



Maritime Disputes in Asia: Finding Peaceful Solutions

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On December 3, 2012, the NCAFP sponsored a panel discussion on the disputed islands in the South China Sea, the East China Sea and the waters between Japan and Korea (which Japan calls the Japan Sea and Korea calls the East Sea.)

The panelists were Columbia University Professor Gerald L. Curtis; Dr. Edward I-Hsin Chen of Tamkang University in Taipei; Dr. Yann-huei Song, Academic Sinica, Taipei; and Evans J.R. Revere, former Principal Deputy Assistant Secretary of State for East Asian and Pacific Affairs.

The Situation

Disputes over islands and waters in East and Southeast Asia have given rise to growing tensions among many of the key actors in the region. In one troubling example, bilateral relations between China and Japan sharply deteriorated this year as a result of their high-profile dispute over the Diaoyu/Senkaku islands. The Japanese government's purchase of the islands, intended to maintain the status quo and avoid an escalation of tensions, was met with a strong and hostile response from China that included large-scale anti-Japanese demonstrations in more than a hundred Chinese cities.

There have also been tensions between America's two key allies in East Asia – Japan and the Republic of Korea (ROK) – over the Dokdo/Takeshima islands. This contributed to the Korean decision to postpone the signing of a landmark new agreement on military intelligence sharing between the two.

At the same time, disputes escalated between China and several Southeast Asian countries, especially Vietnam and the Philippines, over conflicting claims to a number of islands in the South China Sea, particularly the Spratlys and the Paracels.

Contributing to regional tensions over territorial matters has been a rising tide of nationalism that has intensified the emotional content of some of these disputes and made it difficult for any of the disputing parties to be seen as offering concessions. At the same

time, election campaigns in the ROK and Japan and a change of leadership in China have also prompted each country to harden its position on territorial disputes in order to avoid being seen as too “soft.”

To further complicate matters, China’s southernmost province of Hainan recently announced new rules which would allow for interception of “foreign ships” that “illegally enter” Chinese waters. This step exacerbated an already delicate situation by suggesting that a Chinese province had been given authority to take a potentially confrontational action towards a foreign power without seeking Beijing’s permission.

These maritime disputes have the potential to disrupt peace and stability in Asia, with grave implications even beyond the region. As the panelists pointed out, East Asia is home to the world’s second and third largest economies (China and Japan), to six or seven of the world’s largest militaries, including a substantial U.S. military presence, and to some of the world’s most vital shipping lanes in a region that produces over one third of world exports. An escalation of tensions over sovereignty claims could therefore disrupt global shipping and damage the regional and global economy.

Any developments that could lead to increased regional tensions, or even conflict, are of immediate and significant concern to the United States. The United States is an Asia-Pacific nation whose past has been shaped by regional developments and whose future is deeply wedded to the region. Some of America’s strongest alliances and partnerships are with countries in the region, and many of our largest military bases are in the region.

The rebalancing or “pivot” being carried out by the Obama Administration is in large part a reflection of America’s large and growing stake in regional peace and stability. So while Washington may be careful not to take a position on the various territorial disputes, it is by no means an uninterested party.

Complicating Factors

The panelists reviewed several factors affecting the various maritime issues in Asia, including the problems of strategic mistrust, historical resentment, competing nationalisms, China’s growing power, and the legacy of past unresolved or ambiguous territorial settlements. They also explored the role of security treaties and other defense arrangements in such disputes, and discussed the existing international standards governing territorial seas laid out by the United Nations Convention on Laws of the Sea (UNCLOS).

Strategic Mistrust

As Professor Curtis explained in his presentation, the Senkaku/Diaoyu island dispute between Japan and China is underlined by deep and mutual strategic mistrust. China, or at least a significant number of Chinese, believe that Japan is on the verge of a rightward political shift, is unrepentant for its actions in World War II, and is poised to play a much larger and potentially aggressive military role in the region. Japan, or at least a significant

number of Japanese, believe that China uses its educational system to heighten anti-Japanese sentiments among its people, uses its economic power to intimidate Japan, and seeks to replace the United States as the hegemonic power in Asia.

Regional History

The legacy of Japan's invasion and occupation of Korea and China during World War II is contributing to the current tensions over maritime disputes. As the panelists pointed out, the education system in most countries in the region teach World War II history as a victimization narrative. The Chinese, for example, teach a history that emphasizes victimization as the result of territorial breaches committed not just by the Japanese but by the invasion of Western powers in the 19th century. Thus, to the Chinese, the U.S. and other Western powers have a history of seeking to dominate China and to exploit its people, territory, and resources. The Japanese, for their part, are taught an abbreviated narrative of World War II that ignores war crimes and obscures historical enmities.

Security Treaties

World War II and its aftermath also resulted in the U.S. forging security treaties with Japan and the ROK, as well as the Taiwan Relations Act, which covers U.S. relations with Taiwan. Despite its security links to several regional disputants, the U.S. has taken great care to emphasize that it does not take positions on the several sovereignty issues being disputed in East Asia. In the case of the Japan-China dispute, however, the U.S. position is that the U.S.-Japan Treaty of Mutual Cooperation and Security covers all territories and areas administered by Japan, including the Senkaku/Diaoyu islands. While making clear that the Treaty's defense provisions would apply to the islands, Washington has also made clear that it takes no position on the sovereignty issue. China has been probing to see whether it can exploit this perceived ambiguity, while some on the Japanese right argue that U.S. refusal to support Japan's position on sovereignty weakens the credibility of the U.S. security commitment to Japan.

Nationalism

Perhaps because 2012 has been a year of political transition for most of the countries in the region – elections in Taiwan, the United States, the ROK and Japan, as well as the appointment of new leaders in China – there has been a spike in nationalist rhetoric throughout the region. In some cases, political parties and factions have seen an advantage in blaming domestic problems on external actors, and have sought to exploit territorial issues for internal gain. This has served the dual purpose of deflecting problems away from domestic concerns while exploiting a sense of national pride and patriotism.

Nationalism can, however, carry deadly consequences. In China, anti-Japanese street protests boiled over into attacks on Japanese factories in China and even into the tragic beating death of a Chinese citizen who happened to be driving near a protest site in a Japanese brand car.

UNCLOS Standards

Another complicating factor is the array of confusing international laws and norms which govern maritime territorial disputes. As one member of the audience—a former senior U.S. official with wide-ranging experience on law of the sea issues—pointed out, UNCLOS gives every nation both a 12-nautical-mile zone of sovereignty from its coast and an Exclusive Economic Zone (EEZ) that extends 200 nautical miles from the nation’s coast. These norms in themselves may be the reason that “every rock with three goats” can be subject to sovereignty claims, especially when those “rocks” are located in parts of the sea with valuable natural resources such as oil and gas reserves.

Increasing Chinese Assertiveness

Another complicating factor, in the eyes of some of the panelists, is the recent increase in Chinese assertiveness on territorial issues. For example, China has lately given greater attention to the so-called “nine dash line” that Kuomintang China drew up in the 1940s to demarcate China’s extensive territorial claims in the South China Sea. This line covers about 80% of the South China Sea, whose seabed is believed to be rich in oil and natural gas. China also recently promulgated new rules, which allow interceptions of ships in the South China Sea that “illegally” enter “Chinese waters.”

The China-Japan Dispute

The dispute between China and Japan is potentially the most consequential of the maritime disputes in Asia because it is a dispute between East Asia’s two largest powers, one of whom is a U.S. ally and the other a rising great power with whom the U.S. seeks to develop a cooperative partnership.

A stable and cooperative U.S.-Japan-China trilateral relationship is a prerequisite for a peaceful, stable and prosperous Asia.

Moreover, as already indicated, although the U.S. has not taken a position on the sovereignty dispute over the islands, it has made clear that the U.S.-Japan Security Treaty covers the disputed islands, since they are under Japan’s administrative control. Such a position implies that the U.S. would support Japan in any conflict with China over the islands.

Professor Curtis outlined Japan’s overall policy, which is to maintain the status quo, including allowing no new structures or inhabitants on the Senkakus. Japan appears eager to avoid any escalation of tensions with China over the islands. The official government position is that the Senkakus are Japanese territory and that therefore there is no dispute with China (and with Taiwan) to be negotiated. At the same time, besides assuring Beijing (and Taipei) that it will not build any structures on the islands or to allow people to live

there, Tokyo has also permitted Chinese fisherman to operate within the 200 mile EEZ around the islands, escorting them away when they enter within the 12-mile limit.

Last April, the controversial right-wing governor of Tokyo, Shintaro Ishihara, announced his intention to have the Tokyo metropolitan government purchase three of the islands owned by a private Japanese citizen and issued a public appeal for donations to a fund to help finance the purchase. The fund quickly attracted over 14 million dollars in contributions. Governor Ishihara also indicated his intention to build a harbor on one of the islands and have some kind of physical presence there. Japanese Prime Minister Yoshihiko Noda decided to preempt Ishihara's provocative move by having the central government itself purchase the islands, his purpose being to sustain the status quo that Ishihara seemed determined to upset. Purchasing the islands instead of leasing them, as it had been doing, meant no substantive change in the authority the Japanese government had over them. It expected China to recognize that Noda's purpose was to continue to observe the tacit understandings that exist with China.

China, however, angrily rejected the Japanese "nationalization" of the islands as a violation of long existing understandings and as an attempt to upset the status quo. After the purchase, protests erupted including mob attacks on Japanese factories. China has also been sending patrol boats into the waters around the Senkaku Islands on almost a daily basis since the Japanese decision to purchase the islands.

Ma Ying-jeou's East China Sea Peace Initiative

The two participants from Taiwan explained Taiwan President Ma Ying-jeou's East China Sea Peace Initiative (ECSPI). Taiwan maintains that it has sovereignty over the Senkaku Islands. Ma's plan is divided into two stages. First, all sides should negotiate territorial disputes through dialogue. Second, there should be an effort to jointly develop resources. The ECSPI places emphasis on establishing a code of conduct for the East China Sea, developing programs for joint conservation, management and extraction of natural resources, and some form of joint exercises to maintain peace and stability in disputed territories. The initiative envisages bilateral negotiations between Taiwan, Japan and China that could eventually be merged into one trilateral track.

Ways to Move Forward

Panelists concluded by discussing several ways to move forward toward peaceful resolution of territorial disputes.

One possibility is to submit the Senkaku/Diaoyu issue to the International Court of Justice (ICJ). The Noda Administration has sent strong signals to Beijing that if China were to propose ICJ adjudication that Japan would agree. Even the Restoration Party, formed by Governor Ishihara and Osaka Mayor Hashimoto, propose in their party platform that the case be submitted to the ICJ. Taking the case to the ICJ would mean that Japan was

relenting in its position that there is no dispute. Moreover, even if Japan were to change its position and offer to bring the issue to the ICJ, China may be unlikely to go along because its legal claim is weaker and dispute over the Senkakus. But there is no sign that China is interested in taking the issue to the ICJ.

Most panelists agreed that since there is no possibility of resolving these sovereignty issues in the near future, the goal should be to find ways to shelve them and prevent them from further adversely affecting regional relation.

Evans Revere proposed, from an American perspective, a set of principles or guidelines that might be followed as the various parties seek a solution to their differences and as the United States acts to preserve and protect its interests in the region.

The first of these principles would be a commitment by all parties to resolve differences solely through dialogue and diplomacy, including a possible agreement not to deploy military or combat forces in disputed areas.

A second principle would be agreement to respect and adhere to the freedom of navigation guidelines contained in UNCLOS.

Third, all parties should agree to establish a code of conduct governing maritime operations in or around disputed areas

Fourth, China should ensure that it speaks with one voice on territorial and maritime issues.

Fifth, since resource-related concerns are at the core of many of the region's disputes, the parties should seek an agreement on the joint exploration and development of such resources, with an eye towards trying to de-link this contentious issue from the broader question of sovereignty.

Sixth, rather than pressing its neighbors, China should seek to return to its earlier position of promoting joint development and leaving to future generations the thorny question of sovereignty.

Seventh, the United States should make clear its own stake in the peaceful resolution of regional disputes, and also stress its determination to live up to its defense and security commitments. Doing so would remind all parties that we take our commitment to peace – and to the support of our allies – very seriously.

Finally, while there are clear limits to what the United States can or should do in arbitrating or mediating regional disputes (especially since the U.S. is an ally or security partner to several disputing parties), the United States should nevertheless be prepared to use its good offices to encourage peaceful, diplomatic, and creative solutions and should seek to quietly suggest mechanisms that would help reduce regional tensions.

As the panel concluded, many of the panelists agreed on the need to establish a regional code of conduct, which would govern interactions between and among the

disputants. They also agreed that Track II, or unofficial, diplomacy could be a valuable mechanism in establishing such a code of conduct. ASEAN has made strides toward establishing such a code of conduct in the South China Sea, including by sponsoring Track II workshops.

There was also strong interest in the idea of putting off resolution of the territorial disputes until a future date, without prejudice to the parties' current positions. This approach could also usefully include an agreed mechanism to jointly develop resources found on or around the islands. Since access to fishing, mineral and other resources lies at the heart of many of the current disputes, such an agreement could effectively remove the central cause of ongoing disputes among many of the key actors. Such an approach might effectively de-link the sovereignty and resource development issues and serve as a basis for a win-win approach to dealing with these disputes in the years to come, leaving the sovereignty issue as something for future generations to resolve.