



**Maritime Security in East Asia:**  
Boundary Disputes, Resources, and  
the Future of Regional Stability

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## **Increasing Importance of Maritime Boundary Disputes in East Asia<sup>1</sup>**

Maritime territorial disputes increasingly threaten the peace and stability of East Asia, including those in the East China Sea between China and Japan in the Sea of Japan, between the Republic of Korea (ROK) and Japan, and between China and four of its neighbors in the South China Sea. The specific issues and circumstances differ but in all three cases the root causes are the fast rising global competition for increasingly scarce natural resources, especially rich but increasingly degraded fisheries and anticipated undersea oil and gas deposits.

In recent years these underlying drivers have been magnified by China's rising power and assertiveness, politically tinged nationalism in all of the contending countries and conflicting legal principles for asserting claims. Likewise, in all three areas the disputes have strong emotional overtones arising out of the burden of history, especially China's imperial past, the more recent and still bitter legacy of western and Japanese imperialism and colonialism, and Japan's humiliating defeat in World War II.

The United States is not a party to any of the maritime territorial disputes, but major US interests are at stake nonetheless. These include its security alliances with several parties to the disputes and Beijing's increasingly assertive efforts to impinge on the freedom of navigation of US warships and the routine operations of reconnaissance aircraft. The US also has a strong national interest in the security of sea lanes, maintenance of a rules-based international order and regional peace and stability.

This report briefly surveys disputes in the East China Sea and Sea of Japan and then turns to its main focus, the maritime territorial disputes between China and several Southeast Asian neighbors in the South China Sea. These disputes also present a serious threat to regional peace and stability, but they are significantly different in their origins, character, challenges to resolution or management and threats they pose to US interests.

### **East China Sea—Senkaku/Diaoyu Islands Dispute Between Japan and China (and Taiwan)<sup>2</sup>**

Of the two disputes in Northeast Asia, the confrontation between Japan and China over the uninhabited Senkaku (Diaoyu) cluster of tiny islets is currently the most dangerous threat to regional peace and US interests. The stakes are high. At issue between Japan, which controls the islands, and China which claims them for itself, are control of some of

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<sup>1</sup> The co-authors wish to acknowledge with appreciation the contribution of our colleague Yuki Tatsumi, Senior Associate with Stimson's East Asia Program, the author of "East China Sea Disputes—A Japanese Perspective," which has been included as Appendix II of this report. We are also appreciative of research support by Moon (Kimberly) Jun on the dispute between Japan and the ROK over the Dokdo/Takeshima rocks.

<sup>2</sup> This report will use the name given by the country that controls the disputed territory and show that used by the other claimant in parentheses, when appropriate.

the world's richest (and most stressed) fisheries, sizable anticipated undersea oil and gas deposits, and the boundaries of each country's 200 nautical mile Exclusive Economic Zones (EEZs) or the mid-lines between opposing coastlines where their EEZs overlap. South Korea is not a party to the Senkaku (Daioyu) dispute but has fisheries management agreements with both China and Japan.

### **Senkaku (Daioyu) Islands Dispute**

The Senkaku (Diaoyu) islands dispute is long-standing, but as of February 2013 tensions are at the highest level since the mid-1990s. The current flair up, which has included an increasingly sharp war of words and provocative naval and air maneuvers, arguably began in September 2010 when Japan arrested the captain of an intruding Chinese trawler, a move that China regarded as provocative. The Japanese government suffered deep embarrassment and withering right-wing criticism when it handed the captain back without trial after Beijing blocked exports of rare earth minerals, which are critical to a variety of high tech products.<sup>3</sup>

It has been argued that Japan implicitly violated a 1997 joint fisheries agreement that had sought to prevent such conflict by continuing a 1975 agreement that provided for "flag-state" jurisdiction in the case of incidents occurring in the 12 mile territorial sea of the islands and surrounding waters. In terms of this analysis, only China had the right of jurisdiction over a Chinese-flagged vessel. Regardless of whether this analysis is correct or not, it appears that this provision was at least one source of Chinese ire.<sup>4</sup>

Tensions soared again in mid-2012 when Japan effectively nationalized the disputed islets by purchasing three of the largest islets that had previously been "rented" from a private Japanese owner, apparently in an ill-conceived effort to counter criticism of weakness from ultra-nationalist politicians and prevent them and their supporters from provoking incidents.<sup>5</sup> Since then, the dispute has escalated to the point that even an accidental incident, such as another collision or an exchange of fire, could have unpredictable consequences. The risk of an unwanted escalation was underscored at the end of January 2013 when a Chinese PLA Navy frigate allegedly "painted" a Japanese Maritime Self Defense Force (JMSDF) escort ship with its fire control radar.<sup>6</sup>

Japan's move to nationalize the islands also provoked Taiwan, which maintains the same claims as China, to show unusual assertiveness. On September 24 eight Taiwanese

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<sup>3</sup>Keith Bradsher, "Amid Tension, China Blocks Vital Exports to Japan." *New York Times*, September 22, 2010. <http://www.nytimes.com/2010/09/23/business/global/23rare.html?pagewanted=all>

<sup>4</sup>Sourabh Gupta, "

China-Japan trawler incident: Japan's unwise — and borderline illegal — detention of the Chinese skipper." *East Asia Forum*, September 30, 2010. <http://www.eastasiaforum.org/2010/09/30/china-japan-trawler-incident-japans-unwise-and-borderline-illegal-detention-of-the-chinese-skipper/>

<sup>5</sup>Linus Hagström, "China–Japan tensions over Senkaku purchase an orchestrated affair." *East Asia Forum*, September 17, 2012. <http://www.eastasiaforum.org/2012/09/17/china-japan-tensions-over-senkaku-purchase-an-orchestrated-affair/>

<sup>6</sup>Jethro Mullen and Yoko Wakatsuk, "China denies putting radar-lock on Japanese warship." *CNN*, February 9, 2013. <http://www.cnn.com/2013/02/08/world/asia/china-japan-tensions>

maritime surveillance ships escorted 50 or more fishing boats into the disputed area and engaged in water cannon battles with Japanese coast guard vessels. Taiwan, which normally enjoys good relations with Japan, insisted that it was asserting its own claim, not colluding with China. In an apparent effort to repair relations Taiwan's foreign minister visited Tokyo in November 2012 with a proposal for jointly patrolled provisional fishing zone in the disputed area.<sup>7</sup>

### **Implications for the United States**

While the US Government officially takes no position on the dispute, apart from calling for lowering tensions and avoiding the use force or intimidation, the US itself contributed to the problem when it included the islands in the territory handed back to Japan in the 1971 reversion of Okinawa.<sup>8</sup> The US handed the administration of the Senkakus as well as the entire Ryukyus Islands (of which Okinawa is the main island) but declared that it was doing so without prejudice to the underlying historically-based dispute over ownership.

In response to recurring questions about whether the disputed islands fall under the terms of the US-Japan Security Treaty, Congress included a resolution in the Fiscal Year 2013 National Defense Authorization Act (H.R. 4310/P.L. 112-239) that stated among other matters that “the unilateral action of a third party will not affect the United States” acknowledgment of the administration of Japan over the Senkaku Islands.”<sup>9</sup> The operative word is “administration,” not sovereignty. Repeated “clarifications” by the State Department under several different US administrations have also left ambiguity about exactly how the US would view an effort by a Chinese attack on Japanese forces or attempt to seize the islands by force.

Japanese and other observers still see daylight between the handing over territory to Japan that formerly was administered under the US Occupation without prejudice to the sovereignty dispute itself, and the US obligation to come to the defense of Japan if it is attacked by a third party.

Regardless of whether the US-Japan security treaty obligates it to help Japan defend the Senkaku (Diaoyutai) islands, any incident involving serious accidents or exchanges of fire would seriously stress the security alliance. Both the history of the dispute and the events of the past several years make clear that there is no political support in either

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<sup>7</sup> Ida Torres, “Taiwan proposes jointly controlled fishing area in Senkaku waters.” *The Japan Daily Press*, November 8, 2012. <http://japandailynews.com/taiwan-proposes-jointly-controlled-fishing-area-in-senkaku-waters-0818035>

<sup>8</sup> According to testimony before Congress, the United States specifically included the Ryukyus and the Senkakus in an Agreed Minute to the 1971 Okinawa Reversion Treaty. See U.S. Congress. Senate Committee on Foreign Relations. Okinawa Reversion Treaty (hearings). 92nd Congress, 1st Session, October 27 - 29, 1971. Washington, U.S. Govt. Printing office, 1971. (Cite from “China’s Maritime Territorial Claims: Implications for U.S. Interests,” Congressional Research Service (CRS) Report to Congress, RL31183, November 12, 2001) <http://www.hsdl.org/?view&did=446508>

<sup>9</sup> Mark E. Manyin, “Senkaku (Diaoyu/Diaoyutai) Islands Dispute: U.S. Treaty Obligations,” CRS Report to Congress R42761, Summary and p. 6, January 23, 2013. <http://www.fas.org/sgp/crs/row/R42761.pdf>

Japan or China to settle the dispute, but the peace and stability of East Asia and the future of the US-Japan alliance will depend on whether the parties can manage it.

### **Sea of Japan—Dokto/Takeshima Islets**

Ownership of the, Dokto (Takeshima) islets, long known as the Liancourt Rocks on international maps, has been disputed by Korea and Japan for hundreds of years. The latest flare up of the long standing dispute between Korea and Japan reached a peak in August 2012 when then South Korean President Lee Myung-bak briefly visited the largest of the Korean controlled islets in the midst of a national political campaign.<sup>10</sup>

The increase in tensions in mid-2012 stemmed mainly from electoral politics in each country, but the underlying nationalistic passions that are rooted in Japanese imperialism and often brutal treatment of Koreans during its colonial occupation of the Peninsula from 1905, as well as conflicting interpretations of their rightful ownership under the terms of the peace treaty between the US and Japan at the end of World War II.

### **Implications for the United States**

A serious incident would greatly complicate US relations with both. Nationalistic passions in both countries are such that the dispute will likely remain an irritant for a long time to come, but a conflict is most unlikely. Still, even without an overt incident the dispute and the underlying feelings that drive it thus far have been a major obstacle to US efforts to promote the Japan-South Korea leg of trilateral defense cooperation.

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<sup>10</sup> Chico Harlan, "South Korea underscores its claim to islands disputed with Japan." *Washington Post*, October 4, 2012. [http://articles.washingtonpost.com/2012-10-04/world/35498381\\_1\\_dokdo-main-islands-small-islands](http://articles.washingtonpost.com/2012-10-04/world/35498381_1_dokdo-main-islands-small-islands)

## **The South China Sea Disputes**

Competition for natural resources, nationalism, historical legacies and geopolitics all play major roles in the South China Sea maritime territorial disputes, but three other factors give them a substantially different and in some ways more challenging character than those in Northeast Asia.

First, and most important, China has asserted “indisputable sovereignty” over about 90 percent of the South China on a “historical waters” basis that is outside the framework of the prevailing 1982 United Nations Convention on the Law of the Sea (UNCLOS). In the case of the Senkakus (Diaoyus) dispute between China and Japan, both parties base their claims on different interpretations of treaties and overlapping EEZs—common elements in many maritime territorial disputes. These are fully resolvable under established legal principles and international tribunal precedents if both parties have the necessary political will and resolve to find a compromise. In the case of the South China Sea, China has advanced a “historical waters” argument that has no standing under UNCLOS except in uncommon situations involving small bodies of water such as bays or gulfs.

Second, while the parties to both Northeast Asian disputes have at least enough military power to deter deliberate aggression, if not the escalation of incidents, in the South China Sea Beijing’s and economic power exceeds that of the other claimants by several orders of magnitude.

Third, after years of “smile diplomacy” China begun to use its superior military and economic power to intimidate its neighbors, change the “facts” on the sea in areas where its expansive claims intrude into the rightful EEZ and continental shelves of its neighbors, and undermine the cohesiveness of the ten country Association of Southeast Asian Nations (ASEAN).

Fourth, of particular concern to the United States, China is attempting to assert the right—which it does not have under UNCLOS—to challenge the freedom of navigation of warships and take other measures to ban activities that it considers a threat to its security within its 200 n. mile EEZ.

### **Implications for the United States**

US-China relations have become increasingly strained after years of political engagement and deepening economic integration. The reasons are numerous, but most are connected in one way or another with China’s rising power and influence in Asia and in particular with Beijing’s increasingly more open challenge to an international order that has largely been created and led by the United States. US fiscal and economic problems, a troubled changing of the political guard in China, and Beijing’s assertive efforts to lock up supplies of energy, raw materials and other industrial inputs have also played a role.

Starting about 2009, all of these factors have come into play in the South China Sea. Tensions in US-China relations have flared due in part to Chinese actions against US naval activities in international waters off China's coast, including dangerous maneuvers by Chinese fishing boats and patrol craft with a US Navy surveillance ship in March 2009, and US Navy actions to assert its freedom of navigation in both the South China Sea and the Yellow Sea. Beijing's complaints about informal low level exercises with the Vietnamese Navy underscore China's concern about deepening security ties between the United States and Vietnam.

While successive American administrations have repeatedly declared that the United States takes no position on the conflicting claims, Beijing has interpreted statements by US officials in support of UNCLOS principles for determining maritime territorial claims, calls for restraint by all parties, and recent naval exercises with the Vietnamese and Philippines navies as taking sides.

China's challenge to the traditional freedom of warships has also merged with Beijing's broader objective of displacing the United States as the dominant military power in the Asia-Pacific region and replacing it with a de facto Chinese hegemony. These aspirations pose a direct threat to cohesiveness of the ASEAN countries, a community that is based on consensus, a rules-based order, and equity, rather than raw power.

The confluence of interests between the United States, its Asia-Pacific allies, and China's other maritime neighbors has contributed to a false sense that Washington is seeking to prevent China's rise. China understandably chafes at an international legal regime that bears Western, and particularly American fingerprints, but its efforts to impose Chinese-led order in Asia largely have been counterproductive thus far.

Bridging the gap between China's claims to sovereignty over most of the South China Sea, its islands, rocks, reefs, shoals and banks and the current international legal regime may be the single biggest challenge to a peaceful, stable and prosperous Southeast Asia for the next several decades at least.

While concerns about a threat to shipping routes are often overstated—China is much more vulnerable to US military interdiction than the reverse in this case—the US has a bedrock interest in the traditional freedom of navigation and overflight of its naval and air forces in international waters. This interest includes countering China's efforts to push the operational range of US naval forces as far offshore as possible whether by extralegal interference with military research activities or developing more effective conventional and asymmetrical weapons systems.

### **China's Growing Assertiveness**

Most of the maritime territorial disputes in the South China Sea are long-standing, but China's claim to a vast sea used by the sailors and fishers of many peoples and nations

for thousands of years currently is the single most contentious factor in China-Southeast Asia relations. For all practical purposes, Beijing appears to view the South China Sea as contemporary version of the Roman's mare nostrum ("Our Sea"), now the Mediterranean Sea, and increasingly it has used its rising economic and military power to make its dominance a reality.

China's assertiveness has grown in parallel with its rising military and technological capacity, accompanied by increasingly strident nationalistic rhetoric among some bureaucratic and political actors. China's assertiveness has caused enough "push back" from Japan in the East China Sea and Vietnam in the South China Sea to create a real risk of an incident that could lead to unintended escalation.

While the overall thrust of China's growing assertiveness is clearly a matter of national policy, analysts have raised significant questions about responsibility for specific incidents. In all, knowledgeable sources count some nine to eleven ministerial level agencies involved in maritime activity, including five agencies responsible for law enforcement—including the Bureau of Fisheries Administration and China Marine Surveillance, three coastal provinces, the Ministry of Foreign Affairs and the PLAN.<sup>11</sup>

Apart from the desire to avoid a serious military clash that might escalate, the main check on China's assertiveness in supporting its claims has been the desire not to alienate its neighbors, especially in Southeast Asia, where it seeks friendly relationships to support economic integration. At several points in the past China backed off in asserting its claims in the face of a united ASEAN front. In 2002 Beijing joined with the ASEAN in adopting a Declaration on the Conduct of Parties in the South China Sea (DOC) regarding the non-use of force in maritime disputes but continued to resist proposals for a more specific regional Code of Conduct.

How much importance China continues to give to this concern is has increasingly been questioned. After years of promoting a higher diplomatic profile, investment in resources extraction and preferential trade agreements, China has begun to show a different face to its neighbors. Beijing's assertiveness in advancing its maritime claims has created consternation and disarray among the ASEAN countries, four of which have active maritime disputes with China.

Incidents at sea in mid-2011 involving Chinese maritime patrol vessels and geological survey ships deployed by Vietnam have sharply ratcheted up long-standing tensions over conflicting maritime territorial claims in the South China Sea. Reports attribute incidents of deliberate cable and net cutting and the seizure of fishing boats and catches to armed vessels of the central government's Bureau of Fisheries Administration and the China Marine Surveillance and South Sea Command of the State Oceanic Administration.<sup>12</sup>

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<sup>11</sup>International Crisis Group, *Stirring Up the South China Sea (I)*, Asian Report No. 223, April 23, 2012, p. 8-9. <http://www.crisisgroup.org/~media/Files/asia/north-east-asia/223-stirring-up-the-south-china-sea-i>

<sup>12</sup> *Ibid.*, p. 9-11.

China has also provocatively offered nine blocks for bids to international oil and gas companies that lie well within Vietnam's EEZ and continental shelf. The overlapping blocks are off the coasts of Central and Southern Vietnam, and well south of the Spratlys. Vietnam had already put the same blocks up for lease under its own numbering system, and predictably no firm has submitted bids to China for these blocks.<sup>13</sup>

No event demonstrates the polarization of Southeast Asia over China's assertive promotion of questionable maritime territorial claims more than the unprecedented failure of the ASEAN foreign ministers to adopt a final communique at their annual meeting in Phnom Penh in July 2012 because of differences over the South China Sea disputes. For the first time in its 45-year history the consensus-obsessed ASEAN countries could not agree on the language of the normally bland document. Cambodia, the host government and China's best friend in Southeast Asia, balked at the demand by Vietnam and the Philippines for a reference to the uneven confrontation between Chinese and Philippines ships at Scarborough Shoal in the Spratlys.

Under Chinese pressure, Cambodia insisted that mention of the South China Sea confrontation could not be included in the communique and apparently made little, if any, effort to draft compromise language, its responsibility as chair. Subsequently, the delegates left without issuing one. It is hardly unusual for ASEAN to avoid mentioning controversial issues, but it is unprecedented for any issue to cause the failure to achieve a least-common-denominator consensus on a final communique. This fracture in ASEAN may have far-reaching repercussions for the South China Sea dispute, not the least which will be a continuing inability for the ASEAN claimants to work through the regional organization to persuade China to join in any sort of code of conduct.

## **Unbridgeable Conflict of Legal Principles**

Despite the existence of some inconsistencies on both sides, China and its South China Sea neighbors base their respective claims on strongly divergent principles. Except for Taiwan, the other claimants have all adopted the rules-based principles of the 1982 UN Convention on the Law of the Sea (UNCLOS), which came into force in 1994 following extensive negotiations. China, on the other hand, bases its claim to most of the South China Sea as "historical waters" which have been frequented by Chinese ships and in many cases administrated by Chinese governments for hundreds and even thousands of years.

Several rival claimants, including Vietnam and the Philippines, have also made historical claims on a similar basis, but in general their maritime boundary claims submitted to UNCLOS have been consistent with UNCLOS rules. Two particular problems with China's historical waters claims are that a somewhat ambiguous outer boundary—the so-

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<sup>13</sup> "Tensions rise as China offers blocks in waters offshore Vietnam," *Platts.Com*, China and Vietnam: South China Sea Dispute, June 29, 2012. <http://www.platts.com/newsfeature/2012/chinavietnam/index>

called nine-dashed line—cuts deeply into the 200 nautical mile Exclusive Economic Zones (EEZs) and extended continental shelves.

The EEZs in particular are a matter of uncontested right under UNCLOS, to which China and most of its maritime neighbors (but not the United States) are signatories, except where boundaries overlap and must be negotiated or submitted to international courts, tribunals or third party arbitration.<sup>14</sup>

As for the Spratlys, Paracels, Scarborough Shoal, Macclesfield Bank and other features, the claims of most countries are contestable, but China's most of all. In the Spratlys, for instance, China occupies little more than a collection of reefs, of which a few have some small portion above water at high tide, while Vietnam and the Philippines occupy many more islands, most of which would have credible claims to 12 n. mile territorial seas. (Map)

Having become more and more assertive during the past few years in promoting its claims, China has now upped the ante by announcing the creation of the new municipality of *Sansha* (or "Three Sands") in the South China Sea. The "Three Sands" name of the new prefecture refers to the three most important disputed geographic features of the South China Sea--the Paracel and Spratly island groups, and the completely submerged Macclesfield Bank that China calls, respectively as the Xisha, Nansha and Zhongsha islands.

The governmental seat of this new prefecture-level city is based on what it calls Yongxing Island, some 350 kilometers (220 miles) southeast of Hainan Island. The island, known on international charts as Woody Island and to Vietnam as Phu Lam Island, is so small that a 8,900 ft. long (2,700 m.) airstrip, which the Chinese military completed in 1990 to extend the range of its patrol, fighter and transport aircraft, sticks out nearly half the width of the island into its surrounding coral reef and the sea itself. The total area claimed by the city itself simultaneously makes it one of the smallest and largest cities in the world—the total land amount of land is under 15 square kilometers (less than two percent of the land area of New York City), but the water area claimed by Sansha approaches nearly 2-million square kilometers.

China's establishment of Sansha Municipality directly conflicts with the claims of one or more of four other countries-Brunei, Malaysia, the Philippines, and Vietnam, and overlaps entirely with those of Taiwan. The Paracel Islands are also claimed by Vietnam but have been entirely controlled by China since it seized several islands occupied by South Vietnamese forces in a 1974 engagement

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<sup>14</sup> Unlike other provisions of UNCLOS such as an extension of a country's continental shelf beyond the 200 nautical mile EEZ, the EEZ is automatic unless it conflicts in width with that of a neighbor or would intrude into the 200 mile zone of a coastal state on the opposite shore. China's South China Sea Coast is

## UNCLOS and the Rise of East Asian Maritime Disputes

The single greatest obstacle to resolving maritime disputes in the South China Sea is a fundamental divide between China on one side and the Southeast Asian claimants on the other over both competing territorial claims and the rights to the sea areas around them. The South China Sea disputes involve both the delineation of EEZs and continental shelves as well as claims to islands, atolls, shoals, reefs and submerged banks by China and one or more of four Southeast Asian countries, as well as Taiwan. Also at issue are traditional rights which are not specifically addressed by UNCLOS of both regional and extra-regional countries, including the United States, to freedom of navigation and military operations in waters over continental shelves and the EEZs.

UNCLOS was completed in 1982 after nine years of deliberations and came into force on November 14, 1994 following additional negotiations and changes and the accession of the 60<sup>th</sup> state (Guyana) the previous year. UNCLOS consolidates several previous international treaties that were also negotiated under United Nations auspices.<sup>15</sup>

It could be observed that UNCLOS practically invites disputes, but in fact its main purpose was to bring order to a chaotic rush involving numerous coastal nations to lay claim to offshore natural resources that was already underway. The Truman Administration first declared a 200 nautical mile EEZ in 1945, which was followed with similar declarations by Argentina, Chile, Peru and Ecuador. The US initiative seems related mainly to subsea oil and gas rights—the first offshore drilling in the Gulf of Mexico began in 1947. The South American countries were more concerned about the protection of rich offshore fisheries that were being fast depleted by foreign fleets.<sup>16</sup>

Iceland's unilateral declaration of an EEZ in 1972 (initially 50 n. miles) and a fishing quota led to several successive "Cod Wars" between Iceland and the UK that had many of the features of current South China Sea fisheries enforcement actions by China, Vietnam, the Philippines, Malaysia and other countries, include net cutting, ship bumping and the seizure of boats and the arrest of crews.

Despite its major role in initiating and shaping the treaty, the United States has signed it but not yet ratified it. Nonetheless, three successive US administrations have formally supported its principles, while China, which along with some 161 other countries and the EU has ratified/acceded to the convention, cherry picks the parts that are advantageous and opposes or misconstrues the rest. (The treaty, which currently is on the US Senate's agenda, enjoys the support of a bipartisan majority but as in the past, a few implacable opponents have succeeded in blocking a vote.)

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<sup>15</sup> United Nations, The United Nations Convention on the Law of the Sea (A Historical Perspective). Originally prepared for the International Year of the Ocean, 1998.

[http://www.un.org/Depts/los/convention\\_agreements/convention\\_historical\\_perspective.htm#Historical%20Perspective](http://www.un.org/Depts/los/convention_agreements/convention_historical_perspective.htm#Historical%20Perspective)

<sup>16</sup> United Nations, The United Nations Convention on the Law of the Sea (A Historical Perspective). Originally prepared for the International Year of the Ocean, 1998.

[http://www.un.org/Depts/los/convention\\_agreements/convention\\_historical\\_perspective.htm#Historical%20Perspective](http://www.un.org/Depts/los/convention_agreements/convention_historical_perspective.htm#Historical%20Perspective)

## The Relevance of UNCLOS

The scope of UNCLOS has been much misunderstood. The main purpose of the convention is to define the extent of maritime areas that are generated by coastlines and islands and other features in the open sea and the rights and obligations of coastal and archipelagic states (in this case Indonesia and the Philippines), **not** the determination of ownership.

The convention establishes various degrees of rights to maritime zones, including territorial seas and adjacent “contiguous zones,” exclusive economic zones (EEZs) and more limited rights to resources under extensions of their continental shelves up to 350 miles (i.e. beyond the 200 mile EEZs) where relevant and not in conflict with the EEZs or continental shelves of other states. EEZs are drawn seaward from the shore baseline, but the anchor points are the land boundaries.

**Territorial Seas** – The right of a state to the control of waters within 12 miles of its coastline is the most straightforward and least problematical right. Other states’ continue to have the traditional right of “innocent passage” but subject to the laws of the state in question.

**Contiguous Zones** -- UNCLOS also allows a contiguous zone of up to an additional 12 miles where a state can exercise authority to “a) prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea...or (b) punish infringement of the above laws and regulations committed within its territory or territorial sea.”

**Exclusive Economic Zones (EEZs)** -- Part V of UNCLOS, which in many ways is the heart of the convention, provides for the right of states to establish Exclusive Economic Zones (EEZs) up to 200 miles from the baselines of its territorial sea, within which the coastal state has a number of economic rights. These principally include exploitation and conservation of natural resources within the EEZ, whether living or non-living, in both the waters superjacent to the seabed and the seabed itself, though it also grants jurisdiction for the establishment of artificial features and scientific research.

Not every maritime state can have the full 200 n. mile EEZ--the distance between the coastlines or islands of states may be less than 400 n. miles or less than 700 n. miles in the case of continental shelves. UNCLOS provides principles for resolving these issues, but ultimately the issue must be resolved by the states themselves via negotiation or mutual agreement to submit the issue to an international court, tribunal or third-party arbitration with due respect for the principle of proportionality. Disputes involving islands are often difficult to settle because of the ambiguous nature of “weights” attributed to islands that are near coasts. For example, a court or tribunal likely would give little weight to a small island compared to a nearby coastline in determining a maritime boundary, territorial sea or EEZ.

**Continental Shelves** – UNCLOS also provides for the opportunity for limited extension of economic rights beyond the 200-nautical mile EEZ limit through a state’s continental shelf, up to 350-nautical miles from the shore. These include the exclusive right “to authorize and regulate drilling on the continental shelf for all purposes,” but rights to living organisms are limited to “sedentary species” on the seabed, rather than in the waters superjacent to the seabed itself. Importantly, Article 77 states explicitly that these rights “are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State.” Moreover, “the rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation.”<sup>17</sup>

UNCLOS also addresses the traditional rights of non-claimants and external users, including the rights of commercial vessels and US and other non-littoral countries’ naval forces when transiting the twelve mile territorial seas. UNCLOS does not address issues of military use of the sea beyond territorial seas—traditionally regarded the “high seas” over which no country has sovereign rights. The efforts by China, Vietnam and several other countries to demand prior notification for the transit of their territorial waters by warships and to restrict military activities in and over their EEZs have been strongly resisted by the United States as a matter of high principle, regardless of the size and power of the countries involved.

### **Limits of UNCLOS**

UNCLOS includes an International Tribunal for the Law of the Sea that can adjudicate boundary issues, but only at the mutual request of the relevant parties. The high stakes and intense nationalism surrounding the conflicting claims makes it unlikely that most of the claimants would accept adjudication by the International Tribunal for the Law of the Sea (ITLOS). Nonetheless, UNCLOS guidelines can bolster a claimant’s moral authority even if the other party is not prepared to submit to arbitration or a tribunal, and may assist the fair distribution of benefits should countries have a compelling mutual interest in cooperative development.

### **Principle Areas of Dispute in the South China Sea**

The four main areas of contention include the Paracels and Spratlys island groups, the Macclesfield Bank, and Scarborough Shoal (or Reef). Many of the features in these groups, such as their numerous reefs, are insufficient to establish a territorial sea (12 miles from the coastal baseline) under the provisions of UNCLOS as they are either consistently submerged or are “low-water” features, meaning it is only above water at low tide. Under Article 13 of UNCLOS, such low water features are only useful in establishing a baseline for territorial seas when it is “situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island.”

<sup>17</sup> UNCLOS, Part VI, Continental Shelf, Article 77.

[http://www.un.org/Depts/los/convention\\_agreements/texts/unclos/part6.htm](http://www.un.org/Depts/los/convention_agreements/texts/unclos/part6.htm)

Beyond that 12 mile limit, a low-water feature is unusable in establishing a baseline for territorial sea and is unable to generate any territorial sea of its own.

The only caveat to this rule lay under Article 47 of UNCLOS when establishing baselines strictly for archipelagic waters. Under Section 4 of this Article, an Archipelagic State may use a low-tide elevation to form a baseline if a lighthouse or similar installation has been constructed on the feature which is also permanently above sea level, and subject to other restrictions based on additional sections of this article.

### **The Paracels**

Few natural islands and other features in either the Spratlys or Paracels constitute “terra firma” under UNCLOS and can generate their own territorial waters, let alone a 200 n. mile EEZ. The Paracels differ from the Spratlys in that the Chinese occupy the whole of this island chain, after wresting control from South Vietnam in 1974, but the islands do not have any natural fresh water sources beyond purified rainwater, and subsequently are difficult to classify as naturally habitable. This means that, under Article 121 of UNCLOS, they would likely not qualify as able to project an exclusive economic zone of their own.

The Paracels are widely believed to have major undersea deposits of oil and gas, and they sit astride the main sea route from East Asia and both the oil rich Persian Gulf area and European markets.

### **The Spratlys**

The number of islands and bodies that collectively make up the Spratlys varies depending on what definition is used to determine what land feature is counted, as many of the features are only above the ocean surface for limited time or are constantly below the waterline. Thus estimates vary considerably, but of these approximately 50 are occupied by one of the five claimant states, though this occupation does not necessarily mean a continuous presence. Many islands host garrisons, but others are only subject to occasional visitation and patrol by soldiers of the occupying state in order to reinforce claims, so there is some ambiguity in what features are actually occupied on a continuing basis.

Of all of the five claimant states to the Spratlys, Vietnam holds the lion’s share of occupied features at twenty-six, followed by the Philippines at ten, China with eight, Malaysia with seven, and Taiwan with two. Of these five claimants, only Taiwan, the Philippines, and Vietnam control naturally formed islands of any substantial size. Except for the artificial Malaysian island at Swallow Reef, the Chinese and Malaysian controlled features with at least a small portion of land above high tide are limited to small rocks only barely fulfilling the UNCLOS requirement of an island. However, of all of these islands only the Taiwanese Itu Aba Island (or Taiping Island) is known to have a natural source of fresh water, and thus arguably the only island in the Spratlys potentially

capable of fulfilling the requirement of being able to independently sustain human habitation to establish a 200-mile EEZ.(See Appendix I – Occupation of the Spratlys)

However, relatively few of these occupied features have any portion above water at high tide, a requirement under UNCLOS for the establishment of a territorial sea. Altogether, the total amount of land that is consistently above water is less than 5 km<sup>2</sup>. While some sources claim that small rocks and other naturally occurring portions of otherwise low-water features, such as Johnson South Reef, are above water even at high tide, these reports are disputed, both in terms of their accuracy and how meaningful they might be.

The map below shows the locations and ownership of land features in the Spratlys with at least some portion of land above high tide:



## **Macclesfield Bank and Scarborough Shoal**

The South China Sea is dotted with several clusters of hundreds of small atolls, low lying reefs and submerged reefs, shoals and banks. These areas are treacherous to shipping because many of the features are surrounded by deep water. A number of them are named for ships that struck them and sank, including Scarborough Shoal, named after the British East India tea trading ship that struck one of its rocks and sank with the loss of all aboard in 1784. Because of their underwater topography the shoals and banks are rich fishing grounds and have been used by fishers from China, the Philippines and other Southeast countries for centuries and perhaps millennia.

Despite the fact that both areas are nearly or completely under water at high tide China included both the Macclesfield Bank and Scarborough Shoal in a new “municipality” of Sansha (“Three Sands”) in the South China Sea, with its administrative headquarters based on Woody Island, which it calls Yongxing, the largest island in the Paracels.

The Macclesfield Bank is a 6,500 square kilometers area of mainly submerged reefs and shoals circumscribed by a broken outer reef, lying east of the Paracels and north of the Spratlys. The bank is claimed by the Philippines as part of its Zambales Province and by China and Taiwan.

Scarborough Shoal is very large triangular shaped atoll with a rim of reefs and small rocks covering an area of 150 square kilometers that encloses a shallow lagoon covering some 130 square kilometers, one of the world’s largest. Fishers from several littoral South China Sea countries have fished and sometimes sought shelter within the lagoon for centuries.

All of the rival claimants except for tiny Brunei also have some questionable positions, but most of these are at least arguably reconcilable with UNCLOS. China’s declaration of an island city with a population of some 1,100 or so inhabitants, mainly military and none of them indigenous, as the administrative headquarters over geographic features that are also claimed by one or more other coastal states has set off a fire-storm of criticism, as well gasps of astonishment at the audacity of China’s latest move.

While the overall thrust of China’s growing assertiveness is clearly a matter of national policy, analysts have raised significant questions about responsibility for specific incidents. In all, knowledgeable sources count some nine to eleven ministerial level agencies involved in maritime activity in the area, several of which are law enforcement agencies, including the Bureau of Fisheries Administration, China Marine Surveillance, three coastal provinces, the Ministry of Foreign Affairs and the PLAN.<sup>18</sup>

Recently, China's relations with the Philippines also have been roiled over surveillance and construction activities by ships of the People's Liberation Army (PLA), and reports that China intends to deploy a sophisticated new drilling rig into the part of the vast

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<sup>18</sup>International Crisis Group, *Stirring Up the South China Sea (I)*, Asian Report No. 223, April 23, 2012, p. 8-9. <http://www.crisisgroup.org/~media/Files/asia/north-east-asia/223-stirring-up-the-south-china-sea-i>

425,000 square kilometer Spratly archipelago that is partly claimed by Manila.<sup>19</sup> All of the reported incidents have been well within the protesting countries' 200 nautical mile Exclusive Economic Zones (EEZs) that are permitted under the 1982 UN Convention on the Law of the Sea (UNCLOS).

With regard to disputes with the Philippines, China has increased pressure by sending PLA Navy vessels to the area around the disputed reefs. On the night of Wednesday, July 11, in the midst of a row over South China Sea disputes at the annual ASEAN Foreign Minister's meetings in Phnom Penh, a PLA frigate ran hard aground near Half Moon Shoal, just 60 miles off the nearest Philippines coast. The frigate had every right to be there but in the context of recent incidents over fishing rights the presence of the ship appeared provocative and it could hardly have run aground in more embarrassing circumstances.

Apart from the desire to avoid a serious military clash that might escalate, the main check on China's assertiveness in supporting its claims is the desire not to alienate its neighbors, especially in Southeast Asia, where it seeks friendly relationships to support economic integration. At several points in the past China backed off in asserting its claims in the face of a united ASEAN front. For example, in 2002 Beijing joined with the ASEAN in adopting a Declaration on the Conduct of Parties in the South China Sea (DOC) regarding the non-use of force in maritime disputes, though they have continued to resist proposals for a more specific regional Code of Conduct.

How much importance China continues to give to this concern is increasingly doubtful. After years of "smile diplomacy" and the promotion of investment and preferential trade agreements, China's assertiveness in advancing its maritime claims has created consternation and disarray among the ten countries of the Association of Southeast Asian Nations (ASEAN), five of which have maritime disputes with China.

## **ASEAN and South China Sea Disputes**

Most territorial disputes in the South China Sea involve China. Those to which China is not a party all involve members of ASEAN, an organization whose primary concern is regional harmony and cooperation. The main difference between these disputes and those involving China is that among themselves the Southeast Asian countries generally support—in theory, at least—a rules-based approach.

### **Competing Claims among ASEAN Countries**

A number of bilateral disputes among the ASEAN countries have already been the subject of co-development agreements or ongoing negotiations, the most prominent being the Malaysia-Thailand Joint Development Area in the southern Gulf of Thailand and a

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<sup>19</sup>"China tests troubled waters with \$1 billion rig for South China Sea," *Reuters*, June 21 2012. <http://www.reuters.com/article/2012/06/21/us-china-southchinasea-idUSBRE85K03Y20120621>

Malaysia-Brunei agreement. The MTJD area is actively producing natural gas, which is being shared on a 50-50 basis.

Thailand and Vietnam have conflicting claims to the parts of the Gulf of Thailand, which has rich oil and gas deposits. The Gulf of Thailand is a particularly difficult to delineate because it is bounded by Cambodia, Malaysia, Thailand and Vietnam. Cambodia objected to a settlement between Thailand and Vietnam.

Malaysia (on Borneo) also has a claim to part of the South China Sea that is also claimed by Thailand, Vietnam, the Philippines and China. A joint submission by Malaysia and Thailand to UNCLOS earlier this year provoked an angry response by China and a counter claim which, however, was not supported by reference to the provisions of the Law of the Sea.

### **ASEAN and the South China Sea Disputes Involving China**

The South China Sea disputes have been a major feature of relations within ASEAN at least as far back as the 1992 Manila Declaration, in which the then six ASEAN countries committed themselves to the resolving sovereignty issues by peaceful means, without the use of force, and to cooperate on a range of common concerns such as maritime safety, pollution, search and rescue and piracy and drug trafficking.<sup>20</sup> China came more directly into the picture in 1995, when Filipino fishermen found that Chinese forces had surreptitiously seized Mischief Reef in the Spratlys, well within the Philippines EEZ, and built structures to support its maritime operations in the area.

China backed off in the face of a united ASEAN front, but a series of subsequent incidents led to Declaration on the Conduct of Parties in the South China Sea (DOC), in which the relevant parties affirmed their commitment to peaceful resolution and self-restraint, including forgoing further occupation of uninhabited islands, on a voluntary basis. The Declaration, however, did not actually include a more binding code of conduct, something ASEAN has been futilely seeking from China ever since.

Vietnam's joined ASEAN in 1995, just after the Mischief Reef incident, as part of a strategy of self-protection by imbedding itself in a number of international organizations. Vietnam's entry has largely failed to shield it from Chinese incursions into its EEZ and continental shelf, but may have initially contributed to a 2000 agreement on the division of the Gulf of Tonkin. (Below) From another perspective, the long-standing enmity between China and Vietnam and the latter's continuing fury over China's forceful seizure of Johnson South Reef in the Spratlys has given a sharper edge to the issue and upset ASEAN's traditional strong preference for consensus. Moreover, Vietnam's entry did not materially affect China's main advantage, the overwhelming asymmetry of power.

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<sup>20</sup> ASEAN Declaration On The South China Sea, Manila, Philippines, 22 July 1992.  
<http://www.aseansec.org/1196.htm>

## Growing US Involvement in South China Sea Disputes

US attitudes and policy towards maritime disputes have shifted markedly since the 1995 confrontation over China's construction of a makeshift structure on Mischief Reef some 70 miles (113 km) off the coast of the Philippines island of Palawan. At that time, the Clinton Administration spoke against the use of force but took no position on the conflicting claims.

A combination of concerns about China's challenge to the American core interest in freedom of navigation and increasingly serious incidents involving Chinese incursions into the EEZs of Vietnam and the Philippines have caused the US policymakers to implicitly take sides.

The hardening US attitude can be dated approximately from the March 2009 incident in which five Chinese vessels carried out dangerous maneuvers against the US Navy's ocean surveillance ship the *Impeccable* during operations some 75 miles off China's Hainan Island. The US ship was well outside China's territorial sea but within its EEZ, which the United States regards as a lawful military activity under both UNCLOS and long-standing international norms. In addition to being viewed as a provocative intelligence gathering activity, the *Impeccable* in effect was directly challenging China's legally unsupportable policy of seeking to control foreign military activity in its 200 n. mile EEZ.

Incidents at sea in mid-2011 involving Chinese maritime patrol vessels and geological survey ships deployed by Vietnam have sharply ratcheted up long-standing tensions over conflicting maritime territorial claims in the South China Sea. Reports attribute incidents of deliberate cable and net cutting and the seizure of fishing boats and catches to armed vessels of the central government's Bureau of Fisheries Administration and the China Marine Surveillance and South Sea Command of the State Oceanic Administration.<sup>21</sup>

In fact, the United States and most international law experts assert that rights granted by UNCLOS in regard to EEZs relate only to natural resources and environmental protection. UNCLOS nowhere mentions military activities except sections related to rights of "innocent passage" in the 12 n. mile territorial sea.

## China, the United States, and UNCLOS

The policies of China and the United States towards UNCLOS are substantially mirror opposites of each other. The US has not ratified UNCLOS but adheres to it nonetheless, while China has ratified it but supports only those provisions that are in its interest. With regard to the conflict between the nine-dashed line and other countries EEZs and continental shelves, some Chinese experts reason that because China acquired its

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<sup>21</sup> Ibid., p. 9111.

“historical waters” long before UNCLOS, the Chinese claims take precedence. China’s attitude is at least partly based on its belief that the assignment of subsea rights under UNCLOS bears the fingerprints of the US and other developed countries—in other words, a reflection of western dominance of the international order.

Basing claims or rights on UNCLOS principles generally equates with support for a rules-based international order. China’s challenge to the prevailing international order in Asia is the most important cause of friction both with its neighbors, the United States, and other external maritime powers.

In regard to the issue of most concern to the United States in East Asian maritime disputes, unrestrained freedom of navigation for its naval forces, the US insists that nothing in UNCLOS affects traditional rights except for the expansion of a coastal state’s territorial waters from 3 to 12 nautical miles. China, on the other hand, has attempted to treat the 200 nautical mile EEZ as the equivalent of territorial waters for the purposes of controlling the activities of foreign naval forces even as it treats the EEZs of other coastal states as the high seas.

### **Impact on US Policy Interests and US-China Relations**

Both Beijing and Southeast Asian capitals saw the Obama Administration’s broader “reengagement” with Southeast Asia via the 2009 Lower Mekong Initiative (LMI) and the more recent announcement of a “pivot,” now couched as a “rebalancing”, of US military power towards Asia and the Pacific as inherently geopolitical. Whereas Beijing strongly criticized the move as intended to counter China’s rise, the ASEAN countries generally welcomed US reengagement, if only as an opportunity to diversify their relationships and benefit from any competitive bidding for their favor.

Although the United States has long stated that it takes no position on the conflicting claims, Beijing has interpreted statements by US officials in support of UNCLOS principles for determining maritime territorial claims, calls for restraint by all parties, and recent naval exercises with the Vietnamese and Philippines navies as unmistakably “taking sides.” On July 11, 2011, during an official visit to PLA headquarters by Adm. Mike Mullen, chairman of the US Joint Chiefs of Staff, China’s top military leader bluntly criticized the timing of small-scale US naval exercises with the Philippines navy a few days before his arrival and a “low-level” exercise with Australian and Japanese naval forces of the coast of Brunei during the visit, and planned exercises with Vietnam.

Chen’s complaints about planned exercises with the Vietnamese Navy in particular underscore China’s concern about deepening security ties between the United States and Vietnam. Such exercises are not new — the ones with the Philippines are held annually — but Chen criticized the timing of the exercises in the midst of the first military-military visit to China as “extremely inappropriate”<sup>22</sup>.

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<sup>22</sup> *BBC News/Asia-Pacific*, “US-China spat over South China Sea military exercises, July 11, 2011

China, of course, is a master of the art of embarrassing guests and hosts to make its point. Despite criticizing the timing of the US exercises in the South China Sea, Chinese officials reportedly called the first test flight of China's new "stealth" fighter during a visit by US Secretary of Defense Robert Gates a "coincidence."<sup>23</sup>

## **Still Not Another Cold War**

Because of their significant bilateral economic interdependence and mutual interests, China's rising power and assertiveness and US foreign policy resistance and military "rebalancing" are not likely to match the all-encompassing intensity and dangers of the Cold War with the former USSR. Nonetheless, the number of dangerous incidents at sea has been increasing along with the growth of nationalistic passions in maritime Asia. The parties have only grown further apart.

Meanwhile, the interests of China's maritime neighbors have become increasingly aligned with those of the United States. This development may be a geopolitical plus for the United States and also opens the way for greater US military access in Southeast Asian waters, but only in the context of open Sino-US rivalry. Other equally important US interests with China will be negatively affected and the gains for US alliance and partnership relationships in maritime Asia will be offset by increased risks of being drawn into conflicts that are not of American choosing and or broader global interests.

Still, there is no getting around the fact that China is forcing the issue and in a way that the US can only avoid conflict by acquiescing to Chinese dominance of some of the world's most important sea lanes and, the current global economic slump notwithstanding, its fastest growing economies and emerging financial center of gravity. All of the other stakeholders including the United States either have signed UNCLOS or otherwise subscribe to its principles. China is odd-man out, having signed UNCLOS but rejected its basic principles and cherry-picked benefits that suit its interests, such as the creation of EEZs.

## **Challenges Posed by China's Claims and Growing Ability to Enforce Them**

For a number of reasons China's actions will be the primary determinant of future conflict or cooperation Northeast Asia and the South China Sea. The most important factors are its two-decade long rising power trajectory, serious resources deficit and intense feelings of past greatness and recent historical wrongs. China has laid claims to vast maritime areas and their subsea oil and gas deposits and rich but threatened fisheries, and has asserted rights to control military access that are not in keeping with current international maritime law or traditional practice.

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<sup>23</sup> Michael Wines, "Bumps Remain as Military Leaders of U.S. and China Meet," *NYT*, Jan 11, 2011. <http://www.nytimes.com/2011/07/12/world/asia/12china.html>

The main source of contention in many of the disputes, especially in the South China Sea, is China's assertion of sovereignty or other rights based on a concept of "historical waters." The concept includes claims to entire island chains—most notably the Spratlys and Paracels chains on the basis of discovery, use by Chinese merchants and warships, or the periodic administration of individual islands, rocks, reefs, shoals and even underwater banks. Vietnam also claims sovereignty over the whole of the Paracels and Spratlys based on similar historical records—including centuries when Vietnam itself was under Chinese domination, and also as the inheritor of the claims of French Indochina. Vietnam also claims some of the islands and other features as part of its continental shelf. Taiwan not only makes the same claims as China, but the then Nationalist government of China originated the nine-dashed line in the 1930s.<sup>24</sup>

Under UNCLOS, historical claims can be taken into account in a limited number of situations, but in the case of the open sea the two dominant principles are continuous possession and administration and the requirement that rocks and islands must be above water at high tide and can support habitation and economic activity. Claims based on discovery are given little weight, if any, under UNCLOS if not backed by the *active assertion of sovereignty over the islands*. Generally, interruptions of control caused by occupation by another power have much less standing than current administration and occupation (or the absence, thereof.)

Even more to the point, in the case of the Spratlys, six different countries have claims and the more habitable islands are occupied by other countries than China. Less than a dozen can be considered actual islands that can support vegetation and limited habitation and none of them are occupied by China. Taiwan occupies Taiping Island (aka Itu Aba), the largest in the Spratlys group. The Philippines occupies Thitu Island (aka Pagasa), the second largest, as well as Northeast Cay (aka Parola Island), the fifth largest. Vietnam occupies and has built a small airstrip on Big Spratly Island, and in all has garrisoned or established some form of evidence of administrative control such as a lighthouse on over 20 islands, rocks, reefs and banks. The larger Vietnamese occupied features include Southwest Cay (Pugad Island) and Sin Cowe Island (Dao SinhTon), respectively the sixth and seventh largest of the Spratly Islands.

## Prospects for Cooperative Development

Cooperative development offers the best solutions both in the South China Sea and Senkakus/Diaoyutai Dispute between China and Japan but the obstacles thus far have been almost insurmountable. In fact, cooperative development is difficult even among ASEAN governments that agree on the same set of principles—i.e. UNCLOS and the precedents established by international tribunals.

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<sup>24</sup> Li Jinming and Li Dexia, "The Dotted Line on the Chinese Map of the South China Sea: A Note," *Ocean Development & International Law*, 34:287–295, 2003. <http://cat.middlebury.edu/~scs/docs/Li%20and%20Li-The%20Dotted%20Line%20on%20the%20Map.pdf>

Several aspects of China's approach have thus far made cooperative development of the resources of the South China Sea a non-starter. China's position essentially is "what's ours is ours but what you claim as yours under UNCLOS rules or other criteria can be cooperatively developed." In addition, Beijing has insisted that participants conclude separate bilateral agreements with China, which maximizes its leverage, rather than a multilateral accord. Moreover, its proposals thus far both to the Philippines in the Spratlys and Japan in the East China Sea have required acknowledgement of China's sovereignty.

More broadly, China and ASEAN have different principles for dealing with disputes. China seeks agreements that are fundamentally political and are intended to cement relationships. Partly because of their weakness vis-à-vis China and possibly because they inherited claims and boundaries established by their former colonial rulers to strengthen their cases, the ASEAN countries seek "rules based" agreements based on UNCLOS principles.

### **The Gulf of Tonkin Agreement and its Potential Implications for the South China Sea**

The 2000 Boundary Agreement between Vietnam and China marked the first time that China had successfully and clearly settled a disputed maritime border with one of its neighbors. Though the ensuing border has not been entirely without incident, the two sides had not only finally overcome decades of mistrust and failure to resolve their maritime limits, beginning with normalization of relations in 1991, they had also done so on the basis of accepted international law.

The agreed limits marked the territorial sea, contiguous zone and exclusive economic zone of both China and Vietnam. Furthermore, the agreement also followed precedents of proportionality in determining these borders when islands are in question. Specifically, Vietnam's Bach Long Vi island, in the middle of the gulf, was attributed a 25% of normal effect on delimiting the boundary, while the more coastal Con Co island, another Vietnamese island, was given a 50% effect. Subsequently, Vietnam emerged from the negotiation table with 53.23% of the 126,000 square kilometers being negotiated, with China claiming the remaining 46.77%. For seabed resources that straddled the border between the two states, the agreement included a provision stating that the two states would jointly develop those resources on a negotiated "equitable" basis. The Chinese National Offshore Oil Corporation (CNOOC) and PetroVietnam entered into joint exploration agreements based on this principle in 2007, though no development projects have yet to come from this.

The agreement on boundaries entered into effect in 2004 with mutual ratification by both the Chinese and Vietnamese, and coincided with a parallel agreement on fishery management that was ratified on the same day. This fisheries agreement was intended to allow for successful co-management of fish stocks that crossed the newly created maritime border in order to prevent depletion of those resources. Like many other

maritime areas around the world, overfishing threatened the fish population and required a multilateral effort to successfully counter. Though there have naturally been clashes between fishermen and fishery administrations of both sides and frictions in the South China Sea continue to test their relationship, joint patrols of the Gulf of Tonkin have continued since 2005.

While the Gulf of Tonkin agreement precedent for cooperation between the two biggest claimants in the South China Sea, its potential is limited. Specifically, the agreement in the Gulf did not need to solve issues of sovereignty over any islands; it simply delimited the border between the two states following the time-honored tradition of dividing enclosed seas along the median line between the two shores.

The major issue in the South China Sea, however, is the ownership of island chains and the corresponding maritime zones of control that UNCLOS might award them. This is a far more complicated affair, especially because UNCLOS does not provide a mechanism for resolving sovereignty disputes and the unwillingness of the Chinese to negotiate on them. The Gulf of Tonkin agreement does show that the Chinese leadership recognizes the legitimacy of international law in delimiting maritime zones, but only when they themselves want to sit at the bargaining table, which is something they aren't willing to do for the South China Sea at present.

### **The China-Philippines Joint Marine Seismic Undertaking and the Lessons of Domestic Politics**

Among the varied agreements signed by China and the Philippines in 2004, perhaps the most contentious of these was the Joint Marine Seismic Undertaking between the Chinese National Offshore Oil Company (CNOOC), the Philippines National Oil Company (PNOC), and eventually PetroVietnam. The agreement was an effort to promote cooperation between the rival claimants to the South China Sea by setting aside issues of sovereignty for mutual economic benefit. It involved exploratory surveys of the seabed off of the Philippines to lay a framework for potential future joint development. By early 2005, Vietnam had also joined the undertaking, creating a trilateral agreement between the three largest players in the dispute, though initially Vietnam had strongly criticized the agreement, accusing it of violating the Declaration of Conduct signed by China and the relevant ASEAN states in 2002.

By 2008 the project had come to a halt when the issue again became embroiled in Filipino domestic politics. At the time, Filipino President Gloria Arroyo and her husband Jose Arroyo, long haunted by allegations of corruption and misconduct, were accused of accepting bribes from Chinese companies for favorable deals. Though the deals in question were unrelated to the JMSU, the tripartite survey inevitably became entangled with the scandal, partly due to its nature as another business deal with China and partly due to its terms.

Though the original spirit of the agreement was to shelve issues of sovereignty in order to reap the economic benefits of joint development, the agreement was viewed by many as

unnecessarily favorable to the Chinese. A significant portion of the survey area was within Filipino waters that were not contested by China or Vietnam. Some argued that this was unconstitutional, citing Article XII, Section 2 of the Constitution of the Philippines:

*“The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least 60 per centum of whose capital is owned by such citizens.”*

Many Filipinos saw this as “selling out” to the Chinese. Additionally many of the significant JMSU details were not publicly disclosed, adding more fuel to speculation about corruption. Ultimately, the political firestorm that erupted ensured that the JMSU would fail to be renewed by the Filipino government and the next phase of the project would never come to fruition.

The deal also had a significant regional political dimension. A common view in the Philippines and elsewhere was that it was a grave mistake to “break ranks” with its ASEAN counterparts, which had been trying to deal with China as a unified bloc to as a means to cause China into a more regionally cooperative attitude. Second, it is argued that in doing so the Philippines had given legitimacy to China’s authority and claims to the South China Sea, particularly because the Philippines had opened up undisputed areas to the JMSU. Ultimately the agreement failed to produce any sort of tangible economic benefit to China or the Philippines.

The criticism of the Philippines for breaking ranks is valid only if ASEAN is genuinely committed to maintain a common front. Apart from the unified front that it showed after the 1995 Mischief Reef incident, ASEAN’s efforts to present a cohesive bloc vis-à-vis China have remained problematic. What happened in Phnom Penh this July makes clear that China’s resistance to pressure from ASEAN is stronger than the latter’s commitment to regional solidarity.

Whether criticisms of the JMSU are valid or not, the collapse of the trilateral agreement provides an important object lesson. No deal can succeed without domestic political acquiescence, if not support. The lesson for China should be that while superior power may change the objective situation, governments must still answer to popular opinion. Joint development proposals must directly or indirectly provide sufficient benefit to assuage national feeling.

### **HYSY 981 – Cross-Cutting Implications of China’s Newest Oil Rig**

The May 9, 2012 launch of a new oil rig by the Chinese National Offshore Oil Corporation (CNOOC) created widespread concern that China will attempt to exploit this development to independently mine seabed resources in disputed areas. These concerns appeared to be validated by the surprisingly nationalistic language employed by CNOOC to describe the drilling rig. For example, CNOOC Chairman Wang Yilin has used phrases such as “mobile sovereign territory” and “strategic instrument” to describe its

potential role within the South China Sea. Whether China's actions will be guided by nationalistic aspirations or pragmatic commercial considerations remains to be seen.

The new Chinese drilling rig is called the Haiyang Shiyou 981 (HYSY 981). It grants China the indigenous ability to drill in deep-water conditions up to depths of 3,000 meters for the first time. Accompanying the launch of HYSY 981 was HYSY 201, China's first deep-water pipe-laying ship. Together, these two vessels represent a landmark achievement and technological hurdle that had previously left China dependent on the expertise of foreign oil companies for offshore resource extraction deeper than a few hundred meters.

Unquestionably, CNOOC and other state-owned companies can play a role as instruments of the state itself if need be, but some analysts view it as telling that CNOOC chose to deploy HYSY 981 and HYSY 201 to the Liwan fields area, an offshore block well within the boundaries of what would be China's 200 nautical mile Exclusive Economic Zone (EEZ), rather than the Spratly Islands area. Some in China had publicly anticipated sending the rig to this disputed area a year prior during the testing phase of HYSY 981, and several of China's neighbors feared it would make good on that threat, but it never came to be. As an April 3rd article from *China SignPost* argued:

*"Although China's sovereign deep-water drilling capabilities are set to rise, we believe Beijing will exercise restraint in unilaterally exploiting energy resources further than 200 nautical miles from the Chinese coast. Even the benefits of a large new oil or gas field would not outweigh the negative implications of catalyzing more formal anti-China regional security alignments."*

In the short-to-medium term, neither the PLA Navy nor any of China's several paramilitary patrol and surveillance entities have sufficient capability to reliably ensure the safety of any significant drilling operations in the EEZs and extended continental shelves of neighboring countries. Apart from the vulnerability of deep seabed drilling operations, a severe nationalistic backlash in the other claimant states would be unavoidable—countries with which China has important and growing trade and investment ties.

In fact, much of CNOOC's expansion strategy of late has instead revolved around boosting its overseas production outside the region, such as its involvement in the development of Canadian oil sands projects and in the Missan Oil Fields of Iraq, as an alternate means of expansion to independently developing disputed resources. In the longer term, China will have an increasingly compelling interest in exploiting subsea resources closer to home.

Given these realities, the introduction of HYSY 981 has the *potential* to be a positive development for the region, but only if this new technological capability makes CNOOC more attractive as a development partner for some of China's neighbors who remain dependent on international oil and gas companies for exploiting their subsea resources. When speaking about Filipino plans to develop the natural gas fields around Reed Bank,

Philex Petroleum chairman Manuel Pangilinan said recently that, "a gas field will need major expenditures and the help of international oil firms that have the technical capability and financial resources."

Pangilinan, himself, made a recent trip to Beijing to talk with CNOOC executives about the possibility of partnering to develop gas resources in the Reed Bank, despite the recent row between Manila and Beijing over Scarborough Shoal. Though Pangilinan said that CNOOC was only a potential partner and that Philex had not ruled out partnering with other foreign companies, CNOOC at least has a foot in the door for this type of project, and the added technological expertise of deep-water drilling can help their prospects while potentially setting a precedent for joint-development projects in other areas of the South China Sea.

In fact, most development of undersea oil and gas deposits in the EEZs and extended continental shelves of developing countries almost inevitably involves production-sharing agreements with other state-owned or multinational oil companies. In this case, the most difficult aspect of negotiation between Filipino and China energy companies would be whether the terms of such an agreement were sufficiently balanced to avoid enflaming Filipino national sentiments and eliciting accusations of betrayal in the way that an earlier joint exploration agreement with China did several years ago. Equally important, China would have to willing to abandon its insistence that it has indisputable sovereignty over the areas of proposed cooperation.

## **Uncertain Future Directions**

The situation in the South China Sea could play out in several different ways, depending on the actions of one or more of the competing claimants and the United States. For the foreseeable future, management of disputes appears far more likely than productive diplomacy and lowered tensions to define future South China Sea maritime relations.

The most noteworthy aspects of the last three years is the rapidly increasing linkage of South China Sea disputes to the larger issue of China's rise and the longer-term power balance in East Asia. If China and its neighbors do not find a way to bridge their differences in the interest of cooperatively managing fisheries and co-developing the contested subsea resources of the South China Sea, then several decades of progress towards regional economic integration could be at risk. A continued slowing of global economic growth and unfavorable changes in China's terms of trade are not conducive to compromise on issues that are subject to intense nationalistic feelings.

Regional concerns about growing Chinese power are such that the US "pivot" or "rebalancing" towards Asia has been widely welcomed despite its unquestionably polarizing impact. Even countries with no disputes with China have at least cautiously welcomed US regional reengagement as a counter to excessive Chinese influence. Regional concerns about China are not restricted to its rising maritime capabilities.

Despite their differing perspectives, the four countries of the Lower Mekong River—Cambodia, Laos, Thailand and Vietnam readily welcomed the US Lower Mekong Initiative (LMI). Of these, only Vietnam sees itself as facing a two front threat from China’s ability to regulate the flow of the Mekong and Red Rivers, as well on its EEZ and continental shelf.

## **South China Sea Disputes and the Future of China-ASEAN Relations**

It is not clear how the Chinese government feels about having been the source of a serious rift within ASEAN. China applied intense and successful pressure on Cambodia to prevent the adoption of the language proposed by the Philippines and Vietnam. On the other hand, being the cause of the most significant breakdown of consensus in ASEAN in the 45 years of its existence must be seen in Beijing as less than a best-case outcome.

First, at the beginning of the week the ASEAN countries had succeeded in agreeing to “key elements” of a draft Code of Conduct that was to be presented to China as a starting point for negotiations. ASEAN’s success in reaching an agreement on a draft appears to have received a tepid response. A foreign ministry spokesman responded that China was willing to discuss the draft “when conditions are ripe,” but said also that a Code of Conduct could not be used to resolve the actual disputes.<sup>25</sup>

Second, China failed to prevent the South China Sea issue from being taken up in the ASEAN Regional Forum meeting involving the ten ASEAN countries and some 17 extraregional “dialogue partners” and observers.

Third, and worse, as in the case of last November’s East Asia Summit (EAS) meeting in Bali, the United States overcame China’s objections to raising the South China Sea issue. For the most part, China was on the subject of critique by other Southeast Asian countries and thinly veiled criticism from Secretary of State Clinton, who asserted the US “national interest in freedom of navigation, open access to Asia’s maritime commons, and respect for international law in the South China Sea.” Clinton further stated an ongoing US commitment “to being an active partner with ASEAN.”<sup>26</sup>

Finally, on Friday, July 13, at the conclusion of the meetings, China had to endure the humiliation of having a one of its frigates running hard aground near Half Moon Shoal in the southeast region of the Spratlys, just 60 miles from the Philippines island of Palawan.<sup>27</sup> Several days later a small flotilla of PLAN ships and utility boats refloated the

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<sup>25</sup> *Global Nation* (Phil, from AP and AFP), “Asean OKs ‘conduct rules’ to avoid clashes over West PH Sea; China yet to agree.” July 11, 2012. <http://globalnation.inquirer.net/43780/asean-oks-%E2%80%98conduct-rules%E2%80%99-to-avoid-clashes-over-west-ph-sea-china-yet-to-agree>

<sup>26</sup> Rich Rozoff, “Clinton Engineers Expansion Of Asian NATO To Contain China” – OpEd, *Eurasia Review*, July 16, 2012. <http://www.eurasiareview.com/16072012-clinton-engineers-expansion-of-asian-nato-to-contain-china-oped/>

<sup>27</sup> AP, “ASEAN fails to reach common ground on China row,” July 13, 2012. <http://www.usnews.com/news/world/articles/2012/07/13/asean-fails-to-reach-common-ground-on-china-row>

frigate, pulled it off the rocks, and sailed it back to China. The frigate had every right to be there but in the context of recent incidents over fishing rights the presence of the ship appeared provocative and it could hardly have run aground in more embarrassing circumstances.<sup>28</sup> (The US Navy had its own humiliation in mid-January 2013 when a minesweeper, the *USS Guardian*, ran aground on a coral reef in a protected World Heritage area in the Philippines' waters after leaving Subic Bay.)

Without a doubt, the July 2012 ASEAN meetings underscored both the intractability of the South China Sea issues and the dangers inherent in the recent trajectory of heightened tensions and nationalistic rhetoric on all sides. Under current trends, the risk of incidents that could escalate to conflict will continue, oil and gas resources the areas of conflicting claims will remain unexploited, efforts to promote sustainable fisheries on a regional basis will likely fail, and regional economic cooperation involving China and the ASEAN countries will not achieve its full potential.

Moreover, not only is friction and suspicion between Washington and Beijing likely to continue, but the idea of an inevitable political rivalry and zero-sum military competition will become a self-fulfilling prophecy. As a consequence, cooperation that the US seeks from China on a range of regional and global issues will become increasingly difficult.

As for ASEAN's future, it remains to be seen whether the failure to achieve a consensus communique will be an aberration or a longer term trend. Among other responses, the breakdown of unity has prompted Indonesia to step into the breach and attempt to revive its past role as a mediator and center of gravity in ASEAN. On July 18, Indonesia's Foreign Minister Marty Natalegawa began a round of visits to ASEAN capitals, starting with Manila and Hanoi, to seek to repair the damage. While China's nine-dashed line cuts partly into Indonesia's offshore Natuna Gas field, Beijing usually downplays its claim in this area. Indonesia, meanwhile, has no claims in the Spratlys.<sup>29</sup> Moreover, Jakarta places great hopes in the future of Indonesia-China trade and investment relations. This makes Indonesia the best candidate to play the role of an honest broker with China and the ASEAN states.

It may become very difficult for the United States to maintain the primacy of its core interest in freedom of navigation and, to a lesser extent, the security of sea lines of communication without being drawn into the maritime boundary disputes of allies and strategic partners. US interest in increasing the patrolling capacity of the Philippines and, arguably, Vietnam's capacity for self-defense may strengthen deterrence but at a cost to other important equities with China, as well as increasing the risk of being drawn into an unintended military incident.

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<sup>28</sup> Tania, "Chinese frigate runs aground in disputed part of South China Sea" *The Guardian* (UK), July 13, 2012. <http://www.guardian.co.uk/world/2012/jul/13/chinese-frigate-runs-aground-sea>

<sup>29</sup> Manuel Mogato and Ho Binh Minh, "Indonesia seeks to mend SE Asia rift over South China Sea," Reuters, July 18, 2012. <http://www.reuters.com/article/2012/07/18/us-asean-indonesia-idUSBRE86HOCZ20120718>

In the East China Sea, the Sino-Japanese maritime dispute is increasingly driven by strong nationalistic passions that are if anything, are even higher in China (and the Koreans) due to the legacy of Japan's colonialism and imperialism, and its World War II aggression. At the same time, Tokyo's disputes with both Beijing and Seoul could become a distraction from the larger purposes of the U.S. alliances with both countries, and unhelpful to the Obama Administration's efforts to couple its rebalancing strategy with continuing efforts to engage China in other areas of mutual interest.

In the South China Sea, comparatively speaking, Beijing probably has more room to seek compromises with rival claimants and more expectation of a positive response if it does. Despite the current impasse between China and its other maritime neighbors and ASEAN over Beijing's fundamental challenge to the rules-based UNCLOS regime, several important common interests still prevail. First, so long as the impasse remains, exploration and drilling in the contested area cannot be carried out. Second, the common recognition of the need to sustainably manage seriously depleted fisheries, especially those involving open water pelagic species that straddle maritime boundaries such as tuna, yellowfin, skipjack and billfish. Third, no country or stakeholder can benefit from the use of force.

For all of these reasons China and the other maritime claimants in the South China Sea should continue to press for formal and even informal agreements for conflict management, regardless of the slim prospects for actual resolution of the disputes. Ideally, ASEAN should maintain a unified stance towards concluding a Code of Conduct and other measures for avoiding incidents and pursuing pragmatic cooperation based on a commitment to a rules-based order. Unfortunately, the issues are too complex and perceived national interests are too diverse to avoid the intrusion of domestic politics. Nonetheless, all parties must continue to maintain engagement and dialogue rather than submit to the temptation of reactive and probably impassioned response to the kind of crises that now appear inevitable.

## Appendix I – Occupation of the Spratlys

### All Occupied Features in the Spratly Islands

	China	Taiwan	Malaysia	Philippines	Vietnam
Names of Occupied Islands in the South China Sea	-Cuarteron Reef -Fiery Cross Reef -Gaven Reef -Hughes Reef -Johnson South Reef -Mischief Reef -Subi Reef -Whitson Reef	-Ban Than Reef -Itu Aba Island	-Ardasier Reef -Dallas Reef -Erica Reef -Investigator Shoal -Louisa Reef -Mariveles Reef -Swallow Reef	-Commodore Reef -Flat Island -Irving Reef -Loaita Island -Lankiam Cay -Nanshan Island -Northeast Cay -Second Thomas Reef -Thitu Island -West York Island	-Alison Reef -Amboyna Cay -Barque Canada Reef -Central London Reef -Collins Reef -Cornwallis South Reef -East London Reef -Grainger Bank -Great Discovery Reef -Grierson Reef -Ladd Reef -Lansdowne Reef -Namyit Island -Pearson Reef -Petley Reef -Prince Consort Bank -Prince of Wales Bank -Rifleman Bank -Sand Cay -Sin Cowe Island -South Reef -Southwest Cay -Spratly Island -Tennent Reef -Vanguard Bank -West London Reef

### Occupied Features in the Spratly Islands Above Water at High Tide

*Italics* = Only Small Rocks Above Water

\* = Disputed

	China	Taiwan	Malaysia	Philippines	Vietnam
Names of Occupied Islands in the South China Sea	<ul style="list-style-type: none"> <li>-<i>Cuarteron Reef</i></li> <li>-<i>Fiery Cross Reef</i></li> <li>-<i>Gaven Reef</i> *</li> <li>-<i>Johnson South Reef</i> *</li> <li>-<i>Whitson Reef</i> *</li> </ul>	<ul style="list-style-type: none"> <li>-Itu Aba Island</li> </ul>	<ul style="list-style-type: none"> <li>-<i>Erica Reef</i> *</li> <li>-<i>Louisa Reef</i></li> <li>-<i>Mariveles Reef</i></li> <li>-<i>Swallow Reef</i> *</li> </ul>	<ul style="list-style-type: none"> <li>-<i>Commodore Reef</i></li> <li>-Flat Island</li> <li>-Lankiam Cay</li> <li>-Loaita Island</li> <li>-Nahshan Island</li> <li>-Northeast Cay</li> <li>-Thitu Island</li> <li>-West York Island</li> </ul>	<ul style="list-style-type: none"> <li>-Amboyna Cay</li> <li>-<i>Barque Canada Reef</i></li> <li>-<i>Central London Reef</i> *</li> <li>-<i>Collins Reef</i></li> <li>-<i>Discovery Great Reef</i></li> <li>-<i>East London Reef</i></li> <li>-Namyit Island</li> <li>-<i>Pearson Reef</i></li> <li>-<i>Petley Reef</i> *</li> <li>-Sand Cay</li> <li>-Sin Cowe Island</li> <li>-Southwest Cay</li> <li>-Spratly Island</li> <li>-<i>Tennent Reef</i></li> <li>-<i>West London Reef</i></li> </ul>

\*Swallow Reef – The island here is mostly man-made and subsequently not a legitimate source of maritime zones, though some claims say that prior to this there was a small rocky island/outcropping above water at high tide.

## Appendix II – East China Sea Disputes—A Japanese Perspective

By Yuki Tatsumi<sup>30</sup>

### Overview

The territorial dispute over the Senkaku Islands and the friction over the development of natural resources in the East China Sea have been a major contributing factor in the heightened tension between Japan and China.

The Senkaku Islands, controlled by Japan but known in China as the Diaoyu Islands have been the center of a contentious territorial dispute between Japan and China for the past four decades. The “Senkaku Islands” consists of five virtually uninhabitable islands (Uotsuri Jima, Kuba Jima, Taisho Jima, Minami Kojima, Kita Kojima) and three rocks (Okino Kitaiwa, Okino Minami-iwa, Tobise) that lay in close proximity to the Chinese mainland, Okinawa, and the Taiwanese coast. The location of the Senkaku Islands—they sit on top of the East China Sea’s largest petroleum reserve—has complicated the issue.

The East China Sea issue originates in the Japan-China disagreement over how to draw a demarcation line in the area where their claimed exclusive economic zones (EEZs) and continental shelves, defined under the United Nations Convention on the Law of the Sea (UNCLOS), overlap. This includes bilateral negotiation (or lack thereof nowadays) on the demarcation line in the area and Japanese grievances vis-à-vis China’s increased maritime activities in this area, including the ones by “maritime research vessels” and other ships.

These issues are extremely complicated because (1) the territorial dispute over the Senkaku Islands continues to remind generations of Chinese of Japan’s territorial ambition between 1930-1945 and has become a matter of national pride for many Chinese, and (2) China’s behavior on both Senkaku Islands and East China Sea issues, particularly in recent years, are fueling the negative image—close to that of a bully—in Japan. These conditions make the management of these issues politically difficult for both Tokyo and Beijing.

### Japanese Claims and the Status Quo

#### Senkaku Islands

The Japanese government has consistently claimed that the Senkaku Islands were integrated into Japanese territory in 1895. The Japan Ministry of Foreign Affairs (MOFA) articulates Japan’s official position on the Senkaku Islands issue as follows<sup>31</sup>:

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<sup>30</sup> Yuki Tatsumi is a Senior Associate with Stimson’s East Asia Program.

<sup>31</sup> Japan Ministry of Foreign Affairs (MOFA), “The Basic View on the Sovereignty over the Senkaku Islands,” <http://www.mofa.go.jp/region/asia-paci/senkaku/senkaku.html>. Accessed May 29, 2012.

- The Japanese government's decision to integrate the Senkaku Islands into Japanese territory is based on the Cabinet Decision on January 14, 1895. The decision was a result of a 10-year-long survey on the Senkaku Islands that the government conducted through Okinawa prefectural government, which confirmed that the Islands showed no trace of having been under the control of China.
- Since 1895, the Senkaku Islands have continuously remained an integral part of the *Nansei Shoto* (Southwestern) Islands. As such, they were never a part of Taiwan nor a part of the Pescadores Islands Japan acquired from the Qing Dynasty of China in accordance with Article 2 of the Treaty of Shimonoseki that came into effect in May of 1895.
- Accordingly, the Senkaku Islands are not included in the territory that Japan renounced under Article 2 of the 1954 San Francisco Peace Treaty. The Senkaku Islands have been placed under the administration of the United States of America as part of the *Nansei Shoto* Islands, in accordance with Article 3 of said treaty. Therefore, they are included in the area that was reverted to Japan at the time of the Okinawa reversion in 1971.

The territorial dispute over the Senkaku Islands surfaced in the 1970s after the UN Economic Commission for Asia and the Far East (ECAFE) issued a survey in 1968 that indicated the continental shelf between Taiwan and Japan was possibly one of the “most prolific oil reservoirs in the world.”<sup>32</sup>

Taiwan first made the claim over the Senkaku Islands in 1971, around the time of the US reversion of Okinawa to Japan. The reasons behind these claims made by Taipei are as follows:

- The Ryukyu Kingdom (integrated into Japanese territory as Okinawa prefecture in 1879) was in tributary relationship with China (then represented by Qing dynasty). Therefore, the Ryukyu Islands (today's Nansei Shoto Islands that includes the Senkaku Islands) are considered part of Chinese territory.
- As such, the Ryukyu Islands were considered a part of the territory (Taiwan) that was handed over to Japan at the end of the Sino-Japanese War in 1895.

Based on these arguments, Taipei opposed the US reversion of Okinawa to Japan, and Beijing followed suit. Beijing argued that the Senkaku Islands had been incorporated into the territory of the Ming Dynasty in 1556, and asserted that the Ming Dynasty's ownership of the islands invalidated Japan's incorporation of them in 1895. Additionally, they argued that they ceded the Senkaku Islands as part of Taiwan to Japan according to the 1895 Treaty of Shimonoseki, and that the islands should be returned to China.

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<sup>32</sup> UNECAFE 1968:39-40.

From the beginning, Tokyo has consistently maintained the above claim. Today, the Japanese government's position remains that the Senkaku Islands are a part of the City of Ishigaki of Okinawa Prefecture and owned by a private citizen. The Japanese government has countered the Chinese (and Taiwanese) claims by asserting they do not provide valid, legal grounds to challenge Japan's sovereign claims to the Senkaku Islands:

- The Chinese had not incorporated the Senkaku Islands into its territory during the late Qing period.
- The Senkaku Islands were never a part of the Chinese mainland, nor were they a part of the Formosan islands, as Beijing asserts.
- Therefore, these islands were not a part of the Treaty of Shimonoseki discussions, and they were not included in the Formosan territory ceded by China.

One should note that, prior to the discovery of petroleum resources in the Senkaku seabed, neither Beijing nor Taipei insisted that the Senkaku Islands were a part of their territory. Nor did they raise objection to the exclusion of the Senkaku Islands from Article II of the 1951 San Francisco Peace Treaty, which stipulated the territory Japan would cede back to China. They did object to terms in Article 3 of the same treaty, which gave the United States the right to administer the *Nansei Shoto* Islands south of the 29° N latitude (that included the Senkaku Islands). Furthermore, China did not object when the US Navy leased the Kuba and Taisho islands from then-owner Koga Zenji for \$11,000, and used the islands as firing ranges from 1951 onward.

Furthermore, prior to Taipei and Beijing's claims to the Senkaku Islands, several maps that supported the Japanese claims—in which China did not consider the Senkaku Islands as a part of its territory—were published in China. For example, the *World Map Atlas* published by the Beijing Map Publishing Company in 1960 clearly indicated that they were part of Japanese territory. Additionally, a *World Map Atlas* published by the Taiwanese National Defense Studies Institute and the Chinese Institute for Geoscience in 1965 clearly delineated the maritime border between the Senkaku Islands and Taiwan. Lastly, a 1969 classified PRC map published in the *Washington Times* also depicted the Senkaku Islands as being part of Japanese territory. All three maps referred to the disputed islands by their Japanese names and made no mention of their Chinese names, indicating that the Chinese did not consider these islands to be part of their territory at the time the maps were published.

## **Issues in the East China Sea**

Japan and China, both having ratified UNCLOS, possess the legal foundation to claim the EEZs and continental shelves that expand 200 nautical miles from the baseline of their respective territorial waters. In the East China Sea, there are areas where the two countries' EEZs and continental shelves overlap due to the proximity of the baseline of territorial waters. As such, Japan and China have engaged in bilateral discussions to determine the demarcation line since 2004.

Japan's position on this issue is that the demarcation line should be drawn according to the median line in the area where the two countries' legitimately-claimed area overlaps, which China disagrees with.

Tension between Tokyo and Beijing rose in 2003 when China began to express interest in the unilateral development of *Shirakaba/Chunxiao* gas fields. The Chinese government demonstrated its intention when it granted the China National Offshore Oil Corporation (CNOOC) permission to explore for oil approximately three miles (4-5km) west of the median line in August 2003.<sup>33</sup> The Japanese government strongly protested to this decision because it believed that Chinese drilling in the area would result in the siphoning of resources on its half of the median line.<sup>34</sup> These diplomatic exchanges eventually resulted in the Japan-China bilateral negotiation in regards to the East China Sea development, first of which was held in October 2004.

The first three years and a half of the bilateral negotiations were characterized by distrust and tension, particularly over the siphoning issue. The Japanese government was wary about the Chinese depleting the oil reserves from its side of the maritime boundary, while the Chinese government flatly dismissed Tokyo's concerns over the depletion of Japanese natural resources.

It was not until 2008 that the momentum appeared to be shifting in a positive direction. The Japanese Foreign Minister Masahiko Koumura and Minister of Economy, Trade, and Industry Akira Amari announced on June 18, 2008 that Japan and China reached an agreement to allow co-development in the *Shirakaba/Chunxiao* oil and gas field.<sup>35</sup> The agreement stipulated the following three major provisions:

- (1) The two countries would agree to cooperate in terms of joint development and continue consultations, despite the fact that they have not come to an agreement regarding the maritime boundary between China and Japan in the East China Sea.
- (2) The two countries agreed to identify the area for joint development vis-à-vis a set of seven geographical coordinates. They would jointly explore the designated areas for development, and that they would continue discussions

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<sup>33</sup> Lee, Yusin and SangJoon Kim, "Dividing Seabed Resources in east Asia: A Comparative Analysis of the East China Sea and the Caspian Sea," *Asian Survey*, vol. 48, no. 5. (September/October 2008) 802.

<sup>34</sup> Lee, 810.

<sup>35</sup> MOFA, "*Nicchu-kan no Higashi Shina-kai ni okeru Kyoudou Kaihatsu ni tsuite no ryoukai*" (Japan-China Understanding over the joint development in East China Sea), June 18, 2008, [http://www.mofa.go.jp/mofaj/area/china/higashi\\_shina/press.html](http://www.mofa.go.jp/mofaj/area/china/higashi_shina/press.html) (accessed June 20, 2012); MOFA, "*Higashi Shina-kai ni okeru Nicchu-kan no Kyouryoku ni tsuite*" (In regards to Japan-China Cooperation in East China Sea.), June 18, 2008.

[http://www.mofa.go.jp/mofaj/press/kaiken/gaisho/g\\_0806.html#6](http://www.mofa.go.jp/mofaj/press/kaiken/gaisho/g_0806.html#6) (accessed June 20, 2012)

regarding the joint development in other geographic areas of the East China Sea.<sup>36</sup>

- (3) The Japanese companies would be allowed to invest in the existing Chinese development of *Shirakaba/Chunxiao* oil and gas fields. Such cooperative activities would be under the jurisdiction of Chinese enterprise laws.<sup>37</sup>

The consensus on the principles for joint development was certainly a step in the right direction. However, the vague wording and lack of commitment left Japan with a non-legally binding agreement with China. For instance, the 2008 agreement did not have an official title as most treaties or official agreements do, nor did it have the signatures of the participating officials. In short, this was a political agreement whose implementation heavily hinges on the improvement of Japan-China relations in the future.<sup>38</sup>

This proved to be one of the agreement's biggest flaws, as bilateral relations quickly soured after the "principle consensus" was announced. Shortly after the announcement of the Japan-China East China Sea agreement, Chinese vessels were spotted navigating the *Shirakaba/Chunxiao* area again and appeared to resume development of the gas field. The Japanese MOFA immediately requested the Chinese explain these activities on July 10. When Beijing responded by saying they were "conducting work related to the maintenance and management of the platform there," Tokyo remained skeptical, as they requested Beijing to refrain from any action that would undermine the trust between the two countries.<sup>39</sup>

Ultimately, Beijing's behavior following the June 2008 agreement suggests that this agreement failed to take into account that the two sides may choose to interpret the agreement differently, and there is no recourse to reconcile such differences. For example, Beijing believed that their "principle consensus" simply permitted Japanese corporations to invest in their *Shirakaba/Chunxiao* oil development, and understood it as Tokyo's implicit acknowledgement of Beijing's sovereignty over the field. Tokyo, on the other hand, interpreted the 2008 agreement as a positive step towards joint, albeit

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<sup>36</sup> For the geographic coordinates for the designated area for the joint development, see MOFA. "Nicchukan no Higashi Shina-kai ni okeru Kyoudou Kaihatsu ni tsuite no ryoukai" (Japan-China Understanding over the joint development in East China Sea), June 18, 2008. [http://www.mofa.go.jp/mofaj/area/china/higashi\\_shina/press.html](http://www.mofa.go.jp/mofaj/area/china/higashi_shina/press.html) (accessed June 20, 2012).

<sup>37</sup> Hayashi, Moritaka, "The 2008 Japan-China Agreement on Cooperation for the Development of East China Sea Resources," *University of Virginia*, June 22-24, 2011, <http://www.virginia.edu/colp/pdf/Bali-Hayashi.pdf> (accessed June 20, 2012).

<sup>38</sup> Hayashi, 2011.

<sup>39</sup> MOFA, "Higashi Shiina-kai Shigen Kaihatsu (*Shirakaba Yu Gas Den*) (Development of East China Sea Oil and Gas Fields)" July 17, 2009. [http://www.mofa.go.jp/mofaj/press/kaiken/gaisho/g\\_0907.html#5](http://www.mofa.go.jp/mofaj/press/kaiken/gaisho/g_0907.html#5) (accessed June 20, 2012); MOFA, "Higashi Shina-kai Shigen Kaihatsu (*Chugoku-sen ni yoru Shirakaba heno Shizai Hannyu*) (East China Sea Resources Development (China's delivery of materials to *Shirakaba*)." July 14, 2009. [http://www.mofa.go.jp/mofaj/press/kaiken/gaisho/g\\_0907.html#4](http://www.mofa.go.jp/mofaj/press/kaiken/gaisho/g_0907.html#4) (accessed June 20, 2012).

imbalanced, development.<sup>40</sup> Even the wording of Tokyo and Beijing's press releases reflected the difference in interpreting the agreement. The statement issued by Beijing stated that there was a "principle agreement," whereas Tokyo issued a statement indicating that a "joint survey would be conducted for the mutual benefit of both sides."

To Japan's frustration, Beijing proved to be unwilling to return to the discussion table after the 2008 agreement and continued to unilaterally survey the area around the *Shirakaba/Chunxiao* oil and gas fields. In 2009, Japanese Minister of Foreign Affairs Katsuya Okada found himself having to retract his ministry's statement about the "principle consensus" being an agreement for joint development, but simply capital participation.

The situation quickly went from bad to worse starting on September 8, 2010, when a Chinese trawler crashed into a Japanese Coast Guard cruiser off the coast of the Senkaku Islands after an attempt to evade capture. Not only did the Chinese halt the export of rare earth minerals to Japan, they also brought in drill pipes and other machinery into the *Shirakaba* gas field.<sup>41</sup> The Chinese continue to develop the *Shirakaba/Chunxiao* oil and gas field to this day, despite Tokyo's protests. It is clear that agreeing to a "principle consensus" may simply have been an attempt at political posturing by the Chinese. As described above, both sides reached an agreement in June 2008 on the East China Sea as "the sea of peace, cooperation, and friendship," and designated a small section of the sea where their claims overlap as the joint development area.<sup>42</sup> However, the details of how to proceed with the joint developments are yet to be finalized between the two governments.

### **Senkaku Islands/East China Sea Incidents—Contributions to Rising Political Tension Between Tokyo and Beijing**

While the territorial dispute over the Senkaku Islands did not surface until 1971, maritime disputes over the Senkaku Islands date back to the 1950s when Taiwanese boats began fishing off the coast of the islands. These visits to the coastal waters eventually led the Taiwanese fisherman to start trespassing on the Japanese islands in 1968. In response, Ishigaki officials erected trespassing notices on all five islands (Uotsuri, Kuba, Taisho, Kita-kojima, Minami-kojima), and in 1970 the Ryukyu government constructed signs

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<sup>40</sup> MOFA, "*Higashi Shina-kai ni okeru Nicchu-kan no Kyouryoku ni tsuite* (In regards to Japan-China Cooperation in East China Sea.)" June 18, 2008.  
[http://www.mofa.go.jp/mofaj/press/kaiken/gaisho/g\\_0806.html#6](http://www.mofa.go.jp/mofaj/press/kaiken/gaisho/g_0806.html#6) (accessed June 20, 2012); Hayashi, 2011.

<sup>41</sup> "*Gasu-den ni doril paipu Chuugoku ga kussaku kaishi ka: Kei-san Sho Mikata* (Drill pipes in gas fields—China may begin drilling: METI observation) *Asahi Shimbun*, September 25, 2010.  
<http://www.asahi.com/special/senkaku/TKY201009240502.html?ref=reca> Accessed June 20, 2012.

<sup>42</sup> MOFA, "*Higashi Shina-kai ni okeru Nicchu-kan no kyoryoku ni tsuite* (Regarding Japan-China cooperation in East China Sea)" June 18, 2008.  
[http://www.mofa.go.jp/mofaj/area/china/higashi\\_shina/press.html](http://www.mofa.go.jp/mofaj/area/china/higashi_shina/press.html). Accessed May 31, 2012.

prohibiting the entry of any non-Ryukyuan resident onto the Senkaku Islands under orders of the US Army.

September 1970 marked the first skirmish regarding the Senkaku sovereignty issue, when the Okinawan police arrested a Taiwanese journalist attempting to plant a ROC national flag on Uotsuri Island. His capture started anti-Japanese protests in Taiwan and Hong Kong. However, Taiwanese and Japanese diplomats were able to mitigate the situation, negotiate co-development of the oil resources, and promised to address the issues of sovereignty at a later point. Complicating this issue further was the PRC's claims on the Senkaku Islands in December 1972, which led to the abandonment of the co-development plans with Taiwan.

Since then, each of the five rounds of maritime disputes has increased the emotional fervor of the issue and ratcheted up the likelihood of a military response. For instance, during the 1978 Treaty of Peace and Friendship talks Beijing and Tokyo had hoped to keep the Senkaku issue out of the debate and China's Deng Xiaoping had even suggested that China and Japan could co-develop the oil fields and address the sovereignty issue at a later point. However, with the ultranationalist public sentiment overwhelming the leaders of the two nations, the discussions for the Treaty of Peace and Friendship took a wildly divergent path after a group of conservative Liberal Democratic Party (LDP) officials insisted that the Chinese relinquish their claim to Senkaku in the treaty. Deng Xiaoping chose to escalate the tenuous situation by sending numerous Chinese trawlers equipped with the PRC flag to the waters of the Senkaku Islands.

This upset Japanese right-wing political groups including the *Seiran-kai*<sup>43</sup> and *Nihon Seinen-sha* (Japan Youth Federation)<sup>44</sup>, both of which erected a lighthouse on Uotsuri Island in an attempt to solidify Japanese claims to the island. While the situation did not escalate any further in the 1970s, the presence of the lighthouse would become the basis for another round of Senkaku disputes in September 1990. The *Nihon Seinen-sha* applied to have the Uotsuri lighthouse officially recognized by the Japanese Maritime Security Agency (JMSA) [now known as the Japan Coast Guard (JCG)] after renovating the lighthouse in 1988. In response, Taiwanese ultranationalists tried to land on the islands to place their Olympic torch on October 21, 1990, but were blocked by the JCG.

In the summer of 1996, the Senkaku Island issue reignited when the *Nihon Seinen-sha* constructed a second lighthouse on Kita Kojima Island, and requested the JMSA to designate it as an official lighthouse. Since then, the Senkaku Islands have periodically made newspaper headlines and heightened the diplomatic relations between Japan and China.

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<sup>43</sup> *Seiran-kai* is a political group that was established in 1973 by a conservative politicians from the Liberal Democratic Party. The major political figure in the LDP at that time, including now Tokyo governor Shintaro Ishinara, late former foreign minister Michio Watanabe, and former prime minister Yoshiro Mori were all members of this group. The group was disbanded in 1978.

<sup>44</sup> This group, established in 1969, is associated with *Sumiyoshi-kai*, one of the major Japanese *yakuza* group.

**Table 1. Major incidents instigated by the Chinese/Hong Kong/Taiwanese to assert the territorial claims over Senkaku Islands**

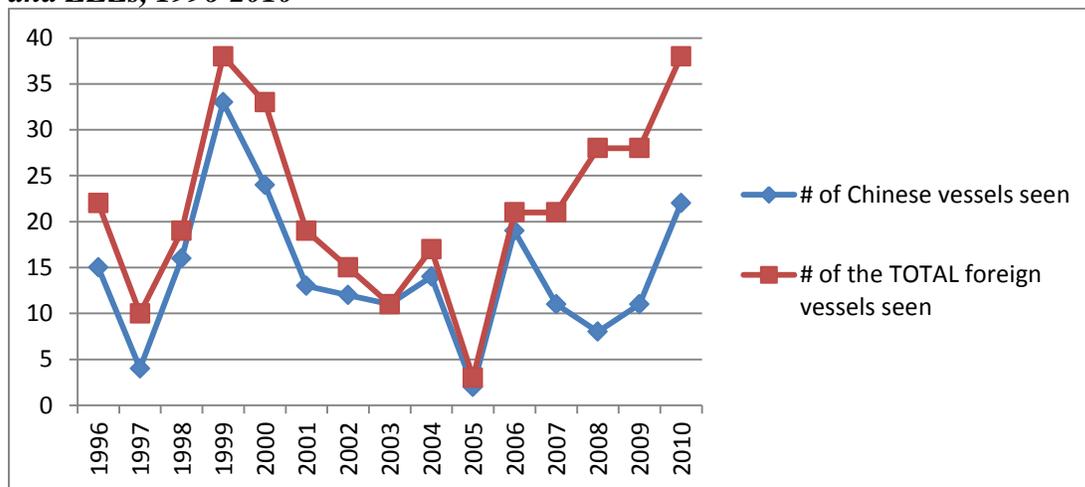
Date	Incident	Outcomes
9/1996	A ship with several Hong Kong activists enter the waters near Senkaku Islands.	A few activists onboard dove into the water and drowned.
10/1996	49 vessels with Hong Kong and Taiwanese activists on board come close to Senkaku. 41 out of 49 vessels entered Japanese territorial water.	Voluntary departure from the area after conducting their protest activities.
5/1997	30 vessels with Hong Kong and Taiwanese activists on board approached Senkaku Islands. 3 out of 30 vessels entered Japanese territorial water.	2 activists got onboard the Japanese Coast Guard's cruiser. Forced departure from the area.
7/1997	A vessel with a Taiwanese activist entered the territorial water around Senkaku.	Departure following Coast Guard's warning.
6/1998	6 vessels with Hong Kong and Taiwanese activists approached the Senkaku Islands. 1 vessel and a rubber boat entered into the territorial water.	Departure following Coast Guard's warning
6/2003	A vessel with a PRC activist entered the territorial water around Senkaku.	Departure following Coast Guard's warning
10/2003	A vessel with PRC activist entered the territorial water around Senkaku	Departure following Coast Guard's warning
1/2004	Two vessels with PRC activists entered the territorial water around Senkaku.	Departure following Coast Guard's warning
3/2004	A vessel with a PRC activist entered the territorial water around Senkaku.	7 PRC activists landed on Uotsuri Island. Activists were arrested and deported.
8/2006	A vessel with a Taiwanese activist approached Senkaku Island.	Departure after Coast Guard's warning.
10/2006	A vessel with Hong Kong and PRC activists entered the territorial water around the Senkaku Islands.	Departure after Coast Guard's warning.
10/2007	A vessel with a PRC activist entered the territorial water around Senkaku.	Departure after Coast Guard's warning.
6/2008	A vessel with Taiwanese activists entered the territorial water around the Senkaku Islands.	Departure after Coast Guard's warning, accompanied by Taiwanese Coast Guard Ship.

9/2010	A vessel with Taiwanese activists approached the Senkaku Islands.	Departure after Coast Guard's warning, accompanied by Taiwanese Coast Guard Ship.
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Source: Japan Coast Guard. *Kaijo Hoan Report 2010* (Maritime Safety Report 2010), [http://www.kaiho.mlit.go.jp/info/books/report2011/html/tokushu/p018\\_02\\_01.html](http://www.kaiho.mlit.go.jp/info/books/report2011/html/tokushu/p018_02_01.html). (Accessed June 5, 2012).

In addition, a number of Chinese maritime research vessels (*Kaiyo Chosa-sen*) have appeared in the East China Sea with greater frequency in the last several years. To demonstrate the heightened concerns that the Japanese government has in Chinese maritime research vessels' activities, the JCG released the number of occasions it witnessed foreign maritime research vessels by country in *Maritime Safety Report*, its annual white paper, in 2000 (Chart 1):

**Chart 1. Frequency of Chinese maritime research vessels in Japanese territorial water and EEZs, 1996-2010**



Source: Japan Coast Guard, *Kaijo Hoan Report* (Maritime Safety Report), 2000-2011.

The fishing trawler incident in September 2010 deserves a special reference because it is likely the biggest contributor to Japan-China tension in recent years. The Chinese fishing trawler entered the territorial waters near the Senkaku Islands and collided with a (JCG) cruiser that followed it while continuing to issue warnings and urging voluntary departure from the area.

This incident was markedly different from previous ones for both countries in several ways. First, the Chinese trawler was much more persistent, as well as the government's reaction that followed. In the past, Chinese (Taiwanese and Hong Kong) vessels that entered the waters near the Senkaku Islands merely ignored warnings issued by the JCG. Second, this was the first time a Chinese vessel collided with a JCG vessel. Finally, the retaliatory action from Chinese government—prohibition of rare earth exports to Japan, detention of Japanese businessmen in China—also was unprecedented.

The Japanese government's management of the incident also broke with past precedent. As seen in Table 1, when Japanese law enforcement authorities previously made arrests

in relation to entry into Japanese territorial water around the Senkaku Islands, the individual was deported to China shortly afterwards. However, in this case, Japanese authorities not only made an arrest but also held the captain of the trawler in custody for nearly a month while the District Prosecutors Office in Naha, Okinawa, were poised to file charges against the captain. Although the District Prosecutors Office eventually decided not to press charges, the process leading up to the decision was not transparent. This left many to speculate that the office felt political pressure from the government's leadership; they feared further aggravating its relationship with China.

The Japanese public's strong reaction spanned several months. To the Japanese, the incident was an indication of several things. First, it was another example that disproved the "governability" of the ruling Democratic Party of Japan (DPJ). Its leadership had already been openly questioned when its first prime minister Yukio Hatoyama stepped down from a mere nine-month-long tenure because of the role he played in aggravating Tokyo's relationship with Washington over the management of the Marines Futenma Air Station relocation in Okinawa. Many supported the arrest of the trawlers' crew, including its captain. However, they also questioned the wisdom of breaking with precedent by holding the captain in custody for almost one month, only to decide *not* to press charges in the end—they argued that if the captain had been quickly deported following past precedent, the incident would not have escalated. Some were especially critical of the position taken by then prime-minister Naoto Kan and his cabinet. They believed that the arrest of the crew, decision to hold the captain in custody, and releasing the captain without filing a charge were all made solely by the Naha District Prosecutor's Office. Their position was regarded as evading responsibility for not being able to manage the situation and letting the situation escalate.

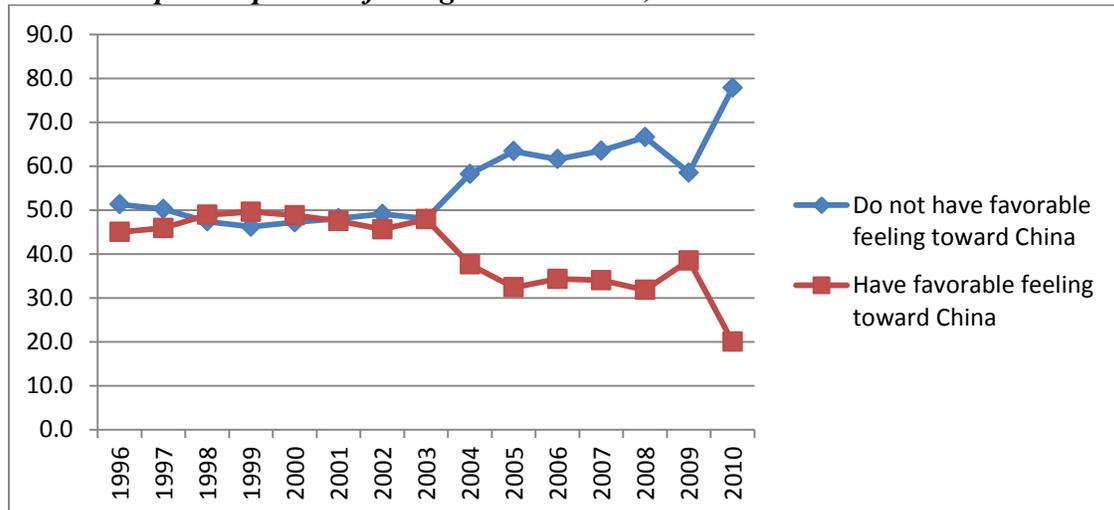
Second, the process that led up to the release of the trawler's captain confirmed that the DPJ is decided pro-China, often to the detriment to Japan's national interest. Many major DPJ figures since the DPJ became the ruling party in September 2009 have made pro-China decisions. Prior to the trawler's incident, a 600-people delegation visit to China in December 2009 led by Ichiro Ozawa, one of DPJ's most influential politicians, was widely reported by the Japanese media as kowtowing to China. During Chinese Vice President Xi Jinping's visit in December 2009, Ozawa pushed to schedule an audience with Emperor Akihito despite the MOFA's objections. The Imperial Household Agency did not grant the audience, and the incident further attracted criticism for the DPJ government forgoing out of its way to please the Chinese and breaking long-held diplomatic protocol in order to do so. The leak of the video footage shot by a JCG officer of the Chinese trawler incident on YouTube in November 2011 further aggravated public criticism against DPJ government for being too soft on China in the face of an obvious hostile act.

Third and most importantly, the September 2010 fishing trawler's incident further facilitated strong anti-China sentiment in Japan. At an emotional level, "apology fatigue" drives anti-China sentiment in Japan. Ever since Jiang Zemin demanded that Japan officially apologize for its wartime atrocities during his visit to Japan in 1998, there has been widespread sentiment among the Japanese that China uses Japan's wartime

atrocities for political maneuvering and to extract more diplomatic concessions from Japan. Chinese reaction to Prime Minister Junichiro Koizumi's repeated visits to the Yasukuni Shrine also facilitated the perception that China *wants* to continue to use historical incidences with Japan because it benefits China. Although Koizumi's visit to Yasukuni was deemed unnecessary in the public eye, a large number of Japanese still supported his visit because they felt that China (and Korea) should not have a say in the prime minister's decision to visit the Shrine.

The public opinion poll taken by Japan's Cabinet Affairs Office on Japanese foreign policy demonstrates this change: there is a downturn in the number of survey respondents who held a favorable feeling toward China after its 2000 survey. This downward trend continued and took a decidedly negative turn in 2004. The number of those who held a favorable feeling toward China hit an all-time low in the 2010 survey, taken a few weeks after the release of the fishing trawler's captain, with 77.8 percent of the respondents having a negative feeling toward China (Chart 2).

**Chart 2. Japanese public's feeling toward China, 1996-2010**



Source: Cabinet Affairs Office, *Heisei 22-nendo Gaiko ni kansuru Yoron Chosa* (FY 2010 Public Opinion Poll on Foreign Policy), <http://www8.cao.go.jp/survey/h22/h22-gaiko/zh/z10.html>. Accessed June 5, 2012.

The anti-China sentiment has been further aggravated by China's economic ascendance and the resulting influx of Chinese citizens in Japan as students, members of the workforce, and/or tourists. People complain of the increase in crime conducted by an increasing number of Chinese living and working in Japan; bad manners displayed by Chinese tourists has become a common grievance. In short, the average Japanese feels that their lifestyle and social norms have been "threatened" by the increasing presence of Chinese citizens in Japan.

Chinese behavior in bilateral issues between Japan and China has increased the insecurity felt by the Japanese public. China's response to the September 2010 trawler incident—high-handedness, escalatory rhetoric in diplomatic scenes, and retaliatory actions in areas completely unrelated to the actual incident—all point to China being comfortable with its economic prowess abroad while still facing a wide array of challenges domestically, and

becoming increasingly assertive to the point of not hesitating to escalate diplomatic tensions.

### **Impact of the Senkaku Islands/East China Sea issue on Japan's perception on China—Tokyo's expectation of the United States**

The biggest impact of the Senkaku Islands/East China Sea issue is a decidedly negative Japanese public perception of China. To a majority of the Japanese public, China is a country that not only causes disruption in their daily lives but also abuses its economic power and conveniently uses historical incidents to its own advantage. Such a sentiment has created an atmosphere within Japan that makes it very difficult for Japanese political leaders and government officials to pursue a pragmatic approach with China. Similar to being perceived as “soft” on North Korea and abduction issues as politically unacceptable, being perceived as “conciliatory” or “accommodating” toward China is equally, or even more unacceptable, in today's Japan.

Among a large segment of Japanese political leadership, Japanese government officials as well as intellectuals, China's increasing assertiveness in the Senkaku Islands/East China Sea issues have made them question Beijing's intention in the future. China's capability to pursue its global policy goals has noticeably improved, thanks to its economic growth as well as its aggressive diplomacy that focuses on promoting economic partnership and securing energy sources. Furthermore, Tokyo government officials—especially those in defense establishment—recognize China's seemingly endless military modernization efforts over the last decade. In the 2011 Defense White Paper, the Japan Ministry of Defense (JMOD) acknowledges that China's published defense budget has grown 18 times over the last 20 years.<sup>45</sup>

In addition, there is a mounting concern in the United States regarding the Chinese civilian leadership's control of the People's Liberation's Army (PLA).<sup>46</sup> Japanese defense analysts, particularly conservative ones, picked up on it following then-Secretary Gates' China visit in January 2011 during which the PLA conducted a test flight of a stealth Jin-20 without the knowledge of Chinese president Hu Jintao.<sup>47</sup>

Aside from the behavior of Chinese protesters and non-military vessels in the area near the Senkaku Islands, the Japan Ministry of Defense (MOD) has been alarmed by the

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<sup>45</sup> MOD, *Heisei 23-nendo ban Bouei Hakusho* (FY 2011 Defense White Paper). 78-79.

[http://www.clearing.mod.go.jp/hakusho\\_data/2011/2011/pdf/23010203.pdf](http://www.clearing.mod.go.jp/hakusho_data/2011/2011/pdf/23010203.pdf). Accessed June 5, 2012.

<sup>46</sup> See, for example, Andrew Scobell, “Is there a Civil-Military Gap in China's Peaceful Rise?” in *Parameters* (U.S. Army War College) Summer 2009.

<http://www.carlisle.army.mil/usawc/parameters/Articles/09summer/scobell.pdf>. (Accessed in June 5, 2012); Gordon Chang, “Was there a Recent Coup Attempt in China?” January 11, 2012.

<http://www.worldaffairsjournal.org/blog/gordon-g-chang/was-there-recent-coup-attempt-china>. Accessed June 5, 2012.

<sup>47</sup> See, for example, Tadae Takubo, “*Chugoku no Bunmin Tousei Houkai no Osore* (Concerns for the collapse of China's civilian control of the military)” January 23, 2011. <http://jinf.jp/wp-content/uploads/2011/01/%EF%BC%8874%EF%BC%89%E7%94%B0%E4%B9%85%E4%BF%9D%E5%89%AF%E7%90%86%E4%BA%8B%E9%95%B7.pdf>. Accessed June 5, 2012.

increasing activities of the PLA. The 2011 Defense White Paper chronicles the major activities of the PLA in Japanese territorial waters, including the areas near Senkaku Islands and the East China Sea. It also indicates that there are a growing number of instances in which PLA vessels and/or aircraft get dangerously close to Japan Self-Defense Forces (JSDF) patrol vessels and aircraft, heightening the risk of accidents.<sup>48</sup>

Under these circumstances, Japan is most concerned about the escalation of maritime accidents between Japan and China into a confrontation that may involve the PLA and JSDF. This concern is mutual, as it served as the primary driver for Tokyo and Beijing to establish the Japan-China maritime consultation.

When Japanese Prime Minister Yoshihiko Noda visited Beijing in December 2011, he and Chinese president Hu Jintao agreed on six policy initiatives to improve and deepen Japan-China relations to commemorate the 40<sup>th</sup> anniversary of Japan-China diplomatic normalization. As part of the six initiatives, the two leaders agreed to launch Japan-China senior official-level maritime consultations to discuss broad maritime issues in the East China Sea that are of mutual concern for Tokyo and Beijing. In addition, an agreement on East China Sea resource development and the establishment of search-and-rescue (SAR) mechanisms to respond to maritime accidents were identified as high priority issues.<sup>49</sup>

The first maritime consultation took place in Beijing on May 16, 2012. The Japanese delegation was led by deputy director-general of the Asian Affairs Bureau, and included representatives from the Cabinet Secretariat, MOFA, MEXT, Resources and Energy Agency, Coast Guard, Ministry of Defense, Ministry of Land, Infrastructure and Transportation (MLIT), Japan Fisheries Agency, and Ministry of Environment. The delegation met with their Chinese counterparts.<sup>50</sup>

Still, as long as the risk of accidents exists and China's assertive behavior in the Senkaku Islands/East China Sea continues, it is important for Japan to be reassured that the Senkaku Islands are covered under Article 5 of the US-Japan Security Treaty—that is, the US forces would come to Japan's rescue in case there is an invasion attempt against the Senkaku Islands. For instance, the repeated reassurance that Article 5 of the US-Japan Security Treaty covers the Senkaku Islands after the Chinese fishing trawler incident in September 2010 from major US cabinet members and US military leadership was effective in ensuring that Japanese government did not resort to measures that would

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<sup>48</sup> *Heisei 23-nendo ban Bouei Hakusho* (FY 2011 Defense White Paper), Pp. 85-86.

[http://www.clearing.mod.go.jp/hakusho\\_data/2011/2011/pdf/23010203.pdf](http://www.clearing.mod.go.jp/hakusho_data/2011/2011/pdf/23010203.pdf). Accessed June 5, 2012.

<sup>49</sup> MOFA, “Nichuu Kokko Seijouka 40 shuunen ni saisuru Nicchu “*Senryakuteki Gokei Kanke*” no issouno shinka ni muketa Muttsu no initiative (fact sheet) (Fact Sheet regarding the Six Initiatives toward deepening strategic mutually beneficial relationship at the 40<sup>th</sup> Anniversary of Japan-China Diplomatic Normalization)” [http://www.mofa.go.jp/mofaj/kaidan/s\\_noda/china\\_1112/pdfs/jc40\\_factseet.pdf](http://www.mofa.go.jp/mofaj/kaidan/s_noda/china_1112/pdfs/jc40_factseet.pdf). Accessed May 31, 2012.

<sup>50</sup> MOFA, “Nicchu Kokyu Jimu Reberu Kaiyo Kyogi Dai-ikkai Kaigou (gaiyou) (Overview: the 1<sup>st</sup> Japan-China Senior Officials Consultation on Maritime Issues”. May 16, 2012. [http://www.mofa.go.jp/mofaj/area/china/jc\\_kk\\_1205.html](http://www.mofa.go.jp/mofaj/area/china/jc_kk_1205.html). Accessed May 31<sup>st</sup>, 2012.

have further escalated the tension with China.<sup>51</sup> Either the absence of a strong US reassurance—or even the perception that US commitment is weakening—would heightened Japan’s sense of vulnerability vis-à-vis China, leading to Japan’s lowered confidence in the US-Japan alliance.

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<sup>51</sup> In the days leading up to Japanese governments’ decision to release the captain of the trawler, Secretary of State Clinton, Defense Secretary Gates as well as the Chairman of Joint Chiefs Admiral Mullen all confirmed that U.S. would honor its commitment under the Article 5 of the U.S.-Japan Security Treaty in case the Senkaku Islands were invaded.