

THE U.S. IMPERATIVE ON THE SENKAKU/DIAOYU TERRITORIAL DISPUTE

by

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This study contends that the U.S. must take the position to support Japan's sovereignty claims on the Senkaku Islands. Washington has held a neutral stance on the Chinese-Japanese territorial dispute since 1971 upon its ratification of the Okinawa Reversion Treaty. This neutral stance was appropriate at the time because the Chinese and Japanese governments agreed to shelve the dispute to pursue the benefits of a peaceful bilateral relationship. From the 1970's through the first decade of the 21st century, China and Japan successfully calmed their occasional territorial dispute flare-ups to ensure both countries prospered from its peaceful relationship. However, with the rise of China, Beijing is less inclined to keep its territorial dispute shelved. China is increasing intrusive surveys in the Senkau/Diaoyu territorial waters to demonstrate its control over the islands. Japan is responding with increasing aggression. The dispute threatens to escalate to a military crisis. Therefore, the U.S. must change its neutral position, support Japan's legal sovereignty claims, and dissuade China from forcefully demonstrating its control over the islands. Washington must convince Beijing to instead, settle its dispute in accordance with the rule of law.

THE U.S. IMPERATIVE ON THE SENKAKU/DIAOYU TERRITORIAL DISPUTE

The recently intensified conflict between China and Japan over the ownership of the Senkaku/Diaoyu Islands in the East China Sea is increasing political tension in the region. The conflict has escalated from the previous sporadic confrontation of Chinese fishermen, small-scale protesters, and Japanese coast guards to the current forceful intrusions of China's ocean surveillance vessels and airplanes into the 12 nautical mile (nm) zone around the islands. The Japanese Coast Guard and the Japanese Self Defense Force has been trying to keep the Chinese out of the islands' territorial area but to no avail.

The trigger of this intensified confrontation was a result of Tokyo's Governor Ishihara Shintaro's announcement of his plan to raise private funds to acquire three of the main Senkaku Islands, in April 2012. He did this as a political ploy to embarrass the Noda government, suggesting the Noda administration was not assertive enough to uphold Japan's sovereignty. Subsequently, in September 2012, Japan's Prime Minister Yoshihiko Noda nationalized three of the largest Senkaku isles (Uotsuri, Kita-Kojima, and Minami-Kojima). Prime Minister Noda's intent was to prevent Shintaro from using the islands to provoke future confrontations with China.¹ Nevertheless, this act provoked China to assert its sovereignty over the islands and elevated anti-Japanese demonstrations.²

As the drama unfolded, the Chinese government subsequently ordered its ocean surveillance vessels to enter the 12 nm zone around the islands. The Japanese Coast Guard's patrol vessels responded to confront the Chinese vessels. However, China continued to send its vessels into the islands' surrounding territorial waters and send surveillance airplanes into the islands' airspace. The situation has been explosive, and

has the potential to escalate. An accidental mishandling of the confrontation between the two sides could lead to an armed conflict.

The United States is watching the development of the flare-ups between China and Japan with great concern. After all, the United States has a mutual defense treaty with Japan. Confirming this policy on October 27, 2010, Secretary of State Hillary Clinton stated that “the ‘Senkakus’ fell within the scope of Article 5 of the 1960 U.S.-Japan Treaty of Mutual Cooperation and Security.”³ If China were to use force against Japan, the United States would have to fulfill its treaty obligation and respond in Japan’s defense. However, an armed conflict with China has grave consequences and is not in the U.S. interests.

Why are China and Japan fighting over those tiny and uninhabitable islands? Which side has the sovereign claim of those islands? Can China and Japan resolve the problem peacefully? What is the U.S. role in the China-Japan confrontation? What is the U.S. stake in this fight? What should the United States do to promote a peaceful resolution of the confrontation?

These are difficult questions, and the answers of which could hold grave consequences. This analysis contends that the U.S. must support the legal sovereignty rights of Japan – a difficult decision that may cause Beijing to view Washington’s support of Japan’s claims as confirmation that the United States intends to hedge against China. Simultaneously, the United States must balance the need to reassure its allies and partners with the need to continue to develop peaceful relations with Beijing.⁴ The U.S. must leverage its national powers of diplomacy, information, and economics; and it must deftly leverage peaceful military engagements and partnerships to continue

to bridge the relationship with China and maintain its relationship with Japan. The road to a stable trilateral affiliation between China, Japan, and the U.S. will be challenging and long. In the interim, the U.S. must encourage China and Japan to adopt conflict-avoidance and risk reduction measures that would mitigate provocative acts among its maritime agencies, especially acts that may lead to a military conflict.⁵

The History of the Senkaku Island Dispute

The history of the dispute dates back to the Qing Dynasty when, China argues, the Senkaku/Diaoyu Islands fell under Chinese jurisdiction. China asserts that in 1893, Sheng Xuanhuai, a Qing Dynasty statesman, collected medical herbs on the Diaoyu Islands. China argues that this proves that China was first to claim the territory.⁶ However, Japan insists that the islands were uninhabited, and in January 1895, the Japanese Emperor approved an Imperial Ordinance annexing the Senkaku Islands to Japan. Conversely, China asserts that Japan stole the islands when the Qing Dynasty signed the 1895 Treaty of Shimonoseki at the conclusion of the Sino-Japanese war. China insists that Japan used its victory to coerce China to cede the islands. Japan disagrees and affirms that the annexation was an act separate from the Treaty.⁷

Nonetheless, China claims that in December 1943 the terms of the Cairo/Potsdam Declaration required that upon Japan's World War II surrender, it must return all territories Tokyo stole. However, the 1951 San Francisco Peace Treaty, which officially laid out the terms of Japan's surrender, delineated the territory that Japan was to return to China by longitude and latitude. The geographical area did not include the Senkaku Islands.⁸ Furthermore, Article 3 of the Treaty placed Okinawa and the Senkaku Islands under the Trusteeship of the United States.⁹

Following the San Francisco Peace Treaty, there was relative calm regarding the Senkaku/Diaoyu sovereignty issue. However, this changed after the Economic Commission for Asia and the Far East (ECAFE) completed a geological survey in 1969. The ECAFE report concluded that substantial deposits of hydrocarbons potentially existed in the seabed between Taiwan and Japan. The report estimated that the amount of deposits might be “comparable to the Persian Gulf area.”¹⁰ Consequently, on December 30, 1971, the Chinese foreign ministry published an official document claiming ownership of the Senkaku/Diaoyu Islands.¹¹ Nevertheless, in accordance with the Okinawa Reversion Treaty, the U.S. turned all powers of administration, legislation, and jurisdiction of the Senkaku/Diaoyu Islands to Japan in 1972.¹² Of great significance, with the 1971 ratification of the Treaty, Washington officially proclaimed its position of neutrality on the islands dispute between China and Japan – a position that still stands today, over 40 years later.¹³

Although the U.S. took a neutral stance between Japan and China, the Senkaku/Diaoyu issue remained strategically insignificant. Beijing and Tokyo were able to defuse the occasional dispute flare-ups under its mutual understanding to keep the issue shelved. Since 1972, the first flare-up occurred with the signing of the 1978, Japan-China Peace and Friendship Treaty (PFT). Japanese protesters insisted that their government resolve the islands sovereignty issue prior to signing the Treaty. Conversely, hundreds of Chinese fishing vessels surrounded the disputed islands to counter the Japanese anti-Treaty forces. The Chinese protesters also intended to confirm China’s sovereignty rights over the islands. Nevertheless, the Japanese and Chinese governments signed and ratified the Treaty. Furthermore, China’s Vice

Premier Deng Xiaoping stressed his principle of shelving the Senkaku/Diaoyu issue for the sake of the greater benefits of a peaceful Sino-Japanese bi-lateral relationship.¹⁴

Then again, in 1990, a Japanese right wing group called the Nihon Seinensha erected a lighthouse on one of the disputed islands. The group intended to confirm Japan's sovereignty over the Senkaus by having the Japanese government recognize the structure as a national navigational marker. In response, the Taiwanese Mayor, Wu Tun-yi, attempted to plant Taiwan's Olympic torch on the islands. However, Japanese maritime safety vessels and aircraft drove the Taiwanese boats back. This sparked anti-Japanese protests throughout Taiwan.¹⁵ Subsequently, the PRC and Japanese government met to discuss a solution to quell the protests. Hence, Japan's Prime Minister Toshiki Kaifu concurred with the PRC government's requests and announced that he would not recognize the lighthouse as an official navigational indicator.

Despite Japan's previous appeasement, Chinese tempers flared again in 1996 when the right wing Nihon Seinensha party placed a solar powered lighthouse on one of the islands. The party again insisted that Japan formally recognize it as an official Japanese navigational indicator. As before, the actions resulted in a series of anti-Japanese protests that swept through China. Several anti-Japanese civil groups from Taiwan and Hong Kong sailed to the islands to protest. Tragically, a Chinese activist from Hong Kong drowned as he tried to plant a PRC flag on the islands.¹⁶ Yet, China and Japan soon calmed the protests and the issue faded. Four years later, in September 2010, a Japanese Coast Guard vessel and Chinese fishing trawler collided near the Senkaku/Diaoyu islands. The Japanese government arrested the trawler's

captain sparking renewed tension over the Senkaku/Diaoyu dispute.¹⁷ Once Japan released the captain under Chinese custody, the territorial flare-up soon quieted down.

Japan and China remained calm about the Senkaku/Diaoyu issue until Governor Shintaro reignited the dispute in April 2012. Unfortunately, the most recent protests have soured the strategic relations between the two countries. Currently, the Japanese and Chinese governments are finding it more difficult to settle and re-shelve the island sovereignty issue as it did in the past. If the two governments are unable to calm tensions on the dispute, will it lead to a possible military crisis and hence destabilize the region? Japan and China's position on the issue confirms that the two countries may not be able to peacefully resolve the territorial sovereignty issue.

Japan's Current Position

Japan adamantly holds the position that the Senkaku Islands are an inherent part of the territory of Japan. The Japanese government argues that its position is founded on historical facts and international law. Additionally, Tokyo insists that the Senkaku Islands are clearly under the valid control of Japan. Therefore, Japan's leaders maintain that there is no issue of territorial sovereignty to be resolved concerning the Senkaku Islands.

Japan goes through lengths to substantiate its legal sovereignty over the Senkaku Islands as an attempt to clear any doubt. The Ministry of Foreign Affairs (MOFA) provided information through official postings on its public website to support Japan's legal claim of the Senkaku Islands. The MOFA argued that the islands were neither part of Taiwan nor part of the Pescadores Islands that China ceded to Japan in the 1895 Shimonoseki Treaty. Therefore, Japan disputed the Chinese claim that the

Senkaku Islands were “stolen” from China due to its defeat in the 19th Century Sino-Japanese War.

Furthermore, the MOFA presented evidence that the Senkaku Islands were not included with the territory that Japan renounced under Article II of the San Francisco Peace Treaty. Japan insisted that the fact that China did not object to the Article III requirement that placed the islands under the United States’ control proved that China did not consider the Senkaku Islands as part of Taiwan. Additionally, the MOFA presented maps that graphically demarcated the islands that the Okinawa Reversion Treaty transferred to Japan. Moreover, Japan stressed that the Chinese claims are solely based on the 1969 ECAFE report of possible petroleum resources in the East China Sea. Japan insisted that none of the Chinese government’s arguments to claim its territorial sovereignty over the Senkaku Islands provided valid evidence under international law.¹⁸

China’s Current Position

The Chinese government disregards Japan’s claims and insists that the Senkaku/Diaoyu Islands legally fall under Chinese sovereignty. When the Japanese nationalized the islands in September 2012, the State Council Information Office of the People's Republic of China published a white paper that provided details surrounding China’s sovereignty claim. The white paper explained that because the Senkaku/Diaoyu territory fell under Chinese rule since the 16th Century, Japan’s argument that the islands were terra nullius is invalid. Moreover, the paper claimed that because China was not included in the San Francisco Peace Treaty negotiations, the terms of the treaty are not legal.

Beijing insisted that at the conclusion of the United States' trusteeship of the islands in 1972, Japan and the United States colluded in backroom deals. China argued that the deals between Washington and Tokyo resulted in Japan gaining administrative control of the territory. When the U.S. turned control of the islands to the Japanese, the Chinese Ministry of Foreign Affairs stated, "It is completely illegal for the government of the United States and Japan to include China's Diaoyu Dao Islands into the territories to be returned to Japan in the Okinawa Reversion Agreement."¹⁹ Hence, when Japan nationalized the Senkaku/Diaoyu Islands in September 2012, the Chinese government responded with renewed arguments that China has legal sovereignty over the Senkaku/Diaoyu Islands.

Regardless of Japan's legal administrative control over the Senkaku Islands, and despite Japan's refusal to acknowledge the existence of a sovereignty dispute, China is determined to prove its ownership of the islands by force. The Chinese government intends to establish that it physically controls the islands. China's marine surveillance vessels are increasing its patrol missions in the waters off the Senkaku/Diaoyu Islands. The Chinese fishery administration's law enforcement vessels are conducting regular patrols and fishery protection missions to uphold China's fishing rules in waters surrounding the islands.²⁰ Since Ishihara first announced his plan to purchase the islands, Beijing's government-affiliated ships have entered the Japanese territorial waters over 21 times.²¹

Furthermore, the Chinese government has been increasing its maritime surveillance of the Senkaku Islands and its surrounding territorial seabed. Most recently, in early January, four Chinese maritime surveillance ships cruised inside the

territorial waters around the islands for more than 13 hours. This was the longest Chinese intrusion since Japan nationalized the islands.²² Beijing intends to prove that it exceeds Japan's geological documents of the islands. In its efforts to bolster China's claim, Beijing is gathering cartographic surveys through maps and charts of the Islands and surrounding reefs. China has also published regular Diaoyu Dao weather forecasts through oceanographic and meteorological monitoring around the islands' waters.²³ Official oceanographic and meteorological surveys are additional steps to demonstrate China's control of the islands.²⁴

Although China's increasing patrols around the islands primarily involved civilian government aircraft and vessels, Beijing is also rapidly developing its military capability to secure its interests. The Chinese state media made clear that "Beijing's military had been instructed to raise their fighting ability in 2013 and should focus closely on the objective of being able to fight and win a battle."²⁵ In its Defense White Paper, Beijing explained its priority in developing its Navy and Air Force in order to strengthen China's capability to win command of the sea and air for counter-intervention operations.²⁶ Moreover, Beijing intends to control its near seas out to its first island chain, which include the East China Sea's Ryukyu Islands.²⁷ Until 2005, Japan had the largest defense budget in Asia. However, China has since surpassed Japan's defense spending. Of concern, Beijing has doubled its defense spending from 19.9 percent in 2000 to 40.2 percent in 2011.²⁸

The United State's Position

What is the United States' involvement in the Senkaku/Diaoyu territorial dispute? First, the United States' core interests hinges on maintaining a major role in the Asia-

Pacific region. Washington cannot achieve this role without strong security partnerships, alliances, and friends within the region. Japan is one of the most important U.S. allies in Asia. To emphasize this point, the U.S. Secretary of State, Hillary Clinton stated that “we consider the Japanese-U.S. alliance one of the most important partnerships we have anywhere in the world, and we are committed to our obligations to protect the Japanese people.”²⁹ On January 18, 2013, the Secretary of State stressed again, “Our alliance with Japan remains the cornerstone of American engagement with the region.”³⁰ She noted the wide range of critical contributions Japan provides from disaster relief to the stand-off over nuclear North Korea.

Second, the U.S. is “committed to building a strong, multifaceted, comprehensive partnership between the United States and China.”³¹ The assistant Secretary of State, Kurt Campbell explained that the U.S.-China relationship “is one of the most important things for American foreign policy going forward, and that it requires very hard work and basically confronting some of the most difficult challenges on the global scene.”³² However, the dispute between China and Japan is making this achievement difficult. Calming tensions and establishing an amicable relationship between China and Japan is within the United States’ key interests.

Finally, the U.S. must maintain a major role in the Pacific-Asia region because Northeast Asia is currently the center of the region’s greatest economic powers. Furthermore, Asia as a region beholds the world’s greatest economic potential. Escalating tensions between China and Japan threatens to destabilize the region. A major crisis between Japan and China threatens not only the United States’ security but also its future economic growth and prosperity.³³

As tensions between Japan and China regarding the Senkaku/Diaoyu Islands creeps steadily closer to a potential crisis, the U.S. is straining to maintain a peaceful, trilateral relationship. The United States urges Japan to show restraint against Chinese provocation. The Japanese government continues to struggle to moderate its response to China's intrusions into the Senkaku territorial waters. Meanwhile, Washington's policy on the Chinese-Japanese territorial dispute remains neutral.³⁴ On September 28, 2012, Assistant Secretary of State Kurt Campbell insisted, "The United States will hold a mutual position on the disputed islands." In addition, he affirmed that the "United States has no intention and will not play a mediating role."³⁵ He further explained that the U.S. is setting clear principles for engagement and a clear overarching policy framework for continued Chinese-Japanese dialog. Reinforcing China and Japan's historical agreement to shelve the dispute, he concluded with the reminder that for decades, Japanese and Chinese leaders have decided that it is "in the best interests of all concerned to put these issues aside, particularly issues that are extraordinarily difficult to solve."³⁶

Following a meeting on January 18, 2013 between the U.S. Secretary of State Clinton and the Japanese Foreign Minister Fumio Kishida, Clinton restated the U.S. policy to remain neutral. She reiterated that the U.S. will "not take a position on the ultimate sovereignty of the islands."³⁷ She went further to affirm that the United States acknowledges that the Senkaku/Diaoyu Islands "are under the administration of Japan."³⁸ She stressed that the U.S. opposes "any unilateral actions that would seek to undermine Japanese administration."³⁹ Clinton urged all parties to take steps to prevent incidents and manage their disagreements through peaceful means.⁴⁰ Subsequently,

Foreign Minister Kishida assured that although Japan “will uphold our fundamental position that the Senkaku islands are an inherent territory of Japan,” Japan will “respond calmly so as not to provoke China.”⁴¹

Why then, does Washington need to change its position of neutrality now? The answer is clear. The strategic relationship between China and Japan has changed. The change has deemed a neutral U.S. position in the dispute inappropriate for four main reasons. First, China’s economic rise has given it the power to assert its position in the dispute. Second, China is exerting increasingly intrusive means to display its control over the islands. Third, Japan’s sovereignty claims are based on legal grounds. Finally, the United States must demonstrate its credibility as a regional partner and ally.

In the early 70’s, when the U.S. turned administrative control of the islands to Japan, Washington’s policy of neutrality was appropriate. Mainly because the Chinese and Japanese governments understood the economic and security advantages of shelving the Senkaku/Diaoyu sovereignty issue. Japan and China “normalized” diplomatic relations in 1972.⁴² Hence, shelving the issue maintained a stable Japan-China relationship. Furthermore, Japan leveraged its newly established diplomatic power and supported the People’s Republic of China’s (PRC’s) October 1971 recognition in the United Nations.⁴³ Subsequently, Japan formally recognized the PRC as the sole legal Chinese Government and terminated the Treaty between Japan and Taiwan.⁴⁴ Six years later, in 1978, with the signing of the Japan-China Peace and Friendship Treaty (PFT), China and Japan mutually agreed to shelve the Senkaku/Diaoyu dispute – an initiative to sustain the greater benefits through the two government’s continued bi-lateral bond.⁴⁵

For almost four decades, China and Japan maintained a stable and prosperous economic relationship. Japan assisted the Chinese government through Official Development Assistance (ODA) loans.⁴⁶ Likewise, China provided Japan a source of low cost manufacturing industries.⁴⁷ A major percentage of Chinese and Japanese import and export industries became interdependent. Sino-Japanese bilateral trade tripled over the past decade to more than \$340 billion.⁴⁸ In 2004, China surpassed the U.S. as Japan's leading trade partner.⁴⁹ Beijing received their largest share of sophisticated components from Tokyo for its largest industry – product assembly.⁵⁰ The Japanese and Chinese governments both benefited from its relationship, and shelving the dispute maintained that valuable relationship.

As China strengthened its economic power, it began to transition from low-cost, labor-intensive production industries to compete with Japan in producing higher-value, high-technology manufacturing. The previously advantageous use of China's low-cost labor to produce competitively priced Japanese products has declined. Today, China no longer depends on ODA loans from Japan. Japan stopped providing ODA loans in 2008.⁵¹ China's strengthening economy is gradually increasing its competition with Japan.⁵² The China-Japan economic interdependency is no longer a guarantor of a peaceful relationship.

In April 2012, when Tokyo's Governor Ishihara Shintaro announced his plan to acquire three of the Senkaku Islands, the territorial issue flared out of control. China is less inclined to shelve the dispute today and maintain economic relations with Japan as it did in the past. Hence, China insists that Japan acknowledge that there is a sovereignty dispute over the Senkaku/Diaoyu Islands. Despite China's demands, Japan

refuses to acknowledge the dispute. In Richard Bush's memorandum to the president, he stated that Japan "fears that such acknowledgment will be followed by a Chinese demand for negotiations."⁵³ Bush further explained that Beijing would not talk to Japan until the Japanese government acknowledges that the dispute exists. Thus, the steady escalation of Chinese presence around the islands' as well as the escalation of anti-Japanese protests in China seems designed to force Japan to acknowledge that the islands are a disputed territory. This is a 180-degree turnaround from the 1978 Chinese-Japanese agreement to indefinitely shelve the Senkaku/Diaoyu dispute.

In response to China's new position, Prime Minister Abe, who took office in December 2012, urgently began to pursue measures outside of China, to strengthen and stabilize Japan's economic standing. Abe began to establish and strengthen partnerships and alliances with other Association of Southeast Asian Nations (ASEAN) countries. His plan was clearly designed to counter balance the economic rise of China.⁵⁴ In January 2013, Prime Minister Abe traveled to Vietnam, Thailand, and Indonesia to push for stronger ties in the ASEAN community. These ties would provide Japan's economy with new sources of growth.⁵⁵ The ASEAN community, home to 600 million people and combined economies worth \$2 trillion, is a source of new and viable economic partnerships.

However, Shotaro Yachi, an adviser to Prime Minister Shinzo Abe on foreign policy warned that seeking competing partnerships in ASEAN may have unintentional consequences. China may view a strengthening Japan alliance and partnership with the ASEAN community as encirclement.⁵⁶ He stressed that although Japan does not intend to encircle China with its alliances, if China responds with escalated aggression,

specifically to occupy the Senkaku Islands, “we have to respond effectively.”⁵⁷ As Japan executes its plan to stabilize the Japanese economy, it also believes it must develop its ability to protect its territory.

In response to China’s intrusive means to display its control over the Senkakus, Japan has increased its Coast Guard air and surface patrols to secure its territorial seas. Additionally, Japan desires to increase its coast guard by an additional fleet. If the supplementary budget to develop the fleet is approved, Japan will include up to eight 1,000 ton class cutters, four of which will be ready by Japan’s FISCAL year 2014. The cutters play a key role in patrolling the waters around the Senkaku Isles. Additionally, the fleet will include a 6,500 ton Akitsushima class cutter, and two 3,000 ton cutters.⁵⁸

Moreover, Prime Minister Shinzo Abe plans to increase military spending to strengthen its military power to defend Japan’s territories unilaterally. Additionally, Prime Minister Abe wants to lift Japan’s ban on the right to exercise collective self-defense for a wider array of scenarios than the four cases suggested by his advisory panel five years ago. The four cases restricted Japan’s military actions to repel attacks against a U.S. fleet on open seas; to intercept ballistic missiles fired toward the United States; to guard foreign troops engaged in international peacekeeping operations with Japan; and to provide logistics support to other countries for peacekeeping operations. If Japan is successful in revising Article 9 of its constitution, it will also be able to leverage new partners and alliances and exercise collective defense.

General Shigeru Iwasaki, Japan's Self Defense Forces Chief of Joint Staff, explained that Prime Minister Abe has instructed the Ministry of Defense to “defend

lives, property, territorial land, skies, and waters at any cost.”⁵⁹ The intent is to strengthen the Japanese Defense Force’s “posture in the southwest, particularly around the Senkakus.”⁶⁰ Japan’s Defense Ministry requested a 2.2% increase in its next year budget to a minimum of 4.706 trillion yen (\$52.8 billion). The increase includes funding for a submarine, a destroyer, naval surveillance planes, additional aerial radar capabilities, airborne warning and control systems (AWACS), and an E-2C early warning aircraft. Japan will also prepare a new base in Yonaguni, just 100 miles from the Senkakus.

Additionally, the Ground Defense Force has increased the number of island defense drills. Likewise, Japan and the U.S. conducted a five day bi-lateral exercise that was originally postponed in October 2012 as a measure to avoid provoking Beijing. However, the U.S. and Japan rescheduled the bi-lateral exercise in January 2013. The scenario, in line with defending the southern territories, was a script to recapture a remote island invaded by an enemy force. The exercise involved six U.S. FA-18 fighters, four Japanese F-4 jets, with U.S. and Japanese ground troops.⁶¹

On January 10, Japan reportedly scrambled two F-15’s from Naha, Okinawa, after several Chinese military aircraft flew close to its Air Defense Identification Zone (ADIZ).⁶² Chief Cabinet Secretary Yoshihide Suga stated that Japan would take “all possible surveillance measures” to protect the islands and its surrounding territorial waters.⁶³ Dangerously, in reaction to escalating Chinese intrusions, the Japanese defense ministry has considered authorizing the Air Self-Defense Force (ASDF) aircraft to fire warning shots at Chinese planes within Japanese airspace.⁶⁴

As China and Japan gradually escalate its civilian and military patrol activities surrounding the islands, the risk of a military conflict is dangerously escalating. If China continues to increase its aggressive control of the Senkaku/Diaoyu Islands, Japan's response will be increasingly forceful. If tensions between Japan and China do not calm down, the risk of a military confrontation is probable.

For these reasons, the United States should support Japan's sovereignty claims based on legal grounds and discourage China from illegally asserting its claim by force. Japan and China's claims of sovereignty over the Senkaku/Diaoyu Islands are based on conflicting views of the traditional international laws for modes of territorial acquisition and international treaties.⁶⁵ However, it is not the purview of the United States to adjudicate between Japan and China's arguments. Hence, if the U.S. supports Japan's claim of legal sovereignty, Washington would be able to discourage China's approach to prove its claim by illegal force. Instead, China must adjudicate its claim in accordance with international laws. Until a higher court such as the International Court of Justice finds otherwise, the current accord stands. Therefore, because shelving the territorial dispute is less likely, and before Chinese and Japanese confrontations lead to a military crisis, the United States should take the legally-based position to support Japan's sovereignty claims.

By taking a position to support Japan's sovereignty claims over the islands, the United States will reassure Japan of the value in developing and maintaining strategic ties with the United States. First, supporting Japan's claim of sovereignty reassures Japan of the U.S. commitment to oblige the U.S.-Japan Mutual Defense Treaty. Japan's ambassador to the U.S., Kenichiro Sasae, clearly stated that the United States'

“stance cannot be neutral if it is to respond firmly in the event of use of force or provocation.”⁶⁶ By taking the position to support Japan’s sovereignty claims, the U.S. assures Japan of its mutual defense treaty commitments. Second, such a stance demonstrates reassurance in the value of U.S. ties among other Asia-Pacific friends and allies. Other countries in East Asia that have territorial or Exclusive Economic Zone (EEZ) disputes with China are compelled to take a more forceful position against Beijing and seek closer strategic engagements with the United States.⁶⁷ Taking a position to support Japan in this case, reinforces the credibility of strategic ties with the United States.

Counter Argument on U.S. Position

The argument against the U.S. taking a position posits that supporting Japan’s sovereignty claim will provoke China to distrust Washington’s intentions to collaborate with China as an equal. A view that will subsequently cause the PRC to reject any further attempts of the United States to diplomatically engage with Beijing to further economic or military partnerships. Additionally, the ASEAN community will be forced to choose sides between the U.S. and China. Because China provides financing, trade, and infrastructure development assistance to many ASEAN members, the ASEAN community may steer away from a U.S. partnership. Therefore, the United States should remain neutral and instead mediate the sovereignty dispute between Japan and China. This argument is understandable. It is difficult to imagine that if the U.S. takes a position to support Japan, Washington will be able to continue to develop relations with Beijing. However, the United States supports Japan’s position on its claims to the Northern Territories.⁶⁸ Despite this fact, the United States is still able to continue

international relations with Russia. China is not the same as Russia, but the principle in supporting Japan based on the international rule of law and peaceful diplomatic dialog is the common theme in both situations.

Although China provides significant economic assistance to the ASEAN community, Beijing also maintains on-going territorial and economic exclusive zone (EEZ) disputes with many of the ASEAN members. Specifically, China bi-laterally holds EEZ or territorial disputes with Brunei, Malaysia, Indonesia, the Philippines, and Vietnam. China's claims cover all of the Spratly and Paracel Islands and most of the South China Sea.⁶⁹ Beijing's approach to its claim, like with Japan, is based on an interpretation of international laws that disproportionately benefit the Chinese. Although a signatory to the United Nations Convention on the Law of the Sea (UNCLOS), China overrides its basic rules with the Chinese self-proclaimed "nine dash line" maritime demarcation. The nine-dash line is a boundary that unfairly excludes many of the ASEAN community from rich natural resources within their EEZs. Although cautiously balancing siding with the U.S. against China, the countries involved welcomed U.S. support. President Obama supported the ASEAN countries' claims of their territories. Although China prefers to negotiate bi-laterally, Obama gained agreement with the countries involved to work together through a multilateral approach on solutions based on international law.⁷⁰

Regardless of its merits, mediation will not work. Mediation requires that the United States participate as a neutral party. The U.S., by default, is not neutral due to its mutual defense treaty with Japan. Moreover, both China and Japan must agree to pursue mediation. China wants to negotiate with Japan bi-laterally and does not want

third party participation in its negotiations. Furthermore, Japan does not acknowledge that there is a dispute over the islands. Japan argues that it has legal sovereignty over the Senkaku/Diaoyu territory and will not agree to mediation.⁷¹ U.S. mediation is not an acceptable approach for either China or Japan.

The overarching principle upholding the argument that the U.S. take the position to support Japan's sovereignty claim is based on the legal authority of the treaties that placed the Senkaku/Diaoyu Islands under the control of the Japanese government. The U.S. will need to emphasize that China must resolve its disputes in accordance with international laws. In addition, the United States, China, and Japan understand that the three nations share mutual economic interests and the stability of its relationship has global implications. All three nations recognize the importance of maintaining a stable diplomatic and economic relationship.

However, the risk remains that if Washington takes the position to support Japan's sovereignty over the Senkakus, China will reject Washington's attempts to work with China as a vital security and economic partner. For this reason, in addition to supporting Japan's legal sovereignty rights, the U.S. must leverage its diplomatic, informational, economic, and military powers to maintain trilateral relations among the U.S., Japan, and China. Both Japan and China maintain bilateral dialog with the United States. Washington must continue to engage China and Japan at the highest levels to maintain dialog focused on reaching peaceful solutions based on international laws. Additionally, the U.S. must leverage multilateral consensus, rules, and agreements within international institutions in which China and Japan are members. For example, the U.S. must engage with and gain consensus on Washington's position with

institutions such as the ASEAN+3, the East Asia Summit, Asia-Pacific Economic Cooperation, and the World Trade Organization.

Next, Washington must leverage the influence of information to gain national support. With China, the U.S. must ensure that the reason the U.S. is taking the position to support Japan is to avoid a military crises and is clearly the peaceful and lawful solution. The Senkaku Island issue must be resolved within the international rules of law and prevent a crisis between the three most powerful countries in East Asia. Washington must encourage Japan to reinforce its formal apology for the atrocities the Imperial Japanese Army committed in China during World War II.⁷² Furthermore, Japan's leaders must avoid formally visiting the Yasukuni Shrine where Japan venerated 14 convicted Japanese World War II war criminals – an act that has provoked Chinese protests in the past.⁷³ In addition, the U.S. must encourage Japan to correct its school books that “white wash” the atrocities Japan's imperialist regime committed.⁷⁴ Such a move would represent Japan's atonement for its historical mistakes – an important step toward quelling Chinese nationalism and establishing mutual trust.

Third, Washington must leverage the U.S., China, and Japan's mutual economic interests to preserve its peaceful relationship. A conflict between the regions three greatest economic powers will not only destabilize each nation's economy, but it also has potentially devastating regional and global economic implications. Many ASEAN nations' governments depend on trade with Japan, the U.S., and China. A military crisis between China and the U.S.-Japan alliance will surely destabilize the East Asian region and have devastating global second and third order effects. China will surely

understand the importance of a stable tri-lateral relationship with the U.S. and Japan and cease its intrusive methods to claim ownership of the Senkaku/Diaoyu Islands.

Finally, the United States must deftly leverage military engagement and partnerships in non-provocative military-to-military programs. These programs are critical toward establishing and maintaining transparency and trust among the three nations. The U.S. must encourage China to continue to allow its armed forces to participate with the United States' and Japan's military in Humanitarian Assistance and Disaster Relief (HA/DR) exercises. The Pacific Command must continue to invite China to participate in multinational military exercises such as the Pacific Rim Exercise. Further, the U.S. must prompt Japan and China to follow through with and implement maritime conflict mitigation measures. Both China and Japan are members of the Western Pacific Naval Symposium, which issues the Code for Unalerted Encounters at Sea (CUES).⁷⁵ However, adherence to the procedures is voluntary. The U.S. should encourage China and Japan to adopt maritime conflict-avoidance and risk reduction measures that regulate the maritime operations and mitigate provocative acts.⁷⁶

Conclusion

In summary, this paper addressed a difficult issue between China, Japan, and the United States. There are no easy answers, yet if the Sino-Japanese sovereignty dispute continues to escalate, a military crisis is likely. Therefore, the United States must take the position to support Japan's claim of sovereignty over the Senkaku Islands. After over 40 years of maintaining a neutral stance on the dispute, the U.S. must now take a position to support Japan because the strategic relationship between China and Japan has changed. China's economic rise has given it the power to assert

its position in the dispute; therefore, China is less inclined to shelve the dispute to maintain economic ties with Japan.

Over time, China has been gradually exerting intrusive means to prove its control over the islands. As a result, Japan is developing the capability to respond with increasing force. China insists that Japan must admit that the islands' sovereignty is a disputed issue. However, Japan refuses to admit the dispute exists and will not negotiate toward a resolution with China. If China is not convinced to seek the settlement peacefully, the risk of a military crises will continue to creep dangerously higher. Therefore, the U.S. must support Japan's sovereignty claims based on the legal authorities of international laws and the current treaties. By taking the position to support Japan based on international law, the U.S. will be in a stronger position to dissuade China from its intrusive ways and instead pursue a peaceful and lawful means to settle its dispute.

Finally, the United States must demonstrate its credibility as a regional partner and ally. Japan will not rest assured that the U.S. will stand by its treaty obligations unless Washington takes a position on the sovereignty of the Senkaku/Diaoyu Islands. By taking a position, the United States must balance its creditably as an ally with all elements of its national power to maintain a mutually supporting and peaceful tri-lateral Japan-China-U.S. relationship.

Taking a position is a very difficult decision in this contentious situation. However, as China's Vice-Premier Deng stated at the Tokyo Press Conference over 34 years ago, "Our generation is not wise enough to find common language on this question. Our next generation will certainly be wiser. They will surely find a solution

acceptable to all.”⁷⁷ Perhaps, with the new Chinese, Japanese, and U.S. leaders in place, the wise generation has finally arrived to find the solution to a difficult situation.

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