphasized that "The United States has an enduring interest in freedom of navigation and overflight as well as the safety and sustainability of the air and maritime environments. We will therefore maintain the capability to ensure the free flow of commerce, to respond quickly to those in need, and to deter those who might contemplate aggression."²⁰⁵ The Strategy also mentioned "illegal and aggressive claims to airspace and in the maritime domain" as

²⁰³ Manyin, Mark E, "The Senkakus (Diaoyu/Diaoyutai) Dispute: US Treaty Obligations," Congressional Research Service Report 42761 (2016), p. 8.

²⁰⁴ Ibid.

²⁰⁵ National Security Strategy, The White House, Washington (2015), p. 13.

well as the territorial disputed, especially in Asia, denouncing “coercion and assertive behaviours that threaten escalation”.²⁰⁶ Securing America’s interest in East Asia has been one of the major goals of the Obama Administration; therefore the freedom of navigation and overflight had to be secured.

More in general, China has grown into a more assertive player in the region, inevitably creating frictions with the US and its interests, while the strategic partnership with Japan has grown also through the shared commitment to freedom of navigation and to respecting international law.

6.4.2. The Trump Administration

According to international-hegemony studies, East Asia is undergoing a notable transition embedded in two systemic modifications, the rise of China and stronghold of the U.S.. After the defeat in the Vietnam War, the U.S. retaliated its position in East Asia, pivoting towards a “US-centric regional security order” comprised with a global and mostly western liberal economic order.²⁰⁷ The other element is China’s rapid economic growth, creating a political-economic US-China interdependence. The continued U.S. predominance in the region, combined with China’s rise and militarization generates a feasible tension with a wide portfolio of possibilities and outcomes.

Modern East Asia faces “a specific form of concentration of power”²⁰⁸. The United States managed to establish power throughout various geopolitical strategies, such as strong alliance systems providing security, military supremacy, and trade partnerships. Today most of the East Asian states follow a liberal operating system, including open economies and rule of law governing systems. The U.S. has so far enjoyed a vast support from

²⁰⁶ Ibid.

²⁰⁷ Goh, Evelyn, "Contesting Hegemonic Order: China in East Asia," *Security Studies* 28, no. 3 (2019), p. 616.

²⁰⁸ Ibid.

almost every Northeast and Southeast Asian state, with the exception of North Korea and more notably China.

The question remains how and to what extent might China contest the hegemonial status the U.S. enjoys in East Asia. Most of the states in the region see the United States as a “protector”, i.a. due to the benevolent Obama policies, promising peace, security and aid if needed, and lastly the administration’s willingness to take Asian interests seriously. All of this seems to lead the regional forces to trust the U.S. (still) more than China.²⁰⁹

With the 2016 election of Donald Trump, the world seemed to be concerned about the possible changes in American foreign policy, especially on the Sino-American relations, taking into consideration Trumps harsh rhetoric towards China during the presidential campaign, shifting from Obama’s “cooperation and competition” position²¹⁰ towards an more open diplomatic dispute. With the onset of Trump’s presidency, many observers were curious what strategy the administration would use in Asia. While some claimed Trump could, under the “America First” policy withdraw from Asia, others claimed Trumps pragmatism could make the U.S. position more aggressive, even more so if both countries (U.S- and China) failed to reach consensus on trade frictions.²¹¹

Indeed, it was for economic and commercial issues that Trump’s Administration took a harsh turn against China. In his remarks on the Administration’s policy towards China, on October 4th 2018, Vice President Pence presented the “new approach to China”²¹² stating that “China now spends as much on its military as the rest of Asia combined, and Beijing has prioritized capabilities to erode America’s military advantages on land, at sea, in the air, and in space” adding that “China wants nothing less than

²⁰⁹ Ibid., p. 617.

²¹⁰ Li, Anthony HF, "China Facing the Trump Presidency. Opportunities for Global Power Projection?," China Perspectives (2017), p. 69.

²¹¹ Ibid., pp. 70-71.

²¹² Remarks by Vice President Pence on the Administration’s Policy Toward China (2018), The White House, Hudson Institute, Washington, D.C. October 4 (2018), p. 2.

to push the United States of America from the Western Pacific” and “is attempting to prevent the U.S. from coming to aid of their allies”.²¹³ In this occasion Pence did not fail to mention the issue of the Senkaku/Diaoyu Islands and the issue of the rising maritime power of China: “Beijing is (...) using its power like never before. Chinese ships routinely patrol around Senkaku Islands, which are administered by Japan.”²¹⁴ In fact, some have speculated that the reason for mentioning this might have been the near collision of Chinese naval vessels with the USS Decatur in the South China Sea near the disputed Spratly Islands on 2nd October 2018, as well as China’s general actions in the SCS.²¹⁵ Pence guaranteed that the Administration would continue to assert American interest across the Indo-Pacific, advancing for a free Indo-Pacific and stronger bonds with nations that share the American values.²¹⁶

Japan remained, also within this administration, one of the strongest regional partners. The Japanese PM and President Trump held their first official meeting on February 10th 2017, mentioning the “unshakable U.S.-Japan Alliance [being] the cornerstone of peace, prosperity and freedom in the Asia-Pacific region” and the “U.S. commitment to defend Japan through the full range of U.S. military capabilities, both nuclear and conventional, [being] unwavering.”²¹⁷

In sum, the Trump administration seems to have continued and even increased Obama’s repositioning in East Asia, stressing the “unshakable alliance” with Japan and expressing concern over the increasingly assertive Chinese stance and actions.

²¹³ Ibid., p. 4.

²¹⁴ Ibid.

²¹⁵ Ng, Tedy and Kristin Huang, “America accuses Chinese warship of ‘unsafe’ manoeuvres after near collision with USS Decatur in South China Sea.” South China Morning Post. October 2 (2018).

²¹⁶ Remarks by Vice President Pence on the Administration’s Policy Toward China (2018), The White House, Hudson Institute, Washington, D.C. October 4 (2018), p. 11.

²¹⁷ Joint Statement from President Donald J. Trump and Prime Minister Shinzo Abe, The White House (February 10, 2017), p. 1.

6.5. Risks and Considerations for the U.S.

While the position over the sovereignty itself on the disputed islands has remained unchanged since the Nixon Administration, the tensions not only between Japan and China but between China and the U.S. have risen significantly.

The dispute remains important to the U.S. for various reasons. One reason is certainly maintaining hegemonial status in the region, securing passage and freedom of navigation, as well as upholding U.S. commitments and security structures. But another reason is to prevent the dispute from escalating any further. Therefore, each time tensions rise over the territorial dispute in the area, questions concerning the U.S. position and responsibilities, as well political and diplomatic relations with the parties involved, are being raised and are to be considered carefully.

It remains a key issue for the U.S. Congress whether the current Administration's position and strategy towards the dispute and in a broader spectrum towards China is appropriate. An assessment of the potential benefits and risks has been made by the Congressional Research Service.

The general goals within a strategic competition with China in the South and East China Sea have been specified as following:

- *“fulfilling U.S. security commitments in the Western Pacific, including treaty commitments to Japan and the Philippines;*
- *maintaining and enhancing the U.S.-led security architecture in the Western Pacific, including U.S. security relationships with treaty allies and partner states;*
- *maintaining a regional balance of power favorable to the United States and its allies and partners;*
- *defending the principle of peaceful resolution of disputes, under which disputes between countries should be resolved peacefully, without*

- coercion, intimidation, threats, or the use of force, and in a manner consistent with international law, and resisting the emergence of an alternative “might-makes-right” approach to international affairs;*
- *defending the principle of freedom of the seas, meaning the rights, freedoms, and uses of the sea and airspace guaranteed to all nations in international law, including the interpretation held by the United States and many other countries concerning operational freedoms for military forces in EEZs;*
 - *preventing China from becoming a regional hegemon in East Asia, and potentially as part of that, preventing China from controlling or dominating the ECS or SCS; and*
 - *pursuing these goals as part of a larger U.S. strategy for competing strategically and managing relations with China.*²¹⁸

For the U.S. to successfully counter China’s aims in the SCS and ECS, many attempts have been taken to dissuade China from carrying out base-construction activities in the SCS and moving additional military personnel and equipment to the disputed areas. As for the dispute in the East China Sea the goal would be to persuade China to reduce or end operations by its maritime forces at the Senkaku/Diaoyu islands²¹⁹ and to encourage China to “adopt the U.S./Western definition regarding freedom of the seas, including the freedom of U.S. and other non-Chinese military vessels to operate freely in China’s EEZ”.²²⁰

The U.S. is to a great extent concerned about China’s maritime territorial claims since they challenge, as outlined earlier, the principle of the right of innocent passage.²²¹ If China’s imposing claims in the SCS and ESC were to succeed, this would have direct and global implications. With the universal application of international laws, outcomes in the South and East

²¹⁸ U.S.-China Strategic Competition in South and East China Seas: Background and Issues for Congress (2019), p.13.

²¹⁹ Ibid., p. 14.

²²⁰ Ibid.

²²¹ O'Rourke, Ronald, "Maritime territorial and exclusive economic zone (EEZ) disputes involving China: Issues for congress," Library of Congress Washington DC., Congressional Research Service, (2015), p. 4.

China Sea could serve as precedent for disputes in other parts of the world. Overturning principles such as the freedom of the seas, would in the US' reading overthrow "hundreds of years of international legal tradition relating to the legal status of the world's oceans and significantly change the international legal regime governing sovereignty over the surface of the world."²²²

While the U.S. has not ratified UNCLOS, they nonetheless refer to the term "freedom of the seas": " (...) the Department [of Defense] uses "freedom of the seas" to mean all of the rights, freedoms, and lawful uses of the sea and airspace, including for military ships and aircraft, recognized under international law. Freedom of the seas is thus also essential to ensure access in the event of a crisis. Conflicts and disasters can threaten U.S. interests and those of our regional allies and partners. The Department of Defense is therefore committed to ensuring free and open maritime access to protect the stable economic order that has served all Asia-Pacific nations so well for so long, and to maintain the ability of U.S. forces to respond as needed."²²³

Last but not least, for the U.S. there are serious concerns that ongoing maritime territorial disputes in the ECS and SCS could lead to conflict between China and its neighboring countries. In the case of the East China Sea with Japan, which could potentially even lead to the United States being drawn in a conflict, because of the bilateral security treaty with Japan.

6.5.1. Risk of Armed Hostilities with China

Should China increase its dominance in the East and South China Sea this could have serious implications not only for the security structure of

²²² Ibid.

²²³ Ibid.

the region but for international structures as well. China's control over its near-sea assets could further complicate the U.S. position in the Western Pacific. Moreover it could prevent U.S. forces to engage in regional partnerships and operations, but in general it would weaken the perception of the U.S. towards its allies. For these reasons, maintaining favorable regional balance of power is one of the top priorities in the U.S. strategy in the region. An armed conflict in East Asia would most likely be non-beneficial for any party involved. Nevertheless, should China forcibly start claiming territories, such as the Senkaku/Diaoyu islands or even engage in a military conflict with Japan, the U.S. Military may be forced to get directly involved and set sides with Japan.

The U.S. Military is as previously mentioned deeply integrated in Japan's Self-Defense forces. While assisting Japan's military with intelligence, surveillance, and investigation support, as well as carrying out maneuvers to enhance Japan's defense abilities, the U.S. is also to great extend bounded to protect Japan.²²⁴ In case a conflict should arise the US could be requested to assist Japan's Self-Defense Forces. Such outcome would of course not necessarily be favorable for the U.S. since a direct armed conflict with China could seriously damage vital U.S. economic, political, and strategic interests.

6.5.2. Risk to US-Japan Alliance

In case China occupied the islands, the United States may, with regards to the above-mentioned treaty, be forced to respond in Japan's favor.

While it can be discussed in which form and to which extend the U.S. would assist and intervene, the Japanese guidelines for the Japan-U.S. Defense Cooperation state that: "The Self-Defense Forces and the United States Armed Forces will conduct bilateral operations to defend waters

²²⁴ Japan-U.S. Security Treaty, Ministry of Foreign Affairs of Japan (1960).

surrounding Japan and to secure the safety of sea lines of communication. The Self-Defense Forces will have primary responsibility for the protection of major ports and straits in Japan and of ships and vessels in waters surrounding Japan and for other associated operations. For this purpose, the Self-Defense Forces will take necessary actions, including, but not limited to, coastal defense, anti-surface warfare, anti-submarine warfare, mine warfare, anti-air warfare, and air interdiction. The United States Armed Forces will conduct operations to support and supplement the Self-Defense Forces' operations. The Self-Defense Forces and the United States Armed Forces will cooperate in the interdiction of shipping activities providing support to adversaries involved in the armed attack."²²⁵

Yet, it remains unclear whether the United States and Japan have a clear shared understanding of what precisely the U.S. actions under Article IV of the U.S.-Japan Treaty on Mutual Cooperation and Security would be in the event of a crisis or conflict over the islands.²²⁶

Every response the U.S. makes in this conflict would indisputably determine the future of the alliance between U.S. and Japan, and of course the alliances with other actors in the conflict and region, furthermore to America's position in the Indo-Pacific.

6.5.3. Risk to Regional Stability

Since China's recent actions had been to some extent unpredictable, a further sharpening of the situation and military intervention could possibly

²²⁵ The Guidelines for Japan-U.S. Defense Cooperation, Ministry of Foreign Affairs Japan (2015), p. 12.

²²⁶ O'Rourke, Ronald, "Maritime territorial and exclusive economic zone (EEZ) disputes involving China: Issues for congress," Library of Congress Washington DC., Congressional Research Service, (2015), p. 44.

cause major power shifts and uncertainties in the region and for U.S. strategies in Asia.²²⁷

Although the dispute might look unimportant at first glance, seemingly revolving around a few rocky uninhabited islands, the dispute bears significance for regional as well as international security and development, for a variety of political, economic and security reasons.

For one instance, major commercial shipping routes pass through these waters. A 3.4 trillion U.S. dollars-worth of international shipping trade passes through these waters every year.²²⁸ The waters are rich in fishing stocks and hydrocarbon as well as oil reserves, which have of course a major impact on the dispute.

Moreover, some of the disputed areas (including in the EEZs) are being used as bases for military support locations. The most prominent in the East China Sea is the Okinawa Base for the U.S. Military. According to the United States Forces in Japan (USFJ), the U.S. military strength in Japan is about 38,000 ashore and 11,000 afloat.²²⁹ With the U.S. Army, U.S. Marine Corps, U.S. Navy, and U.S. Air Force elements, all consisting of approximately 54,000 military personnel, 42,000 dependents, 8,000 Department of Defense civilian employees, as well as 25,000 Japanese workers, the U.S. has about 85 facilities located on Honshu, Kyushu, and Okinawa with a total area of 77,000 acres (approx. 311 km²).²³⁰

The presence of the U.S. Military guarantees both Japan's abilities to possibly defend itself from China as well as the U.S. capacity to assert its position in the region and defend the commercial activities surrounding the waters, and more importantly to dominate the surrounding waters and airspace. Any changes in the status of the Senkaku/Diaoyu Islands in

²²⁷ Smith, Sheila A, "A Sino-Japanese Clash in the East China Sea," Council on Foreign Relations, Center for Preventive Action, (2013), p. 5.

²²⁸ O'Rourke, Ronald, "Maritime territorial and exclusive economic zone (EEZ) disputes involving China: Issues for congress," Library of Congress Washington DC., Congressional Research Service, (2015), p. 1.

²²⁹ United States Forces Japan (USFJ), see: section "About".

²³⁰ Ibid.

favor of China would inevitably lead to an even more disputed EEZ and Airspace between Japan and China, as well as to serious concerns for the U.S. Military activities in the water surrounding the islands.

Lastly, the claims have become matters of intense feelings of nationalism on both sides, leading to protests and unease. Both governments have constructed widespread narratives about the historical and legal status of the islands, which can only lead to more difficulties in reaching a compromise. Taking into consideration the long and complicated relationship between Japan and China, as well as the deeply rooted mistrust on both sides, this dispute has not only the potential to foster aggressive behavior but also to prevent the countries from cooperating economically and strategically. Furthermore, as history has already shown, any armed conflict would risk drawing a series of consequences far beyond the East China Sea.

7. Same Actors - Other Regional Disputes

Both the East and South China Sea are scenes of sharpening territorial disputes between China and its neighbors. While the East China Sea dispute could be viewed as a more political dispute, the South China Sea Dispute is largely a matter of economic and strategic power. The area is rich in natural resources and it is a key trading route, so it's a territory where inevitably both regional as well as global power politics are at play.

As China has been seeking to expand its maritime power and presence, regional actors have been assertive of their own part of the disputed areas. China's assertive claims and actions towards this dispute might fuel concerns over an escalation of the conflict and in general strategic balance in the Asia-Pacific region. These assertions have raised concerns about China's territorial and exclusive economic zone (EEZ) claims in the South China Sea. The country's domination in the region or control over

the disputed areas could affect its neighboring countries as well as non-regional powers like the U.S. strategic, political, and economic interests in the Asia-Pacific region.²³¹

China is involved in a number of territorial disputes in the South China Sea, in particular the dispute over Paracel Islands, Spratly Islands, and Scarborough Shoal. China's territorial claims in the South China Sea cover roughly 90% of the disputed areas. Their territorial claims are commonly known as the "nine dash line". An Exclusive Economic Zone border has been drawn by China, claiming "a historical right" to the disputed areas. China claims ownership of most of those islands and therefore the waters surrounding them. While these islands seem to be mostly rocks and reefs they are also (as in the case of the Spratly Islands for example) claimed by several other regional actors, including Vietnam, Taiwan and a part of it by the Philippines, Malaysia and even Brunei. The tensions in these overlapping territorial claims reach from minor maritime tension to a broader spectrum of i.a. military exercises and the threat of using force.

In understanding the importance or the fuel to this dispute it is important to know that the South China Sea channels one third of the world trade shipping, making it one of the most important shipping lane. Furthermore the sea is rich in fisheries, natural resources such as gas and oil deposits and is geo-politically an important spot for non-regional, global actors and political powers. All of this makes this are one of the most disputed in South-East Asia and has certainly the most potential for the escalation of an armed conflict.²³²

In addition to the territorial disputes China has, the country is also involved in broader political disputes with the United States. The question is whether China has a right to regulate the activities of foreign military vessels within its claimed Exclusive Economic Zones. In this area, the U.S. might put

²³¹ O'Rourke, Ronald, "Maritime territorial and exclusive economic zone (EEZ) disputes involving China: Issues for congress," Library of Congress Washington DC., Congressional Research Service, (2015), p. 1.

²³² Roy, Denny, "Return of the dragon: rising China and regional security," Columbia University Press, (2013), p. 223.

pressure on ASEAN and use their close connections with the Philippines and Japan. Since the U.S. holds defense treaties with both countries, there is the risk of Washington getting military involved should it come to an armed conflict in the region. Overall, the U.S. will stand for no unilateral attempt to change the status quo of the dispute, it might call for a peaceful settlement of the dispute, but it will try to keep its influence strong on the Philippines and Japan.

Japan

Japan's interest in the South China Sea ranges back to 1920, when private business started exploiting guano in some parts of the Spratly islands. It was in the 1939 that Japan claimed sovereignty over the whole Spratly area. With San Francisco Peace Treaty of 1951, Japan Renounced in Art. 2 (f) "all right, title, and claim to the Spratly Islands and to the Paracel Islands".²³³ However, this renouncement does not stated to whom the disputed islands were being returned, which gives Japan free hands, and does not bind it to any claim of the other disputed parties.

Japan re-entering this territory could be explained in different ways, touching upon different reasons: economically for extracting natural resources, and strategically for securing safe and free passages trough this very important sea line of communication. Considering that 85%–90% of Japan's oil imports pass through the sea lane of communication of the South China Sea, this makes it a strategically as well as politically highly important matter for Japan.²³⁴

Japanese aims and policies towards the South China Sea seem to be focused on a peaceful solution of the dispute. However, Japan has become more outspoken regarding its ongoing disputes with China. Starting in 2013, under Prime Minister Abe in particular, Japan has become increasingly vocal about China as a challenge if not threat to Japan's security. The main reason for this concern is the perceived

²³³ Shoji, Tomotaka, "The South China Sea: A View from Japan," NIDS Journal of Defense and Security 15, no. 12 (2014), p.130.

²³⁴ Ibid.

intention of China to change the territorial status quo by coercion, not only in the ECS but also in the SCS.

In December 2013, the new Abe government issued its first National Security Strategy which refers to the SCS as follows: “In the South China Sea in particular, disputes that have arisen over sovereignty between coastal states and China cause concern over the maintenance of the rule of law at sea, freedom of navigation, and stability in the Southeast Asian region. In addition, vulnerability is also increasing in sea lanes of communication, spanning between Japan and the Middle East, on which Japan is largely dependent for its natural and energy resources, due to various problems including regional conflicts and international terrorism in and around coastal states, as well as piracy.”²³⁵

Especially considering Japan’s alliance with the U.S., a joined patrolling of the area might be foreseen. In order to sustain the support of the U.S. regarding the East China Sea Dispute, Japan might follow U.S. wherever necessary.

The U.S.

The U.S. is majorly concerned about China’s assertion of territory in the East China Sea as well as in the South China Sea, since this could strategically affect the interest of the U.S. in the Asia-Pacific region. Whilst the U.S. is in no territorial dispute with China and claims to be neutral, its major disagreement with China regarding the South China Sea is whether or not China has a right to regulate activities of foreign military forces operating within China’s claimed EEZ. The United States had their positions toward the dispute openly outlined and somewhat clear. Some of these positions are:

- “The United States supports the principle that disputes between countries should be resolved peacefully, without coercion,

²³⁵ Drifte, Reinhard, “Japan's Policy Towards the South China Sea-Applying, “Proactive Peace Diplomacy”?”. Peace Research Institute Frankfurt (PRIF), Leibniz-Institut Hessische Stiftung Friedens-und Konfliktforschung (2016), p. 6.

intimidation, threats, or the use of force, and in a manner consistent with international law.

- The United States supports the principle of freedom of seas, meaning the rights, freedoms, and uses of the sea and airspace guaranteed to all nations in international law. The United States opposes claims that impinge on the rights, freedoms, and lawful uses of the sea that belong to all nations.
- The United States takes no position on competing claims to sovereignty over disputed land features in the ECS and SCS.
- Although the United States takes no position on competing claims to sovereignty over disputed land features in the ECS and SCS, the United States does have a position on how competing claims should be resolved: Territorial disputes should be resolved peacefully, without coercion, intimidation, threats, or the use of force, and in a manner consistent with international law.
- Claims of territorial waters and EEZs should be consistent with customary international law of the sea and must therefore, among other things, derive from land features. Claims in the SCS that are not derived from land features are fundamentally flawed.
- Parties should avoid taking provocative or unilateral actions that disrupt the status quo or jeopardize peace and security. The United States does not believe that large-scale land reclamation with the intent to militarize outposts on disputed land features is consistent with the region's desire for peace and stability.
- The United States, like most other countries, believes that coastal states under UNCLOS have the right to regulate economic activities in their EEZs, but do not have the right to regulate foreign military activities in their EEZs.
- U.S. military surveillance flights in international airspace above another country's EEZ are lawful under international law, and the United States plans to continue conducting these flights as it has in the past.
- The Senkaku Islands are under the administration of Japan and

unilateral attempts to change the status quo raise tensions and do nothing under international law to strengthen territorial claims.”²³⁶

China's assertion of territory and its defending of the EEZ claims in the South China Sea, as well as in the East China Sea represent a major concern for the U.S. and might rise questions for the U.S. whether it has adequate strategies to counter China, how far can they go with their allies without risking being dragged into a crisis or conflict and how strong their position is without them being a part of the United Nations Convention on the Law of the Sea (UNCLOS).

8. Conclusion

Fewer territorial disputes have the potential of major world powers sliding down into conflict like the dispute over the Senkaku/Diaoyu Islands. With huge interests at stake, often seen as primary national interests by the parties involved, the dispute and the risks that it brings along have been gaining prominence in the international debate. In parallel, the actors involved have increased their resolve and determination.

China has been developing sharp maritime strategies and assertive claims over the disputed area. In Beijing, the accent is being put on the importance of defense and control of China's coastal, near-sea, and far-sea areas. In order to do so, and growing increasingly irritated by the perceived 'security belt' set up by Washington around the Chinese coastline²³⁷, China has impressively strengthened its naval powers and expanded its area of military operations.²³⁸ In this sense, Beijing has progressively tried to prevent foreign military ships and airplanes from

²³⁶ O'Rourke, Ronald, "Maritime territorial and exclusive economic zone (EEZ) disputes involving China: Issues for congress," Library of Congress Washington DC., Congressional Research Service, (2015), pp. 1-2.

²³⁷ Bendini, Roberto, "The Struggle for Control of the East China Sea," Depth Analysis (2014), p. 20.

²³⁸ Pearson Richard, "East China Sea Tensions Perspectives and Implications," The Maureen and Mike Mansfield Foundation, Washington D.C. (2014), p. 11.

conducting any kind of activities in the area, including through the establishment of an Air Defense Identification Zone (ADIZ) over the East China Sea. These increasingly assertive policies could easily be seen as an attempt of gaining power in the region and to secure its own strategic section of Pacific Ocean from the hegemonic power, the United States.²³⁹

Whilst China tried to strengthen its military presence and overall power in the region, Japan took the 'opportunity' provided by the dispute to increase its cooperation with the U.S. In parallel, as outlined in the thesis, Japan has developed a very comprehensive and detailed legal argument to justify its claims on the islands, and it has defended it consistently, including by indirectly dragging the U.S. into the dispute.

On their end, the United States has repeatedly downplayed their role. Washington has consistently described the dispute as a matter for Japan and China to solve bilaterally. However, the United States is well more than a passive spectator. As largely shown in this thesis, especially when analyzing the history immediately-following the Second World War and the U.S. role in administrating the Ryukyu Islands, the U.S. have noticeably been deeply involved. And although it could be argued that *legally* the U.S. have consistently been neutral on the dispute, it is hard to argue against the fact that *politically*, especially in most recent years, Washington has increasingly sided with Tokyo. While trying to engage with China, the Obama administration for example has on several occasions made clear that the United States were bound by a defense treaty with Japan, which would be assisted in case of attack. The Trump Administration seems even less likely to soften the relations with China, also considering that the primary interest of the U.S. in the area remains to maintain free trade routes and to safeguard the balance of power in the region.

Given Japan's unwillingness to bring the dispute to an international court and China's strict policies regarding the sovereignty of the islands, it seems hard to think of a solution based on international juridical hearing

²³⁹ Bendini, Roberto, "The Struggle for Control of the East China Sea," In-Depth Analysis (2014), pp. 21-22.

on the issue. The islands are seen as a strategic stronghold and as a potential tool for power-shifting in the region, and the issue is likely to remain on top of the international agenda in the years to come. What remains to be noted is that when it comes to diplomacy and international affairs, the manner in which dialogue occurs is often of great importance. A hostile environment breeds hostile reactions.

Only time will show how and if this dispute will be solved and how the balance of power in that key region will settle.

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