

Sino-Japanese controversy over the Senkaku/Diaoyu/Diaoyutai Islands

An imminent flashpoint in the Indo-Pacific?

SUMMARY

The 50-year-old controversy between Japan, the People's Republic of China (PRC) and Taiwan over the sovereignty of a group of tiny, uninhabited islets and rocks in the East China Sea, administered by Japan and referred to as the Senkaku Islands in Japan, as the Diaoyu Islands in the PRC and as the Diaoyutai Islands in Taiwan has become a proxy battlefield in the growing Sino-US great power competition in the Indo-Pacific, against the backdrop of a widening Sino-Japanese power gap.

Since 1971, when the PRC and Taiwan laid claim to the contested islets and rocks for the first time, challenging Japan's position of having incorporated them into Japanese territory as *terra nullius* in 1895, possible avenues for settling the controversy have either been unsuccessful or remained unexplored. The PRC's meteoric economic rise and rapid military modernisation has gradually shifted the Sino-Japanese power balance, nourishing the PRC leadership's more assertive, albeit failed, push for Japan to recognise the existence of a dispute. Two incidents in the 2010s, perceived by the PRC as consolidating Japan's administrative control, led to the PRC starting to conduct grey-zone operations in the waters surrounding the islets and rocks with increasing frequency and duration, to reassert its claims and change the status quo in its favour without prompting a war.

The EU has held a position of principled neutrality as regards the legal title to the disputed islands. However, the risk of unintended incidents, miscalculation and military conflict arising from the unresolved dispute poses a challenge to regional peace and stability and to the EU's economic and security interests. The EU's 2021 Indo-Pacific strategy takes a cooperative and inclusive approach, to promote a rules-based international order and respect for international law. This may include a greater Indo-Pacific naval presence under the strategy's maritime security dimension.



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Sino-Japanese controversy in the East China Sea

The controversy between Japan on the one side and the People's Republic of China (PRC) and Taiwan on the other is about the legal title to eight tiny uninhabited islets and rocks located in the semi-enclosed East China Sea (see Map 1). These are known as the Senkaku Islands in Japan, as the Diaoyu Islands in the PRC and as the Diaoyutai Islands in Taiwan. However, the sovereignty dispute is inextricably linked with a dispute over the delimitation of the Sino-Japanese maritime boundary.

Although the contested islets and rocks are routinely [referred to](#) as 'islands', it is unclear whether they are islands that can generate the full range of maritime zones (Article 121(2) of the United Nations Convention on the Law of the Sea (UNCLOS)) or rocks, which can only generate a territorial sea of 12 nautical miles (nm) and a contiguous zone of 24 nm from their baselines (Article 121(3) UNCLOS).

Geographical location of the disputed islands

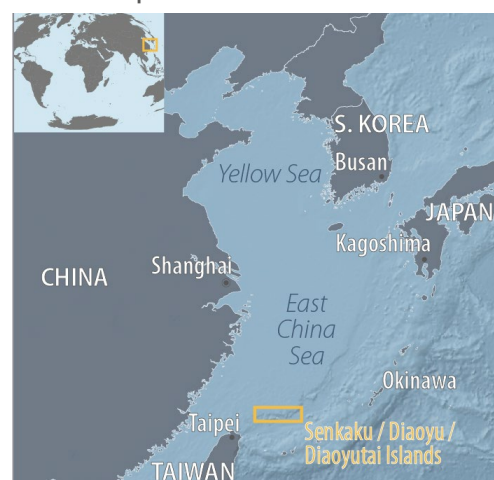
The contested islets and rocks are located at about 170 km northwest of Japan's Ishigaki Island/Okinawa Prefecture, at approximately 170 km northeast of Taiwan, and roughly 330 km off the coast of mainland China. They have a total area of 6.3 km² and [consist](#) of five volcanic islets and three barren rocky outcrops. Their geological characteristics are distinct from those located in the South China Sea. They are much less suited to being turned into artificial islands through land reclamation with a view to hosting military facilities and serving as military outposts to project power. Their strategic value may have been [overblown](#). The biggest islet, Uotsuri Island, is the only 'island', sustaining a Japanese population engaged in economic activity until the 1930s.

Conflicting sovereignty claims to the disputed islands

The PRC/Taiwan and Japan are at odds over which country first discovered the islands and effectively occupied them and whether they were part of territory ceded under the various peace treaties of the 19th and 20th centuries. The [PRC's narrative](#) is built on historic evidence substantiating its claim of having first discovered the islands in [1372](#) under the Ming Dynasty (1368-1644) and of the islands having been an 'inherent part of Chinese territory since ancient times'. The PRC asserts that the islands 'were placed under the jurisdiction of China's naval defences as affiliated islands of Taiwan'. While it is true that the Chinese Emperor routinely [dispatched](#) imperial envoys on investiture missions to tributary kingdoms in the region, including the [Ryukyu Kingdom](#), there does not seem to exist evidence of permanent Chinese occupation of the islands. [Researchers](#) have moreover pointed to Chinese historic maps displaying the islands as belonging to Japan.

The narrative defended by Japan, which currently has administrative control (which it calls 'valid control') over the islands, is based on acquisition of ownership through discovery and occupation. Japan has consistently denied that there is a [sovereignty dispute](#) in the first place. According to [Japan's official position](#), Tatsushiro Koga, a Japanese businessman, [explored](#) the islands in 1884 and leased four of them from 1896 after Japan had carried out [on-site field surveys](#), in line with procedures set out in international law. The surveys confirmed that the islands had never been inhabited and displayed no signs of having been under the control of China's Qing Dynasty (1644-1912). Japan incorporated the islands as *terra nullius* into Okinawa Prefecture in January 1895 – i.e. during the 1894-1895 Sino-Japanese War – just a few months prior to the [Treaty of Shimonoseki](#) signed by China and Japan in April 1895. Under the treaty, China – defeated in that war – ceded to Japan 'the island of Formosa (Taiwan), together with all islands appertaining or belonging to the said island of Formosa, as well as the Penghu Islands'. The eight islets and rocks are not mentioned.

Map 1 – East China Sea and location of the disputed islands



Source: EPRS.

The PRC, however, asserts that they were among the territory ceded to Japan, while Japan claims that they were already Japanese territory. The incorporation of the islets and rocks coinciding with the first Sino-Japanese war, the incorporation having been kept secret until 1952 and the Japanese government's long hesitation prior to the incorporation are among the reasons that have prompted some [scholars](#) to argue that Japan's claim under international law sits on 'shaky legal grounds'. [Other scholars](#), however, hold a different position.

The PRC and Taiwan have argued that the islands should have been returned to China under the 1943 [Cairo Declaration](#) and the 1945 [Potsdam Declaration](#), following Japan's unconditional surrender after World War II. Under the Potsdam Declaration 'Japanese sovereignty shall be limited to the islands of Honshu, Hokkaido, Kyushu, Shikoku and such minor islands as we determine'. The Japanese position, however, states that Article 3 of the 1951 [San Francisco Treaty of Peace with Japan provides](#) 'that the Nansei Shoto Islands be placed under the administrative authority of the US'. It also states that 'at that time, the Senkaku Islands were included in the Nansei Shoto Islands and thus remained as part of Japanese territory'. The contested islands were therefore not part of Taiwan or the Pescadores, which Japan renounced. Since the San Francisco Treaty was signed in the absence of the PRC and Taiwan, they do not feel bound by its terms and insist on the terms of the Cairo and Potsdam Declarations. Some researchers have [argued](#) that 'neither the Japanese nor Chinese version of the historical background is devoid of weak points'.

The US administered the islands from 1952 under the 1951 San Francisco Treaty of Peace before [returning](#) them to Japan in 1972 under the [Okinawa Reversion Agreement](#). The US maintained a neutral stance on the legal title of the islands. During this period neither the PRC nor Taiwan made objections. Only in 1971, the year the PRC took over Taiwan's UN seat, did the PRC and [Taiwan](#) for the first time make a formal claim to sovereignty of the islands. Several [commentators](#) have linked their sudden claims to a geological survey performed in 1968 under the UN Economic Commission for Asia and the Far East (ECAFE) which [suggested](#) that there was 'a high probability' that the continental shelf between Taiwan and Japan might be one of the world's 'most prolific oil reservoirs'.

Table 1 – Japanese position on ownership status of the disputed islands

	Ownership	Background	
Uotsuri	State	Leased to a Japanese citizen free of charge in 1896. Sold off to a Japanese citizen in 1932. (The ownership was then transferred between Japanese citizens.)	Rented out to the state on April 1, 2002. Acquired and owned by the state on September 11, 2012.
Kitakojima	State		
Minamikojima	State		
Kuba	Private	State-owned throughout	Part of the U.S. facilities and areas under the Japan-U.S. Status of Forces Agreement since 1972.
Taisho	State		
Okinokitaiva	State	State-owned throughout	
Okinominamiwa	State		
Tobise	State		

Source: Y. Nakauchi, [Issues Surrounding the Senkaku Islands and the Japan-China Relationship, 2015, p. 5.](#)

Conflicting views on the Sino-Japanese maritime boundary delimitation

Since the disputed islands are located in the overlap between the exclusive economic zones (EEZ) claimed by Japan and the PRC respectively (see Map 2), the Sino-Japanese sovereignty issue over the disputed islands is inextricably linked with the dispute over delimitation of the parties' maritime boundaries, for which they apply different methods. Under UNCLOS, coastal states, in addition to having the right to establish a territorial sea and a contiguous zone, are also entitled to claim an EEZ of up to 200 nm and may have a [continental shelf](#) that can extend up to 350 nm (or beyond) from the baseline. The latter two maritime zones grant sovereign rights and jurisdiction with respect, inter alia, to the exploration and exploitation of natural resources of the seabed and its subsoil. Since the distance between the coast of the PRC and the coast of Japan is less than 400 nm, the parties' claimed EEZs overlap and the PRC's [claim](#) to a [continental shelf](#) incorporating the disputed islands as a natural extension of its territory would push the parties' maritime boundary eastwards into

Japan's claimed EEZ, up to the [Okinawa Trough](#). In the event of overlapping EEZs or continental shelves between states with opposite or adjacent coasts, UNCLOS Articles 74 and 83 [task](#) the parties to the dispute with defining the boundary between their claimed maritime zones by mutual agreement. There are [various](#) methods of delimiting maritime boundaries but none of them is recognised as standard under UNCLOS. Courts therefore have large discretion to consider each case's unique circumstances.

One method applies the [equitable principle](#), of which the PRC is a proponent. This principle is embodied in Article 2 of the PRC's 1998 [Law](#) on the Exclusive Economic Zone and the Continental Shelf. It was key in the ruling of the International Court of Justice (ICJ) in the 1969 [North Sea Continental Shelf case](#) but has [lost](#) importance in recent case law. The method advocated by Japan is based on the [equidistance](#) (median-line) principle, enshrined in Articles 1 and 2 of [Japan's](#) 1996 [Law](#) on the Exclusive Economic Zone and the Continental Shelf. Japan argues that the equitable principle applied by the PRC is inconsistent with current [case law](#).

Unsuccessful and unexplored avenues to settle the disputes

Denying the existence of a sovereignty dispute versus seeking to shelve it

During the 1970s, the PRC chose a [policy](#) of shelving the sovereignty issue for future generations and deflecting bilateral tensions with Japan. This policy was aimed at delaying the resolution of the controversy in favour of normalising bilateral relations in 1972 and signing the 1978 [Treaty of Peace and Friendship](#). Subsequently, from 1978 to 2018, the PRC [received](#) official development assistance from Japan worth [US\\$32.4 billion](#). Since 1978, the PRC has pursued a policy of '[reform and opening up](#)' of its economy, requiring a stable external environment. As the economic and military capabilities of the PRC were underdeveloped, the PRC sought joint resource exploitation in the vicinity of the disputed islands with a view to keeping a foot in the door. Japan, by contrast, at that time the world's second largest economy, was in a strong economic and diplomatic position, allowing it to continue to deny the very existence of a dispute. Opportunities to solve the dispute were thus [missed](#) in the 1970s and 1980s when the conflict was dormant and the PRC may still have been open to forging a compromise before its position started to harden in the 1990s.

Stalled negotiations on the delimitation of a common maritime boundary

Following ratification of UNCLOS in 1996 by the PRC and Japan, from 1998 the two parties [held](#) bilateral consultations on the Law of the Sea and the delimitation of their EEZs until 2003. In that year the PRC started operations at the Chunxiao/Shirakaba [gas field](#) (see Map 2) located at only 5 km west of the median line claimed by Japan, prompting doubts in Japan as to whether the PRC could [siphon](#) off hydrocarbons from the EEZ claimed by Japan. In the absence of an agreement on the maritime delimitation issue, from 2004 to 2008 bilateral consultations were held on joint resource exploitation, separating the latter issue from the sovereignty and maritime border issues.

Gridlocked joint exploitation of hydrocarbon resources

[Estimates](#) by the US Energy Information Administration suggest that the East China Sea holds around 200 million barrels of oil, and between 30 and 60 billion cubic feet of natural gas. This compares with the [significantly higher](#) reserves the South China Sea is estimated to harbour, i.e. between 11 and 12 billion barrels of oil and between 160 and [190 billion](#) cubic feet of natural gas. The PRC started seabed hydrocarbon exploration in the East China Sea [in the 1970s](#) and sped it up in the [1990s](#) after becoming a net oil importer in 1993. This was the time when hydrocarbon exploitation was set to shift from onshore to offshore.

After the [geopolitical shifts](#) of the 1970s, Japan's interest in securing the less abundant hydrocarbon resources on the east side of the median line of its EEZ that bisects the East China Sea was [limited](#)

due to the heavy cost of building pipelines through geologically and thus technologically challenging areas, i.e. the deep Okinawa Trough, making oil imports cheaper. The PRC, by contrast, has relied on existing pipelines to its coast [co-financed](#) earlier by the Asian Development Bank. It was only in 2004 that Japan began its own geological survey work east of the median line, after the PRC [refused](#) to share its geological survey data.

From 2005, Japan asked the PRC to suspend its exploitation of gas and oil fields from rigs close to the median line. The PRC's national oil companies, however, [pursued](#) unilateral exploitation, including from the Tianwaitian/Kashi gas field (see Map 2). Japan [had](#) by then lost its lead in exploration technologies as a negotiating chip with the PRC. Japan [had](#) Japanese private oil developer, Teikoku Oil Company conduct experimental drilling in 2005, but [faced](#) PRC surveillance vessels, destroyers and submarines apparently intent on thwarting Japan's exploration.

In [2008](#), an [agreement](#) in principle was [reached](#) on a joint development zone straddling the median line, including the Longjing/Asunaro oil/gas field, the participation of Japanese oil companies in the Chunxiao/Shirakaba [gas field](#) under Chinese law and negotiations on the terms of a treaty. However, the 2008 '[principled consensus](#)' has never been implemented, since both sides [failed](#) to settle on the details of their cooperation. While negotiations on implementation [resumed](#) in 2010, they were later suspended once more. The PRC [asserted](#) that its domestic audience regarded the agreement as being too favourable to Japan and tantamount to a 'second Treaty of Shimonoseki'. This highlighted the importance of domestic politics and nationalist sentiment in the PRC, exacerbated by the [visit](#) to Tokyo's controversial [Yasukuni war shrine](#) by Japan's former Prime Minister Junichiro Koizumi and the publication of Japanese [textbooks](#) in which the disputed islands were displayed as Japanese territory. For a range of reasons, joint resource development has thus failed as an intermediary solution to ease Sino-Japanese tensions.

Box 1 – Fishery agreements as a model for shelving the sovereignty dispute?

In 1997, Japan and the PRC [signed](#) a bilateral [fishery agreement](#) to take UNCLOS rules into account and to revise an earlier [fishery agreement](#). It entered into force in 2000 and established a cooperative mechanism for the sustainable management of shared living marine resources and a joint fisheries commission. It [divides](#) the relevant parts of the East China Sea into five [maritime sections](#) where different rules apply: the Japanese EEZ, the PRC's EEZ, a Japan-China Intermediate Zone, a Japan-China Provisional Measures Zone and a zone covering the contested islands where no rules on fish catch apply. Experts nonetheless claim that there has been an [understanding](#) that sovereignty issues should be separated from commercial issues and that traditional fishing practices allowed under earlier bilateral agreements would continue.

In 2013, under the PRC-friendly Ma Ying-jeou government in Taiwan, Japan and Taiwan [reached](#) an [agreement](#) on a fisheries agreement, signed by Taiwan's Association for East Asian Relations and Japan's Interchange Association, which shelves the sovereignty and delimitation issues. A joint fishery committee was set up [to deal with](#) issues the parties failed to resolve, including fishing in waters around the disputed islands, and a legal and institutional mechanism for bilateral fisheries issues was set up. President Ma Ying-jeou was a strong [proponent](#) of an 'East China Sea Peace Initiative', which advocated for all parties to shelve sovereignty issues, seek peaceful resolution, and develop resources jointly in disputed waters. In geopolitical terms, the agreement [allowed](#) Japan to break a cross-strait alliance based on shared claims to the disputed islands.

The unlikelihood of a judicial settlement of the disputes

While some international [legal experts](#) regard the resolution of the dispute over the ownership of the islets and rocks as a precondition for a Sino-Japanese agreement on the delimitation of the maritime border, prospects for a judicial settlement are dim. The sovereignty dispute could have been settled by the ICJ had both parties agreed to submit a case. However, the PRC's reluctance to initiate such a case may be due to its general [distrust](#) in what it perceives as Western-dominated international law and more specifically to the [unpredictable](#) nature of the outcome of the highly sensitive sovereignty case given the limited case law. Japan for its part has not brought the sovereignty issue before the ICJ, having consistently denied the existence of such a dispute.¹

When it comes to the maritime boundary dispute, the UN [Commission](#) on the Limits of the Continental Shelf is authorised to recognise the outer limits of a continental shelf beyond 200 nm. In 2009, the PRC [submitted](#) a claim for an extended continental shelf reaching up to the Okinawa Trough. Following an [objection](#) from Japan, the Commission has yet to examine the PRC's claim.

The maritime boundary dispute could have been brought before the International Tribunal for the Law of the Sea (ITLOS) or another arbitral tribunal open to UNCLOS parties. For different reasons, both [Japan](#) and the [PRC](#) have refrained from choosing the judicial avenue to settle their dispute. The PRC has pursued a strategy of '[localising](#)' the existing case law and of taking 'a more expansive and inclusive view of relevant circumstances to be factored into maritime delimitation, including geological or geomorphological factors and economic factors'. The PRC is nonetheless [unlikely](#) to be granted an extended continental shelf of the size it claims, since the current case law has only recognised extended continental shelf claims if they were undisputed. The PRC therefore runs the risk of not being able to get its maximalist claims recognised and of losing face before its domestic audience. Legal experts have therefore [argued](#)

that given the large discrepancy between the positions of countries in the region and the case law of the ICJ and arbitral tribunals, the countries concerned are not expected to refer their disputes over the delimitation of their maritime borders to international tribunals in the near future.

It seems unlikely that the PRC will consider the international law trajectory as a promising dispute settlement given the 2016 [arbitration ruling](#) in the case opposing the PRC and the Philippines. The ruling declared the PRC's claims to maritime features and waters in the South China Sea inside what the PRC refers to as the 'nine-dash line' based on 'historic rights' as inconsistent with UNCLOS. The PRC did not participate in the case and ignored the ruling. For Japan, although following the example of the Philippines would [demonstrate](#) its respect for international law solutions, it would bear the risk of PRC retaliation and non-compliance in the event of a negative outcome for the PRC.

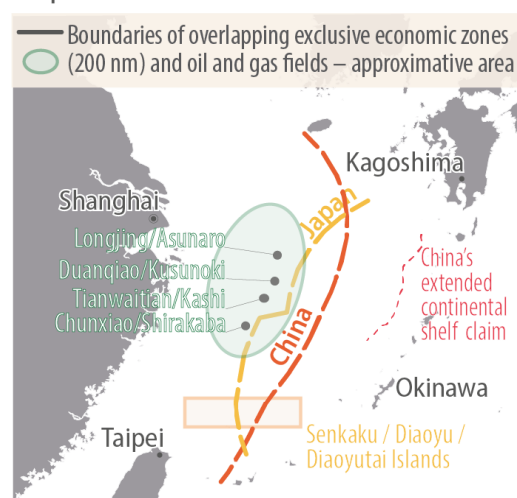
Gradual militarisation of the sovereignty dispute

Committed to peace by its 1946 [Constitution](#), Japan has made neither economic nor military use of the disputed islands that could be interpreted as occupation or that could have threatened the PRC. This may explain why state-controlled PRC media [hardly](#) mentioned the East China Sea dispute until the mid-2000s. This contrasted with abundant PRC media coverage on the [South China Sea disputes](#). However, starting in the 2000s, the behaviour of both Japan and the PRC has increasingly been driven by growing domestic [nationalism](#) and mutual [distrust](#) fuelled by historic grievances, making it more difficult for both parties to prevent minor incidents from further exacerbating already tense bilateral ties.

2010 fishing trawler incident

In 2010, when the PRC [overtook](#) Japan as second largest economy in the world, a PRC fishing trawler [collided](#) with two Japan Coast Guard (JCG) ships in the waters around the disputed islands. Unlike in earlier [incidents](#) when Japan had quickly deported Chinese activists who landed on the islands, the captain and the crew were accused of obstructing the JCG's [public duties](#) and detained under Japanese law. Japan thus established a [precedent](#) for subjecting PRC fishermen to Japanese law although the parties appeared to have [agreed](#) by an exchange of notes not to apply their domestic

Map 2 – Oil and gas fields close to the disputed area and maritime zone claims



Data sources: [Flanders Marine Institute](#); and [Submission](#) by the PRC, 2009.

fisheries law to fishermen in the waters around the contested islands. From a PRC perspective this incident was an expression of Japan's exercise of sovereignty tilting the status quo in Japan's favour. [Anti-Japanese protests](#) in the PRC took place until captain and crew were eventually released. The PRC retaliated by [imposing](#) an [export ban](#) on rare earths on Japan, which the dispute settlement body of the World Trade Organisation (WTO) in 2014 found to be [inconsistent](#) with international trade law in joint cases brought by the [EU, Japan](#) and the [US](#) against the PRC. It was an early example of [economic coercion](#) that has since become a hallmark of PRC foreign policy.

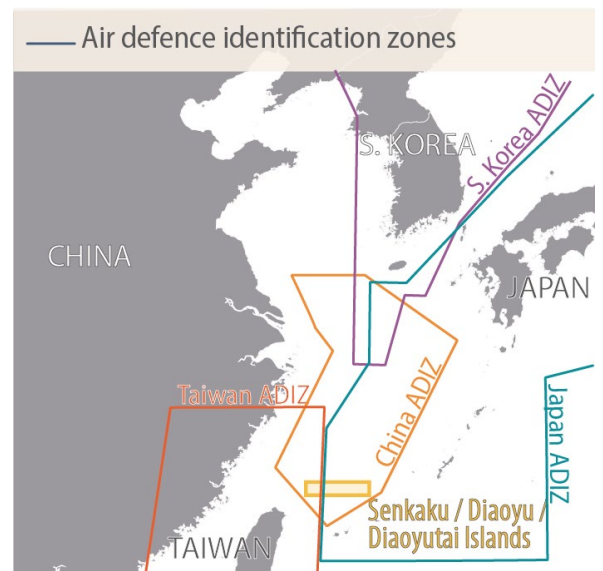
2012 'nationalisation' of three disputed islands

In 2012, Japan acquired three disputed islands from a Japanese businessman [to pre-empt](#) their purchase and development by Tokyo's then right-wing populist Governor Shintaro Ishihara as well as to avoid antagonising the PRC. The purchase sparked violent [anti-Japanese protests](#) in the PRC, [causing](#) damage to several big Japanese brands. The PRC regarded the islands' '[nationalisation](#)' as a major provocation and a [unilateral change](#) in the status quo, requiring the PRC in turn to establish a new status quo if it [did not wish](#) to be presumed to have acquiesced in Japan's act of sovereignty.

One immediate PRC action was to [announce](#) territorial sea baselines around the disputed islands, placing them under PRC administration in line with PRC law, thus directly challenging Japan's administrative control. Since then, the PRC has deemed the entry of vessels of the Japanese Self-Defence Forces (JSDF) and other Japanese government vessels into the area to be intrusions into PRC territory and a violation of sovereignty. The PRC then issued the 2012 [white paper](#) 'Diaoyu Dao, an inherent territory of China'. Taiwan also released a 2012 [position paper](#) entitled 'Summary of historical facts concerning Japan's secret and illegal occupation of the Diaoyutai Islands'. In a 2012 speech at the UN, Japanese Prime Minister Yoshihiko Noda [rejected](#) any compromise on the sovereignty issue. Stoked by mounting nationalism in both the PRC and Japan, the dispute has taken on a [symbolic](#) relevance and has since been marked by a [narrative of theft](#). Military officials in both Japan and the PRC have each [labelled](#) the other as a threat, laying the foundations for an approach based on military strength.

The incident brought Sino-Japanese relations to an all-time low. It led to the disruption of almost all communication channels, including the bilateral talks on a set of [crisis management mechanisms](#) launched in 2008 to avoid unintended incidents at sea from escalating into armed conflicts.² The decades-long non-confrontational PRC concept of shelving the dispute for future generations and of exploring opportunities to engage in joint resource exploitation has turned into a [confrontational](#) approach, termed by some experts as '[reactive assertiveness](#)'. The term stresses the PRC tactic of labelling an action by the other party as a major provocation that then serves as justification to bring about sweeping changes on the ground long sought by the PRC. A case in point is the air defence identification zone (ADIZ) that the PRC declared in 2013 (Map 3). It overlaps with the ADIZ of Japan and that of Taiwan and spans the contested islands to strengthen the PRC's claims. Since then, the Japanese Self-Defence Forces (JSDF) have [scrambled](#) a growing number of PRC fighter jets entering the Japanese ADIZ with increasing frequency. The PRC applies [more restrictive rules](#) in its ADIZ than Japan and Taiwan, [for instance](#) with respect to the identification of foreign aircraft travelling through the ADIZ but not entering territorial airspace.

Map 3 – Air defence identification zones (ADIZ)



Source: EPRS based on M. Duchâtel, [China's Policy in the East China Sea](#), 2016, p. 15; [Center for Strategic & International Studies \(CSIS\)](#).

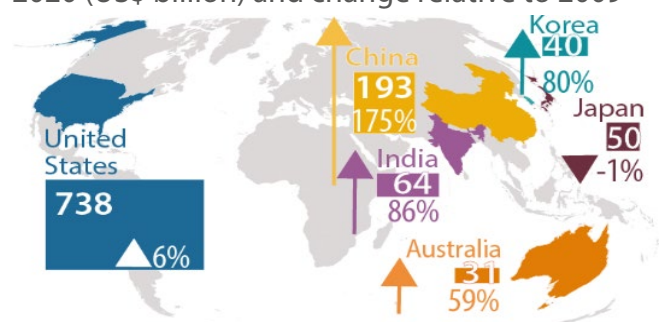
Growing Sino-Japanese capabilities gap

Former PRC President Hu Jintao's 2012 [Work Report](#) for the 18th Party Congress, which called for the PRC to become a maritime power and to 'resolutely safeguard China's maritime rights and interests', prepared the ground for the PRC's strategy of challenging Japan's administrative control of the islands. Moreover, in 2013 the PRC added the disputed islands to its list of [core interests](#), which includes Hong Kong, Macao, the South China Sea, Taiwan, Tibet and Xinjiang, i.e. strategic interests on which the PRC will not compromise and which it is willing to defend by force. The PRC's more assertive approach to the contested islands is underpinned by the PRC's massive build-up of a blue water navy to achieve its ambitious objectives for its economic and military development, as [defined](#) at the 19th Congress of the Chinese Communist Party in 2017. These objectives include the modernisation of the PRC's military capabilities into a world-class military by 2049.

Japan's defence budget today is only a fraction of the PRC's defence budget

In the last decade, the yearly percentage rise in the PRC's official defence budget has [exceeded](#) the growth of its annual gross domestic product (GDP) to fund its ambitious military modernisation goals.³ According to the [Military Balance 2021](#) (Figure 1), Japan's 2020 defence budget of US\$49.7 billion (down 1 % from 2009) pales against the PRC's four times higher defence budget of US\$193.3 billion (up 175 % from 2009), trailing only, by far, the US budget – worth US\$738 billion (up 6 % from 2009). However, it exceeds the joint defence budget of its Indo-Pacific peers Australia, India, Japan and South Korea – US\$185.5 billion taken together. Since the PRC overtook Japan as the second largest economy in the world in 2010, the Sino-Japanese military balance has rapidly shifted in the PRC's favour, with the PRC's military expenditure steeply rising and the Japanese defence budget remaining flat, currently reaching [1 % of its GDP](#). The PRC's defence budget also dwarfs that of its [strategic partner](#), Russia, which stood at only US\$60.6 billion in 2020. This is not however the case in terms of the defence budget share of GDP, with the PRC at 1.9 % compared with Russia's [3.9 %](#) (the figure for the US is 3.4 %, South Korea 2.7 % and India 2.4 %).

Figure 1 – US and top five Asian defence budgets, 2020 (US\$ billion) and change relative to 2009



Data source: [The Military Balance 2021](#) and [2009](#).

Rapid rise of the PRC's naval capabilities

The PRC's naval capabilities consist of three branches: the People's Liberation Army's naval forces ([PLAN](#)), the China Coast Guard (CCG) and the [maritime militia](#) staffed by the PRC's fishing fleet. The PLAN is the largest navy in the world with a fleet of approximately [350 ships](#) and submarines in 2020, ahead of the US Navy with [298](#) deployable ships as of 2020. In 2018, Japan's Maritime Self-Defence Force ([JMSDF](#)) had close to [160 ships](#). A 2020 US Center for Strategic and Budgetary Assessments [report](#) stresses that the PRC's navy build-up has resulted in a growing Sino-Japanese power disparity and PRC naval superiority over the JMSDF in a number of combat capability categories.

CCG's capabilities have already surpassed those of the JCG

The capabilities of the CCG, the most relevant military naval forces operating in the area surrounding the disputed islets and rocks, have rapidly caught up in quantitative terms with their Japanese counterparts. According to [Japanese sources](#), in 2012 the JCG had 51 vessels of 1 000 tonnes or more, while the PRC had 41 vessels of this kind. In 2014, the PRC had surpassed Japan, as it had 82 such ships, while Japan had only 54. In 2019, the asymmetry had further increased. The PRC had almost twice as many coast guard vessels bigger than 1 000 tonnes (130 to Japan's 66). More importantly, the CCG's offshore assets of 2 500 tonnes grew from 58 vessels in 2005 to 260 vessels

in 2020, an increase of [350 %](#). The CCG has not only surpassed JCG capabilities in terms of tonnage (Figure 2), as its vessels have become larger, partly owing to decommissioned armed vessels received from the PLAN, but the CCG vessels' equipment has also been upgraded with water cannons, guns and helicopter facilities. This allows the CCG to step up the frequency and duration of its presence in contested waters at a long distance from the PRC's coast.

Organisational reforms to bolster the CCG

In 2013, four PRC maritime law enforcement agencies were [streamlined](#) into a unified CCG, which saw quantitative expansion and a technological upgrade designed to strengthen the PRC's presence in claimed waters in the East and South China Seas. Maritime sovereignty protection became a top priority for the CCG. In 2018, the CCG was [incorporated](#) into the military line of command under the PRC's [Central Military Commission](#) chaired by President Xi Jinping. This signalled a blurring of civil and military competences and a militarisation of the PRC's civil law enforcement, contrasting strongly with the institutional set up and competence of the JCG, which is strictly [civilian](#), and thus creating an asymmetry between the two coast guards.

Implications for the PRC's future behaviour

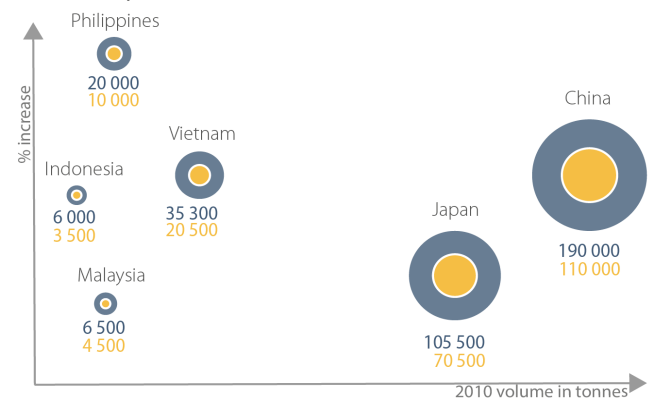
The CCG's reorganisation, military upgrading and quantitative expansion is, according to most analysts, part of a ['historic power transition'](#) from Japan to the PRC, with Japan losing its status as the leading naval power in Asia to the PRC. This has implications for the PRC's assessment of its capabilities to decide disputes in its favour and on the PRC's reduced propensity to refrain from using military force or coercion.

The PRC's strategy of eroding Japan's administrative control

Japan's 2020 [defence white paper](#) states that the PRC has 'relentlessly continued attempts to unilaterally change the status quo by coercion in the sea area around the Senkaku Islands'. Since Japan's acquisition of three of the disputed islands from a private Japanese landowner in September 2012, the PRC has adopted a more offensive strategy, involving the deployment of ['grey-zone operations'](#) aimed at gradually and incrementally challenging Japan's administrative control over the contested islands and generating 'proof' of the PRC's administrative control by means of sub-threshold coercion, without triggering an armed conflict. These operations are mainly performed by the [CCG](#) and the maritime militia, with the PLAN remaining in the background to make operations look like pure civil law enforcement activities.

As can be seen from Figure 3, in September 2012 the CCG abruptly changed its operational pattern by significantly stepping up the number of its vessels present not only in the contiguous zone of 24 nm but also in the territorial sea of 12 nm around the contested islands. A continued CCG presence in the contiguous zone [allows](#) prompt law enforcement interventions inside the territorial sea, rather than only CCG presence. Researchers have nonetheless [highlighted](#) that the Japanese way of displaying the accumulated daily number of PRC vessels that are present per month could lead to the wrong impression that at times more than a hundred *different* PRC vessels were deployed to the area. The increased presence of CCG vessels since 2012 did not come as a short flare up as was the case in the wake of the 2010 trawler incident. Rather the increasingly frequent and longer presence of the CCG in the maritime zones around the disputed islands has become a constant

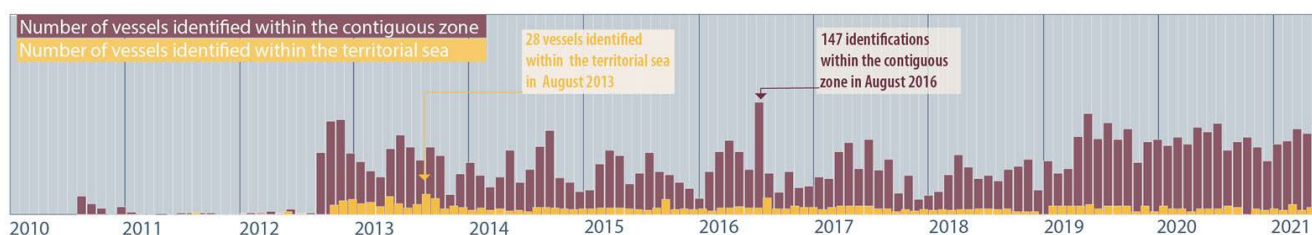
Figure 2 – Total coast guard tonnage of selected countries, 2010 and 2016.



Data source: Lyle J. Morris, [Blunt Defenders of Sovereignty](#), 2017, p. 4.

feature of what researchers have referred to as the first phase in a three-phased [strategy](#) of coercive grey-zone operations. The second phase of the strategy, i.e. [overlapping](#) administrative control, would be the PRC's exercise of law enforcement rights in these maritime zones in parallel to Japan. In the last few years, notably during the annual [fishing ban](#) unilaterally imposed by the PRC from [May to August](#) and apparently extending to the maritime zones at issue, there were [instances](#) of CCG vessels [pursuing](#) Japanese fishing vessels in the territorial sea of the disputed islands in what would appear to be almost fully-fledged law enforcement patrols of PRC-claimed waters. The third and final stage would consist of the PRC gaining effective control of the islands.

Figure 3 – PRC vessels in the territorial sea and contiguous zone of the disputed islands



Data source: [Japan's Ministry of Foreign Affairs](#), as of June 2021.

The PRC's 2021 Coast Guard Law

The PRC's [Coast Guard Law](#) (CGL), [adopted](#) in January 2021, adds a 'lawfare' dimension to the PRC's strategy.⁴ It follows one of the PRC's four [approaches](#) to international problems, one of which consists of 'attempting to advance unique and self-serving interpretations of established international rules, when there is room for wider interpretation to support China's position'. The Coast Guard Law creates the domestic legal basis for enhancing CCG operational capabilities.

The law appears to be designed as a tool to [avert](#) what the PRC defines as infringements of its sovereignty (a national defence issue) and maritime rights. There are [concerns](#) that some of its provisions may be inconsistent with UNCLOS. The law has drawn [criticism](#) for the vagueness of the geographical scope of the PRC concept of '[jurisdictional waters](#)', which unlike in the draft law is not defined in the final version. The law allows the CCG to conduct law enforcement action expansively.

The Coast Guard Law applies to all waters considered by the PRC as lying within its jurisdiction [without distinguishing](#) the specific rules attributed to the different maritime zones under UNCLOS. The PRC may for instance establish temporary maritime security zones (CGL [Article 25](#)) in which it can restrict or prohibit the passage and stay of vessels or individuals with large discretion. However, maritime security zones are [not](#) generally accepted under international law owing to their vagueness and susceptibility to abuse. The CCG is vested by this law with the [power](#) to expel foreign warships and government vessels from jurisdictional waters for violating China's domestic law (CGL Article 21), which appears to be [at odds](#) with Articles 32, 95, and 96 UNCLOS on the immunities of warships and government vessels. This is relevant, inter alia, for foreign warships performing freedom of navigation operations across PRC-claimed territorial waters in the Indo-Pacific. The PRC [considers](#) navigation by foreign warships through its territorial sea without its [prior approval](#) to be illegal. The CCG is set to apply this restrictive interpretation of UNCLOS. However, UNCLOS allows 'innocent passage' (Article 17) in a 'continuous and expeditious' manner (Article 18) that precludes a number of military activities (Article 19). Moreover, the CCG may use all necessary means, including the use of weapons, against 'foreign organisations or individuals' in the event of an infringement on China's sovereignty, sovereign rights and jurisdiction at sea (CGL [Article 22](#)). There is [concern](#) that the Coast Guard Law may provide a legal basis for the systematic interdiction of Japanese vessels from contested waters in the future. A comparison of the Coast Guard Law with the coast guard laws of other countries in the region [shows](#) that they have similar provisions, although they only apply under [exigent circumstances](#).

As the Coast Guard Law is [perceived](#) as the domestic legal basis for implementing the PRC's maritime military-civil fusion strategy aimed at gaining control inside the first island chain, it may contribute to an escalation of tensions and provoke incidents requiring JSDF [involvement](#). This would take the dispute to a higher level where Japan may seek stronger support from the US and other members of the quadrilateral security grouping ([Quad](#)) composed of Australia, India, Japan and the US.

US position

Since 1972, the US has held a neutral position on the sovereignty of the disputed islands. However, in the 1990s the US [started to](#) confirm that they are covered by Article 5 of the [US-Japanese Treaty of Mutual Cooperation and Security](#) as Japanese-administered territory. In 2014, former President Barack Obama made an oral US [defence commitment](#) in favour of the disputed islands in the event of their attack. In 2017, former President Donald Trump [reaffirmed](#) this US commitment in a [joint written declaration](#) with then Japanese Prime Minister Shinzo Abe. Following this, the US Air Force and the Japan Air Self-Defence Force (JASDF) held joint [training flights](#) near the disputed islands.

When Secretary of State Antony Blinken and Secretary of Defence Lloyd Austin of the Biden Administration on their first official trip abroad selected Japan in March 2021, the final statement with their Japanese counterparts [reaffirmed](#) the US commitment to the free and open Indo-Pacific (FOIP) and to US defence of the disputed islands. It expressed their 'opposition to coercion and destabilising behaviour towards others in the region as well as to any unilateral action that seeks to change the status quo or to undermine Japan's administration of these islands'. Serious concern was voiced with respect to the recent adoption of the PRC's Coast Guard Law. The meeting took place shortly after the Quad in March 2021 held its first-ever leader-level summit [reaffirming](#) their shared vision for the FOIP and a region 'anchored by democratic values, and unconstrained by coercion'.

EU position

The EU pursues a three-pronged policy in the East China Sea that has been referred to as '[principled neutrality](#)' with respect to territorial disputes: no position on sovereignty and no taking sides; promotion of crisis management; and promotion of international law. In line with this policy, recognising its significant interests in the region, the EU issued a [declaration](#) in 2012 regarding Sino-Japanese tensions over Japan's purchase of three of the contested islands. A 2013 [declaration](#) concerned the PRC's declaration of an ADIZ in the East China Sea covering the disputed islands.

In a 2020 [resolution](#) on the annual report on implementation of the common foreign and security policy, in respect of the East and South China Seas and the Taiwan Strait the European Parliament called 'for all parties involved to respect the freedom of navigation, to solve differences through peaceful means and to refrain from taking unilateral actions to change the status quo'. In February 2021, Parliament's China delegation, in tandem with the Sub-committee on Defence (SEDE)/Committee on Foreign Affairs (AFET), [held](#) an exchange of views in camera on Chinese military territorial provocations in the Indo-Pacific, also raising the future role of the EU in the region. An AFET own-initiative report on [a new EU-China strategy](#) including an opinion of the Committee on International Trade (INTA) is scheduled for a vote in plenary in September 2021, and another, on [EU-Taiwan relations and cooperation](#), is likely to be on Parliament's October 2021 plenary agenda.

In April 2021, the EU published its first-ever [Indo-Pacific strategy](#). While the strategy emphasises 'like-minded' countries in the Indo-Pacific, it pursues a cooperative, i.e. non-confrontational, pragmatic and inclusive approach with a [broad-based agenda](#). The strategy stresses the centrality of the Association of Southeast Asian Nations (ASEAN), with which the EU [entered](#) into a [strategic partnership](#) in December 2020. On maritime security, the strategy suggests 'coordinating EU maritime presences, based on voluntary contributions from Member States ... inter alia, to cooperate with partners' navies, and build their capacities where relevant, to establish comprehensive monitoring of maritime security and freedom of navigation, according to international law, in particular UNCLOS'. In May 2021, France, Japan and the US [held](#) joint exercises in the East China Sea

simulating different scenarios, including defending remote islands. The [joint statement](#) of the 2021 EU-Japan summit reads: 'We remain seriously concerned about the situation in the East and South China Seas and strongly oppose any unilateral attempts to change the status quo and increase tensions. We reaffirm the critical importance of respecting international law, in particular ... UNCLOS with its provisions on the obligation to settle disputes by peaceful means, and maintaining freedom of navigation and overflight'.

FURTHER READING

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ENDNOTES

- ¹ Given Taiwan's international status and its not being party to UNCLOS, these judicial avenues are not open to it.
- ² Talks on crisis management mechanisms including air space were taken up again in 2014 and an agreement on a maritime and aerial communication mechanism was [reached](#) in 2018. However, implementation has moved forward at a snail's pace in its different dimensions, with an [agreed](#) emergency hotline linking senior Japanese and Chinese defence officials still [not in place](#) in November 2020.
- ³ Experts believe that the official PRC defence budget is underreported and that real figures are higher. The estimates of the Stockholm International Peace Research Institute ([SIPRI](#)) and the International Institute for Strategic Studies (IISS) are significantly higher than the official figures. See: What Does China Really Spend on its Military? CSIS [ChinaPower project](#).
- ⁴ In 2016, as a likely response to the [growing](#) number of Chinese fishermen [arrested](#) by foreign coast guards for poaching in foreign waters, the PRC's Supreme People's Court issued two [judicial interpretations](#) of PRC legislation [reaffirming](#) the CCG's authority to arrest foreign mariners suspected of poaching in PRC-claimed jurisdictional waters and to charge them with violations of the criminal code. Foreigners merely found entering PRC-claimed territorial waters could be subject to criminal proceedings. Experts have [noted](#) that the CCG has not enforced these provisions (yet), while stressing with respect to the PRC's Coast Guard Law that in 'authorising its coastguard to use deadly force to uphold its maritime claims, Beijing has crossed a line. Foreign diplomats should tell their Chinese counterparts that ambiguity of any kind is simply no longer acceptable'. Earlier in 2016, the Supreme People's Court had [published](#) interpretations to revamp the jurisdiction of the PRC's maritime courts along the lines of the Chinese Communist Party's [4th Plenum Decision](#) of 2014 to 'use legal methods to safeguard our country's sovereignty, security and development interests', among others.

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