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U.S. Involvement in the Sino-Japanese Diaoyu/Senkaku Conflict: Finding Solutions for Stability in the East China Sea

Abstract: After reviewing the origin and current deterioration of the territorial dispute for the Diaoyu/Senkaku islands involving Beijing and Taipei against Tokyo in the East China Sea, the paper presents and evaluates the distinction made by China between the United States of America as a newcomer in the crisis (with its full potential for further deteriorating or defusing tensions) and Japan as a much more proactive contender. Options for the United States of America as a possible constructive mediator between China and Japan over the archipelago are discussed.

Key words: Diaoyu islands, East China Sea, Okinawa Reversion Treaty, Senkaku islands, U.S. mediation

美国介入中日钓鱼岛/尖阁诸岛冲突：求解中国东海稳定困局

摘要：本文在回顾北京、台北与东京之间围绕东海钓鱼岛/尖阁诸岛领土争端的起源和当前恶化的局势之后，提出中国认为在这场危机中，作为后来者的美国（拥有加剧或化解紧张局面的能力）和更积极竞争者的日本之间的区别。本文还讨论了美国在中日岛屿争端中进行建设性斡旋的可能性。

关键词：钓鱼岛、中国东海、归还冲绳协定、尖阁诸岛、美国斡旋

U.S. INVOLVEMENT IN THE SINO-JAPANESE DIAOYU/SENKAKU CONFLICT: FINDING SOLUTIONS FOR STABILITY IN THE EAST CHINA SEA

The dispute

The history of the Diaoyu/Senkaku territorial conflict is contingent on the Chinese and Japanese narratives (and Taiwanese). Beijing's legal basis rests, among others, on claims that it was the first to discover, name and exploit the islands. China recounts that it has exercised jurisdiction since the early-Ming dynasty, and placed them under the authority of the local government of Taiwan since the Qing dynasty. Furthermore, Japanese nationals surveyed the islands in 1885 and the Chinese government ceded them to Japan in 1895 under the Treaty of Shimonoseki together with the island of Formosa, thus the Meiji government acknowledged Chinese ownership of the islands back in 1885.¹ Next, the islands were returned to China after World War II but the United States of America (U.S.) included them under its trusteeship in the 1950s and "returned" de "power of administration" to Japan in 1972. Finally, China and Japan reached consensus and understanding at the time of the negotiation of the 1978 Sino-Japanese Treaty of Peace and Friendship on "leaving the issue to be resolved later".² The Chinese narrative rests in history and is linked directly to a war of aggression and what has been regarded as illegal occupation after the World War II.

The Japanese stance, on the contrary, states that, to begin with, there is no issue of territorial sovereignty to be resolved as Japan is the rightful owner. However, Tokyo adds that preventive acts, namely that surveys in 1885 proved that the islands were *terra nullius* at the time, and, as a consequence, the Japanese Government issued a Cabinet Decision on 14 January 1895 to erect a marker on the islands to formally incorporate them into the empire (therefore incorporation by acquisition through occupation). Japan also claims that the islands have never been part of Formosa or the Pescadores, either as territories ceded in the 1895 Treaty of Shimonoseki, or included in the 1951 San Francisco Peace Treaty as a territory renounced by Japan at the end of World War II; instead, they were placed under the administration of the U.S. as part of the Nansei Shoto archipelago. The official stance further points out that administrative right over the Senkakus was later restored in 1972 and that Chinese claims emerged only in the early-1970s. Finally, Tokyo denied that in 1972 or 1978 China and Japan reached agreement in order to "shelve" the Senkaku problem for the future.³ As it became apparent, Japan has divorced the Senkaku issue from the Taiwan's cession and,

¹ Nicholas Kristof, "The Inconvenient Truth Behind the Diaoyu/Senkaku Islands", The New York Times, 19 September 2012. Available online at <http://kristof.blogs.nytimes.com/2012/09/19/the-inconvenient-truth-behind-the-diaoyusenkak u-islands/>

² PRC State Council Information Office, "Diaoyu Dao, and inherent territory of China" White Paper, 29 September 2012, available online at http://www.gov.cn/english/official/2012-09/25/content_2232763_2.htm

³ Japan Ministry of Foreign Affairs, The Basic View on the Sovereignty over the Senkaku Islands, May 2013, available online at http://www.mofa.go.jp/region/asia-paci/senkaku/basic_view.html Recent statements on the contrary, however, have been revealed to the Japanese press. See John Hofilena, "Ex-Cabinet Secretary: Japan, China agreed to 'shelve' Senkaku territorial dispute in 1970s", Japan Daily Press, 4 June 2013, available online at <http://japandailynews.com/ex-cabinet-secretary-japan-china-agreed-to-shelve-senkaku-territorial-dispute-in-1970s-0429996>

while underlying the absence of reference of the islands in the 1951 Peace Treaty, it has nonetheless linked the issue with the U.S. administration over the area until 1972, thus placing Washington in the eye of the storm.

During recent years, the number of incidents near the Senkakus area has been on the rise (notably since 2006), and particularly since September 2010 when a Chinese fishing trawler rammed two Japan Coast Guard patrols. However, 2012 was by far the tensest year, in fact a turning point in the conflict. After the Chinese government published in March the names of all the 71 formations of the Diaoyu group,⁴ in April governor Shintaro Ishihara responded in Washington that the Tokyo Metropolitan government intended to purchase three islands from the Kurihara family (identified as owners). In spite of a public donation campaign that reached some 1.5 billion yen by January 2013, the Kuriharas rather decided in September 2012 to sell the islands to the central government, a much desired “nationalization” in Japanese ultranationalist circles for a price tag of 2.05 billion yen (then roughly 26 million U.S. Dollars).

In sharp response, Taiwan and China have resorted to their own policies in order to defend rights, including escorting fishing boats toward the area.⁵ On September 17, a flotilla of around 1,000 Chinese fishing boats approached the islands,⁶ while on 23 April 2013 eight Chinese patrol ships from China’s State Oceanic Administration⁷ entered waters near the islands.⁸ Frequent Chinese aerial, naval and submarine incursions have been reported throughout 2013.

Reasons for U.S. involvement

Until recently, the U.S. had kept a low profile on this conflict, and in fact had shown clear neutrality, but Washington’s involvement dates back some decades. Washington’s first involvement was in 1951 during the San Francisco Peace Treaty when the allies shaped the extent of the postwar Japanese territory. After the peace treaty, the United States Civil Administration of the Ryukyu Islands designated the geographical boundaries of the Ryukyu

⁴ Published originally online by the China State Oceanic Administration, it has been printed in Guojia Haiyangju, Zhongguo diaoyudao dimingce, Beijing, Haiyang chubianshe, 2012 , pp. 29-32.

⁵ Matt Blake, “Duel by water cannon: Japanese and Taiwanese coastguards blast each other with spray in row over disputed islands”, Daily Mail Online, 25 September 2012, available online at:

<http://www.dailymail.co.uk/news/article-2208305/Senkaku-Islands-Japan-Taiwan-boats-attack-spray.html#ixzz2WpeML8s0>

⁶ David Alexander, ‘In everybody’s interest’ for Japan, China to maintain good relations, Panetta says as Beijing launches flotilla of 1,000 fishing boats to disputed islands, Reuters, 17 September 2012, available online at

<http://news.nationalpost.com/2012/09/17/china-japan-leon-panetta/>

⁷ The marine surveillance ships Haijian 51, 23 and 46, later joined by the Haijian 50, 15, 49, 66 and 137.

⁸ “Eight Chinese vessels enter Senkaku area”, The Japan Times, 24 April 2013, available online at

http://www.japantimes.co.jp/news/2013/04/24/national/eight-chinese-vessels-enter-senkaku-area/#.Uh-XKT_9zbw

islands.⁹ It is known that in 1958, Koga Kenji leased the islands to the Ryukyu government, which in turn leased them to the U.S. authorities. In 1960 the U.S.-Japan Security Treaty was revised, whereby in its article 5 it is stipulated that the U.S. is bound to protect “the territories under the Administration of Japan.”¹⁰

Later, in the Okinawa Reversion Treaty reached between the U.S. and Japan on 17 June 1971, a provision was included for the return to Japan of “all and any powers of administration, legislation and jurisdiction” over the Ryukyu and Daito islands, which the U.S. had held under the 1951 peace treaty. 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...”¹¹ Conceding that the Diaoyu-Senkaku islands were included in Article 3, it seems that in 1971 the U.S. eventually resolved the issue of the Japanese administration over the islands without having to address the issue of competing claims of sovereignty, claims well known at the time the Okinawa Reversion Treaty, which had to be ratified by the U.S. Senate.¹²

The U.S. current official position had until recently rested on three pillars: “(1) strict neutrality; (2) strong support for peaceful resolution; and (3) a disinclination to become publicly or actively involved in the disputes or their resolution.”¹³ However, Washington has begun to calibrate some of these principles, first because current U.S. overall involvement in the Asia Pacific region is now more open and visible as part of the *rebalancing* policy of the Obama administration. Second, subtle changes have occurred partly as a natural reaction of an ally of Japan in view of a more powerful Chinese presence in those waters. Finally, the U.S. government seems to have concluded that inaction and not being a facilitator for dialogue simply sends the wrong message to China and to what is perceived as aggressive Chinese behavior.

On 27 October 2010 Secretary of State Hillary Clinton made clear that the islands are part of the U.S.-Japan mutual treaty obligations.¹⁴ The Obama administration has made the interpretation that the U.S. agreed in the Okinawa Reversion Treaty to apply the 1960 Security Treaty to the treaty area, including the Senkakus.¹⁵ In January 2013 Clinton pointed

⁹ Hiromichi Moteki, *The Senkaku Islands Constitute an Intrinsic Part of Japan* (Tokyo: Society for the Dissemination of Historical Fact, 2010), Available online at http://www.sdh-fact.com/CL02_1/79_S4.pdf

¹⁰ Article V, Treaty of Mutual Cooperation and Security between the United States and Japan, available online at <http://www.mofa.go.jp/region/n-america/us/q%26a/ref/1.html>

¹¹ Mark E. Manyin, *Senkaku (Diaoyu/Diaoyutai) Islands Dispute: U.S. Treaty Obligations* (Washington: Congressional Research Service, January 22, 2013), p. 4.

¹² *Ibid.*

¹³ Don Keyser, *The Senkaku/Diaoyu dispute: The U.S. policy perspective and Japanese PM Abe’s visit*, China Policy Institute Blog, 21 February 2013, available online at <http://blogs.nottingham.ac.uk/chinapolicyinstitute/2013/02/21/the-senkakudiaoyu-dispute-the-u-s-policy-perspective-and-japanese-pm-abes-visit/>

¹⁴ Secretary Clinton Joint Press Availability with Japanese Foreign Minister Seiji Maehara, Honolulu, Hawaii, 27 October 2010, available online at <http://www.state.gov/secretary/rm/2010/10/150110.htm>

¹⁵ Manyin, *op. cit.*, p. 5.

out that “although the United States does not take a position on the ultimate sovereignty of the islands, we acknowledge they are under the administration of Japan and we oppose any unilateral actions that would seek to undermine Japanese administration...”¹⁶ At the same time, however, the U.S. government has reiterated that dialogue and consultations are the best way to ease tensions between China and Japan.

China, on her part, has recognized that the U.S. bilateral relationship is the most important in the region, therefore efforts to maintain high-level dialogues on several issues, including territorial rows between China and its neighbors, is of paramount importance. As for Japan, however, China’s response has been particularly strong. Beijing promulgated the baselines of the territorial sea of the islands and affiliated features and published the chart of those baselines on 10 September 2012, later a list of geographical coordinates of points and a chart of features. Surpassing the diplomatic front, Beijing has also begun since autumn 2012 to deploy China Maritime Surveillance (CMS) and Fisheries Law Enforcement Command (FLEC) ships to patrol near the islands and stepped up other activities. On January 30 a weapon-guiding radar was directed from a Chinese Navy vessel to an escort vessel of the Japanese Maritime Self-Defense Force, which led to official protest and a Japanese proposal for an inquiry into the incident. Further incursions have been denounced throughout 2013.¹⁷

The U.S.-Japan alliance and its implications for the East China Sea

From the purely military perspective, since 2011 the U.S.-Japan defense alliance has started to evolve under the framework of a so-called Dynamic Defense Cooperation (DDC), even though important issues on military cooperation remain unsolved.¹⁸ Yet, Washington has been in fact struggling to receive enough assurances from Tokyo that a more active Japanese commitment to the alliance is possible. In the meantime, however, Washington is assuring Beijing that the U.S.-Japan alliance is as strong as ever, warning repeatedly that the Senkakus are in fact covered by the 1960 security treaty.¹⁹ In October 2012, Richard Armitage accused Beijing of “trying to drive a wedge” between the U.S. and Japan. The Obama administration, as noted, while maintaining its neutrality on the competing claims, had made clear that the U.S. agreed in the Okinawa Reversion Treaty to apply the 1960 Security Treaty to the treaty area, including the Senkakus. Here, a crucial difference has thus been made clear by the U.S. between Japanese “sovereignty” and “administration” over the islands, without changing the application of the 1960 Security Treaty to the Senkakus. Such distinction also allows the U.S.

¹⁶ Remarks by Secretary Clinton with Japanese Foreign Minister Fumio Kishida After Their Meeting, 18 January 2013. Available online at <http://www.state.gov/secretary/rm/2013/01/203050.htm>

¹⁷ “Chinese ships enters waters near Senkakus”, *The Japan Times*, 14 May 2013, available online at http://www.japantimes.co.jp/news/2013/05/14/national/chinese-ships-enter-waters-near-senkakus/#.UiDIID_9zbw

¹⁸ Tomohiko Satake, *US Rebalancing toward the Asia-Pacific and Japan-US Dynamic Defense Cooperation* (Tokyo: NIDS, *The National Institute for Defense Studies News*, October 2012, available online at http://www.nids.go.jp/english/publication/briefing/pdf/2012/briefing_e169.pdf

¹⁹ Stephen Harner, “Is the U.S. Committed to Defend the Senkakus? Text of Article 5 of the U.S.-Japan Treaty”, *Forbes*, 23 September 2013, available online at <http://www.forbes.com/sites/stephenharner/2012/09/23/is-the-u-s-committed-to-defend-the-senkakus-text-of-article-5-of-the-u-s-japan-treaty/>

some space on the diplomatic front by not directly challenging China's sovereignty claims over the isles or by openly supporting Japan.

As the U.S. makes this clear distinction between administration and sovereignty, Tokyo has concluded that there is no need, at least for now, to pressure Washington further over a military commitment to Japan on the matter. In February 2013, Prime Minister Abe, while assuring that his country will never fall as a Tier-two nation, warned that Japan will not allow China to change the status quo (namely, Japanese effective control over the islands), adding that "on the Senkaku issue, our intention is not to ask the United States to do this or that or to say this or that..."²⁰ But no doubt Japan has welcomed U.S. deterrence vs. China and hopes for a more active role in the maritime East Asia.

U.S. involvement in future scenarios

What possible role should the U.S. have in the future as an actor already much more involved in the dispute? Washington is in a delicate, albeit privileged position to use its political capital with both Tokyo and Beijing as part of the power triangle in the Asia-Pacific region. It is in the U.S. national interest to promote good relations between China and Japan and not to be dragged further into this territorial conflict. Here, the U.S. has several options between the two Asian neighbors over the Diaoyu-Senkaku islands. Some of these are the following:

(1) An increasingly hands-off policy. This is probably the most ideal scenario for the U.S., but difficult to realize as tensions are already high and because Washington has already publicly stated that Japan has "administration" over the islands. A further policy in this line might also erode U.S. prestige in the region, similar to the damage resulting from the absence of President Obama in October 2013 during the APEC and the East Asia summits. Washington cannot ignore the conflict anymore, and should devise a more constructive policy.

(2) Military support to Japan, the less desired scenario but nonetheless the most prepared given the U.S. and Japanese alliance through the U.S.-Japan Security Consultative Committee. It remains to be seen, however, whether Washington would accept the damage in the G2 relationship with China, the most important one in the world in the short term. During his September 2012 trip to Japan, Secretary of Defense Leon Panetta stated: "It is in everybody's interest ... for Japan and China to maintain good relations and to find a way to avoid further escalation."²¹

(3) U.S. mediation, track-two diplomacy initiatives, and third-party arbitration is a third. This is a more proactive and constructive approach that may include a Northeast Asian summit to discuss ways to enhance confidence-building measures and the creation of a functional crisis management mechanism to defuse tensions, not only between Japan and China, but also with South Korea.²² It would open channels of communication at the highest level (both political and military). Track-two diplomacy might also include official funds allocated by the U.S. Department of State to universities and think-tanks to facilitate informal meetings. Probably

²⁰ *Statesmen's Forum: Shinzo Abe, Prime Minister of Japan*, Washington, Center for Strategic and International Studies, 22 February 2013.

²¹ Reuters, 17 September 2012, available online at <http://news.nationalpost.com/2012/09/17/china-japan-leon-panetta/>

²² On 25 June 2013 South Korea and Japan announced the suspension of a swap financial agreement.

third-party arbitration (which may not include the U.S. itself) can be the most difficult task in this scenario. Careful and timely implementation of these options might result in defusing tensions, thus proving that, even though not desired by Beijing, the role of the U.S. as a mediator might be the most pragmatic option as its rebalancing policy is creating strong resonances in the international system in the Asia-Pacific region.

Overall, constructive mediation by the U.S. might help to revive the idea put forward in 2008 by China and Japan of the East China Sea as a "Sea of Peace, Cooperation and Friendship",²³ recently rephrased by Taiwan as a five-point proposal - the so-called "East China Sea Peace Initiative."²⁴ Also, U.S. mediation efforts may be placed between the somehow more idealistic Chinese proposals of coexisting with the status quo²⁵ and those more radical Japanese proposals (including for Washington to acknowledge Japanese sovereignty over the Senkakus and pressing China to accept arbitration which may also hopefully include submitting the dispute to the International Court of Justice ICJ).²⁶ Washington has the responsibility and the power, through its own bilateral relation with Beijing and Tokyo, to help de-securitize the Diaoyu/Senkaku issue and lower tensions. Now that China has implemented an air defense zone in the East China Sea²⁷ and increased patrols in waters near the islands, it is imperative that new, creative measures, such as a Code for Unalerted Encounters at Sea (CUES),²⁸ are discussed jointly. The U.S. might help in such endeavors.

²³ Joint Statement between the Government of Japan and the Government of the People's Republic of China on Comprehensive Promotion of a "Mutually Beneficial Relationship Based on Common Strategic Interests", Tokyo, Japan 7 May 2008, available online at <http://www.mofa.go.jp/region/asia-paci/china/joint0805.html>

²⁴ U.S.-China Economic and Security Review Commission, 2012 Report to the Congress, (Washington: U.S. Government Printing Office, November 2012), p. 258.

²⁵ Fudan and Nottingham University professor Guo Dingping, envisions for the future: 1) the establishment of a crisis management mechanism between China and Japan, 2) wisdom and courage by Chinese and Japanese leaders to put the bilateral relationship on track, and 3) a more balance triangular relationship among China, Japan and the US, and substantial progress to be "made in regional cooperation and community-building in East Asia" Dingping Guo, Three Scenarios for the Diaoyu/Senkaku Dispute, *China Policy Institute Blog*, February 21, 2013, available online at <http://blogs.nottingham.ac.uk/chinapolicyinstitute/2013/02/21/three-scenarios-for-the-diaoyusenkakaku-dispute/>

²⁶ Proposal by Masashi Nishihara, President of the Research Institute for Peace and Security (RIPS). See Masashi Nishimura, "Japan should stand firm in the Senkaku Islands dispute", *AJISS Commentary* 164, 6 November 2012, available online at http://www2.jiia.or.jp/en_commentary/201211/06-1.html

²⁷ "China eyeing contentious air defense zone in East China Sea: paper", *The Japan Times*, 10 November 2013, available online at <http://www.japantimes.co.jp/news/2013/11/10/national/china-eyeing-contentious-air-defense-zone-in-east-china-sea-paper/#.UowBr-KQMSo>

²⁸ Tetsuo Kotani, *The Senkaku Islands and the U.S. - Japan Alliance: Future Implications for the Asia-Pacific*, Project 2049 Institute, p. 8, available online at http://project2049.net/documents/senkaku_kotani.pdf