

# Maritime Security and the U.S.-Japan Partnership

*Go ITO*

## Abstract

This article addresses the differences in maritime policies between Japan and China, and then moves to Japan's possible credible security measures to realize the regionwide stability under the banner of its alliance with the United States. From legal perspectives, Japan's position has been far more solid than China's. The bilateral relationship, however, should be cultivated more seriously for future generations. If the oil resources are real, it is possible that both Japan and China will be able to contribute to the more general energy issues existing in the world. The article then moves to possible measures which both the United States and Japan could address in these maritime issues. Articles in the treaty, possible joint military exercises in conjunction with Australia and others, and the US claim on the "freedom of navigation" will also be introduced. For the region wide security, Japan has to continue a variety of dialogues with its neighboring countries. Eventually the possibility of joint energy exploitation in the East China Sea could seriously be considered, so that "next generations" will finally find the wisdom to resolve this problem.

## Keywords

Maritime security, US-Japan Alliance, United Nations Convention on the Law of the Sea (UNCLOS), Exclusive Economic Zone (EEZ), crisis management

## 1. Senkaku, International Law, and Identity Politics

In the South China Sea, the Philippines have territorial disputes on the Spratly islands and Scarborough reef with China, and in the Chinese-Philippino territorial

negotiations, China often refers to a variety of classical documents and writings indicating that Chinese used to live in the contentious places hundreds of years ago. I also hear the same claims of China's reference at various times to old writings from Malaysians and Vietnamese whose governments have had similar territorial conflicts with China. It can be argued that China's reference to old writings has been their strategy to justify their holdings of the islands.

Senkaku is not an exception. The Chinese government often refers to those writings back in the Ming Dynasty, and sometimes in the Han Dynasty period. China bases its claims to the islands primarily on its method for delimiting the maritime boundaries between it and Japan, which is based on the natural prolongation of the continental shelf. China says that the Diaoyu islands are inside the natural prolongation of the continental shelf extending from the Chinese mainland. Therefore China naturally claims the islands. It argues that the trough between the continental shelf and the Ryukyu Islands (and between the Diaoyus and the Ryukyus) makes it evident that the Ryukyus are attached to Japan but that Taiwan and the Diaoyu Islands are a part of the Chinese continental shelf.

While China's claims to the Diaoyu Islands are based primarily on the continental shelf argument, China also has a historical argument that buttresses its claims.<sup>1</sup> The Chinese argue that they discovered the islands in the 14th century, incorporating them into its coastal defense network in 1556. They argue the islands were part of China all along, but that China was forced to cede them to Japan, along with Taiwan, in 1895 as a part of the Treaty of Shimonoseki marking the end of the first Sino-Japanese War (which China of course lost). The argument is that the islands were ceded under duress (with Taiwan) and (like Taiwan) provisions for their return were included in the 1943 Cairo Declaration and the 1945 Potsdam Declaration, agreements reached between the allied powers (which included China) during the Second World War. The US then administered them from war's end (1945) until 1971 when the Ryukyus (including Okinawa) and Senkakus were given back to Japan to administer. China believes they should have reverted to Chinese control at this time.

Taiwan (Republic of China, ROC) shares much of Beijing's understanding of China's traditional claims to the Diaoyutai (as they call them in Taipei) Islands and the standard Chinese post-World War Two narrative, except that it argues that the islands were historically administered by Formosa/Taiwan and should rightly be administered in the modern era by Taipei. Regarding delimiting maritime boundaries in the East China Sea, Taiwan argues for something in between

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<sup>1</sup> Gong Yinchun provides a useful overview of China's historical position. Gong Yinchun, "The Development and Current Status of Maritime Disputes in the East China sea," in Clyde Schofield, ed., *Maritime Energy Resources in Asia: Energy and Geopolitics*, NBR Special Report #35 (Washington, DC: National Bureau of Asian Research, December, 2011).

Beijing's and Tokyo's position, using both the continental shelf and the 200 mile Exclusive Economic Zone arguments. The Exclusive Economic Zone (EEZ) argument, of course, makes sense given Taiwan's closer proximity to the islands than mainland China. Taipei seeks to capture the logic of both arguments. Given mainland Chinese calculations that it will get Taiwan back some day in any event, it might seem natural for the PRC to seek cooperation with the ROC against Japan on the Diaoyu/Senkaku issue. While Beijing has made overtures to work together with the government of Taiwan on the Diaoyu dispute, the Taiwan authorities have thus far resisted cooperating extensively with Beijing against Japan on the issue, despite the general warming in ties between the two under the administration of Taiwan's Ma Ying-jeou.<sup>2</sup>

Japan argues for maritime delimitations based on the United Nations Law of the Sea and its 200 mile Exclusive Economic Zone, using straight baselines. Japan proposes using a median line in cases where the 200 nautical miles' lines of adjacent countries' EEZ's overlap. Japan argues the UNCLOS 200 nautical mile limit should be the key means of determining delimitations, and hence, given the island's proximity to the Ryukyus (92 nautical miles away from the closest point, Ishigaki Island), Japan claims them as being within its own territory, inside its 200 nautical mile EEZ as drawn from the Ryukyus.

Japan adds to this a historical argument. It claims that the islands were unoccupied and unclaimed by the Qing government and so were incorporated into Japan in 1895 by way of a Japanese legislative act (January 14), and that this was separate from the annexation of Taiwan in the Treaty of Shimonoseki in May of the same year. Its argument is that Taiwan was returned to China following the Second World War, but that the Senkakus were not because they were not a part of the annexation of Taiwan. Japan argues that its control of the islands went unchallenged by anyone from 1895 until 1971, and relates renewed interest in the islands to a 1968 UN study showing possible oil deposits in the area, and that only thereafter did Beijing begin to show interest in the islands and make claims to them. Japan also argues that the Diaoyu/Senkaku Islands were not a part of the 1951 San Francisco Peace Treaty wherein Japan renounced its claims to former holdings in Asia that it had acquired during the war, along with Taiwan and the rest of China. It notes that the islands were under US administration from 1945 to 1971 with Okinawa and the rest of the Ryukyus (and Japan from 1945 to 1952). The Japanese point out that when the US reverted Okinawa and the Ryukyus back to Japanese control in 1971, the Senkakus were formally included.

While Japan understands that Chinese fisherman frequented the area prior

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<sup>2</sup> Taiwan Radio International, "Taipei Declines Beijing's Invitation to Solve Disputed Territory Issues Together," April 26, 2012.

to 1895 and afterwards, it argues that this does not diminish Japan's claim to sovereignty over them. In 1998 Japan and China signed a fisheries agreement in which they agreed that both sides could fish inside the EEZ of the other side with permission, but that such fisherman are subject to the laws of the country inside whose EEZ they are fishing and are accountable there to if they break the law. Unfortunately, given the disputes over the status and demarcation of the EEZ around the Diaoyu/Senkaku Islands, this agreement has not been overly helpful in this case.

In Europe, for instance, Italy has never mentioned the Roman Empire to justify their holdings of various lands in Europe.<sup>3</sup> Simply said, the Roman Empire was a classical event, and it is technically impossible for Italy to claim ownership of the European places because the Empire was just a part history before international law was created. In this sense, China's reference to classical writings makes no sense in terms of international law. Moreover, China's high-handed behaviors on maritime issues in the East and South China Seas not just toward Japan but also toward Vietnam, the Philippines, Malaysia, and other ASEAN countries will invite China's isolation in international relations of Asia.

## **2. Ownership Issues of the Senkaku/Diaoyudao Islands**

On the issue of the Senkaku disputes, the legal position of Japan is that neither China nor Taiwan made any claim from 1945 to 1971 and that therefore the Japanese government's position is fundamentally solid and quite tenable under existing international law.<sup>4</sup> In addition, the Chinese leadership did not initially place this issue at the center of the relationship. Deng Xiaoping proposed in 1978 "to leave this issue to the wisdom of the next generations" at the concluding stage of the Treaty of Peace and Friendship. The Japanese government echoed this position and basically kept the islands restricted, even for Japanese nationals, a policy very different from the Russians' (in the northern territories) and Koreans' (in Takeshima) efforts in exploiting in full the islands under their respective

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<sup>3</sup> Some Japanese authors even argue that China's reference to Ming Dynasty's writings have fatal flaws. Shimajo Masao, "It is a lie that Senkaku belongs to China since the Ming Dynasty," *Seiron*, May, 2012.

<sup>4</sup> Reference 1 is a map jointly published by Taiwan's Institute for National Defense and China's Institute for Geoscience in 1964, and Reference 2 is a map which appeared in *Washington Post* in 1969, but the original map was produced by the PRC. Reference 3 is an article in *Renmin Ribao* in 1953, indicating that Senkaku belongs to Japan. These are a fraction of the documents scholars and diplomats around me usually circulate on the Senkaku disputes.

governance.<sup>5</sup>

But with the rise of China in the 1990's, the Chinese side began to claim these islands more openly, and this was responded to with sporadic actions by some nationalists in Japan. Finally, in September 2010 the collision of a Chinese fishery vessel and a Japanese coast guard ship heightened the tensions between the two countries and left an impression on the Japanese side that, if mishandled, this issue can become the causes of war for the two countries. Completely different perceptions of the islands then emerged in Japan, as the Senkakus came to be considered one of the most serious security dangers in the region.

Historically speaking, the Senkaku disputes started at the end of the 1960s when it was discovered that there might be substantial oil resources beneath the islands. Taiwan and China began to claim ownership in 1971 (in June by Taiwan, and in December by China), despite the rejection of the Japanese government, whose jurisdiction had been unchallenged since 1895, including during the postwar years from 1945 onward. So the disputes started as an energy-related political, not legal, issue, but given some complexity in the claims that existed before 1895, the issue has the danger to turn into a historical memory issue for China.<sup>6</sup> History issues have been quite delicate for Japan-China relations, and if the dominance of legal aspects in the Senkaku disputes is altered to the emphasis on history issues, the Senkaku disputes can become another example of identity politics for both countries, and sporadic nationalistic movements, most of which are too complicated to resolve, may occur.<sup>7</sup> Thus, in today's bilateral relations where the general public in both countries can easily become nationalistic, the emergence of identity politics stemming from history issues should be avoided.

Territorial disputes have three characteristics. One is a legal aspect. Regarding Senkaku, even the Chinese government stated that the islands belonged to Japan before December 1971 (see attached documents). But, if the issue becomes a part of identity politics (the second characteristic), another aspect relating to history will emerge. The third is a political aspect in which we can conduct dialogues so

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<sup>5</sup> In this sense, I argue that Japan's methods of effective control over the disputed islands have been much softer (or naïve from a difference perspective) than Russia and South Korea.

<sup>6</sup> Japanese need to become more aware that the process by which Japan annexed these islands at the time of its victory in the first Sino-Japanese War resembles very closely the process of annexing Takeshima. The Senkakus' acquisition in January 1895 preceded Taiwan's acquisition through the Shimonoseki Treaty of April 1895, just as Takeshima's annexation preceded the annexation of Korea itself.

<sup>7</sup> For instance, Japan has had history problems with the United States on the issue of nuclear weapons in Hiroshima and Nagasaki. But, thanks for the bilateral allied partnership that has lasted for more than a half century, the issue rarely becomes too political. Japan's relations with China have not been that easy, since history issues have often been linked with political claims by the Chinese government. It is now time that the Japan-China bilateral relationship should enter a more mature stage where we can avoid emotional identity politics.

that we could avoid the use of force in resolving territorial disputes.

### **3. A Brief History of the Dispute and Possible Political Solvency**

On April 20 and June 11, 1971, Taiwan's Foreign Ministry first mentioned the ownership of the Diaoyutai. On December 30, China's Foreign Ministry referred to the ownership for the first time since the end of the Pacific War. On September 29, 1972, Japan normalized its diplomatic relations with Mainland China, and the Senkaku/Diaoyu issue was not discussed by Tokyo and Beijing with normalization. Deng Xiaoping proposed in 1978 "to leave this issue to the wisdom of the next generations" at a press conference when he visited Tokyo to sign the Treaty of Peace and Friendship.

However, the issue became more contentious during the 1990's, and the following is a detailed look at a series of events for the past two decades:

- (1) In February 1992, China's National People's Congress stipulated China's Law of Territorial Seas which said that Diaoyudao belongs to China.
- (2) China's stipulation of the Territorial Seas affected Japan's right-wing activities. In July 1996, the second lighthouse was constructed on one of the Senkaku islands. And in September, five members of the Japan Youth Society (日本青年社) landed on the island.
- (3) After July 1996, this kind of seemingly right-wing activity did not occur. In 1997, both the Japanese and the Chinese governments agreed on fishery areas (in the northern areas of 27th parallel north, which did not include the Senkakus, but both governments certainly sought to make an agreement on the East China Sea.), and sought to maintain the flag state doctrine regarding the management of fishery boats.
- (4) In order to maintain the order stipulated in the 1997 fishery framework, the Japanese government, in October 2002, decided to make a lease contract of the Senkakus with their owner, Kunioki Kurihara (栗原国起). The Chinese side condemned the Japanese, but the Japanese government, by making the contract, made it unlawful for Japanese fishermen to enter the contentious areas to catch fish. Thus, the Japanese side sought not to provoke China with this lease contract.
- (5) On March 24, 2004, seven Chinese activists landed on Diaoyudao, and Japan's coast guard and Okinawa's police department arrested them. But, Prime Minister Junichiro Koizumi and Foreign Minister Makiko Tanaka did

not prosecute them. Rather, the Japanese side enforced their repatriation to Shanghai. The fact that the prosecution did not occur was quite different from the 2010 case.

- (6) On December 8, 2008, China's two vessels for marine investigations navigated in Japan's territorial seas for nine hours and a half (this action itself is not against the international Law of the Sea, as long as the navigation is an innocent passage), and stayed close to the Daiiaoyudao for about one hour and circulated itself clockwise around the island (this action is not an innocent passage, and completely against international law. The stay is possible only within the area of territorial seas.). Against Japan's critics, China's Foreign Ministry stated that, "given the effective control needed over the islands to justify China's ownership, China is ready to indicate its presence and conduct effective management."<sup>8</sup>
- (7) On September 7, 2010, a Chinese fishery boat rammed Japan's coast guard, the images captured on camera and posted on Youtube.

(1) and (2) resulted in escalating the tension, while (3) worked for calming it. (4) has different interpretations between Japan and China, but the Japanese government's lease contract resulted in preventing Japanese fishermen from entering the contentious areas not to provoke China. (5) indicated an aspect of Chinese activists' extremism, but Japan's addressing the issue was wise enough not to politicize the tension. However, in the (6) event, the Chinese side started to justify not just the ownership of the islands from a legal perspective, but rather their seemingly militaristic actions and behaviors, while (7) reminded the Japanese government of (6), and the Japanese government started to think that China's strategy had altered in a more belligerent direction.

The urgency of addressing the Senkaku Islands dispute is plainly obvious: the islands now run the risk of causing a violent conflict between Japan and China. In a situation where Japan's actual ownership and legal position are solid, there is no reason to give up its ownership, and, in fact, sound defense policy is needed to maintain the status quo. But, it is not enough only to claim the legal ownership as seen in various Japanese newspapers.

The argument that legal claims are not enough for the Japanese government has two implications. First, in the political context, it seems that China started not only to move forward to justify their legal ownership, but also has moved to more belligerent behaviors as the rise of China becomes more apparent. Second, however, Japan's relentless repetition that there are no territorial disputes over Senkaku can be seen as an insult for the Chinese, since Japanese at various times

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<sup>8</sup> Togo Kazuhiko, *Japan's Territories Problem* (Tokyo: Kagawa shinsho, 2012), 138.

have been told the same thing over the northern territorial issues by the Soviets/Russians. Legally speaking, the northern territories should belong to the Japanese, but if the country having effective control only continues to say that there is no territorial dispute, the counterpart who has lost the effective control should feel greatly humiliated.<sup>9</sup>

I argue that all-out diplomacy should precede any military conflict between the two countries. This is of highest priority, all the more so because, given the overall phenomenon of the rise of China, Japan has no time to lose on failed diplomacy or risking the lives of Japanese and Chinese youngsters on account of islands where wild goats have effectively been sovereign for many decades now.

#### **4. How Universal or Particular are China's Claims in Maritime Security in Asia?**

As its economic rise has become more salient, China has been interested in expanding its maritime interests. Despite its territorial breadth on the ground, the size of China's exclusive economic zones (EEZ) are smaller than that of Japan. To sustain its economy whose population counts ten times as large as Japan, China has become quite assertive since the 1990's in obtaining as well as maintaining fishery rights, natural resources on the seabed, and possible oil well underneath. Because of its geographical outreach, China has caused a variety of problems with neighboring countries.<sup>10</sup>

The well-known "history problems" in Asia cannot be applied only to China-Japan relations. Other than with Japan, China has raised issues relating to history in international negotiations with South Korea, Russia, Vietnam, India, Central Asian countries, and others. For instance, "history issues" have also existed in Japan's relations with the United States, but the "issues" have NOT that often shown up as "problems" under the banner of the bilateral partnership. That is, it can be argued that "history problems" have been particular phenomena raised by the Chinese government.

Moreover, China has caused not just ground border conflicts but also maritime territorial problems with the neighboring countries.<sup>11</sup> In its negotiations with Japan, the Senkaku Islands disputes have been a typical case. On September 7,

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<sup>9</sup> When Gromyko was the foreign minister of the Soviet Union, he repeated insultingly to the Japanese that there has been no territorial dispute over the northern islands.

<sup>10</sup> Michael Glosny, Phillip Saunders and Robert Ross, "Debating China's Naval Nationalism," *International Security*, 35-2 (Fall, 2010): 161-75.

<sup>11</sup> However, many of ground territorial issues have been resolved during the Hu Jingtao period. The remaining issue still exists only in China-Japan and China-India relations.



2010, China's fishing trawlers entered the disputed area near the islands, and one of the fishing boat collided with Japan's coast guard patrol vessels. Japan's coast guard boarded the Chinese ship, and arrested its captain, who then came to be released on September 24

Against this incident, the Chinese government issued a strong protest against the Japanese government. Their ground for protest is that the Senkaku Islands are within China's territory. Strangely enough, however, until December 1971 when the Chinese government declared the territorial rights over the Senkaku, a variety of official Chinese governmental documents indicated that the islands were under the territorial domination of Japan.<sup>12</sup>

Even more important in China's approaches to maritime interests in the surrounding seas has been recent disputes between Beijing and several other Asian governments over ownership of islands in the South China Sea. Many Southeast Asian observers have seen this dispute as a litmus test for a newly-strong China's relations with its smaller neighbors: whether China would use its formidable military power to attempt to intimidate the other claimants, or settle the matter peacefully through good-faith negotiations. Vietnamese who fear long-term Chinese intentions see in the Spratly and Paracel Islands disputes a harsh and sometimes violent counterpoint to China's Asia-Pacific "smile diplomacy."

Moreover in negotiations with South Korea, China also has had territorial disputes over a small island (argued by the South Korean government) in the northern East China Sea for long years. Judging from all of these territorial disputes as well as the gradual expansion of its maritime interests, I can argue that "maritime security problems" have been what has been raised particularly by China.<sup>13</sup>

## **5. Crisis Management in the Past and China's Claims**

On these maritime disputes, Japan, China, and neighboring countries have suggested several methods for crisis management.

The first is intentional delay of the disputes. Regarding the Senkaku Islands, when Deng Xiaoping visited Japan in August 1978 for the Japan-China Peace and Friendship Treaty, he mentioned at a press conference that the issue should not be addressed either by China or Japan for the time being. It was wise for both

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<sup>12</sup> It should be emphasized that such maps of the Senkaku belonging to Japan, were quite often published by the PRC government at that time.

<sup>13</sup> Denny Roy, "Southeast Asia and China: Balancing or Bandwagoning?" *Contemporary Southeast Asia*, 27-2 (2005):305-22.

countries under the banner of the bilateral friendship to delay the possible conflict toward the future.<sup>14</sup>

The second is to show compromises. In the case of the East China Sea, Japan's EEZ overlaps with China's, and Japan has suggested the medium line between the marginal line of Japan's EEZ and that of China's. Against Japan's suggestion for seemingly compromise, however, China has argued that the marginal line of the continental shelf reaching out close to Okinawa, which lasts longer than 200 miles from the Chinese continent, should have been under China's control. Strangely enough, however, China has claimed the continental shelf against Japan over the East China Sea, while arguing against Vietnam that the medium-line of the EEZ should be the basis of the bilateral maritime interests with Vietnam.<sup>15</sup> That is, China has employed contradictory approaches toward its maritime interests, depending on the usefulness of its tactics in international negotiations.

The third method is the gradual making of norms regarding the conduct of concerned countries over the disputed areas. As far as the South China Sea is concerned, China signed the Declaration on the Conduct of Parties in the South China Sea (DOC) in 2002, and also declared its readiness to establish the specific action norms for the security of the South China Sea in 2007. However, for the recent few years, a number of Chinese military vessels as well as submarines have appeared in the disputed area. There is a tendency regarding China's gradual entry into the South China Sea that fishing trawlers first come to the hotspot, then vessels to patrol the fishing trawlers show up, and finally military vessels appear, the gradation process of which should have become more fearful for neighboring countries as time goes by.<sup>16</sup>

That is, China has been making use of the "carrot and stick" diplomacy. It sometimes conducts "smile diplomacy" to make agreements with countries in dispute.<sup>17</sup> But, the agreements do not last for long, and then strong claims on the territorial dominations will be indicated in bilateral negotiations. Here, China often emphasizes the historical legacy of the territories. It usually argues that it

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<sup>14</sup> However, it is not clear even now if Deng's statement had been agreed with the Japanese government before his press release. When the Senkaku incident occurred in September 2010, the Chinese government condemned Japan for violating the agreement of NOT touching on the Senkaku issues. Against this condemnation, the Japanese government recently says that there has been no agreement on this matter during the 1970's.

<sup>15</sup> Rommel Banlaoi, "Maritime Security Environment In The East And South China Sea" paper presented at the International Conference on Maritime Security Environment in East Asian Waters organized by the Ocean Policy Research Foundation (OPRF), Tokyo, Japan on 16-17 February 2011.

<sup>16</sup> *New York Times*, April 23, 2010.

<sup>17</sup> More specifically, China tends to indicate softer diplomacy when the U.S. government shows its readiness to intervene. Before that stage comes, however, China prefers bilateral negotiations over the disputed areas.

was Chinese who used to stay in such hotspots. They often cite classical Chinese writings as what justifies China's territorial rights. As the continental Asia used to be influenced culturally by the Chinese empire, it is common that a variety of writings exist in China about the movement of Chinese to the hotspots. It is questionable, however, that such classical writings can be effective in claiming China's territorial rights under the principles of the modern international law.<sup>18</sup>

## **6. The U.S.-Japan Partnership for Maritime Security Issues**

In Washington, Beijing's growing assertiveness (from its perspective) in the East China and South China Seas too looks very much like Realist prophecy fulfilled. In other words, as China's economic growth has continued apace, it has transferred more and more of that economic growth into military spending, and in particular the People's Liberation Army Navy (PLAN) has received much of the growth, expanding its maritime capabilities and its reach, from Northeast Asia to the East China Sea to the South China Sea to China's so-called "string of pearls" naval facilities that are interspersed from the South China Sea through the Strait of Malacca, through South Asia and up to the Persian Gulf region, where much of China's shipping runs, whether exports of manufactured goods to Europe, imports of oil from the Middle East, or a multitude of other kinds of goods and trade. The mandate of the PLAN has expanded in recent years, and China has increased its commitment to its maritime claims and the policing there of. This was made clear by statements in and following the recent National People's Congress meetings.<sup>19</sup>

American policy makers have been watching developments in China's maritime disputes with interest and with some concern. From the American perspective the dispute between China and the Philippines in the spring of 2012 in particular is an important test case in how China will handle its maritime disputes with its neighbors. In April 2012 as eight Chinese fishing boats were plying the waters of what the Philippines call Panatag Shoal (also known as Scarborough Shoal) and the Chinese call Huangyan Island, the Philippines dispatched the biggest ship it is fleet, a retired US Coast Guard cutter, to the region. Finding the boats were Chinese in origin the Philippines began a process to arrest the fishermen given that they were fishing inside the Philippines 200 miles Exclusive Economic Zone

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<sup>18</sup> Rommel Banlaoi, *op.cit.*

<sup>19</sup> See Lee Mingjiang, "China's Rising Maritime Aspirations: Impact on Beijing's Good-Neighbour Policy," *RSIS Commentaries*, No. 053/2012 (Singapore: Nanyang Technological University; March 28 2012).

(based on UN Law of the Sea principles). Before the fishermen could be arrested, however, two Chinese maritime surveillance boats arrived and effectively prevented the arrests. In a display of de-escalation, the large Philippine ship eventually withdrew, to be replaced by a smaller Philippine coast guard ship. Instead of de-escalation, however, the Chinese brought in a still larger fisheries patrol and maritime enforcement ship (the Yuzheng 310, 361 feet long). With the scattering of the Chinese fishing boats, a standoff between Chinese and Philippine official vessels ensued with both sides refusing to back down.

American observers are concerned about these and other developments related to conflicts between China and its neighbors over maritime claims for several reasons. First, though a signatory to the UN Convention on the Law of the Sea (UNCLOS), China is not following the gist of UNCLOS. As it regards Panatag/Scarborough Shoal (Huangyan Island), it is 123 miles from the main Philippine island of Luzon, but 540 miles from China's Hainan Island, China's closest land mass. Based on UNCLOS principles, Panatag/Scarborough/Huangyan is well within the 200 mile limit of the UNCLOS Exclusive Economic Zone (EEZ) (See map below. The pink line represents the EEZ delimitations of the nations facing the South China Sea). China's claim to the island is based not on UNCLOS, however, but on the historical presence of Chinese fishermen there over the years. China argues that it made its claims to the South China Sea explicit in a 1947 map submitted to the UN, showing nine dashed lines surrounding the South China Sea, off the shores of Vietnam, Malaysia, Brunei, and the Philippines. The evidence for this is strong, and China's records are thorough. But the Philippines argues that their fishermen have been visiting the shoal for centuries as well, though their record keeping may not be as thorough.

Second, the US finds China's position problematic in that it argues that even questioning China's claims is unthinkable, that there is no place for nor room for negotiation of any kind on the matter as it regards the sovereignty of these maritime features. China's position is represented by the statement, "The [Huangyan] island has been part of China's indisputable territory since ancient times."<sup>20</sup> "Indisputable" has been a term used by Chinese authorities in statements about China's claim to Huangyan, and they've argued that there is no need to take the dispute to any international tribunals or UNCLOS hearings, as the Philippines argues should be done, because this would internationalize what is in their view a dispute between China and the Philippines. "Bringing disputes about another country's indisputable territory to international tribunals violates the ground rules of contemporary international relations," argues Deng Zhonghua, Director of the

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<sup>20</sup> Zhang Yunbi, "Mutual Respect Stressed," *China Daily* (May 31, 2012; [http://www.china-daily.com.cn/cndy/2012-05/31/content\\_15430662.htm](http://www.china-daily.com.cn/cndy/2012-05/31/content_15430662.htm)).

Chinese Foreign Ministry's Department of Boundaries and Ocean Affairs.<sup>21</sup> The American perspective is that China has staked out a position characterized by the American aphorism, "It's my way or the highway," which Americans generally use with derision. China is not even willing to sit down and discuss it in a forum outside of bilateral discussions with the Philippines. American observers do not consider this position helpful, but rather consider it rather arrogant, uncooperative, hardly harmonious, and even rather "hegemonic," to use a term the Chinese have used with derision against the US and the Soviet Union.

Third, American policy makers are concerned that this new assertiveness in China's relations with its neighbors since 2008-2009, in maritime disputes in particular, could be a foretelling of China's international behavior in the future, when its power has reached its culmination, its fullness. Most of America's "China-watcher" community is of the "engagement not containment" ilk, seeing China as a "troubled modernizer" and perhaps slightly oppressive but basically pragmatic trader, rather than a "red menace" or expansionist threat, to borrow the terms in quotations from Richard Madsen.<sup>22</sup> The "China threat" narrative has had only a minority number of adherents in this all-important community of those who most influence US policy on China. While there is not yet any quantitative data to support this contention, it seems certain that the "China threat" narrative has gained adherents in the last three years given China's support of North Korea through the Cheonan and Yeonpyeong Island incidents, and of Syria in recent months, and of its more aggressive stance in the Diaoyu/Senkaku Islands (the fall 2010 skirmish between the Chinese trawler and Japanese coast guard ships being case in point) and in the South China Sea (Chinese actors' cutting of the cable lines being towed by Vietnamese survey ships, and the recent Huangyan/Scarborough/Penatag incident are two cases in point here), have provided grist for the mills of those who churn out anti-China invective in the US. Put another way, China's foreign policy actions of the past three years (2009-2012) have increased the plausibility of the China threat narrative in the eyes of many in the US.

What implications does all of this have for the East China Sea issue from the US perspective? There should be many. China's claims in the Diaoyu/Senkaku Islands are also claimed historically, and China's rights over the islands indisputable. China's interest here, as in the South China is driven by three primary resources: fisheries, oil deposits and natural gas deposits. The Diaoyu/Senkakus are perhaps less strategic in terms of shipping traffic than the South China Sea, but a solid claim to the Diaoyu(s) and the reunification of Taiwan

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<sup>21</sup> Zhang Yunbi, "Mutual Respect Stressed," *China Daily* (May 31, 2012; [http://www.china-daily.com.cn/cndy/2012-05/31/content\\_15430662.htm](http://www.china-daily.com.cn/cndy/2012-05/31/content_15430662.htm)).

<sup>22</sup> Richard Madsen, *China and the American Dream: A Moral Inquiry* (Berkeley: University of California Press, 1995).

certainly would have strategic benefits for Beijing. China's actions in the South China Sea will likely have important analogical and experiential implications (in terms of set-backs or successes) for its East China Sea policy. Lastly, like the Philippines the US has a defense treaty with Japan, the primary competitor with China for sway over the East China Sea and the Diaoyu/Senkaku Islands, so here, as in the Philippines, the US has important national interests at stake.

Therefore, first of all, regarding the Senkaku issues, it has been well-known that Article 5 of the U.S.-Japan Security Treaty could touch on the possibility of the U.S. government's intervention. The article says that "Each Party recognizes that an armed attack against either Party in the territories under the administration of Japan would be dangerous to its own peace and safety and declares that it would act to meet the common danger in accordance with its constitutional provisions and processes." That is, as long as the U.S. government recognizes that Senkaku belongs to the Japanese territory, it will make sense that Japan would seek American support to maintain Japan's territorial rights over the islands.

Second, since China seeks to broaden its maritime interests by claiming its territories, it is necessary for Japan (and the United States) to continue to argue the importance of "freedom of navigation" in the disputed area. That is, "freedom of navigation" has been one of significant rules of international law, and by making use of the international logic, we should avoid being entangled into China's claim on "territorial sovereignty." Regarding the South China Sea which the U.S.-Japan security treaty does not directly address, but China prefers not to have the U.S. intervened, the possible geographical enlargement beyond the U.S.-Japan security treaty will become important. It does not imply the alliance's military outreach, but rather seeks to disseminate universal aspects of the U.S.-Japan alliance toward the countries concerned about maritime security in the region. Such functional outreach could seek to include China as a significant member, but if China dislikes to join the joint settings (or institutions, if the functions of the U.S.-Japan alliance could be outreached more widely), the U.S.-Japan cooperation, together with neighboring countries, could present itself as a kind of stick against China's particularism.

More specifically, there will be three methods to realize the effective (and also functional) enlargement of the U.S.-Japan partnership to address the maritime security. First, both the U.S. and the Japanese governments should welcome Australia's entry into a variety of maritime security issues in the disputed areas. In July 2011, the trilateral military exercises were conducted near the South China Sea, and the event significantly affected the Chinese perceptions of its strategy toward the South China Sea.<sup>23</sup> Because of its geographical closeness, Australia has

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<sup>23</sup> One significant element in the South China Sea has been that since 1992 when the U.S.

been interested in engaging in Asian affairs since the 1980's, and the Australian interests toward Asia will fit with those of the U.S. and Japan for the security of the archipelago areas in Southeast Asia. While seeing the rise of China as a possible chance to boost their economies, the ASEAN countries have sought to avoid the gradual intimidation by China regarding their economic connections with China. That is, for the ASEAN members to hedge various risks stemming from China's excessive rise, it is wise to maintain their relations with bigger powers like Australia, the United States, and Japan. For Australia which during the Premier Howard years showed its readiness to enter the East Asian Summit, it will also be beneficial to join the making of Asia's regional frameworks. In this sense, Australia's participation cannot be what seeks to contain China against other Asian countries.<sup>24</sup>

Second, it is important for both the U.S. and Japan to think about broadening their cooperation beyond the U.S.-Australia-Japan trilateralism, and to seek to globalize the universal aspects of maritime security with other neighboring countries. Such members as South Korea and Taiwan, and possibly Vietnam as well, in terms of sealane security, can think about the importance of security in the East and the South China Seas. That is, the more region-wide dissemination of the maritime security will enable the participating countries to emphasize the universal elements of the sea as commons.<sup>25</sup>

Finally, the ultimate globalization of the maritime security will be the application of the rule of maritime law, and the extent to which we could engage China into the international framework will become a litmus test to judge China's real intention of the "carrot and stick" diplomacy. China has often emphasized the historical justification of the surrounding seas, which the neighboring countries regard as irrelevant. How much of our efforts can bring China into the "global standard" of maritime security will be the key for the future stability and prosperity of the Asia-Pacific as a whole.

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military withdrew from the Philippines, there has been no U.S. military base in Southeast Asia.

<sup>24</sup> However, various articles written by Chinese scholars tend to emphasize aspects of containment against China in the U.S.-Australia-Japan trilateral cooperation. See Sheldon Simon, "The United States, Japan, and Australia: Security Linkages to Southeast Asia," paper presented for the conference entitled *New Security Environment—Implications for American Security in the Asia Pacific Region*, The Institute for National Strategic Studies, The National Defense University, Washington, DC, April 4-5 2011.

<sup>25</sup> I would like to thank Admiral Yoji Koda for providing me with this comment. In my understanding, he argues the nature of collectivity in the U.S.-Japan alliance, and emphasizes the importance of broadening the U.S.-Japan partnership toward other neighboring countries.

## **Conclusion: Mixed Measures for Maritime Security**

From legal perspectives, Japan's position has been far more solid than China's. We, however, should move forward to think about the future of the bilateral relationship. If the oil resources are real, it is possible that both Japan and China will be able to contribute to the more general energy issues existing in the world. It is not just China, but also Taiwan which has claimed ownership of the Senkaku islands. Thus, without intervening in any of diplomatic relations between Beijing and Taipei, the Japanese government could invite all actors to conduct dialogues on the territorial disputes.

With this recognition, in addition to the security danger discussed above, it is essential that the Japanese government recognize the existence of the Senkaku Islands issue as a subject of dialogue, while also implementing reliable security measures in the region. Eventually the possibility of joint energy exploitation could seriously be considered, so that "next generations" will finally find the wisdom to resolve this problem.<sup>26</sup>

## **About the Author**

Go ITO is a professor of international relations at Meiji University in Tokyo, Japan. He received M.A. (international relations) at Sophia University in Tokyo, and Ph.D. at the Graduate School of International Studies, University of Denver, Colorado, USA. He is currently one of Japan's leading experts on national and international security studies, more specifically on U.S.-China-Japan relations; U.S. policy toward East Asia; China-Taiwan cross-strait relations; and Japanese foreign and security policy. He has a significant impact on policy-making and research in these areas and has received numerous domestic and international honors for his work, including Eisenhower Fellowships in 2005, and the Yasuhiro Nakasone Award in 2006. His publications include: "Redefining Security Goals: Japan's Response to the September 11 Terrorism," *Journal of East Asian Studies* (Seoul: Korea University, 2002), *Alliance in Anxiety* (New York and London: Routledge, 2003 and 2013), "Leadership in Bandwagon," *Policy and Society*, 23-1 (University of Sydney Press, 2004), "The Self-Defense Forces Overseas: Japan's

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<sup>26</sup> However, I do not address here what percentage of the fruit of the joint exploitation, if the oil resources become real, will be given to both Japanese and Chinese. The so-called "relative gain" issues will become a source of contention for the bilateral relationship. It may be, however, too early to argue issues of the portion before we could find the real oil. Also, the same logic of conducting dialogue should be applied to the Spratly islands, and China needs to conduct dialogues with its neighboring countries.



Lessons from the Indian Ocean Tsunami Assistance,” *Liaison* (Honolulu: Center of Excellence in Disaster Management and Humanitarian Assistance, 2006), and “Japan’s Participation in UN Peacekeeping Operations,” Mike Mochizuki et. al., *Japan in International Politics: The Foreign Policy of an Adaptive State* (Boulder: Lynne Rienner, 2010).

Address: Department of Political Science, Meiji University, Tokyo, 101-8301  
JAPAN

Email: [goito@kisc.meiji.ac.jp](mailto:goito@kisc.meiji.ac.jp)