

The U.S.-Japan Partnership for Maritime Security in the East and the South China Seas

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Abstract

This paper addresses “Maritime Security and Possible Cooperation between China and Japan,” and seeks to look for possible solvency in the bilateral relations. While emphasizing nowadays confrontational aspects of the ownership of the Senkaku/Diaoyudao Islands, I could say that the East China Sea has often been viewed as “the Sea of Friendship and Cooperation.” The paper touches on the ownership issues of the islands on the one hand, but all participants recognize that we cannot converge the bilateral relations into the Senkaku/Diaoyudao.

It also addresses such issues as exclusive economic zones (EEZ), freedom of navigation, possible joint exploration of energy, and environmental collaborations between China and Japan. It will also touch on the method of avoiding the seemingly unrelated linkage between maritime issues and economic trade, and seeks to look for the ways to clam down the emotional reactions by both countries, and to avoid the convergence of substantially plural exchanges of goods and services into issues of the islands where only goats live.

Deng Xiaoping once said that “next generations” will have better wisdom. To attain this purpose, we must have our own wisdom by which the next generations will be able to create the better wisdom than us.

Keywords: maritime security, Japan-China relations, EEZ, East China Sea, South China Sea

I. Introduction

During my June 2012 trip to Honolulu, Hawaii, after seven year's absence, I met an old friend of mine currently working for the Asia-Pacific Center for Security Studies, an academic institute under the jurisdiction of the US Defense Department. The friend is originally from the Philippines, and we came to discuss issues on maritime security in the East and South China Seas.

In the conversation, we agreed on one point. 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.

II. Legal Aspects and Identity Politics

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. In Europe, however, Italy has never mentioned the Roman Empire to justify their holdings of various lands in Europe.¹ 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.

On the issue of the Senkaku disputes, the legal position of Japan is that neither China nor Taiwan made any claim from 1895 to 1971 and that therefore the Japanese government's position is fundamentally solid and quite tenable under existing international law.² 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, although having not officially agreed on "leaving the ownership issue & the next generation, 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 governance.³

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 military conflict 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.⁴ History issues have been quite delicate for Japan-China relations, and if the dominance of legal aspects in the Senkaku disputes yields 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.⁵ 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. 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 that we could avoid the use of force in resolving territorial disputes.

III. 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 Daiaoyudao 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."⁶

- (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 recognized as an insult by the Chinese, since Japanese at various times 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.⁷

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 only wild goats have effectively been living for many decades until now.

IV. How Universal or Particular Are China's Claims in Maritime Security in Asia?: "Maritime Security Problems" Have Been "China Problems"

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.⁸ 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.⁹ In its negotiations with Japan, the Senkaku Islands disputes have been a typical case. On September 7, 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.¹⁰

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.¹¹

V. 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 countries under the banner of the bilateral friendship to delay the possible conflict toward the future.¹²

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 middle-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.¹³ 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 de-

clared 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.¹⁴

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.¹⁵ 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 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.¹⁶

VI. The U. S.-Japan Partnership for Maritime Security in the East and the South China Seas

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. intervene, 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 outreach 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.¹⁷ Because of its geographical closeness, Australia has 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 econo-

mies, 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.¹⁸

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.¹⁹

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.

VII. Conclusion

From legal perspectives on the Senkaku islands, Japan's position has been far more solid than China's. Japan, 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 the actors concerned to conduct dialogues on the territorial disputes.

Japan's current repetition that there has been no territorial dispute has been seen by Chinese as an insult. Also, Japan's unwillingness to engage in diplomatic actions over the disputed islands, while at the same time emphasizing its legitimacy only from legal perspectives, will invite its own immobility in foreign policy in today's changing international relations.

With this historic recognition, in addition to the security danger discussed above, it is essential that the Japanese government accept the existence of the Senkaku Islands issue as a subject of dialogue (not necessarily as a subject of disputes), while also implementing a credible defense policy in the region. Eventually the possibility of joint energy exploitation could seriously be considered, so that "next generations" — following Deng's statement in 1978 — will finally find the wisdom to look for any solution.²⁰

Notes

- 1 Some Japanese authors even argue that China's reference to Ming Dynasty's writings have fatal flaws. 下條正男『『尖閣は明代から中国領』の真っ赤な嘘』『正論』2012年5月号。
- 2 See the attached maps and articles. 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.
- 3 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.

- 4 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.
- 5 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.
- 6 東郷和彦『日本の領土問題』角川新書, 2012年, 138頁。
- 7 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. However, if the recognition of the territorial disputes cannot alter the contentions claimed by both sides into a more stable situation, it only works disadvantageously for the country having effective control. Thus, the recognition must be conducted with care.
- 8 Michael Glosny, Phillip Saunders and Robert Ross, "Debating China's Naval Nationalism," *International Security*, 35-2 (Fall, 2010), pp. 161-75.
- 9 However, many of ground territorial issues have been resolved during the Hu Jintao period. The remaining issue still exists only in China-Japan and China-India relations.
- 10 See attached reference. It should be emphasized that such maps of the Senkaku belonging to Japan, were quite often published by the PRC government at that time.
- 11 Denny Roy, "Southeast Asia and China: Balancing or Bandwagoning?" *Contemporary Southeast Asia*, 27-2 (2005), pp. 305-22.
- 12 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.
- 13 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.

- 14 *New York Times*, April 23, 2010.
- 15 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.
- 16 Rommel Banlaoi, *op. cit.*
- 17 One significant element in the South China Sea has been that since 1992 when the U. S. military withdrew from the Philippines, there has been no U. S. military base in Southeast Asia.
- 18 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.
- 19 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.
- 20 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.