

# Historic Dimensions to the Senkaku Diaoyu Islands Territorial Dispute

BRETT HUYTON

*The Senkaku Islands dispute is a litmus test for the state of relations between Japan and China; with the dispute often coming to the fore at times when relations are in decline. The state of the dispute itself is subject to a wide variety of contributing factors including historic claims. This article will briefly examine the dangers inherent in the dispute and then focus on the historic claims of both parties. The disputed claims of the two parties demonstrate the complexity of verifying sovereignty when conflicting historic claims are involved.*

KEY WORDS: Senkaku Diaoyu Islands, Japan/China, Historical dimensions of Senkaku Diaoyu dispute, US – Japan Security Treaty of Mutual Cooperation

## Introduction

The heightened international tension relating to the People's Republic of China's claims in the South China Sea are well known, but China is involved in another territorial dispute with the potential to cause a major international confrontation. This dispute is with Japan over sovereignty of the tiny, remote islands known as Senkaku by Japan and Diaoyu by the People's Republic of China (PRC). Although receiving less attention this dispute also poses dangers for international peace and security; involving as it does the United States, Japan, Taiwan, and China.

Since 2012 when Japan nationalised the Senkaku Islands, intermittent confrontation and a war of words has continued. At the UN General Assembly in September 2012 the Chinese Foreign Minister claimed that 'Japan stole the Diaoyu Islands ... that China has sovereignty over them' while Japan's deputy ambassador responded, 'there exists no evidence that the islands belong to China' (cited in Sato 2019: 61). In 2020 the Japanese Defence White paper claimed that China has 'relentlessly continued attempts to change the status quo by coercion in the sea area around the Senkaku Islands' (Mochizuki and Han 2020).

Potentially dangerous confrontations have continued to occur. The PRC has maintained a semi-constant presence in the contiguous zone of the islands with occasional forays into what are currently acknowledged internationally as Japan's territorial waters and contiguous zone resulting in clashes between Japanese and Chinese Coastguard vessels and fishing boats. In 2013 the PRC created an air defence identification zone requiring commercial aircraft to notify Beijing of their presence thus overlapping with Japan's declared zone (SCMP 2019).

Chinese fishing and naval vessels also venture beyond the contiguous zone into the territorial waters around the islands. Chinese military aircraft enter the airspace above (Mullen and Wakatsuki 2013).

The danger to international peace and security lies in the potential for escalation into physical confrontation between the two major powers in the region as China seeks to assert its position as an emerging superpower while the United States seeks to maintain its dominance (see McDevitt 2014). Although the US claims to be neutral about the final allocation of sovereignty it has consistently opposed any unilateral action to change the status of the Islands and has gone beyond words, undertaking military exercises, and supplying advanced platforms and weapons to Japan for its Amphibious Rapid Deployment Brigade.

Recent US administrations have publicly committed to support Japan against any unilateral action from China. In 2014 President Obama stated that the 1960 *US – Japan Security Treaty of Mutual Cooperation* covers the Senkaku Islands, and that their status should not be changed unilaterally, a position reiterated by the Trump administration. Shortly after his inauguration President Biden assured Prime Minister Suga of 'the United States unwavering commitment to the defence of Japan under Article 5 of our security treaty, which includes the Senkaku Islands' (Manyin 2021: 9-10).

## The Senkaku Diaoyu Islands

The Senkaku Islands are a cluster of five uninhabited islands and three rocks located in the East China Sea. They are located 120 nautical miles (nm) from Taiwan,

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120nm from the Japanese Ryukyu Islands and 200nms from the Chinese mainland (Guoxing 1995: 8-12). This relatively close geographic proximity has exacerbated the potential for territorial disputes. It also allows naval and air forces from the three respective jurisdictions and civilian activists to quickly respond to acts by the other claimants: increasing the potential for clashes.

The average depth of the seabed surrounding the islands is less than 200 metres creating optimum conditions for economic development of oil and gas fields and commercial fishing. The exception to this overall depth is the Okinawa Trough, which divides the Japanese continental shelf from the Chinese/Taiwanese continental shelf. This geological division of the Senkaku Islands from the Japanese continental shelf can be seen to support China's claims over the island group, but Japanese sovereignty over the Ryukyu Islands, also separated geologically, is not disputed. Arguments based on geographic divisions work in favour and against both the PRC and Japan's claims equally. By geographic distance and separation Taiwan has the strongest claim to the islands. Its territory is not separated by any major geological features such as oceanic troughs, but Taiwan is itself claimed by China, so Taiwan's claims are also advanced by China as justification for their claim.

The largest of the islands in the group is known as Uotsuri-Shima in Japanese or Diaoyu Dao in Chinese and holds a total area size of 4.3km<sup>2</sup> and an elevation of 383 metres. The smallest rock in the group is 800m<sup>2</sup> and barely breaks sea-level. The geographic distinctions between an island and a rock are of importance in this dispute as they determine the legal rights bestowed upon the government that holds sovereignty.

#### **United Nations Convention on the Law of the Sea**

Sovereignty over the Senkaku Islands is important to determining maritime control in the East China Sea and explains why Japan and China are seeking to validate their de jure ownership. *The United Nations Convention on the Law of the Sea* (UNCLOS) grants territorial rights to islands, which are defined as:

a naturally formed area of land, surrounded by water, which is above water at high tide...the territorial sea, the contiguous zone, the exclusive economic zone, and the continental shelf of an island are determined in accordance with the provisions of this Convention ...Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.

The importance of sovereignty over the islands then pertains to the potentially lucrative Exclusive Economic Zone (EEZ) which grants the holder rights over all the economic resources within this 200nm zone (Articles 55-75). The right to control the continental shelf and utilise its oil and gas reserves includes the right to lay submarine cables and pipelines (Articles 76-85).

Thus, at minimum the owner of the Senkaku Islands is granted the rights to the territorial sea and contiguous zone including the right to the highly valuable EEZ and strategically valuable territorial control and jurisdiction. This explains just why this cluster of barely inhabitable islands and uninhabitable rocks are so heavily sought after. Sovereignty grants economic and jurisdictional control over 20,750 square nautical miles of the East China Sea (Lee 2002: 69-70), its fish stocks, and oil and gas deposits (Valencia 2007: 128). Thus, an understanding of the physical geography of the Senkaku Islands, and the resultant international legal implications, is crucial to fully understand the complexities of this long-running dispute.

#### **Historic Background to the Senkaku Diaoyu Dispute**

The Senkaku Islands have been the subject of a long and contested history. China dates its current claims back to the thirteenth century. The PRC and the Republic of China (now also known as Taiwan) both support this stance as part of their overlapping claims that the islands came into China's possession when they were discovered and named around the time of the Ming Dynasty, 1368-1644 (Berg 2014: 31-32).

The earliest reference to the Diaoyu islands appears in the ancient geography book *Yudi Jisheng* dating back to 1221. Although the folklore story within *Yudi Jisheng* that pertains to the name Diaoyu is contested as being Ryukyuan in origin, with the Ryukyuan having a greater naval tradition in that time than the Chinese. Berg (2014) argues that this book is '... largely ignored by both Chinese and Western scholars ...' due to the doubt about whether its original existence can be authenticated (31-32). Whether or not this original reference in *Yudi Jisheng* can be authenticated, the fact remains that later references to the Diaoyu Islands within recreations of the *Yudi Jisheng* still predate the emergence of Japan's claims over the islands. This is used to build a case to support China and Taiwan's claims to precedence of sovereignty, or at least for recognition and use of the islands.

Another set of historic documents in which the islands were consistently referred to were diplomatic missives between China and the then-independent Ryukyu Kingdom, which mainly occupied the Ryukyu Island chain; a diplomatic relationship which continued from around 1368 through to the annexation of the Ryukyu kingdom

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by the Imperial Japanese five hundred years later. During this period, it is claimed that the Ryukyu kingdom became a tributary state to China resulting in a continuous flow of communication and tribute between the two.

Wei Su prominently refers to China's diplomatic missions to the Ryukyu kingdom from this period. Included within these missives are references to the Diaoyu Islands, which are claimed to support China's argument of its tradition of ownership of the islands (Wei Su 2005: 48-49). According to Berg much more prominent than the Chinese diplomatic missions to the Ryukyu kingdom were the Ryukyu kingdom's diplomatic missions to China (Berg 2014: 32-33). Whilst China conducted an estimated 24 missions to Ryukyu, the Ryukyu kingdom dispatched over 384 in the same period.

China claims that the Senkaku Islands were included in part of its coastal defence lines during the sixteenth century (Wei Su 2005: 48-49). Records from this time show that the Senkaku Islands were one of the five naval patrol areas for the Fuzhou Prefecture, with a map from 1561 recording three of the islands with their Chinese names. Adding to the complexity of these claims however is the fact that Taiwan had yet to be occupied by China, just as the Ryukyu kingdom had yet to be occupied by Japan. Thus, as late as the early seventeenth century pre-Chinese Taiwan and the independent Ryukyu kingdom, both of which were geographically close to the Senkaku Islands, were independent from the present-day claimants. Indeed, the precedence-of-use that China, Taiwan and Japan have all attempted to demonstrate to strengthen their claims on the Senkaku Islands are reliant on the use of the area for fishing by peoples and territory that none of the claimants owned until after the early seventeenth century. Complicating matters further are claims that the Ryukyu Kingdom paid tribute to both Japan and China (Ling and Nakamura 2019: 551).

Japan's place in the dispute, which has led to their current occupation of the Senkaku Islands, emerged in the late nineteenth century. At the time the first Sino-Japanese War had reached a close with Japan undoubtedly the dominant power in the region. *The Treaty of Shimonoseki* had brought about the cessation of hostilities between the two at a tremendous cost to China. Article 2 granted Japan complete control over Formosa (Taiwan) as well as the Province of Fengtien and the Pescadores Islands. In addition, Article 4 demanded that China pay Japan war indemnities, with the remaining articles forcing upon China a variety of trade and access conditions which worked greatly in favour of Japan's economic interests (*The Treaty of Shimonoseki 1896*).

Before the close of hostilities in 1895, however, Japan had incorporated the islands into their Okinawan Province, which by then encompassed the previously independent Ryukyu kingdom. The official Japanese declaration of sovereignty over the Senkaku Islands states that after surveying the islands for a decade they were found to be completely devoid of human life and use. In view of this, the Japanese claimed the islands under the principle of terra nullius (an area which is not subject to the control of any state). This position of the Japanese government is proclaimed within *The Basic View on the Sovereignty over the Senkaku Islands 2013*, Japan's Ministry of Foreign Affairs' official position document on the dispute, which states:

Historically, the Senkaku Islands have continuously been an integral part of the Nansei Shoto Islands, which are the territory of Japan... it was confirmed that the Senkaku Islands had been uninhabited and showed no trace of having been under the control of the Qing Dynasty of China. Based on this confirmation, the Government of Japan made a Cabinet Decision on 14 January 1895 to erect a marker on the Islands to formally incorporate the Senkaku Islands into the territory of Japan (Ministry of Foreign Affairs).

This clearly demonstrates the official stance currently held by the Japanese government on how they came to possess the islands. The Chinese and Taiwanese governments, and academics such as Wei Su who argue for those countries' respective claims, counter the official position of the Japanese government (Wei Su 2005: 48-49) and argue that China in fact ceded the islands to Japan under forceful coercion as part of the concessions within Article 2 of the *Treaty of Shimonoseki*. This argument insists that the Senkaku Islands were an integral part of the Province of Taiwan and were thus not incorporated by Japan separately, but rather seized as part of the First Sino-Japanese War.

This position that both China and Taiwan considered the Senkaku Islands to be part of the Province of Taiwan is contradicted by Japan's actions. Japan's incorporation of the Senkaku Islands, which they could simply have seized as part of Article 2 of the *Treaty of Shimonoseki*, demonstrates that Japan in fact believed that the islands were not part of Taiwan. Having been defeated in the First Sino-Japanese War, China was in no position to contend any Japanese occupation of a cluster of uninhabited rocks and islands, let alone the occupation of Taiwan (Valencia 2007: 151-152). The Japanese occupation of Taiwan, and control of the Senkaku Islands continued undisputed until the defeat of Imperial Japan at the end of World War II.

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With the close of World War II the Senkaku Islands, along with the Ryukyu Islands were occupied and under the administration of the United States Navy and Army. According to Article 3 of the *Treaty of San Francisco* 1951:

Japan will concur in any proposal of the United States to the United Nations to place under its trusteeship system, with the United States as the sole administering authority, Nansei Shoto south of 29° north latitude (including the Bonin Islands, Rosario Island and the Volcano Islands) and Parece Vela and Marcus Island. Pending the making of such a proposal and affirmative action thereon, the United States will have the right to exercise all and any powers of administration, legislation and jurisdiction over the territory and inhabitants of these islands, including their territorial waters.

What Article 3 effectively served to create was the United States Civil Administration of the Ryukyu Islands (USCAR), which lasted from 1950 through to 1970. Throughout this period the United States had full administrative rights of the Ryukyu Islands group, including the Senkaku Islands. This inclusion of the Senkaku Islands within the USCAR, albeit unnamed within Article 3, contributed to the current occupation and administration of the Senkaku Islands by Japan.

Throughout this period of the USCAR the United States sought to address any concerns held by the Japanese that the United States would seek to permanently occupy the areas administered by the USCAR. The United States was consistent in referring to Japan's 'residual sovereignty' over the occupied territory (Drifte 2015: 186). This act of placing the Senkaku Islands under the USCAR through Article 3 was unlikely to have been part of an intentional plan to give Japan control of what China sees as occupied territory, but rather a lack of understanding of the contested sovereignty over the Senkaku Islands.

Drifte (2015: 186) argues that *The Treaty of San Francisco* unintentionally laid the foundations for the three territorial disputes in which Japan is a claimant; the Kurile Islands dispute with Russia that has served as a roadblock to the formal signing of a peace agreement between Russia and Japan, the Liancourt Rocks dispute between South Korea and Japan, as well as the Senkaku Islands dispute.

Part of China and Taiwan's collective grievances were exacerbated by Article 2 and Article 3 of the *Treaty of San Francisco*, which neither was party to. The inclusion of the Senkaku Islands within Article 3 (although not specifically named), through placing them under the USCAR, created the situation in which the *Treaty of San Francisco* laid the foundations for the contemporary Senkaku dispute. A key

component of China's claims is that the Senkaku Islands were part of the Province of Taiwan when it was ceded to Japan as part of Article 2 of the *Treaty of Shimonseki*.

### **Beginning of the Present Phase of the Senkaku Dispute**

The present phase of the dispute surrounding the Senkaku Islands can be traced to the proclamation of both the People's Republic of China and the Republic of China's (Taiwan's) claims during the 1970s (Wei Su 2005). During this time first the ROC and then the PRC declared their claims to sovereignty over the islands. These claims followed closely on the publication of the UN Economic Commission for Asia and the Far East Report (1969) that found 'substantial energy deposits' in the seabed between Taiwan and Japan off the Senkaku Diaoyu Islands.

The motivation for the emergence of these claims some argue was the discovery of seabed oil deposits that could potentially contain up to the equivalent of 100 billion barrels. Although these oil resources have yet to materialise fully the contemporary financial value of this oil was estimated initially at between US\$5-14 trillion. This means that even with relatively low oil prices the value of the deposits would enormously bolster any of the claimants' economic fortunes. As well as potential oil and gas reserves were the fishery resources important to Japan and desirable to China to feed their growing population.

Sovereignty over the Senkaku Islands would grant economic and jurisdictional control over 20,700 square nautical miles of the East China Sea. This area of control through the EEZ and the rights to oil and gas exploration and exploitation in the continental shelf under Articles 76-85 of the UNCLOS would thus grant the owner of the Senkaku Islands an enormous economic windfall. In 1969 the United Nations Economic Commission for Asia and the Far East found 'substantial energy deposits' in the seabed between Taiwan and Japan in the waters around the Senkaku/Diaoyu Islands. This was identified as one catalyst for the claims to sovereignty over the islands made by China and Taiwan in 1970.

However, the dispute was based on more than just economic resources. Wider complexities of contemporary security issues relating to territorial control, the historic context and the status of Taiwan remain influences in the dispute and the emergence of China and Taiwan's claims. Sato identifies four reasons for China's offensive actions over the Senkaku Islands; China's demands for natural resources, historic issues with Japan, as part of internal power struggles, and as a tool for China's national integration. An internal power struggle within the CCP being behind the large invasion of armed Chinese

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fishing boats into the waters of the Senkaku Islands in 1978 (Sato 2019: 50-82).

One sometimes ignored factor in the timing of China and Taiwan's declaration of their claims was the role of the United States' administration of the Senkaku Islands. Prior to the Okinawa Reversion Agreement coming into effect in 1972 the Senkaku Islands were administered by the United States as part of the Civil Administration of the Ryukyu Islands (USCAR) (Danner 2014: 28; Fravel 2010). Thus if China or Taiwan sought to pursue their claims to the territory prior to the Okinawa Reversion they would have had to contest the status of the islands against the United States' administration.

For Taiwan to create such a dispute with its primary benefactor and military ally, the United States, would have left it in a tenuous position. The Chinese Civil War had ended 20 years earlier, but the People's Republic of China's declared intent to reunite what they see as a wayward province remained; thus presenting an existential threat to Taiwan in the event of a withdrawal of US support.

The normalisation of relations between China and Japan in 1972, and the cutting of diplomatic ties between Taiwan and Japan, resulted in Taiwan being free to dispute Japan's administration of the Senkaku Islands. For China though, as it emerged onto the global stage after decades of internal focus, this presented new avenues through which they might pursue their claims, rather than through a direct confrontation with the United States at the height of its Cold War superpower status (Sun 2007: 790-792). Thus, with the reversion of control of the Senkaku Islands, alongside the Ryukyu Islands, to Japan from the United States, the opportunity had arisen for both Taiwan and China to contest Japan's control.

Further, the shift of international recognition to the PRC as the government of China during this time from the Republic of China allowed the PRC to contest Japan's control of the Senkaku Islands with Japan not the United States. In 1972, the same year as administration of the Senkaku Islands was returned to Japan, the Republic of China was expelled from the United Nations and People's Republic of China admitted. The United States presented its position, in response to the proclamation of China's claims to the islands was that the dispute should be resolved by the claimants (Danner 2014: 187). This position was put forward by a US State Department legal advisor, Robert Starr:

The United States believes that a return of administrative rights over those islands to Japan, from which the rights were received, can in no way

prejudice any underlying claims. The United States cannot add to the legal rights Japan possessed before it transferred administration of the islands to us, nor can the United States, by giving back what it received, diminish the rights of other claimants. The United States has made no claim to the Senkaku islands and considers that any conflicting claims to the islands are a matter for resolution by the parties concerned (Manyin 2013).

This statement explains the legal position the United States had taken at the emergence of the dispute. It also helps to provide a wider understanding of the difficult position that the United States was placed in due to a failure to take existing territorial disputes into account within the Treaty of San Francisco. It also serves to demonstrate the overarching complexities when attempting to determine the status of the Senkaku Diaoyu Islands; especially when misunderstandings or ignorance of those complexities can influence treaties and agreements and effectively create legitimacy for a country's claims unintentionally.

### Conclusion

The geographic position and features of the Senkaku group grant legal and territorial rights over the East China Sea that belie the physical size of the group's five islands and three rocks. The rights granted with sovereignty over the islands by the United Nations Convention on the Law of the Sea have important implications for territorial control of the East China Sea and the right to exclusively exploit the economic resources of a large swathe of the East China Seas and seabed including oil and gas resources and fish stocks.

The historic claims to control, ownership and usage of the islands can be used to demonstrate a precedence of use to support a country's claims to sovereignty. The lack of immutable evidence and the reliance of historic claims related to previously independent populations who have been absorbed by the modern states creates doubt on the credibility of some of these historic claims. An understanding of Japan's possession of the islands, whether through annexation in war as China asserts or through incorporation under *terra nullius* as Japan asserts, demonstrates the contested facts that underlie the dispute. The post-World War II period had the most influence over the current state of the dispute. Though these historic claims are alluded to in the contested claims the period of the United States' administration and the subsequent return to Japan's administration have been most influential. The People's Republic of China's emergence onto the international political stage dramatically changed the political landscape of the East China Sea, which is now another potential site for great power confrontation.

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## Author

Brett Huyton has a keen interest in politics and international relations. The research for this article was originally undertaken in preparation for his thesis at the University of the Sunshine Coast.

### you take it

the road's offer  
and in the days before you go  
the ground under you stirs

*distance intrudes*  
*looking lengthens*  
*ranges soften*

the mind's grown wheels  
you're filling up with country  
running your hand over its folds and river-nerves

*distance intrudes*  
*looking lengthens*  
*ranges soften*

the ground under you stirs  
and the solids of your life shiver  
in anticipation

*distance intrudes*  
*looking lengthens*  
*ranges soften*

HARRY LAING