

# Understanding the Senkaku/Diaoyu Islands Dispute: Diplomatic, Legal, and Strategic Contexts

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## Understanding the Senkaku/Diaoyu Islands Dispute: Diplomatic, Legal, and Strategic Contexts

<https://www.e-ir.info/2022/06/23/understanding-the-senkaku-diaoyu-islands-dispute-diplomatic-legal-and-strategic-contexts/>

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**This is a preprint excerpt from *Asian Territorial and Maritime Disputes: A Critical Introduction*. You can download the book free of charge from E-International Relations.**

The Senkaku Islands, controlled by Japan, are also claimed by the People's Republic of China (PRC), which refers to them as the Diaoyu Dao, as well as the Republic of China (ROC) in Taiwan, which calls them the Diaoyutai Lieyu.[1] Japan's administrative control at present is facing a growing challenge from the PRC's Coast Guard and other naval assets. The tacit diplomatic stalemate, in which Beijing claims the islands but has neither brought an international legal case against Japan nor mounted a kinetic attempt to seize them that rises to the level of *casus belli*, while Tokyo is refraining from enhancing its administrative control yet denies the existence of a dispute altogether, has continued to drift into competitive efforts over control of the islands in the post-Cold War period. This chapter discusses the Senkaku/Diaoyu island dispute between Japan and China and analyses it using aspects of territorial and maritime sovereignty, international law, natural resource exploration, and the role of the United States, as well as the geopolitical implications of the same. The Chinese attempt to keep the United States on the sidelines as a neutral party outside the conflict, while Japan's lobbying of Washington attempts to clarify US commitment to the defense of the islands through the bilateral alliance. The Sino-US rivalry that has been growing since the administration of US President Barack Obama has favoured Japan's desire for rhetorical US support, but Japan has concurrently built its own maritime forces in order to balance against the increasingly assertive Chinese activities.

### A Diplomatic Context on the Question of Sovereignty

Sino-Japanese relations have been severely affected by bilateral disputes, which range from their respective interpretation of history to national positions on maritime and territorial conflicts. However, the dispute concerning sovereignty over the Senkaku Islands has, over the past few decades, accelerated geopolitical tensions in the East China Sea (ECS). Presently administered by Japan, the uninhabited islands of the Senkaku chain comprise five islets – Uotsuri Island, Kuba Island, Taisho Island, Kitakojima Island, and Minamikojima Island – and three rocks – Tobise Island, Okinokitaiwa Island, and Okinominamiiwa Island (Hamakawa 2007).[2] Located 190 nautical miles away from the southwest coast of Okinawa, the Senkaku/Diaoyu islands are in close proximity to China's east coast (200 nautical miles) and Taiwan's northwest coast (120 nautical miles) (Pedrozo 2016).

These islands lie on the key sea lines of communication in the ECS, but only became part of an intense Sino-Japanese maritime conflict in the late 1960s after surveys by the United Nations Economic Commission for Asia and the Far East announced that there may be massive oil and hydrocarbon reserves off the Senkaku Islands (Chansoria 2018). Subsequently, in 1970–1971, the PRC government claimed that the Diaoyu (Senkaku) Islands are historically part of Taiwan, which China also claims as its own territory, making the islands sovereign Chinese territory. Japan, meanwhile, cited legal assertions based in international law as the basis for its sovereignty over the Senkaku Islands, which it has enjoyed de facto control over since 1895 without any complaints from China. The official position of the PRC is that 'Diaoyu Dao is China's inherent territory in all historical, geographical and legal terms,' according to historical evidence of the islands being administered as part of Taiwan since the Ming and Qing dynasties (MOFA of PRC 2012). But Chinese historical assertions are largely based on historical evidence, mainly under three broad

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categories – the use and naming of the islands by China, the jurisdiction of the islands during the Ming dynasty, and maps from the era illustrating the islands as Chinese territory.

To support its claims, Beijing makes reference to records from the Ming and Qing dynasties, including reports like Chen Kan's record, dating to 1534, of imperial Chinese envoys sent to Ryukyu for imperial-title conferring (*Shi Liu Qiu Lu*), which mentions the route from China to Ryukyu, passing by 'Diaoyu Dao, Huangmao Yu, Chi Yu' until the land of Ryukyu marked by Gumi Mountain (today's Kume Island). The Chinese claims hold that 'Diaoyu Dao and Chiwei Yu belong to China and Kume Island belongs to Ryukyu, and that the separating line lies in Hei Shui Gou (today's Okinawa Trough) between Chiwei Yu and Kume Island' (People's Daily 2012). The waters surrounding the Senkaku Islands were frequented by Chinese fishermen during that era. Furthermore, in published maps like Hu Zongxian's 1561 *An Illustrated Compendium on Maritime Security (Chou Hai Tu Bian)* China has stated that the Diaoyu Islands are illustrated in the Map of Coastal Mountains and Sands (*Yan Hai Shan Sha Tu*) and the foundation of a coastal defense zone by the Ming dynasty in the decade of the 1560s was a response to threats from Japanese pirates, which China claims included the Diaoyu Islands (Hamakawa 2007; MOFA of PRC 2012). The Qing court, according to the PRC government, placed the Diaoyu Islands under Taiwanese jurisdiction (as mentioned in *A Tour of Duty in the Taiwan Strait or Tai Hai Shi Cha Lu*) and Chen Shoqui's 1871 Volume 86 of *Recompiled General Annals of Fujian (Chong Zuan Fu Jian Tong Zhi)*, held Diaoyu Dao among strategic coastal defense zones under the jurisdiction of Gamalan (present Yilan County) in Taiwan (Kerrigan 2012, 454–455). China has also referenced maps by foreigners such as the Japanese writer Hayashi Shihei in 1785, French cartographer Pierre Lapie in 1809 and the British Royal Navy in 1877, which all coloured the Diaoyu islands the same as Taiwan (MOFA of PRC 2012).

While Japan has not raised any objections to the Chinese naming of the islands centuries earlier, it has cited international law, which dictates that discovery of an island or geographical closeness are not sufficient conditions for asserting territorial sovereignty (Okinawa Peace Assistance Center 2016). Japan has also questioned the validity of maps such as Hayashi Shihei's 1785 *Illustrated Outline of the Three Countries* for lack of reason to believe that the author's intention was to draw the recognized territories of the era, since Taiwan on that map is inaccurately shown less than half the size of Okinawa's principal island (Hamakawa 2007). Tokyo considers these maps to be insufficient evidence, contending that the maps published during the era do not state that the Senkaku Islands to the west of Kume Island were affiliated with the Ming or Qing dynasties of China, and that their mere presence on a map does not instate them as Chinese territory (MOFA of Japan 2014). In a speech by then-Japanese Prime Minister Yoshihiko Noda in 2012, the Japanese stance was clarified: that the Senkaku Islands 'are clearly an inherent territory of Japan, in light of historical facts and based upon international law' (MOFA of Japan 2014; Noda 2012). Moreover, Japan denies any 'issue of territorial sovereignty to be resolved' in relation to the Senkaku Islands (MOFA of Japan 2016).

The Japanese Government, after incorporating the Ryukyu Islands into Okinawa Prefecture, placed the Senkaku Islands in the same prefecture after 1885 surveys (conducted according to the established methods of duly acquiring territorial sovereignty under international law) which showed the islands as *terra nullius*, i.e., uninhabited with no sign of being under control of any state (MOFA of Japan 2014). Japan has provided documents to argue that, indeed, the PRC recognised the Senkaku Islands as part of Japanese territory in the 1950s and 1960s, such as in a 1953 issue of the China's People's Daily (*Renmin Ribao*), which reports on the populace of the Ryukyu Islands (which includes the Senkaku/Diaoyu Islands) battling the US occupation (People's Daily 1953). This position is further evidenced by Beijing's silence on America's use of the Senkaku Islands (Taisho Island and Kuba Island) for firing drills, as well as a Chinese map publisher's atlas in 1958 illustrating the islands as the 'Senkaku Group of Islands' under Okinawa (MOFA of Japan 2010; Okinawa Peace Assistance Center 2016; Sakamoto 2016).

From the perspective of international law and mutual agreements, China claims it was unfairly forced to cede the islands of Formosa, Pescadores, and other islands under the Treaty of Shimonoseki in April 1895, and hence Japan had renounced all claim and authority over those territories including the Diaoyu Islands under the 1952 Sino-Japanese Peace Treaty (People's Daily 2012).[3] Japan, on the other hand has pointed out the lack of evidence in the treaty or its Article 2 regarding inclusion of Senkaku Islands in the ceded territories (Treaty of Peace 1895), since the Japanese Cabinet's decision to incorporate the Senkaku Islands into Okinawa Prefecture had been taken in January 1895, before the signing of the Treaty of Shimonoseki (MOFA of Japan 2014). Moreover, since Article 2 of

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the 1951 San Francisco Peace Treaty does not discuss sovereignty over the Senkaku Islands, Japan claims rights over those territories in the East China Sea (United Nations 1952). However, since Article 3 of the Treaty of San Francisco places the Senkaku Islands under US administration as part of the Nansei Shoto Islands, administrative rights over all these islands only reverted back to Japan after the signing of the 17 June 1971 Agreement Between Japan and the United States of America Concerning the Ryukyu Islands and the Daito Islands (Agreement Between Japan and the United States of America 1971; United Nations 1952). Meanwhile, China never asserted sovereignty over these islands until 30 December 1971, after discovery of petrochemical reserves, as revealed in a declassified US intelligence report which concludes that 'the Japanese claim to sovereignty over the Senkakus is strong, and the burden of proof of ownership would seem to fall on the Chinese' (Central Intelligence Agency 1971; MOFA of Japan 2013a; People's Daily 2012). Beijing deems Tokyo's arguments invalid and the 1971 treaty illegal, and claims that the United States 'arbitrarily expanded the scope of trusteeship' to include the Diaoyu islands (MOFA of PRC 2012).

Inactive ownership of the main island of the Senkakus in private hands has helped the Chinese and Japanese governments keep the issue low-profile, as long as that was what they both wanted. After the Meiji Government had allowed the placement of national landmarks on the Senkaku Islands in 1894 and incorporated them into Okinawa in 1895, the islands were leased to Japanese entrepreneur Tatsushiro Koga for his bonito fish business, which shut down three years later, and in 1978, the islands were sold to the Kurihara family (Hiraoka 2005). After China developed an interest in acquiring the islands, Beijing started testing Japanese resolve by sending quasi-private fishermen there to challenge Japanese control of the waters surrounding the islands. After about 100 Chinese fishing vessels congregated close to the Senkaku Islands, a Japanese nationalist group erected a lighthouse on Uotsuri island, followed by another lighthouse in 1996, which was protested by China and the ROC by raising their flags on the island. Japan responded with a diplomatic protest and removal of the planted flags by its Coast Guard. In 2002, the Japanese government leased the privately held Senkaku Islands, in order to enforce its ban on private landing (Japanese or foreign) on the islands in its effort to keep bilateral diplomacy under government control. Following a collision between a Chinese fishing trawler and two Japanese Coast Guard patrol boats inside the territorial waters of the Senkaku Islands in September 2010, the Japanese government under Prime Minister Yoshihiko Noda decided to nationalize the islands by purchasing them from the Kurihara family in September 2012.[4]

The 2012 announcement by the Japanese government to nationalize the Senkaku Islands incited violent protests in China outside Japanese diplomatic missions (Lee and Ming 2012). China's then-Premier Wen Jiabao stated that 'the Diaoyu Islands are an inalienable part of China's territory, and the Chinese government and its people will absolutely make no concession on issues concerning its sovereignty and territorial integrity' (China Daily 2012), and China deployed two maritime surveillance ships close to the Senkaku Islands (Pedrozo 2016). The nationalization by the Japanese government effectively put an end to a tacit bilateral management of the dispute. Ship incursions into both the territorial and contiguous waters jumped after September 2012, and they have remained high ever since (See Figure 1). Moreover, since 2020, the number of hours that Chinese ships have remained in the territorial waters has significantly increased (Yomiuri 2021), making the Chinese presence more regular than it was during the 2012-2019 period.

## Broader Maritime Demarcation in the ECS

China and Japan have not demarcated their maritime boundary over the broad entirety of the East China Sea. The location of the Senkaku Islands within the overlapping zone between China's extended continental shelf claim and Japan's exclusive economic zone (EEZ) claim places a complex legal significance on the claims over the islands.

Article 121 (3) of the 1982 UN Convention on the Law of the Sea (UNCLOS) states that 'Rocks which cannot sustain human habitation or economic life of their own' cannot have an EEZ or a continental shelf (UNCLOS 1982, 66). While Japan argues that the Senkaku Islands are not just rocks and therefore do generate an EEZ and continental shelf, China has not stated an official position on the matter (Pedrozo 2016). Japan defines its boundary as the limit of its EEZ spreading to the west of the southern islands of Kyushu and Ryukyu, but not using the Senkaku Islands as the baseline of its EEZ claim. Meanwhile, China has defined its maritime boundary along its continental shelf's natural extension.

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Article 57 of UNCLOS states that the boundary of an EEZ may be up to 200 nautical miles from the baseline or to the median line in case of claims of overlap from opposing coasts. Article 76 defines the extended continental shelf, permissible to the lesser of a continental shelf's end or 350 nautical miles from the baseline (Sato 2020; UNCLOS 1982). Japan cites the median line as the maritime boundary, while China cites the limitation of the extended continental shelf as the boundary. This implies an overlap in Japan-China claims of approximately 81,000 square miles in the ECS covering the Senkaku/Diaoyu islands. After 1990, the issue became politically contentious.

## Natural Gas Deposits in Overlapping Claims

Several gas fields have been discovered along the edge of the continental shelf, and these fields have been a contentious issue between Japan and China. China has installed gas rigs close to (but outside) the Japan-claimed median line. From Beijing's perspective, the rigs are deep inside its own extended continental shelf boundary. In 2004, Japan and China held their first bilateral talks on the ECS disputes. Fearing that China would siphon off the gas in case the fields spread across the median line, Japan requested that China share its geological survey data. China refused, and instead dispatched guided-missile cruisers to the area in 2005. This led to a tense encounter with a Japanese patrol plane equipped with anti-ship missiles (Sato 2017).

Japan has continued to protest China's extraction operations on the contested Okinawa trough fields. Although in 2008, after the May summit meeting between then-Japanese Prime Minister Yasuo Fukuda and then-PRC President Hu Jintao, Tokyo and Beijing agreed to engage in joint gas exploration in four ECS gas fields. Japan had earlier refused China's proposals of joint resource exploration and development so close to the Senkaku/Diaoyu islands, previously made in 1990 and 2006 (Lee and Ming 2012), and it did so again in 2008. The 2008 agreement included one field on the Japanese side of the median line for joint exploration as well (Nikkei 2015). Further negotiations over details of the terms for joint development of the Shungyo/Chunxiao field dragged on, and while it halted production activities in other disputed regions, China began unilateral development of the Tianwaitian/Kashi gas field (Yoshida and Terada 2008). In 2010, after Japan's Coast Guard confronted a Chinese fishing trawler close to the Senkaku/Diaoyu islands, China cancelled joint energy exploration negotiations (France 24 2010). In a September 2011 White Paper titled *China's Peaceful Development*, the PRC government stated that it had 'made a constructive proposal to shelve disputes and seek joint development and done its utmost to uphold peace and stability in the South China Sea, East China Sea and the surrounding areas' (PRC 2011). That same year, Tokyo announced that the Japan Air Self-Defense Force (JASDF) had had to scramble fighter planes 156 times in response to Chinese military activity around the Ryukyu Islands (Japan Times 2012).

The dispute escalated in 2013 after China unilaterally established an air defense identification zone (ADIZ) over most of the ECS, compelling aircraft entering the zone to provide flight information to Chinese air traffic controllers (Sato 2013), which Japan diplomatically protested as a violation of international law and 'extremely dangerous as it could unilaterally escalate the situation surrounding the Senkaku Islands and lead to an unexpected occurrence of accidents in the airspace' (MOFA of Japan 2013b; Rinehart and Elias 2015). Under the Obama administration, then-Secretary of State John Kerry stated that the 'unilateral action constitutes an attempt to change the status quo in the East China Sea' (Kerry 2013). Washington issued a statement urging China to 'exercise caution and restraint,' and the then-Secretary of Defense Chuck Hagel affirmed that Article 5 of the US-Japan Mutual Defense Treaty 'applies to the Senkaku Islands' (White 2013).

Meanwhile, Japan continued to protest China's placement of exploration platforms in the ECS – they had increased to 16 by 2012 – near Japan's proposed median line separating the EEZs, with then-Chief Cabinet Secretary Yoshihide Suga stating 'it is extremely regrettable that China is proceeding with unilateral development in the area while the boundary between Japan and China in the East China Sea is not yet fixed, despite (our) repeated protests' (Sayers and Kotani 2019, 4; Japan Times 2016). In its defense White Papers between 2013 and 2015, Japan under the Prime Minister Shinzo Abe's administration had expressed need to increase the defense budget to JPY5.09 trillion (with a focus on strengthening protection of the Senkaku Islands) as well as a reinterpretation of Article 9 of the Japanese constitution that would enable collective self-defense by Japanese Self-Defense Forces (Ministry of Defense 2015).

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One comforting factor is that China and Japan have agreed not to enforce their respective fishery rules in the overlapping part of their maritime claims against the other's fishing boats. The ongoing lawfare within the territorial waters of the Senkaku Islands notwithstanding, the two countries have largely abided by this agreement in the broader ECS.

## Shifting Strategic Context

The dispute over the Senkaku/Diaoyu islands is being played out not only within the realms of history and law, but it is also entangled with the geopolitical strategic stances of Japan, China and the United States. Tokyo and Beijing have taken differing approaches to the Senkaku Islands dispute in the East China Sea, and the US position on this dispute has been seemingly oscillating. Japanese policymakers have lobbied successive US administrations for explicit support for Japan's claim to sovereignty, but Washington has consistently stopped short of doing so by simply recognizing Japan's ongoing administrative control, without releasing an explicit statement on the applicability of the bilateral defense treaty to the defense of these islands. The Sino-Japanese conflict over the Senkaku/Diaoyu islands had continued to intensify politically, with increased assertion of sovereignty from both sides. In the past, China and Japan have tacitly refrained from taking actions that the other may see as provocative and altering the status quo (Kaseda 2017).[5] Although the maritime and air-defense assertions in more recent years can also be viewed in terms of political rituals for domestic consumption within each country, the acts are increasingly regularized on both sides and more explicitly tied with logging the actual exercise of control. The grey-zone challenges posed by Chinese Coast Guard ships have been largely non-combative but grave enough to potentially spark conflict in the contested areas.[6] Japan fears that the Chinese Coast Guard ships may attempt to stop and board Japanese fishing vessels inside the territorial waters around the islands, presumably to register a record of law enforcement, but possibly also to draw out an overreaction from Japan in order to open a path to further escalation. Incidents of Chinese Coast Guard vessels chasing Japanese fishing boats in 2020 and 2021 have been met by a Japanese Coast Guard patrol boat placing itself between the Chinese ships and the fishing boat to deter any enforcement action by agents of the Chinese government (Japan Times 2020). In this context, the new Chinese Coast Guard Law of 2021 authorizing the country's patrol boats to fire upon foreign patrol boats and fishing vessels has elevated the risk of escalation and accidental clashes (Tan 2021).

Moreover, Chinese military vessels have been actively operating in the contiguous waters around the islands. For instance, in June 2016, a Jiangkai I-class frigate operating around the Senkaku Islands became the first People's Liberation Army Navy (PLAN) combatant vessel to enter the area, and in January 2018 Japan confirmed the submerged transit of a PLAN submarine around the Senkaku Islands, though Beijing did not acknowledge the latter (Ministry of Defense 2020). The lifting of the annual summer ban on the Chinese fleet's fishing in the East China Sea by PRC in August 2020 raised tensions over its consequences for Sino-Japanese Senkaku/Diaoyu islands dispute, and was followed by a joint naval exercise by US and Japanese naval forces in the East China Sea (Sato 2020). The United States continues to have concerns about the Senkaku/Diaoyu islands dispute owing to the US-Japan Treaty of Mutual Cooperation and Security of 1960, according to which aggressive provocations by Beijing could compel American defense actions under Article 5 of that treaty. Japan is increasingly aware that it must shoulder the primary responsibility for the defense of the Senkaku Islands against all possible scenarios including a grey-zone attack, such as landing and occupation of the islands by disguised and armed Chinese fishermen (Eldridge 2020). It is when China accomplishes an occupation of the uninhabited Senkaku Islands before US forces can respond that the alliance commitment of the United States will be tested.

In February 2021, the PRC enacted the China Coast Guard Law, authorizing the use of weapons, inconsistent with the international law including geographical zones where Coast Guard rules are applicable (Ministry of Defense 2021). Japan's defense White Paper confirmed the presence of China Coast Guard vessels around the Senkaku Islands between April and August 2020 for 111 consecutive days, totalling 333 days for 2020, during which cumulatively 1,161 Chinese Coast Guard vessels conducted activities in the East China Sea around the Senkaku Islands (Ministry of Defense 2021). UNCLOS Article 32 provides the right to conduct affairs without outside interference to warships and other government ships operated for non-commercial purposes. While a coastal state can demand that a foreign warship leave its territorial waters, international law is unclear over the degree of a coastal state's power to force a non-compliant warship to exit its territorial waters (UNCLOS 1982). Such legal ambiguity

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further complicates assessments of Beijing's actions in the East China Sea, while risking an escalation of the conflict. Moreover, with no efforts being made to diffuse the tensions or resolve the Senkaku/Diaoyu island claims, Japan would need to enhance its defensive capabilities, at least as long as China maintains such an active military and paramilitary presence in the East China Sea.

The growing tension in the East China Sea has kept pace with the disputes in the South China Sea to which it has been increasingly tied (Sato 2016). The rising US-China geopolitical rivalry and the efforts of the littoral states of the South China Sea to solicit stronger US commitments to regional maritime security have not only resembled the political dynamics in the East China Sea, but they have also activated Japanese maritime security assistance to Southeast Asian countries like the Philippines and Vietnam (Sato 2021). From the perspective of the Southeast Asian recipients of Japanese aid, Japan offered a means of diversified dependence in countries where domestic and external considerations render a hedging strategy more advantageous over bandwagoning on the United States (Tran and Sato 2018; Tran 2019).

## Conclusion

The ambiguities of the three parties – Japan, China, and the United States – that masked the potentially explosive bilateral territorial and maritime boundary disputes are crumbling in the post-Cold War era, and the tension has been rising at an accelerated pace since the Japanese nationalization of the Senkaku Islands.

While neither the Chinese nor Japanese historical narrative can establish a strong claim of control over the islands, which were uninhabited for much of history, the Chinese emphasis on its dynastic records and the Japanese emphasis on contemporary international law mean that the two parties are not on the same page. While Japan frames its claim within the growing emphasis by the United States and its partners in the Quadrilateral Security Dialogue on a rules-based order (Hatakeyama 2021), China resorts to a combination of maritime force buildup and lawfare. International law has been of limited use on questions of sovereignty over the islands and maritime demarcation.

Japan's fear of abandonment by the United States (Atanassova-Cornelis and Sato, 2018) in the event of a Chinese occupation of the Senkaku Islands has, to some degree, been eased by reassuring comments made by US officials, but it is Japan's own naval and Coast Guard buildup that will ultimately ensure both deterrence against China and a robust US commitment to the alliance. The perceived threat from China against the Senkaku Islands, not the US request for burden-sharing elsewhere, is indeed the most acceptable reason for the Japanese populace to support an increase in the defense budget.

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# Understanding the Senkaku/Diaoyu Islands Dispute: Diplomatic, Legal, and Strategic Contexts

Written by Yoichiro Sato and Astha Chadha

[4] Noda's decision was prompted by an earlier decision by the then-governor of the Tokyo Metropolitan government Shintaro Ishihara to start a donation campaign to raise funds to purchase the islands. Ishihara's conservative leanings led to speculation that more provocative assertions of the sovereignty claim through activist landings and construction of permanent structures would be forthcoming.

[5] The Chinese claim that then-Prime Minister Kakuei Tanaka admitted the existence of a dispute and agreed to shelve it during his visit to Beijing in 1972, however, this has not been substantiated by official diplomatic records of the Japanese government.

[6] Grey-zone, in international relations, refers to the threats or operations of state or non-state actors towards another state that exceed acceptable peacetime behavior but fall short of attack or war, thus not qualifying for a traditional military response.

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