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The Senkakus (Diaoyu/Diaoyutai) Dispute: U.S. Treaty Obligations

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Summary

Since the mid-1990s, and particularly since 2012, tensions have spiked between Japan and China over the disputed Senkaku (Diaoyu/Diaoyutai) islands in the East China Sea. These flare-ups run the risk of involving the United States in an armed conflict in the region. Japan administers the eight small, uninhabited features, the largest of which is roughly 1.5 square miles. Some geologists believe the features sit near significant oil and natural gas deposits. China, as well as Taiwan, contests Japanese claims of sovereignty over the islands, which Japan calls the Senkaku-shoto, China calls the Diaoyu Dao, and Taiwan calls the Diaoyutai Lieyu. Although the disputed territory commonly is referred to as "islands," it is unclear if any of the features would meet the definition of "island" under international law.

U.S. Administrations going back at least to the Nixon Administration have stated that the United States takes no position on the question of who has sovereignty over the Senkakus (Diaoyu/Diaoyutai). It also has been U.S. policy since 1972, however, that the 1960 U.S.-Japan Security Treaty covers the islands. The treaty states that the United States is committed to "meet the common danger" of an armed attack on "the territories under the Administration of Japan," and Japan administers the Senkakus (Diaoyu/Diaoyutai). In return for U.S. security commitments, Japan grants the United States the right to station U.S. troops—which currently number around 50,000—at dozens of bases throughout the Japanese archipelago. Although it is commonly understood that Japan will assume the primary responsibility for the defense of the treaty area, in the event of a significant armed conflict with either China or Taiwan, most Japanese likely would expect that the United States would honor its treaty obligations.

Since 2012, without challenging the U.S. government's position of neutrality over who has sovereignty over the islands, Congress nevertheless has expanded rhetorical support for Japan on the dispute. Congress inserted in the FY2013 National Defense Authorization Act (H.R. 4310/P.L. 112-239) a resolution stating, among other items, that "the unilateral action of a third party will not affect the United States' acknowledgment of the administration of Japan over the Senkaku Islands." Following Congress's statement, Obama Administration officials began using similar language, also without changing U.S. neutrality on the sovereignty question. Most prominently, in April 2014, President Obama reiterated that Article 5 of the U.S.-Japan Security Treaty covers the islands and that "we do not believe that [the Senkakus' status] ... should be subject to change unilaterally." This is believed to be the first time a U.S. President publicly stated the U.S. position on the dispute.

In February 2017, during his first joint press appearance as President with Prime Minister Shinzo Abe, President Donald Trump stated that "we are committed to the security of Japan and all areas under its administrative control.... " A joint statement issued by the two governments during their summit said that the two leaders "affirmed that Article V of the U.S.-Japan Treaty of Mutual Cooperation and Security covers the Senkaku Islands. They oppose any unilateral action that seeks to undermine Japan's administration of these islands."

The expanded U.S. rhetorical support for Japan has been a reaction to China's increasing patrols around the Senkakus (Diaoyu/Diaoyutai) beginning in the fall of 2012, moves that appear to many to be an attempt to exploit the U.S. distinction between sovereignty and administrative control by demonstrating that Beijing has a degree of administrative control over the islands. In a further effort to deter Chinese actions, the United States has increased its support for Japan's efforts to boost its maritime and island defenses.

Each time tensions over the territorial dispute have flared, questions have arisen concerning the U.S. legal relationship to the islands. This report focuses on that issue.

Contents

Introduction 1
The Competing Claims 3
U.S. Administration of the Islands until 1971 4
Inclusion of the Islands in the 1971 Okinawa Reversion Treaty 5
U.S. Position on the Competing Claims During the Treaty Debate 5
The U.S.-Japan Security Treaty and the Islands 6
2012-2017: Expanded U.S. Support for Japan's Position 7

Figures

Figure 1. Map of Senkaku (Diaoyu/Diaoyutai) Islands and Surrounding Region 2

Contacts

Author Information 10

Introduction[1]

Periodically, tensions flare up between Japan and China over a small group of Japanese-administered islands located in the East China Sea. Japan, China, and Taiwan all claim sovereignty over the islands, known as the Senkaku-shoto in Japan, the Diaoyu Dao in China, and the Diaoyutai Lieyu in Taiwan.[2] The land features in question are eight in number, sometimes described as five islands and three rocks, and are uninhabited. The largest, Uotsurijima (Diaoyudao/Diaoyutai), is roughly 1.5 square miles (941 acres) in area, a bit larger than New York City's Central Park.[3] The others range in size from the Tobise (Fei Yu/Feilai) rock cluster's half an acre to Kubajima's (Huangwei Yu/ Huangwei Islet) 0.35 square miles (224 acres). Some geologists believe that the waters surrounding them may be rich in oil and natural gas deposits. Although it has become conventional to refer to the Senkakus as "islands," some observers might argue that they may not qualify legally as islands for purposes of generating maritime zone entitlements under the United Nations Convention on the Law of the Sea (UNCLOS).[4]

The gravity of the dispute between Japan and China over the Senkakus (Diaoyu/Diaoyutai) has increased since 2010, featuring episodic eruptions of crises between the two countries. Events in 2012 dramatically intensified matters. In September of that year, Japan's central government purchased three of the islands from their private owner in order to preempt a Japanese nationalist who had raised nearly $20 million to purchase the islands. China and Taiwan protested the move, and across China large-scale anti-Japanese protests erupted, some of which resulted in violence. Additionally, since the Japanese government nationalized the three islands, China has markedly increased its deployments of maritime law enforcement and naval ships near the islands and increased military patrol flights in the East China Sea, prompting reciprocal responses from the Japanese Coast Guard and Japanese Air Self Defense Force (Japan's Air Force). The frequent proximity of the two countries' ships and planes to one another has prompted worries from many about a collision or skirmish, which could draw in the United States due to its treaty commitment to help protect Japan and the specific U.S. interpretation that its treaty commitment applies to the disputed territory.

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[1] This report originally was written by Larry Niksch, who retired from CRS in 2010. It has been updated and modified from the original. This report is not designed to be a legal analysis. For questions on legal aspects, please contact the American Law Division of CRS.

[2] China considers the Senkakus (Diaoyu/Diaoyutai) to be part of Taiwan, over which it claims sovereignty.

[3] Central Park is 843 acres. Central Park Conservancy, http://www.centralparknyc.org/about/about-cpc/.

[4] Under UNCLOS, an "island" generates a 12-nautical-mile territorial sea, a continental shelf, and an exclusive economic zone (EEZ) of 200 nautical miles. (And under UNCLOS, states have the right to regulate foreign economic activities in their own EEZs.) In contrast, under UNCLOS, a "rock" generates only a 12-nautical-mile territorial sea. On July 12, 2016, an arbitral tribunal constituted under UNCLOS in a case between the Philippines and China stated that whether a land feature qualifies under UNCLOS as an island "... depends upon the objective capacity of a feature, in its natural condition, to sustain either a stable community of people or economic activity that is not dependent on outside resources or purely extractive in nature." Permanent Court of Arbitration Press Release, "The South China Sea Arbitration (The Republic Of The Philippines v. The People's Republic Of China)," The Hague, July 12, 2016. For a more extensive discussion of the issue in the case, see Permanent Court of Arbitration, "In the Matter of the South China Sea Arbitration before an Arbitral Tribunal Constituted Under Annex VII to the 1982 United Nations Convention on the Law of the Sea between the Republic of The Philippines and the People's Republic Of China," PCA Case Nº 2013-19, July 12, 2016, especially ¶¶539-553, p. 227-232. As of mid-2016, neither Japan nor China has claimed an EEZ or a continental shelf from their claims over the Senkakus (Diaoyu/Diaoyutai), though in 2012 China published coordinates for baselines (the lines from which the breadth of maritime entitlements are measured) enclosing the Senkakus (Diaoyu/Diaoyutai). Japan protested China's baseline claim. For more, see J. Ashley Roach, "China's Straight Baseline Claim: Senkaku (Diaoyu) Islands," American Society of International Law, Volume: 17, February 13, 2013.

Each time a crisis has erupted over the Senkakus (Diaoyu/Diaoyutai), questions have arisen concerning the U.S. relationship to the islands. This report focuses on that issue, which has four elements:

1. U.S. administration of the islands from 1953 to 1971, when the United States occupied Okinawa;
2. the application to the Senkakus (Diaoyu/Diaoyutai) of the 1971 "Treaty Between Japan and the United States of America Concerning the Ryukyu Islands and the Daito Islands"—commonly known as the Okinawa Reversion Treaty, which was approved by the Senate in 1971 and entered into force the following year (the Daito Islands lie to the east of Okinawa);
3. the U.S. view on the claims of the disputants; and
4. the relationship of the 1960 U.S.-Japan Security Treaty to the islands.

For additional information and analysis on the geopolitical aspects of this and other maritime disputes, see

- CRS Report R42784, *Maritime Territorial and Exclusive Economic Zone (EEZ) Disputes Involving China: Issues for Congress*, by Ronald O'Rourke;
- CRS Report R42930, *Maritime Territorial Disputes in East Asia: Issues for Congress*, by Ben Dolven, Mark E. Manyin, and Shirley A. Kan; and
- CRS Report RL33740, *The U.S.-Japan Alliance*, by Emma Chanlett-Avery and Ian E. Rinehart.

Figure 1. Map of Senkaku (Diaoyu/Diaoyutai) Islands and Surrounding Region

Source: Created by CRS. Map generated by Hannah Fischer using data from Department of State (2015) and Esri (2014).

The Competing Claims

The claims of China and Taiwan to sovereignty over the Senkakus (Diaoyu/Diaoyutai) have a similar basis. China asserts that its Ming Dynasty (1368-1644) considered the islands part of its maritime territory and included them on maps and documents of areas covered by Ming Dynasty coastal defenses. According to China, the Qing Dynasty (1644-1911) went further and placed them under the jurisdiction of Taiwan, which was a part of the Qing Dynasty.[5] However, although there are claims that Chinese fishermen used the islands as places of temporary shelter and repair, China does not appear to have ever established a permanent settlement of civilians or military personnel, and apparently did not maintain permanent naval forces in adjacent waters.[6]

Japan, which rejects the existence of a territorial dispute, laid claim to the Senkakus (Diaoyu/Diaoyutai) on January 14, 1895, when the Japanese Cabinet issued a decision to formally incorporate them into Japanese territory.[7] Before then, Japan argues, the islands were uninhabited, without owner (*terra nullius)*, and "showed no trace of having been under the control of China."[8] The Chinese and Taiwanese governments reject Japan's *terra nullius* claim.[9] For several years after Japan claimed the territory, a Japanese citizen, Tatsuhiro Koga, established settlements on some of the islands to extract materials—including bonito and guano—from the land and the surrounding waters.[10]

In May 1895, Japan and the Qing Dynasty government of China signed the Treaty of Shimonoseki ending the Sino-Japanese war that had begun the previous year. Under the pact, which China today considers one of a number of "unequal treaties" forced on it by foreign powers, China ceded Taiwan (Formosa) to Japan "together with all the islands appertaining or belonging to the said island of Formosa." The Treaty did not specifically mention the Senkakus (Diaoyu/Diaoyutai) and the islands were not discussed during the negotiating sessions.[11] Japan has claimed from this that its incorporation of the Senkakus (Diaoyu/Diaoyutai) was an act apart from the Sino-Japanese War. In contrast, China and Taiwan argue that Japan used its victory in the war to annex the Senkakus (Diaoyu/Diaoyutai). As an extension of this argument that Japan took the islands by force from China, Beijing and Taipei also argue that the Allied declarations at

[5] State Council Information Office, The People's Republic of China, *White Paper on Diaoyu Dao, an Inherent Territory of China*, September 2012, http://english.people.com.cn/90785/7960320.html. Chinese names are rendered using the Pinyin transliteration system.

[6] Cheng Tao, "The Sino-Japanese Dispute over the Tiao-yu-tai (Senkaku) Islands and the Law of Territorial Acquisition," *Virginia Journal of International Law*, Winter 1974, pp. 244-246, 260.

[7] Ministry of Foreign Affairs of Japan, "Recent Developments in Japan-China Relations. Basic Facts on the Senkaku Islands and the Recent Incident," October 2010, http://www.mofa.go.jp/region/asia-paci/china/pdfs/facts1010.pdf.

[8] Ministry of Foreign Affairs of Japan, "Recent Developments in Japan-China Relations. Basic Facts on the Senkaku Islands and the Recent Incident," October 2010, http://www.mofa.go.jp/region/asia-paci/china/pdfs/facts1010.pdf; Japan's use of the term *terra nullius* appears, among other places, in "Fact Sheet on the Senkaku Islands," Ministry of the Foreign Affairs of Japan, November 2012, http://www.mofa.go.jp/region/asia-paci/senkaku/fact_sheet.html.

[9] "Statement of the Ministry of Foreign Affairs of the People's Republic of China," September 10, 2012, http://www.fmprc.gov.cn/eng/topics/diaodao/t968188.htm. "The Diaoyutai Islands: An Inherent Part of the Territory of the Republic of China (Taiwan)," April 9, 2012, http://maritimeinfo.moi.gov.tw/marineweb/LayFromE0.aspx?icase=T02&pid=0000000516.

[10] Sasakawa Peace Foundation Center for Island Studies, "Senkaku Islands Facts and Figures," February 17, 2015.

[11] Upton, Peter N., "International Law and the Sino-Japanese Controversy over the Territorial Sovereignty of the Senkaku Islands," *Boston University Law Review*, Fall 1972, p. 776. State Council Information Office, The People's Republic of China, *White Paper on Diaoyu Dao, an Inherent Territory of China*, September 2012, http://english.people.com.cn/90785/7960320.html.

Cairo and Potsdam during World War II—which vowed to restore to China territories taken from it by Japan through military aggression—apply to the Senkakus (Diaoyu/Diaoyutai), which therefore should have been returned to China.[12] In October 1945, when Japan relinquished authority over Taiwan, it did not specifically mention the disposition of the islands.

U.S. Administration of the Islands until 1971

U.S. administration of the islands began after World War II, as a result of the 1951 Treaty of Peace with Japan.[13] The Treaty did not mention the Senkakus (Diaoyu/Diaoyutai), but it referred to other locations that had reverted to Chinese control or which China claimed. These included Taiwan and the Pescadores (off the western coast of Taiwan), as well as the Spratlys and the Paracels (both in the South China Sea). Article 3 gave the United States sole powers of administration of "Nansei Shoto south of 29 north latitude (including the Ryukyu and the Daito Islands)…."[14] In 1953, the U.S. Civil Administration of the Ryukyus issued U.S. Civil Administration of the Ryukyus Proclamation 27 (USCAR 27), which defined the boundaries of "Nansei Shoto [the southwestern islands] south of 29 degrees north latitude" to include the Senkakus (Diaoyu/Diaoyutai islands).[15] At the time of the signing of the Okinawa Reversion Treaty in 1971, several State Department officials asserted that following the signing of the Japan Peace Treaty, "Nansei Shoto south of 29 degrees north latitude" was "understood by the United States and Japan to include the Senkaku Islands."[16] Moreover, during the period of U.S. administration, the U.S. Navy established firing ranges on some of the islands and paid an annual rent of $11,000 to Jinji Koga, son of Tatsushiro Koga who had created extractive settlements on some of the islands.[17] China has described the U.S.-Japan understandings related to the islands as "backroom deals" that are "illegal and invalid."[18]

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[12] U.S. Congress, Senate Foreign Relations, *The Agreement between the United States of America and Japan Concerning the Ryukyu Islands and the Daito Islands*, hearing on the Okinawa Reversion Treaty, 92nd Cong., 1st sess., October 27, 1971 (Washington: GPO, 1971), pp. 149, 152 (hereinafter "Okinawa Reversion Treaty Hearings"); "The Diaoyutai Islands An Inherent Part of the Territory of the Republic of China (Taiwan)," Ministry of Foreign Affairs of the Republic of China (Taiwan), http://www.mofa.gov.tw/EnOfficial/Topics/TopicsArticleDetail/fd8c3459-b3ec-4ca6-9231-403f2920090a.

[13] Treaty of Peace with Japan, signed Sept. 8, 1951, 3 U.S.T. 3169.

[14] The Daito Islands are located to the east of Okinawa.

[15] Okinawa Reversion Treaty Hearings, pp. 149, 152.

[16] The State Department officials included Robert Starr, Acting Assistant Legal Adviser for East Asian and Pacific Affairs; Harrison Symmes, Acting Assistant Secretary of State for Congressional Relations; and Howard McElroy, Country Officer for Japan. For their statements, see Okinawa Reversion Hearings, pp. 90-91, 93, 147.

[17] Ibid, pp. 77, 94, 119; Hornsby, Michael, "Japan Asserts Rights to Isles Claimed by China," *London Times*, March 19, Mark J. Valencia, "The East China Sea Dispute: Context, Claims, Issues, and Possible Solutions," *Asian Perspective*, Vol. 31, No. 1, 2007, pp. 150-156. During the 1970s, the Koga family sold four of the islands, Uotsurijima (Diaoyudao/Diaoyutai), Kitakojima (Beixiaodao/Bei Islet), Minamikojima (Nanxiaodao/Nan Islet), and Kubashima (Huangweiyu/Huangwei Islet) to the Kurihara family. In 2012, the Kuriharas sold the first three islands to the Japanese government. Kubashima (Huangweiyu/Huangwei Islet), the second-largest of the eight islands, continues to be owned by one of the Kuriharas. The Japanese Ministry of Defense reportedly leases Kubajima (Huangweiyu), last signing a 20-year lease in 2012. Antoni Slodkowski, "How Debts and Double-Dealing Sparked Japan-China Islands Row," reuters.com, November 11, 2012.

[18] State Council Information Office, The People's Republic of China, *White Paper on Diaoyu Dao, an Inherent Territory of China*, September 2012, http://english.people.com.cn/90785/7960320.html.

Inclusion of the Islands in the 1971 Okinawa Reversion Treaty

The Okinawa Reversion Treaty, which was signed on June 17, 1971, and entered into force on May 15, 1972, provided for the return to Japan of "all and any powers of administration, legislation and jurisdiction" over the Ryukyu and Daito islands, which the United States had held under the Japan Peace Treaty.[19] Article I of the Okinawa Reversion Treaty defines the term "the Ryukyu Islands and the Daito Islands" as "all territories with their territorial waters with respect to which the right to exercise all and any powers of administration, legislation and jurisdiction was accorded to the United States of America under Article 3 of the Treaty of Peace with Japan.... " An Agreed Minute to the Okinawa Reversion Treaty defines the boundaries of the Ryukyu Islands and the Daito islands "as designated under" USCAR 27. Moreover, the latitude and longitude boundaries set forth in the Agreed Minute appear to include the Senkakus (Diaoyu/Diaoyutai). A letter of October 20, 1971, by Robert Starr, Acting Assistant Legal Adviser for East Asian and Pacific Affairs—acting on the instructions of Secretary of State William Rogers—states that the Okinawa Reversion Treaty contained "the terms and conditions for the reversion of the Ryukyu Islands, including the Senkakus."[20]

U.S. Position on the Competing Claims During the Treaty Debate

During Senate deliberations on whether to consent to ratification of the Okinawa Reversion Treaty, the State Department asserted that the United States took a neutral position with regard to the competing claims of Japan, China, and Taiwan, despite the return of the Senkakus (Diaoyu/Diaoyutai) to Japanese administration. State Department officials asserted that reversion of administrative rights to Japan did not prejudice any sovereignty claims. When asked by the then-chairman of the Senate Foreign Relations Committee how the Okinawa Reversion Treaty would affect the determination of sovereignty over the Senkakus (Diaoyu/Diaoyutai), Secretary of State William Rogers answered that "this treaty does not affect the legal status of those islands at all."[21] In his letter of October 20, 1971, Acting Assistant Legal Adviser Robert Starr stated:

> The Governments of the Republic of China and Japan are in disagreement as to sovereignty over the Senkaku Islands. You should know as well that the People's Republic of China has also claimed sovereignty over the islands. The United States believes that a return of administrative rights over those islands to Japan, from which the rights were received, can in no way prejudice any underlying claims. The United States cannot add to the legal rights Japan possessed before it transferred administration of the islands to us, nor can the United States, by giving back what it received, diminish the rights of other claimants. The United States has made no claim to the Senkaku Islands and considers that any conflicting claims to the islands are a matter for resolution by the parties concerned.[22]

Successive U.S. Administrations have restated this position of neutrality regarding the sovereignty claims, particularly during periods when tensions have flared, as in 1996, 2010, and 2012.

[19] Treaty on Reversion to Japan of the Ryukyu and Daito Islands, signed Jun. 17, 1971, 23 U.S.T. 446.

[20] Okinawa Reversion Treaty Hearings, p. 91.

[21] Ibid., p. 11.

[22] Ibid., p. 91.

In providing its consent to U.S. ratification of the Treaty, the Senate did not act on the advice of committee witnesses who objected to the inclusion of the Senkakus (Diaoyu/Diaoyutai) in the reversion of Okinawa and surrounding territories to Japan.

The U.S.-Japan Security Treaty and the Islands

Article 5 of the 1960 U.S.-Japan Security Treaty stipulates 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. [emphasis added]

Thus, "administration" rather than "sovereignty" is the treaty's key distinction. The inclusion of the Senkakus (Diaoyu/Diaoyutai) in the Okinawa Reversion Treaty under the definition of "the Ryukyu Islands and the Daito Islands" made the Security Treaty applicable to the islands. Further cementing the linkage, Article II of the Okinawa Reversion Treaty states that "treaties, conventions and other agreements concluded between Japan and the United States of America, including, but without limitation to the Treaty of Mutual Cooperation and Security between Japan and the United States of America ... become applicable to the Ryukyu Islands and the Daito Islands as of the date of entry into force of this Agreement."[23] Using "Okinawa" as shorthand for the territory covered by the Treaty, then-Secretary of State Rogers stated in his testimony before the Senate Foreign Relations Committee that the 1960 U.S.-Japan Security Treaty "becomes applicable to Okinawa" in the same way as it applied to the Japanese home islands.[24] Then-Deputy Secretary of Defense David Packard, in his testimony, stressed that Japan would assume the "primary responsibility" for the defense of the treaty area but that the Security Treaty was applicable.[25]

In short, while maintaining neutrality on the competing claims, the United States agreed in the Okinawa Reversion Treaty to apply the Security Treaty to the treaty area, including the Senkakus (Diaoyu/Diaoyutai). During the 2010 worsening of Japan-PRC relations over the disputed territory, then-Secretary of State Clinton summed up the U.S. stance by stating, "... with respect to the Senkaku Islands, the United States has never taken a position on sovereignty, but we have made it very clear that the islands are part of our mutual treaty obligations, and the obligation to defend Japan."[26]

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[23] The Treaty of Mutual Cooperation and Security Between Japan and the United States, 11 U.S.T. 1632, was signed on January 19, 1960, and entered into force on June 23 of the same year.

[24] Okinawa Reversion Hearings, p. 22.

[25] Ibid, p. 42, 44.

[26] "Hillary Rodham Clinton Remarks Following Signing Ceremonies," Hanoi, Vietnam, October 30, 2010. Clinton went on to say that "We have certainly encouraged both Japan and China to seek peaceful resolution of any disagreements that they have in this area or others. It is in all of our interest for China and Japan to have stable, peaceful relations. And we have recommended to both that the United States is more than willing to host a trilateral, where we would bring Japan and China and their foreign ministers together to discuss a range of issues." In an earlier statement of U.S. policy, in 2004, Deputy Secretary of State Richard Armitage stated that the U.S.-Japan Mutual Security Treaty "... would require any attack on Japan, *or the administrative territories under Japanese control*, to be seen as an attack on the United States." (emphasis added) Armitage was speaking about the United States' treaty obligations in general. The Senkakus (Diaoyu/Diaoyutai Islands) were not mentioned during the event. U.S. State Department, "Remarks and Q & A at the Japan National Press Club, Richard L. Armitage, Deputy Secretary of State," February 2, 2004.

2012-2017: Expanded U.S. Support for Japan's Position

In 2012, China began regularly deploying maritime law enforcement ships near the Senkakus (Diaoyu/Diaoyutai) and stepped up what it called "routine" patrols to assert jurisdiction in "China's territorial waters."[27] China was responding to the Japanese central government's September 2012 purchase of three of the islands from their private owner.[28] Since then, China has maintained and occasionally increased these patrols around the islands, perhaps to test Japan's resolve, and has increased military patrol flights in the East China Sea, prompting reciprocal responses from the Japanese Coast Guard and the Japanese Air Self Defense Force. China's increase in patrols around the Senkakus (Diaoyu/Diaoyutai) since the fall of 2012 appears to many to be an attempt to demonstrate that Beijing has a degree of administrative control over the disputed territory, thereby exploiting the U.S. distinction between sovereignty and administrative control. Thereafter, some observers, seeking to avoid a situation where the United States inadvertently encourages more assertive Chinese actions, called on Obama Administration officials to stop using the word "neutral" in describing the U.S. position on the issue and also to publicly declare that unilateral actions by China (or Taiwan) will not affect the U.S. judgment that the territory is controlled by Japan.

In its own attempt to address this perceived gap, Congress inserted in the FY2013 National Defense Authorization Act (H.R. 4310, P.L. 112-239) a resolution stating, among other items, that "the unilateral action of a third party will not affect the United States' acknowledgment of the administration of Japan over the Senkaku Islands," language that since 2012 has reappeared in a number of bills and resolutions concerning U.S. interests in the East China Sea.[29] In January 2013 then-Secretary Clinton stated that "we oppose any unilateral actions that would seek to undermine Japanese administration" of the islands during remarks to the press with the Japanese Foreign Minister.[30]

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[27] "Chinese Ships Continue Patrol Around Diaoyu Island," *China Daily*, October 28, 2012.

[28] The Japanese central government's purchase from the Kurihara family was taken to preempt a group of Japanese, led by then-Tokyo governor Shintaro Ishihara, to buy the islands and carry out various activities on them. Ishihara conducted an online campaign to support his efforts, raising nearly $20 million in private donations for the purchase. He called for demonstrating Japan's control over the islands by building installations such as a telecommunications base, a port, and a meteorological station. Japanese leaders expressed concern that such activity could prompt an escalation in the dispute with China, and perhaps with Taiwan.

In 1932, the Japanese government sold the three islands, Uotsurijima, Kitakojima Minamikojima, as well as Kubajima, to the Koga family, which in the 1970s sold all four to the Kurihara family. From 2002 to 2012, the Japanese government leased Uotsurijima, Kitakojima Minamikojima from the Kuriharas. Japanese Ministry of Foreign Affairs, "Press Conference by the Assistant Press Secretary," October 2, 2012, available at http://www.mofa.go.jp/announce/press/2012/10/1002_01.html.

[29] See, for example, §114 of S. 1635, the FY2016 Department of State Operations Authorization and Embassy Security Act, which the Senate passed by unanimous consent on April 28, 2016; and §104 and of the Asia-Pacific Maritime Security Initiative Act of 2016 (S. 2865 in the Senate and H.R. 5890 in the House).

[30] State Department, "Remarks with Japanese Foreign Minister Fumio Kishida After Their Meeting," January 18, 2013. An April 2015 U.S.-Japan joint statement read, "The United States has deployed its most advanced military assets to Japan and provides all necessary capabilities to meet its commitments under the U.S.-Japan Treaty of Mutual Cooperation and Security. *These commitments extend to all the territories under the administration of Japan, including the Senkaku Islands. In that context, the United States opposes any unilateral action that seeks to undermine Japan's administration of the Senkaku Islands.*" [emphasis added] White House Press Release, "U.S.-Japan Joint Statement. The United States and Japan: Shaping the Future of the Asia-Pacific and Beyond," April 25, 2014.

The joint statement also states, "The United States and Japan share strong concern over recent actions that have raised tensions in the East China Sea and South China Sea.... Our two countries oppose any attempt to assert territorial or maritime claims through the use of intimidation, coercion or force. The United States and Japan urge the establishment

Speaking to the press with Prime Minister Shinzo Abe in Tokyo in April 2014, President Obama underscored the U.S. commitment in what are believed to be the first public remarks by a U.S. President stating the U.S. position on the Senkakus (Diaoyu/Diaoyutai) dispute. In his prepared remarks, the President said

> We stand together in calling for disputes in the region, including maritime issues, to be resolved peacefully through dialogue. We share a commitment to fundamental principles such as freedom of navigation and respect for international law. *And let me reiterate that our treaty commitment to Japan's security is absolute, and Article 5 covers all territories under Japan's administration, including the Senkaku Islands*.... [emphasis added]

During the same press conference, President Obama responded to a questioner asking why he had chosen to speak about the Senkakus:

> Our position is not new. Secretary Hagel, our Defense Secretary, when he visited here, Secretary of State John Kerry when he visited here, both indicated what has been our consistent position throughout. *We don't take a position on final sovereignty determinations with respect to Senkakus, but historically they have been administered by Japan and we do not believe that they should be subject to change unilaterally*. And what is a consistent part of the alliance is that the treaty covers all territories administered by Japan. So this is not a new position, this is a consistent one. [emphasis added]
>
> In our discussions, I emphasized with Prime Minister Abe the importance of resolving this issue peacefully—not escalating the situation, keeping the rhetoric low, not taking provocative actions, and trying to determine how both Japan and China can work cooperatively together.... [31]

Speaking at a joint press conference with Japanese Defense Minister Tomomi Inada in Tokyo in February 2017 on his first overseas trip after becoming President Donald Trump's Secretary of Defense, Jim Mattis said "... I made clear that our longstanding policy on the Senkaku Islands stands. The United States will continue to recognize Japanese administration of the islands, and as such article five of the U.S.-Japan Security Treaty applies." Inada said that, in addition, during their meetings, Mattis said that "United States opposes any unilateral action to attempt to overthrow Japan's administration of the Senkaku Islands."[32]

In February 2017, during his first joint press appearance as President with Prime Minister Shinzo Abe, President Donald Trump stated that "we are committed to the security of Japan and all areas under its administrative control.... "[33] A joint statement issued by the two governments during their summit said that the two leaders "affirmed that Article V of the U.S.-Japan Treaty of Mutual Cooperation and Security covers the Senkaku Islands. They oppose any unilateral action that

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of confidence-building measures among governments and militaries in the region to address these tensions.... "

[31] White House, "Joint Press Conference with President Obama and Prime Minister Abe of Japan," Akasaka Palace, Tokyo, Japan, April 24, 2014. President Obama made a similar statement at an April 2015 joint press conference with Prime Minister Abe, saying in his prepared remarks, "I want to reiterate that our treaty commitment to Japan's security is absolute, and that Article 5 covers all territories under Japan's administration, including Senkaku Islands. We share a concern about China's land reclamation and construction activities in the South China Sea, and the United States and Japan are united in our commitment to freedom of navigation, respect for international law, and the peaceful resolution of disputes without coercion." The White House, "Remarks By President Obama and Prime Minister Abe of Japan in Joint Press Conference," April 28, 2015.

[32] Department of Defense News Transcript, "Joint Press Briefing by Secretary Mattis and Minister Inada in Tokyo," February 4, 2017.

[33] White House, "Remarks by President Trump and Prime Minister Abe of Japan in Joint Press Conference," February 10, 2017.

seeks to undermine Japan's administration of these islands."[34] In response, a Chinese Foreign Ministry spokesperson said "China is gravely concerned about and firmly opposed to relevant comments by Japan and the United States.... We are firmly against Japan's attempt to try to gain U.S. support for its illegal territorial claims in the name of the so-called mutual defense treaty. Japan and the U.S. should exercise prudence and stop making wrong remarks so as not to complicate relevant issues or bring negative impact on regional peace and stability."[35]

The expanded U.S. rhetorical support for Japan on the dispute has been accompanied by increasing bilateral diplomatic coordination on responding to China's increased assertiveness in the South China Sea, as well as increased bilateral security cooperation to boost Japan's maritime and island defenses. Since at least 2012, the United States has increased sales of advanced air and naval equipment to Japan, and the two countries in 2015 revised their bilateral defense guidelines, which provide a framework for alliance cooperation, in part to make the U.S.-Japan alliance better able to function in a contingency involving conflict between Japan and China in the East China Sea. As laid out in the U.S. Defense Department's 2015 Asia-Pacific Maritime Security Strategy, these moves are part of the overall U.S. policy of attempting to "deter conflict and coercion."[36]

[34] White House, "Joint Statement from President Donald J. Trump and Prime Minister Shinzo Abe," February 10, 2017.

[35] Ministry of Foreign Affairs of the People's Republic of China, "Foreign Ministry Spokesperson Geng Shuang's Regular Press Conference on February 13, 2017."

[36] U.S. Department of Defense, *Asia-Pacific Maritime Security Strategy*, July 27, 2015. The report was required by §1259 of P.L. 113-291, the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015.

The Japan-China Dispute over Their Maritime Boundary

Japan and China are involved in another East China Sea disagreement over their maritime boundary (as opposed to the competing claims over the territorial sovereignty of the Senkakus [Diaoyu/Diaoyutai]). China claims maritime rights over much of the East China Sea, deriving from its claim to a continental shelf that extends from China's mainland to the Okinawa Trough.[37] Japan claims some of the same maritime area, to a median line between its undisputed territory and that of China. China's claims extend well east of the Japanese-declared median line that Japan claims is the appropriate boundary between the two countries' 200-nautical mile exclusive economic zones (EEZs).[38] Since at least the 1970s, China has been exploring and building pipelines on and around its side of the median line in the disputed waters, under which are oil and gas deposits. Some of these energy deposits straddle the Japanese-declared median line. In the first decade of the 2000s, Japan and China began to pursue a bilateral agreement over the exploitation of the undersea hydrocarbon resources. In their negotiations, both Beijing and Tokyo sought to make a distinction between their territorial dispute over the Senkakus (Diaoyu/Diaoyutai Islands) and the rights to develop the undersea hydrocarbon fields.

In June 2008, the two sides announced an agreement in principle on joint exploration for gas and oil in two of the fields close to or straddling the Japanese-declared "median line." The Japan-China joint development agreement explicitly states that it does not prejudice either side's legal claims in the area. Under the agreement, the two countries reached an "understanding" for cooperation in the Chunxiao gas and oil fields (called Shirakaba in Japanese), the southernmost of the fields. To date, however, no progress has been made in implementing the agreement. According to some sources, the Chinese government pulled back from implementing the agreement after encountering significant domestic criticism that China had conceded too much.[39]

It is unclear to what extent and in which situations the 1960 U.S.-Japan Mutual Security treaty would apply in the event of a Sino-Japanese military conflict over the two countries' maritime boundary dispute. Regardless of the treaty's technicalities and its interpretation, however, it is likely that Japanese policymakers and citizens would expect that the treaty would apply to any Sino-Japanese military conflict, including those involving the competing maritime claims.

In contrast to Japan's and China's inability to reach a resources agreement, in April 2013 Japan and Taiwan agreed to jointly share and administer the fishing resources in their overlapping claimed EEZs near the Senkaku (Diaoyu/Diaoyutai) islands. The agreement, which had been discussed for 17 years, addressed neither the two sides' conflicting sovereignty claims, nor the question of fishing rights in the islands' territorial waters. On July 29, 2013, the Senate passed S.Res. 167, which described the pact as a "model for other such agreements."[40]

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[37] "Preliminary Information Indicative of the Outer Limits of the Continental Shelf Beyond 200 Nautical Miles of the People's Republic of China," People's Republic of China submission to the United Nations Secretary-General, 2009.

[38] China's claim extends farther east than its 200 nm line. The United Nations Convention on the Law of the Sea (UNCLOS) defines an EEZ as the area extending from a country's coastline outwards up to 200 nautical miles from the baseline of a country's territorial sea, which ends 12 nautical miles from its coastline. UNCLOS also allows coastal states to exercise administrative rights in maritime areas over extended continental shelves (such as the one China claims in the East China Sea), beyond the 200 nm limit for most EEZs.

[39] See, for instance, International Crisis Group, "Dangerous Waters: China-Japan Relations on the Rocks," April 8, 2013, Asia Report No. 245, pp. 43-45.

[40] S.Res. 167 expressed support "for the peaceful resolution of territorial, sovereignty, and jurisdictional disputes in the Asia-Pacific maritime domains."

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