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# **The Future of East Asian Security**

**Coedited by**

**Yasuhiro Takeda and John Rydqvist**



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**NDA-FOI Joint Seminar on**

# **The Future of East Asian Security**

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Yasuhiro Takeda and John Rydqvist

October 2017

Center for Global Security, National Defense Academy  
Yokosuka, Japan

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## GLOBAL SECURITY SEMINAR SERIES

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This volume is based on the working papers presented at the NDA-FOI Joint Seminar on “The Future of East Asian Security” held on January 25, 2017. Most of the chapters are revised or up-dated to reflect the views expressed during the course of the seminar.

On behalf of GS and FOI, we would like to express our sincere appreciations not only to the contributors for their precious time and efforts in the process of this publication, but also to all those who attended the seminar and participated in the discussions. The views expressed in each of the chapters, however, strictly represent those of the respective authors, and so go the credits.

We hope the insights shared by the authors here invite a new round of discussion among readers. Comments and suggestions on our joint research project are more than welcome.

October 2017  
Yasuhiro Takeda and John Rydqvist  
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## INTRODUCTION

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The East Asian security environment has become increasingly severe during the last decade and Japan is facing various worrying challenges and so-called 'gray zone' situations, i.e., antagonistic situations in between peace and armed conflicts over territory, sovereignty, or maritime interests. In addition, there has been a growing risk that security problems inside a single country or sub-region could destabilize the entire East Asian region.

China has rapidly expanded its maritime activities with regard to both naval and air power. In 2013, China announced the establishment of the 'East China Sea Air Defense Identification Zone (ADIZ)' near the Senkaku Islands, with Chinese government vessel intrusions into the territorial waters near the Senkaku Islands becoming routine in the past 5–10 years. In addition, there has been growing friction with China over territorial disputes in the South China Sea because of China's land reclamation activities, its construction of a runway, and its introduction of military hardware on the Spratly Island reefs. It remains to be seen how and to what extent international law can play a role in dealing with these territorial issues in both the East China Sea as well as the South China Sea and in understanding the future of East Asian security.

The development of nuclear weapons and missile delivery capability by North

Korea is a serious and imminent threat to regional and global security; however, economic sanctions against North Korea seem to have failed because of discord among the major powers. Military options to remove the nuclear assets is a high risk endeavor favored by few in all but the most acute situations. Sino–Taiwanese relations have remained unchanged and at times tense as Beijing remains adamant that Taipei must accept unification with the People’s Republic of China. Meanwhile, the military capability gaps continue to widen in China’s favor.

The Trump Administration’s commitment to a foreign policy focused on American interests and American national security may result in surprising shifts in international relations. If the United States refrains from playing a leading role in regional affairs or makes substantial changes to the way it deals with security problems in Northeast Asia, it may trigger hedging behavior by regional states who are confronted by the rise of China, resulting in further destabilization of the security situation in East Asia and an increased likelihood of friction and confrontation.

Japan and other East Asian countries are the most likely to be directly affected by these regional tensions and would also be the ones hardest hit should there be any escalation into conflict. Geography, political differences, and the expanding ambitions of the new superpower have put these countries on a collision course with China, which sees them as obstacles to its ambitions. However, the Northeast Asian security situation also has indirect effects further away. Because of the growing trade relations between Europe and the region due to China’s economic might, any conflict affecting East Asian economies would adversely impact Europe. North Korean military proliferation is both a general problem for continued arms control efforts and a real threat if long-range nuclear capabilities are developed. The cascade effects of what is likely to soon be a mature North Korean nuclear arsenal will also be felt in Europe. Finally, the internationalization of trade and politics coupled with the continued championing of free societies and adherence to the current global order makes it likely that European powers would be involved in one way or another should hostilities break out in Northeast Asia.

In early 2017, The Center for Global Security at the National Defense Academy



(NDA) in Japan and the Swedish Defence Research Agency (FOI) convened a seminar to address the current challenges and examine the potential influences the political and security developments in East Asia could have in the medium-term (5-10 years). This publication is based on the papers presented at this joint seminar and the discussions they provoked. The chapters presented herein give various perspectives on the security challenges in Northeast Asia as seen by both Japanese and Swedish scholars.

In Chapter One, John Rydqvist of the FOI assesses the risk of war between Japan and China. He concludes that although any contingency surrounding the territorial and maritime disputes between the two countries may be manageable and that Japan with its alliance partner the U.S. would in the short term be able to negate any Chinese attempts to change status quo, the broader shift of power associated with China's rise already has increased the risk of armed conflict. The risks that such structural contentions could trigger war will increase as we move forward.

In Chapter Two, Tetsuo Kotani reviews the regional approaches to maritime dispute management in the East and South East China Seas, in which it is claimed that there is neither a consensus nor an incentive in the region for a peaceful legal resolution of the maritime disputes. He concludes that all regional players need to develop flexible deterrent options to control any escalations by reinforcing internal and external balance and upholding the rule of law.

In Chapter Three, Masahiro Kurosaki examines a regional variation of international law to deal with strategic Asian security issues. By paying special attention to a 'rule of law versus a lawfare' perspective, he highlights the roles and functions of international law as well as the conflicting approaches embraced by the regional states in their operationalization of such laws.

In Chapter Four, Jerker Hellström of the FOI discusses current and future aspects of the Sino-Taiwanese relationship. While cross-strait relations have, broadly speaking, remained relatively unchanged, the future seems more uncertain. Mr. Hellström concludes that there are three key uncertainties: it will remain unclear if

Beijing would revert to violence to prevent Taiwanese moves towards independence; the U.S. might be less likely to come to Taiwan's help in the Trump era; and it is not certain that Taiwan will continue to favor the current status quo.

In Chapter Five, Hiroyasu Akutsu examines North Korea's military strategy and its nuclear and missile development programs, clarifies North Korea's motivations behind its assertive and aggressive behavior, and discusses the implications for Japanese security, arguing that Japan needs to strengthen its own defense capabilities.

## CHAPTER 1

# Japanese-Chinese Relations and the Risk of War

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## INTRODUCTION

This chapter discusses the risk of war between Japan and China. The two countries have had a long period of peace and stability but during the last fifteen years the bilateral relationship has become more contentious. Escalating tensions around contested territories and China's anxiety about being encircled by the United States, Japan, and other American allies have been two of the main causes of the increased strain. China's expanding power as well as long held historic grievances and opposing political systems has further complicated the relationship. As a result of the increasing tension between Japan and China, debates about the risk of war in East Asia have intensified.

Research has suggested that the long peace enjoyed in East Asia was brought about primarily as a result of the deepening economic interdependence between key regional powers.<sup>1</sup> Arguments based in the liberal peace theory tradition has claimed that the scale and success of regional economic expansion in the last few decades has been enough to 'inhibit the escalation of interstate conflict'.<sup>2 3</sup> If the

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<sup>1</sup> Dingding Chen, "Economic interdependence underpins peace between China and the US", *South China Morning Post*, June 9, 2015, on the internet:

<http://www.scmp.com/comment/insight-opinion/article/1819183/economic-interdependence-underpins-peace-between-china-and>, (retrieved June 5, 2017).

<sup>2</sup> Min Ye, *Comparative Kantian Peace Theory: Economic Interdependence and International Conflict at A Group Level of Analysis*, Department of Government and International Studies, University of South Carolina, 2000, on the internet:

economic strategies of the key players remain the same, and focus continues to be on domestic economic development as has been the case according to one line of argument, peace is likely to be maintained.<sup>4</sup> This has been presented as a strong argument for continuing peace even though two of the three key variables for liberal peace theory, democracy and strong multi-lateral institutions, largely missing in East Asia. There is no general adherence to democracy with the dominating power in the region being a one party communist dictatorship. Informal regional confidence building networks have played a significant role in maintaining peace<sup>5</sup> but there have been few strong multilateral security accords or organizations regulating the security interactions between the nation states through legal and normative processes.

This paper explores the current trends in the Sino-Japanese relationship to understand whether the risk of war has been increasing. Well aware that the nature of war is in itself an issue of major discussion today, war in this paper is defined as the outbreak of armed hostilities and the use of force at any level between Japan and China, including antagonistic cyber activities affecting critical infrastructure etc. Several factors at different levels interact and influence how the risk of war can be interpreted at any given time. The important drivers of the Japan-China relationship are territorial disputes, cultural animosity, and contradictory political systems and economic policies. These bi-lateral factors also relate to and are influenced by the broader global power reconfigurations that primarily involve the U.S./China relationship. The key question of this paper is, therefore:

Given current bilateral relations, is war between Japan and China becoming more likely?

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<https://artsandsciences.sc.edu/poli/sites/sc.edu.poli/files/MinYe1026.pdf?q=sites/default/files/MinYe1026.pdf>, (retrieved June 5, 2017).

<sup>3</sup> Benjamin E. Goldsmith, "East Asian Peace as a Second-Order Diffusion Effect", *International Studies Review*, Vol. 16, 2014, pp. 275-289.

<sup>4</sup> Stein Tønnesson, *Can the East Asian Peace Survive*, PRIO Blog, May 11, 2017, on the internet: <https://blogs.prio.org/2017/05/can-the-east-asian-peace-survive/> (retrieved June 8, 2017).

<sup>5</sup> Mikael Weissman, *The East Asian Peace: Conflict Prevention and Informal Peacebuilding*, Basingstoke: Macmillan, 2012.

This paper describes the current trends and discusses how they influence the risk of war at present and in the immediate future, but does not make predictions and does not present scenarios of alternative futures. The chapter begins by examining Sino-Japanese relations and the escalating conflict over the Senkaku Islands. Next, the overall Sino-Japanese relationship is discussed within the context of ongoing regional and global power transitions. Finally, the empirical findings are summarized and discussed.

## **TERRITORIAL CONFLICT OVER THE SENKAKU (DIAOYU) ISLANDS**

A territorial dispute dating back to the late nineteenth century is nominally at the heart of the current conflicts between Japan and China. China and Taiwan both claim that the Senkaku Islands (referred to as Diaoyu in China) are historically part of their respective territories. A defining feature of the conflict is that the parties have presented their key arguments by ‘cherry-picking’ the facts or failing to publically disclose information that would make the dispute easier to comprehend and judge.<sup>6 7</sup>

This blurring of the issue has also affected the how the risks of war associated with the dispute is judged. Assessments differ widely, with some suggesting that the Senkaku Islands dispute is a manageable issue that will not lead to war between Beijing and Tokyo,<sup>8</sup> while others claim that the Senkaku controversy has the possibility of escalating to armed conflict and that the risks have increased sharply in the last decade. The Senkaku dispute is closely coupled to the Sino-Japanese disputes over maritime borders and Exclusive Economic Zones (EEZ) in the East

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<sup>6</sup> Example of key documents that, as far as the author knows, are not yet released to the public are likely to be those underpinning the conclusion of the Treaty of Peace and Friendship of 1978. See: Kawashima Shin, “The Origins of the Senkaku/Diaoyu Island Issue”, *Asia-Pacific Review*, Vol. 20, No. 2, 2013, p. 140.

<sup>7</sup> William Choong, *The Ties that Divide*, Adelphi Series, 54: 445, IISS, London, 2014, p. 71.

<sup>8</sup> Trefor Moss, “7 Reasons China and Japan Won’t Go Too War,” *The Diplomat*, 7 February, 2013, on the internet:

<http://thediplomat.com/2013/02/7-reasons-china-and-japan-wont-go-to-war/?allpages=yes> (retrieved June 7, 2017).

China Sea, which is discussed in the next section.<sup>9 10</sup>

The Senkaku Islands are situated a short distance north of Taiwan in the East China Sea. The Chinese claim that the ‘Tiaoyou (sic, Diaoyu) and the other islands have been part of China’s territory since ancient times’.<sup>11</sup> Beijing has also claimed that ‘Chinese sovereignty has sufficient historical, geographical and legal basis that the islands have been part of China’s sea defense region since the Ming Dynasty and possibly as early as the fourteenth to fifteenth century’.<sup>12</sup>

China argues that Japan forcefully seized the islands as part of its imperial expansion in the late nineteenth century, and specifically that they were occupied during the first China-Japan war (1894-1895). Japan, in honoring the Cairo Declaration (1943) and Potsdam Agreement (1945) which clarify that territories seized as a result of Japanese aggression should be returned to the former occupant, should have returned the islands to China as part of the peace accord of San Fransisco from 1951.<sup>13</sup>

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<sup>9</sup> An example is the use of conflicting UNCLOS provisions of Exclusive Economic Zone’s (EEZ) normal limit line (Japan) versus continental shelf prolongation (China). See: William Choong, *The Ties that Divide*, Adelphi Series, 54:445, IISS, London, 2014, p. 60.

<sup>10</sup> As shown by the 2012 Chinese submission to the UN Commission on the Limits of the Continental Shelf and responding Japanese Notes Verbal that include sections on the sovereignty of the Diaoyu/Senkaku Islans. See : *Submission by the People’s Republic of China Concerning the Outer Limits of the Continental Shelf beyond 200 Nautical Miles in Part of the East China Sea*, the Commission on the Limits of the Continental Shelf (CLCS), the United Nations Convention on the Law of the Seas (UNCLOS), The United Nations, August 13, 2012, on the internet:

[http://www.un.org/depts/los/clcs\\_new/submissions\\_files/submission\\_chn\\_63\\_2012.htm](http://www.un.org/depts/los/clcs_new/submissions_files/submission_chn_63_2012.htm) (retrieved August 24, 2016).

<sup>11</sup> “Statement of the Ministry of Foreign Affairs of the People’s Republic of China 30 November 1971,” *Peking Review*, No. 1, 7 January, 1972, p. 12, on the internet: <http://www.massline.org/PekingReview/PR1972/PR1972-01.pdf>, (retrieved July 23, 2016).

<sup>12</sup> *Note Verbal*, Communication by the Permanent Mission of the People’s Republic of China to the United Nations to the Commission on the Limits of the Continental Shelf (CLCS), the United Nations Convention on the Law of the Seas (UNCLOS), The United Nations, January 7, 2013, on the internet:

[http://www.un.org/depts/los/clcs\\_new/submissions\\_files/chn63\\_12/chn\\_re\\_jpn07\\_01\\_2013e.pdf](http://www.un.org/depts/los/clcs_new/submissions_files/chn63_12/chn_re_jpn07_01_2013e.pdf), (retrieved August 24, 2016).

<sup>13</sup> Akos Kooper, “Managing conflicting ‘Truth Claims’ – ambiguity in the diplomat’s toolkit in East-Asian Island conflict,” *The Pacific Review* Vol. 29, No. 4, 2016, pp. 605-606.

Japan bases its claim on a record of continuous control and independent occupation. It holds that the islands were part of the Ryukyu kingdom, which was incorporated into Japan in 1879, and for which Japan claimed sovereignty in 1884. At this time the Senkaku Islands were unoccupied. Based on this historic record the 'Senkaku Islands are clearly part of the Territory of Japan and there are no territorial sovereignty issues'.<sup>14</sup> This also means that the islands were not occupied as part of the 1894-95 war against China and were therefore not aggressively taken.<sup>15</sup> Thus China is not in a position to claim the islands as part of any peace accord or ruling after the 1945. Consequently, from the Japanese perspective, there is no dispute.

The 1951 San-Francisco Peace Treaty arguably supports the Japanese position.<sup>16</sup> In it the Islands were treated as Japanese and the U.S. was granted administrative and legislative power over them. Japan's 'residual sovereignty' was cited and this ruling indicated that at some point the islands would be returned to Japanese rule, which occurred in 1972.<sup>17</sup> Japanese experts also point out that the Chinese did not include any mention of Senkaku Island sovereignty in the separate Japan-China peace treaty signed in 1952 or made any official claims to the islands at any time between 1951 and the late 1960s.<sup>18</sup> Chinese claims to the territory appear to have been rekindled by the 1968 UN Sea Charting venture that concluded a possibility of large natural resource reserves in the sea bed between Taiwan and the Senkaku Islands. However, the Peoples Republic of China (PRC) did not file any official

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<sup>14</sup> "The Basic View on the Sovereignty of the Senkaku Islands," Ministry of Foreign Affairs of Japan, May 8 version, 2013, on the internet:

[http://www.mofa.go.jp/region/asia-paci/senkaku/basic\\_view.html](http://www.mofa.go.jp/region/asia-paci/senkaku/basic_view.html), (retrieved July 23, 2016).

See also *Note Verbal*, Communication by the Permanent Mission of Japan to the United Nations to the Commission on the Limits of the Continental Shelf (CLCS), the United Nations Convention on the Law of the Seas (UNCLOS), The United Nations, August 13, 2013, on the internet:

[http://www.un.org/depts/los/clcs\\_new/submissions\\_files/chn63\\_12/jpn\\_re\\_chn\\_13\\_08\\_2013.pdf](http://www.un.org/depts/los/clcs_new/submissions_files/chn63_12/jpn_re_chn_13_08_2013.pdf), (retrieved August 24, 2016).

<sup>15</sup> Ibid.

<sup>16</sup> William Choong, *The Ties that Divide*, Adelphi Series, 54:445, IISS, London, 2014, p. 69.

<sup>17</sup> Ibid.

<sup>18</sup> There were recurrent incursions into the Senkakus by Taiwanese fishermen during all the post war years, which for the duration of the occupation was the US responsible to handle. See: Robert D. Eldridge, *The Origins of U.S. Policy in the East China Sea Island Dispute: Okinawa's Reversion and the Senkaku Islands*, Routledge, Oxon, 2014, p. 52

claims to the Islands until late 1971 when the U.S. decided to return the administration for the Senkaku Islands to Japan.<sup>19</sup> Consequently, academics such as Shin Kawashima have suggested that the prospect of access to resources was a key reason for the sudden Chinese sovereignty claim.<sup>20</sup>

Even though the PRC had insisted on their claim to the Senkaku Islands, pursuing the matter was not in Beijing's interest at the time. The détente and restoration of diplomatic relations between the U.S. and China during the 1970s also meant that China and Japan could also normalize relations. While the U.S. recognized the PRC in 1979, Japan had done so much earlier in 1972, and by 1978, Japan and China had signed a separate peace and friendship treaty. Although part of the reason for the improved relations was to dampen the Soviet influence in the region, there were also economic reasons. Japanese business was pushing the government to improve relations so as to improve their economic opportunities.<sup>21</sup> Therefore, it is widely thought that in 1972, China and Japan made an agreement to shelve any Senkaku island disputes so as to achieve diplomatic normalization, even though this speculation has been officially denied.<sup>22</sup>

## **INCREASE OF TENSIONS AROUND THE SENKAKU ISLANDS**

The improved relations and the agreement to put differences aside did not stop intermittent tensions over the Islands' sovereignty to flare up. In 1978, just four months before the Treaty of Peace and Friendship Between the People's Republic of China and Japan was signed, a massive armada of around 80 Chinese fishing boats, many of which were armed, came close to the Senkaku Islands displaying signs that claimed that the island belonged to the Chinese. Most research has claimed that there is little doubt that this flotilla had been sent with the

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<sup>19</sup> "Statement of the Ministry of Foreign Affairs of the People's Republic of China", *Beijing Review* No. 1, January 7, 1972, p. 12.

<sup>20</sup> Shin Kawashima, "The Origins of the Senkaku/Diaoyu Island Issue," *Asia-Pacific Review*, Vol. 20, No. 2, 2013, pp 122-145.

<sup>21</sup> Daniel Tretiak, "The Sino-Japanese Treaty of 1978: The Senkaku Incident Prelude," *Asian Survey*, Vol. 18, No. 12, December, 1978, p. 1236.

<sup>22</sup> Choong, 2014, p. 68.



government's blessing;<sup>23</sup> no military confrontation took place and the armada returned peacefully to mainland China. The incident, however, did indicate that the Chinese were willing to leverage protests and threats to get what they wanted. Therefore, the connection between this Senkaku incident and Chinese discontent with the ongoing peace negotiations was obvious.

Over the next two decades, there were several more incidents, but they were few, far between and had little impact on overall relations. However, more recently, China and Japan have increased pressure to protect their respective interests around the Senkaku/Diaoyu Islands. In 2004, there was a much publicized incident on Uotsurishima, the largest of the Senkaku Islands. A former Chinese civil servant managed to land on the island, after which he was arrested by Japanese authorities, the first time such an arrest had been made.<sup>24</sup> In 2008, Chinese government surveillance ships entered the Senkaku region for the first time, and in 2010, a Chinese fishing boat deliberately rammed a Japanese coast guard vessel, prompting the arrest of the captain. As a result, large anti-Japanese protests were organized on the mainland, in which some Japanese owned businesses were deliberately looted. Several high level Sino-Japanese talks were cancelled, including talks on the future of the East China Sea.

Since 2010, several other incidents have occurred and much points to China as the less conciliatory party. In 2012, when Japan nationalized the islands (as before that time, they had been privately owned), large Chinese protests were again organized. According to Japanese officials and unnamed Chinese military sources, in 2013, a PLA Navy frigate targeted its weapons on a Japanese Self Defense Forces Navy destroyer.<sup>25</sup> This was the first incident of its kind and led to further military escalation, as that same year, China established the contentious Air Defense Identification Zone (ADIZ) over much of the East China Sea, including the Senkaku

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<sup>23</sup> Daniel Tretiak "The Sino-Japanese Treaty of 1978: The Senkaku Incident Prelude," *Asian Survey*, Vol. 18, No. 12, December, 1978, p. 1242.

<sup>24</sup> Sanaa Y. Hafeez, "The Senkaku/Diaoyu Islands Crisis of 2004. 2010 and 2014: A Study of Japanese-Chinese crisis Management", *Asia-Pacific Review*, Vol. 22, No. 1, 2015.

<sup>25</sup> "China military officials admit radar lock on Japanese ship, says report", *South China Morning Post* March 18, 2013, on the internet:

<http://www.scmp.com/news/china/article/1193600/china-military-officials-admit-radar-lock-japanese-ship-says-report> (retrieved March 22, 2017).

Islands.<sup>26</sup> China has continued to increase the number of ships it has operating within the Senkaku territorial waters<sup>27</sup> , with 2016 seeing the greatest number yet.

### **U.S. SECURITY GUARANTEES AND THE SENKAKU DISPUTE**

As tensions have risen over the Senkaku Islands, there has been speculation about the role of the U.S. The Japan-U.S. alliance has been the cornerstone of Japanese security arrangements since 1945, with the U.S. having been the guarantor not only for Japanese security but also for broader regional strategic stability. However, Washington has consistently stated it does not wish to take any position on who has the sovereign right to the islands. On the other hand a research report from the Congressional Research Service has unequivocally concluded that the Senkakus are included in U.S. security guarantees to Japan.<sup>28</sup> Even though the U.S. is refusing to take a formal position on Senkaku Islands sovereignty, the 1960 U.S.- Japan Security Treaty on which the alliance rests states that the alliance parties ‘recognize that an armed attack against either Party in the territory under the administration of Japan would be dangerous to its own peace and declares that that it would act to meet the common danger’; therefore, administrative control, rather than sovereign right, is the reference point for alliance commitments.

Lately, as tensions have risen, the U.S. has politically reinforced this commitment. In 2013, the then Secretary of State, Hillary Clinton, said that the U.S. would oppose any unilateral action ‘that would seek to undermine Japanese administration’ of the Senkaku Islands. In 2014, during his visit to Tokyo, former President Obama expanded on the Senkaku issue in both prepared remarks and in response to questions at a press conference, the core message being that the defense

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<sup>26</sup> Mark E. Rosen, *Chinas Reactions to the Arbitration Ruling's Will Lead Into Battles It Won't Win*, Part I, Center for International Maritime Security, September 6, 2016, on the internet: <http://cimsec.org/chinas-reactions-arbitration-ruling-will-lead-battles-wont-win-part/27598>, (retrieved November 27, 2016).

<sup>27</sup> “Over the Line: Tracking Energy Competition in the East China Sea,” CSIS Asia Maritime Transparency Initiative, 2016, on the internet: <https://amti.csis.org/energy-competition-east-china-sea/>, (retrieved November 24, 2016).

<sup>28</sup> Mark E. Manyin, *The Senkakus (Diaoyu/Diaoyutai) Dispute: U.S. Treaty Obligations*, Congressional Research Service, October 14, 2016.

commitments of the alliance are ‘absolute’ and do include the Senkakus as they are under Japanese administration. This position was reiterated by the new U.S. administration. In February 2017, during a visit by Japanese Prime Minister, Shinzo Abe, President Trump stated that the U.S. was ‘committed to the security of Japan and all areas under its administrative control’.<sup>29</sup> Any other contingency in the East China Sea unrelated to the Senkaku Islands is, however, a less explored scenario but as mentioned, one which currently has less potential of escalating into conflict.

In the case of the Senkakus, the strengthened and expanded alliance relationship, Japan’s reinterpretation of the constitution to allow collective self-defense, and explicit U.S. security guarantees for the islands arguably strengthens the deterrence against unilateral Chinese attempt to take control of the islands. On the other hand, the strong U.S. backing could lead Japan to overextend its response in the event of a conflict. There is also the risk that China could miscalculate the U.S. commitment and continue to pressure Japan over small territories such as the Senkakus, and make territorial moves that could trigger alliance action.

### **FLASHPOINT - THE EAST CHINA SEA AND THE CONTENTION OVER THE LAW OF THE SEA, UNCLOS**

The Senkaku Islands are situated close to the south-western edge of the Okinawa Trough, a geological depression and fault line extending northeast from Taiwan towards Japan’s main islands. The trough constitutes part of the sea bed of the East China Sea which is at the heart of another Sino-Japanese dispute, that over water boundaries and Exclusive Economic Zones (EEZs) in this body of water.

The United Nations Convention on the Law of the Sea (UNCLOS) that both China and Japan have ratified makes it possible for a coastal state to claim an EEZ that extends 200 nautical miles (nm) from its coast. If the stretch of water between the

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<sup>29</sup> The White House, “Remarks by President Trump and Prime Minister Abe of Japan in Joint Press Conference, Office of the Press Secretary,” 2017, on the internet: <https://www.whitehouse.gov/the-press-office/2017/02/10/remarks-president-trump-and-prime-minister-abe-japan-joint-press> (retrieved March 24, 2017).

states is narrower than 400 nm, which is the case in parts of the East China Sea, the countries must decide, through arbitration, where to draw the line.<sup>30</sup> In a 2012 submission to the U.N., China argued that the slope at the western edge of the Okinawa Trough constitutes the edge of the continental shelf. Here the sea bed drops from shallows of around 100-150 meters to between 1000 and 2000 meters and then rises again to form Japan's Ryukyu Islands, also known as the first island chain.<sup>31</sup> Pointing to this geological characteristic, China invokes a right known as the natural prolongation of the continental shelf.<sup>32</sup> This UNCLOS provision ostensibly allows China to claim an EEZ beyond 200 nm from its coast line. Leaving out the intricate details, this means that China is claiming an EEZ boundary that envelops most of the East China Sea, its furthest reaches eastward extending very close to Japanese territory.

Japan disputes the Chinese interpretation and argues that the Okinawa Trough is part of the continental shelf which, according to the Japanese interpretation, stretches uninterrupted all the way to and beyond the Ryukyu Islands. As the shelf is located east of the islands, Tokyo argues that an equidistance principle must be applied and that a median line must be calculated from the respective coasts of China and Japan.<sup>33</sup> This is where the Senkaku Island and territorial water disputes converge. Whoever has sovereignty over the Senkakus has the ability to expand its territorial waters and EEZ at the expense of the other.

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<sup>30</sup> *United States Convention on the Law of the Sea, Part VI Article 83, Continental Shelf*, The United Nations, on the internet:

[http://www.un.org/Depts/los/convention\\_agreements/texts/unclos/part6.htm](http://www.un.org/Depts/los/convention_agreements/texts/unclos/part6.htm) (retrieved November 28, 2016).

<sup>31</sup> *T'ai-Wan to Okinawa Shima, T'ai-Wan and Japan*, Sea Chart, Scale 1:750 000, Hydrographic Office, the Admiralty, United Kingdom, Crown Copyright 1985, 2008 edition, 2008.

<sup>32</sup> "Submission by the People's Republic of China Concerning the Outer Limits of the Continental Shelf beyond 200 Nautical Miles in Part of the East China Sea," the *Commission on the Limits of the Continental Shelf (CLCS)*, the *United Nations Convention on the Law of the Seas (UNCLOS)*, The United Nations, August 13, 2012, on the internet:

[http://www.un.org/depts/los/clcs\\_new/submissions\\_files/submission\\_chn\\_63\\_2012.htm](http://www.un.org/depts/los/clcs_new/submissions_files/submission_chn_63_2012.htm) (retrieved August 24, 2016).

<sup>33</sup> Reinhard Drifte, *Japanese-Chinese territorial disputes in the East China Sea – between military confrontation and economic cooperation*, Asia Research Centre Working Paper 24, LSE Asia Research Centre, 2008, p. 9, on the internet:

[http://eprints.lse.ac.uk/20881/1/Japanese-Chinese\\_territorial\\_disputes\\_in\\_the\\_East\\_China\\_Sea\\_\(LSERO\).pdf](http://eprints.lse.ac.uk/20881/1/Japanese-Chinese_territorial_disputes_in_the_East_China_Sea_(LSERO).pdf), (retrieved November 27, 2016)

The East China Sea issue has also seen some recent tension, primarily regarding oil and gas fields situated close to the median line. In 2007 the two countries agreed on a cooperative mechanism of exploitation these deposits even though the final status of the EEZ had not been agreed upon.<sup>34</sup> In 2015 Japan complained that China was undertaking drilling activities that violate the 2007 agreement.<sup>35</sup> Overall, however, the sea right dispute has been much less tense than the island conflict. This does not exclude future tensions in the East China Sea but at the moment little evidence suggests there is any risk the sea control dispute could escalate into open conflict.

### **THE SENKAKUS AND EAST CHINA SEA AS A FOCAL POINT FOR JAPAN-CHINA CONTENTION**

China continues to patrol the area around the Senkakus in the East China Sea.<sup>36</sup> In June 2016, for the first time, a Peoples Liberation Army Navy (PLAN) Frigate violated Japanese waters around the Senkakus.<sup>37</sup> Although it only entered the 24 nm contiguous zone and not the 12 nm territorial waters, Japan protested at the aggression; analysts speculated that China was again signaling its non-acceptance of the existing status quo and was indicating its preparedness for action to get its way.<sup>38</sup> After the Hague Permanent Arbitration Court ruled against China's claims to

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<sup>34</sup> *Japan-China Joint Press Statement: Cooperation between Japan and China in the East China Sea*, Ministry of Foreign Affairs of Japan, June 18, 2008.

<sup>35</sup> Nicholas Szechenyi, 'China and Japan: A Resource Showdown in the East China Sea?' *The National Interest*, August 10, 2015.

<sup>36</sup> Oliver Holmes; Tom Phillips, "South China Sea Dispute: what you need to know about The Hague court ruling," *The Guardian*, July 12, 2016, on the internet: <https://www.theguardian.com/news/2016/jul/12/south-china-sea-dispute-what-you-need-to-know-about-the-hague-court-ruling> (retrieved July 22, 2016).

<sup>37</sup> Steven Stashwick, "That Chinese Frigate in the Senkakus Was a Bad Move for China: Is China escalating in the East China Sea, or tipping its hand?", *The Diplomat*, June 13, 2016, on the internet: <http://thediplomat.com/2016/06/that-chinese-frigate-in-the-senkakus-was-a-bad-move-for-china/>, (retrieved July 24, 2016).

<sup>38</sup> "Japan warns China on deteriorating relations over Senkaku Islands", *The Guardian*, August 9, 2016, on the internet: [www.theguardian.com/world/2016/aug/09/japan-warns-china-of-deteriorating-relations-ov](http://www.theguardian.com/world/2016/aug/09/japan-warns-china-of-deteriorating-relations-ov)

the Spratly Islands in the South China Sea (SCS) in July 2016, Beijing took more assertive steps in an attempt to display its displeasure (it does not accept the court's jurisdiction nor its ruling).<sup>39</sup> Even though Chinese reactions were primarily focused on the SCS, the Chinese decided on a show of force around the Senkakus as well. In August Beijing claimed to have sailed a large number of ships, and to have conducted air force exercises close to the Senkakus.<sup>40</sup> Japan reacted by publically stating that the government was examining further defense capabilities to protect its administrative control over the islands.<sup>41</sup>

The question, however, is whether the shift to a more confrontative approach by Japan would heighten the risk of war. The relatively smooth handling of the Senkaku issue since 1972 built on a more or less tacit agreement by both countries to keep their conflicting arguments ambiguous and not push territorial claims. For a time this made these conflicts less of an issue domestically in both China and Japan. Today decision makers and the public have come to see the conflict as a strong symbols of national right.<sup>42</sup> This could in turn force the two governments to act with more determination in a continued escalatory cycle. China, in particular, is using several ways to rally the public's support for the communist regime including nationalistic fervor. It has been speculated that China may escalate the Senkaku conflict to divert the public's attention away from issues related to public discontent with the regime. Japan, for its part, is adamant about its position; there is no conflict over the Senkakus.

Due to the worsening government to government relationship, there is a risk that

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er-senkaku-islands (retrieved September 18, 2016).

<sup>39</sup> Full documentation for the case is found here: *Case 2013-19, The South China Sea Arbitration* (The Republic of the Philippines v. The People's Republic of China), Permanent Court of Arbitration, The Hague, 2016, on the internet: <https://pcacases.com/web/view/7>, (retrieved July 25, 2016).

<sup>40</sup> "Japan: Chinese fleet sails close to disputed islands", *BBC*, 6 August, 2016, on the internet: <http://www.bbc.com/news/world-asia-36996534> (retrieved September 30, 2017).

<sup>41</sup> "As Senkaku tensions surge, Japan eyes missiles to protect its islands: report", *Japan Times*, August 14, 2016, on the internet: <http://www.japantimes.co.jp/news/2016/08/14/national/chinese-fighter-jet-came-within-50-km-of-disputed-senkakus-source-says/#.WEfq6bLhBpg> (retrieved September 7, 2016).

<sup>42</sup> Akos Kooper "Managing conflicting "Truth Claims" – ambiguity in the diplomat's toolkit in East-Asian Island conflict", *The Pacific Review* Vol. 29, No. 4, 2016, pp. 605-606.

both countries may not be able to communicate effectively in a crisis,<sup>43</sup> which may be further compounded by the fact that there are no military focused maritime confidence building and crisis management mechanisms between China and Japan. There have been discussions of a Maritime Communication Mechanism for many years but with few results. In 2013, there was a surge of diplomatic activity on this issue and in 2015, a hot-line between the two armed forces was being considered.<sup>44</sup> However, to date, as there have been no concrete agreements, Japan and China remain without a robust crisis management structure such as the U.S.-China Military Maritime Consultative Agreement from 1998 or the Incidents-at-Sea agreement signed by the Soviet Union and the U.S. in 1972.

The lack of clear cut international rules that favor any one side has left China with enough political flexibility to maintain its stance;<sup>45</sup> however, China has little to gain by seeking international arbitration and Japan cannot appeal as long as it retains its 'no conflict' position. The recent arbitration ruling by the Hague Court on Chinese claims to the Spratly Islands mentioned above may also shed new light on the conflict. The ruling included a provision stating that the Spratly Islands were 'rocks', which by definition meant that they could not be claimed as an exclusive economic zone. The largest of the Spratly Islands is similar to the Senkakus as neither can sustain permanent human settlements. If the Spratlys are not considered to be islands, the status of the Senkakus as islands may also be debatable from a legal point of view,<sup>46</sup> which would significantly reduce their value; therefore, a ruling such as this would not be in either Japan's or China's interests.

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<sup>43</sup> Sanaa Y. Hafeez, "The Senkaku/Diaoyu Islands Crisis of 2004. 2010 and 2014: A Study of Japanese-Chinese crisis Management", *Asia-Pacific Review*, Vol. 22, No. 1, 2015, pp. 91-92.

<sup>44</sup> Marta M. Ross, *The Japan-China Maritime and Air Communication Mechanism: Operational and Strategic Considerations*, Japan Institute of International Affairs, JIIA, June 30, 2015, on the internet: [https://www2.jiia.or.jp/pdf/fellow\\_report/150630\\_Ms\\_Ross\\_ECS.pdf](https://www2.jiia.or.jp/pdf/fellow_report/150630_Ms_Ross_ECS.pdf) (retrieved April 22, 2017).

<sup>45</sup> Carlos Ramos-Mrosovsky, "International Law's Unhelpful Role In The Senkaku Islands", *University of Pennsylvania Journal of International Law*, Vol. 29, No. 4, 2008, pp. 903-946.

<sup>46</sup> Ryan Scoville, "The South China Sea Arbitration: Implications for the Senkaku Islands", *Lawfare Blog*, July 18, 2016, on the internet: <https://www.lawfareblog.com/south-china-sea-arbitration-implications-senkaku-islands> (retrieved May 24, 2017).

China's behavior in the East and South China Seas is often cited as key examples of Chinese assertiveness. Beijing's challenges of existing international legal regimes and the use of military coercion to push its claims display all the hallmarks of revisionist power politics, which is the main reason for the growing international animosity towards China. If the ECS and Senkaku policies were the sole determinant of bilateral relations between Japan and China, it could be speculated that there could be a military conflict in the near future.

It still remains to be seen if China is willing to wage war or use violence to enforce its claims or if it has the patience to continue using assertive methods below the threshold of war.<sup>47</sup> However, there are many other elements that influence bilateral relations, most of which deal with wider regional security. Part of China's strategy is to use the Senkaku conflict as leverage for other more important foreign policy agendas.<sup>48</sup>

### **REGIONAL RISKS, SYSTEMIC STABILITY, AND THE WAR PEACE EQUATION**

China's rise and quest for political stability, economic security, and great power status continue to be at the heart of a general global shift of power to the Asia Pacific. This 'rise itself is enough to remake the physics of our world', as one prominent China-expert once observed and is a key factor shaping Sino-Japanese ties.<sup>49</sup> Beijing's increasing power and ability to affect international affairs has made it possible for China to expand its international ambitions. China's pursuit of its long term national goals has increasingly put it on a collision course with other East Asian powers.

The current overall Japan-China relationship is shaped not only by rivalry but also cooperation. Key factors include economics, historic animosity, irreconcilable

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<sup>47</sup> Ben Connabel; Jason, H. Campbell; Dan Madden, *Stretching and Exploiting Thresholds for High Order War: How Russia, China and Iran are Eroding American Influence Using Time-Tested Measures Short of War*, RAND Corporation, Santa Monica, 2016, pp. 20-22.

<sup>48</sup> Krista Wiegand, "China's Strategy in the Senkaku/Diaoyu Islands Dispute: Issues and Coercive Diplomacy", *Asian Security*, Issue 2, Vol. 5, 2009.

<sup>49</sup> Joshua C. Ramo, *The Beijing Consensus*, Foreign Policy Center, London, 2004, p. 9.



ideological differences, and Japan's alliance with China's peer competitor the U.S., in addition to territorial issues. It is, to borrow Steve Chan's words an 'enduring rivalry' but one which has remained peaceful and well managed since the end of the Pacific War in 1945<sup>50</sup>

## A HISTORY OF CONTENTIONS

The Chinese and Japanese views on strategic relations have been deeply influenced by their imperial rivalry before 1945. Both countries have internalized the bitter lessons of strategic miscalculations from this era. China continuously invokes the Japanese atrocities inflicted on its people during this time and repeatedly complains that Japan has not apologized sincerely. This perpetuates resentment against Japan in Chinese society.<sup>51</sup>

Japan for its part, remains skeptical of China's 'peaceful rise', partly because it remembers its own 19th century transformation when unfettered imperial ambitions brought about Japan's ruin in 1945. The 'keynotes of Japanese policy in the post-1868 period were peace abroad and reconstruction at home'.<sup>52</sup> However, as soon as Japan had caught up with the European powers around the 1910's, it devoted itself to the same expansionist colonialism that the Europeans had undertaken.

With this in mind, it is reasonable to question if a benign rebalance of power in East Asia is possible. China talks of peace but is increasingly using force to strengthen its economy and pursue historic claims and rights. To many, this demonstrates again that a quick rise to power rarely remains peaceful.

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<sup>50</sup> Steve Chan, *Enduring Rivalries in the Asia-Pacific*, Cambridge University Press, Cambridge, 2013.

<sup>51</sup> "China marks 72<sup>nd</sup> anniversary of Japan's WWII surrender", *Xinhua*, August 15, 2017, on the internet: [http://news.xinhuanet.com/english/2017-08/15/c\\_136528809.htm](http://news.xinhuanet.com/english/2017-08/15/c_136528809.htm) (retrieved October 6, 2017)

<sup>52</sup> Willmott, H. P, *Empires in the Balance: Japanese and Allied Strategies to April 1942*, United States Naval Institute, Naval Institute Press, Annapolis, 1982, p. 11.

Japan's anxiety about access to natural resources was a key driver of Japanese military expansionism. Because of the lack of domestic natural resources needed to sustain modern industrialism, Japan relied heavily on sea transports to import what they needed. The deep seated anxiety about access to resources was reflected in Japanese policies. While the seeds of military expansionism had already been sown by the 1930s, the impact of the Great Depression and the profound poverty it brought to Japan was a key factor in forming national strategy before the Pacific War.<sup>53</sup> The 'Fundamental Principles of National Policy' issued by the cabinet in 1936 reaffirmed Japan's quest for imperial control of the continent and their plans for a 'peaceful' expansion into the 'South Seas'. This expansion was seen as necessary for the enhancement of foreign trade so as to achieve the independent economic development 'indispensable for the maintenance and betterment of economic life...'.<sup>54</sup>

As much as anything, Japan saw itself as pursuing a policy of economic security.<sup>55</sup> Imperial hubris and the inability to constrain expansionism, however, put the country on the road to war.<sup>56</sup> Japan did not lose the war because of inferior war fighting capabilities, but rather because of 'superior American industrial power and organizational ability'.<sup>57</sup> More importantly, the Japanese also lost because it pursued concurrent political, economic and military expansion, which brought it to the attention of the other great powers; a recurring phenomenon in international relations.<sup>58</sup> These lessons have arguably been ingrained in the self-image of the Japanese, and have also to some degree informed their concerns about China's rise.

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<sup>53</sup> Ronald H. Spector, *Eagle Against the Sun: The American War with Japan*, Vintage Books, New York, 1985, p. 35.

<sup>54</sup> *Fundamental Principles of National Policy*, 1936, on the internet: <http://ibiblio.org/pha/monos/144/144app01.html> (retrieved July 23, 2016).

<sup>55</sup> H.P. Willmott, *Empires in the Balance: Japanese and Allied Pacific Strategies to April 1942*, Naval Institute Press, 1982, p. 32ff, pp. 56-57

<sup>56</sup> Expression borrowed from: Michael Scheuer, *Imperial Hubris: Why the West is Losing the War on Terror*, Potomac Books, Washington DC, 2004.

<sup>57</sup> Ronald H. Spector, *Eagle Against the Sun: The American War with Japan*, Vintage Books, 1985, p. 560.

<sup>58</sup> Edward Luttwak, *The Rise of China vs. the Logic of Strategy*, The Belknap Press of Harvard University Press, Cambridge Massachusetts, 2012.

## JAPAN, CHINA, THE CURRENT GLOBAL POWER TRANSITION AND RISKS OF WAR

Besides Japan and China, a number of the world's great powers have key interests and ambitions in East Asia. Despite or perhaps thanks to this convergence of interests, the region has experienced an unprecedented level of economic development. Broader regional war in East Asia, it is often said, has been avoided because of the implications of this economic expansion and the mutual interdependence it has caused. This is seen as equally true of the bilateral Sino-Japanese relationship, as both countries have benefitted from their expanding economic ties. As both countries have been able to gain what they want through trade, military expansion has not been a worthwhile option for either.<sup>59</sup> Current national priorities of the Chinese and Japanese governments reflect this assessment. In Japan, as is often noted, Abenomics – the Abe government's policy of economic reform – is the main priority of the current government; that is, recovery and reinvigorated growth is of greater interest than security-related reforms. For China, the same has been said about the economic focus of the Xi-regime because of such ambitious projects such as the Belt and Road-initiative that aims to secure further growth and development in the Chinese economy.

Although the current economic interaction between China and Japan remains very significant, trade is no longer expanding and Japanese foreign direct investment into China has been decreasing.<sup>60</sup> While this to some degree is a reflection of the residual effects of the 2009 economic crisis, Japanese firms are also moving elsewhere as Chinese salaries and production costs increase. Decisions at the company level have also been influenced by the recent crisis, as exemplified by the 2012 riots and the plundering of Japanese businesses and affiliates in China in the aftermath of the Senkaku Islands nationalization. According to a study by the Japanese Research Institute of Economy, Trade, and Industry (Rieti), these events 'made Japanese companies hesitate to invest in China'.<sup>61</sup> According to a research

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<sup>59</sup> Richard Rosecrance; Peter Thompson, "Trade, Foreign Investment and Security," *Annual Review of Political Science*, 6, 2003, p. 378.

<sup>60</sup> María C. Latorre, Nobuhiro Hosoe, "The role of Japanese FDI in China," *Journal of Policy Modeling*, Volume 38, Issue 2, March–April, 2016, pp. 226–241.

<sup>61</sup> Hongyong Zhang, "Economic Relations between Japan and China in 2016," *Rieti Column*, Tokyo, 2016, [http://www.rieti.go.jp/en/columns/a01\\_0441.html](http://www.rieti.go.jp/en/columns/a01_0441.html) (accessed March 23, 2017).

paper on the link between the economy, security and mutual FDI rather than trade, has shown a stronger correlation with peaceful relations.<sup>62</sup>

The economy, therefore, has been negatively impacted by the increasingly strained bilateral relations. The Rieti study concluded that ‘the deterioration of the Japan-China relationship had an extremely large economic impact’ on both countries.<sup>63</sup> Exports from Japan to China dropped 2.69% and Chinese exports to Japan decreased by about the same level, the majority of the declines coming the month after the nationalization of the disputed islands was announced in September 2012. Furthermore, despite frequent attempts at the highest diplomatic levels, no Sino-Japanese High Level Economic Dialogues have been conducted since 2010.

Prospects of a downturn in economic interdependence aside, the wider peace through economic interdependence discourse has been contradicted by inconclusive scientific evidence of a strong correlation between economic cooperative and peace. Pre-World War I European affairs, for example, demonstrated that cataclysmic war could erupt despite a high degree of economic interaction.<sup>64</sup> Unfair trade balances, skewed tariff arrangements, protective foreign investment legislation, and currency disputes are all current issues in East Asia, all of which makes it seem politically questionable to rely on strong economic ties as a guarantee of future peace. Research has also shown that economic interdependence and free trade are but one factor when assessing the risks of war; power balances, power transitions, and diversionary politics at the inter-state level of analysis are some of the other important factors that need to be considered.<sup>65</sup>

International conflict triggered by the shifting balance of power could be a cause Japan to be drawn into a war with China. In a recent book, Graham Allison

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<sup>62</sup> Richard Rosecrance; Peter Thompson, “Trade, Foreign Investment and Security,” *Annual Review of Political Science*, 6, 2003.

<sup>63</sup> Ibid.

<sup>64</sup> Richard Rosecrance, Peter Thompson, “Trade, Foreign Investment and Security,” *Annual Review of Political Science*, Vol. 6, 2003, p. 378.

<sup>65</sup> Jack S. Levy, “The Causes of War and the Conditions for Peace,” *Annual Review of Political Science*, Vol. 1, 1998.

examines 16 historic examples of power transitions and concludes that in 12 of these cases war was the result.<sup>66</sup> However, others have pointed out that shifts in power and the rebalancing of an international system do not by necessity mean war or hostility. Chan, for example, argues that rebalancing could also be achieved as a result of brokering. The logic is that the relative bargaining power of the states can affect the shift, thereby allowing the rising power to demand more concessions. If done in the right way, the weaker party might well be inclined to concede and accommodate rather than violently resist; and this is what is going on in East Asia, according to Chan.<sup>67</sup>

Studies have suggested, however, that the risk of war does increase in periods of power shifts, but that conflict is neither a logical necessity nor a deterministic outcome. Power shifts alone, it seems, are not enough to explain wars. This is an example of the Thucydides trap, of which Allison and many before him have reminded us; the notion that both the actual rise of a challenger and the fear it causes in the challenged powers is what leads to war<sup>68</sup>; that is, what matters are the power relations and the perceptions, political cultures and deep seated beliefs of the involved players. As early as 2004, Joshua Ramo, in his seminal paper, *The Beijing Consensus*, notes that while China hoped that its international engagement would reassure the world it was serious about a peaceful rise, such views were far too optimistic and failed 'to reflect the profound uneasiness in some quarters about China's rise'.<sup>69</sup>

Turning to the risks of war in East Asia today, Ramo's question is still a valuable starting point. Is China expanding in such a way that is instilling more fear than hope at the systemic level? What opportunities are there for a peaceful rebalancing through accommodation and agreement? An optimistic assessment is that China does not pose any great threat to the current global order, specifically not to the

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<sup>66</sup> Graham Allison, *Destined for War: Can America and China Escape Thucydide's Trap*, Houghton Mifflin, 2017. Harcourt and Graham Allison, "The Thucydides Trap: Are the U.S. and China Headed for War?", *The Atlantic*, September 24, 2015.

<sup>67</sup> Steve Chan (2013) p. 5.

<sup>68</sup> Se J. McKinney, "Four Questions for the Improbable War" Review Essay, *Asian Security*, Vol. 12, No. 1, 2016. and Christopher Coker, *The Improbable War: China, The United States and the Logic of Great Power Conflict*, Oxford University Press, Oxford, 2016.

<sup>69</sup> Joshua C. Ramo, *The Beijing Consensus*, Foreign Policy Center, London, 2004, p. 9, p. 53.

power that matters the most, the U.S. For Ramo, the key variable is asymmetry; that is, China is using a new globalized development model that is more focused inward and less interested in global issues. The key challenge is to ensure the stable development of Chinese society from the individual to the state level. Therefore, with this somewhat internal focus, the rest of the world is of second order interest at best, which is also mirrored in China's military strategy. Ramo believes that it is fundamentally driven by the conviction that fighting wars is detrimental to the broader goals of development and would indicate political failure. Consequently, its military strategy continues to emphasize strategic and operational defense and deterrence concepts.

From this perspective China's rise is an example of hope, rather than a threat. Ramo suggests that Beijing is 'marking a path for other nations around the world who are trying to figure out not simply how to develop their country, but also how to fit into the international order in a way that allows them to be truly independent, to protect their way of life and political choices in a world with a single massively powerful center of gravity'.<sup>70</sup> Chan shares a similar view contending that East Asia today is less polarized, and less competitive than before because of the new approach China is taking, the examples it is setting, and the economic success it has brought to the region and the world including the U.S.<sup>71</sup>

This is why the U.S. is more likely to find a new deal with China that accommodates its rise rather than focusing on conflict.<sup>72</sup> This does not mean the U.S. needs to capitulate or that it should relinquish its strengths. On the contrary, continued U.S. strength is a guarantee that China does not overstep or overextend. As long as the West finds an acceptable balance and remains strong rivalry and fear will not increase. As a consequence, the risk of war should decrease.

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<sup>70</sup> Joshua C. Ramo, *The Beijing Consensus*, Foreign Policy Center, London, 2004, p. 3.

<sup>71</sup> Jared McKinney, "Four Questions for the Improbable War" Review Essay, *Asian Security*, Vol. 12, No. 1, 2016, p. 57.

<sup>72</sup> Charles L. Glaser, "A U.S.-China Grand Bargain? The Hard Choice between Military Competition and Accommodation", *International Security*, Vol. 39, No. 4 (Spring), 2015. and Hugh White, *The China Choice: Why America Should Share Power*, Collingwood, Australia, 2012.

This optimistic view is contested by those more alarmed by China's rise.<sup>73</sup> Some pessimistic appraisals agree that even though China is not attempting to overthrow the current liberal Washington centered world order from which it has so benefitted, Beijing is increasingly attempting to reinterpret and if necessary challenge the existing rules and norms for its own benefit, which it has been doing piece meal by promoting local changes in particular areas of interest rather than implementing systemic change. Had this been done in a way that convinced peers and neighbors they had nothing to fear, there would be little to worry about and no reason for other states to react defensively to hedge against it.

The problem is that Beijing is acting in a particularly self-interested way and has shown little interest in promoting regional common good. For example, economic regulation in China is often cited as unfair to foreign companies, with China's way of doing business in Africa and other countries often being described as relationships in which Beijing 'unabashedly pursues its self-interests'.<sup>74</sup> Chinese exploitation and self-interest has also been discussed in relation to initiatives such as the Belt and Road (B&R) or the Asian Infrastructure Investment Bank (AIIB).<sup>75</sup> China's behavior has also become more assertive and coercive. With its growing military prowess, China is putting increased pressure on neighbors to relinquish territorial claims and even seeking to change the existing status quo by force as in the South China Sea.

Were it not for the U.S. alliance structures in the region, Japan and other states may have felt compelled to accept Chinese dominance a long time ago. The security guarantees, extended deterrence, and forward military deployment of the United States have enabled states such as Japan to resist Beijing's territorial claims. From a practical point of view the U.S. guarantees are what ensure stability in the region

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<sup>73</sup> Enrico Fels, *Shifting Power in Asia-Pacific: The Rise of China, Sino-US Competition and Regional Middle Power Allegiance*, Springer International Publishing Switzerland, 2017, p. 50.

<sup>74</sup> David Haroz, "China in Africa: Symbiosis or Exploitation?", *The Fletcher Forum of World Affairs*, Vol, 35, No. 2, Summer, 2011, p. 83.

<sup>75</sup> Such assessments feature prominent in Chinas neighbour counties. Se for example: Jagannath Panda, *AIIB Chronicle: China's Ambitions Behind Infrastructure Investment*, Issue Brief, Institute for Defence Studies – IDSA, March 21, 2017. and Simeon Djankov; Sean Miner, *Chinas Belt and Road Initiative – Motives, Scope, and Challenges*, PIIE Briefing 16-2, Peterson Institute for International Economy, 2016.

by checking China's expansionist ambitions. At the same time, the U.S. engagement prevents a recalibration of the relations in Asia to reflect the growing power of China. This causes a rise of tension in the regional context.

## **CONCLUSION – RISKS OF WAR AND OPPORTUNITIES FOR CONTINUED PEACE?**

This chapter has explored if war is becoming more likely between Japan and China. At the outset, it was suggested that economic interdependence alone is not enough to ensure continued peace. Instead several factors at the bi-lateral, regional, and global level interact and influence how the risk of war should be judged at any given time. The main drivers of the Sino-Japanese relationship are territorial disputes, cultural animosity, and contradictory political and economic systems. These bi-lateral factors relate to, and are influenced by the broader global reconfiguration of power between the U.S. and China.

This chapter began by examining Sino-Japanese relations through the lens of the escalating conflict over the Senkaku Islands. Crises that involve military assets increase the risk that incidents can turn into violent clashes. The lack of diplomatic and military communication mechanisms has complicated effective crisis management, control, and de-escalation. This is an environment in which military and political miscalculations leading to armed clashes is a risk, one exacerbated by the lack of clear cut international rules, and the actor's disinterest in pursuing a political solution.

However, continuing U.S. support has provided deterrence, and in the last few years, Japan has taken more firm military measures to ensure it can effectively resist Chinese incursions without the need of going to war.<sup>76</sup> A Sasakawa Peace Foundation scenario gaming report also supports this view,<sup>77</sup> the key insights from which were that none of the three actors; Japan, China and the U.S.; want to go

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<sup>76</sup> Interviews with acting and former officials and think tank experts by the author in Japan in 2010, 2012, 2013 2015 and 2017. Records held by the author.

<sup>77</sup> Michael McDevitt, *Senkaku Islands Tabletop Exercise Report*, Sasakawa Peace Foundation USA, Tabetop held at Lockheed Martin Center for Innovation, March 28-30, 2017.



to war over the Senkakus and would attempt to de-escalate any crisis.<sup>78</sup> However, this is no insurance against mistakes that may be caused either by a lack of communication or as a result of political considerations beyond the narrow issue of the Senkaku/Diaoyu Island sovereignty.

War can be triggered by incidents and mistakes but are rarely fought or pursued solely because of them. Major wars are fought because the warring parties are at cross purpose regarding fundamental principles of co-existence and at the same time in competition for power and prestige. Japan and China are currently caught in such a relationship and it is this aspect rather than the Senkakus territorial dispute that makes war more probable.

There are fundamental rapid geopolitical changes in the region. The ongoing power transition caused by the rise of China has resulted in the status quo powers such as Japan and the U.S. feeling increasingly nervous and fearful. Therefore, both countries are subtly building up their military capability in response to China's force modernization. Deep and seemingly unsolvable grievances and to some extent xenophobia against the 'other' has exacerbated the contentious atmosphere, making reconciliation all but impossible to pursue.

Were it not for the U.S. alliance structures in the region, Japan and other states might have felt compelled to accept Chinese dominance. However, it is the security guarantees, extended deterrence, and forward military deployment of the United States that has enabled states such as Japan to resist Chinese territorial claims. From a practical point of view, the U.S. guarantees ensure stability in the region by restricting China's 'expansive ambitions. At the same time, U.S. engagement has hindered a recalibration of the relations in Asia given China's growing power. As pressure from China mounts, the fear is expected to increase, which in turn will encourage greater military action and reaction, thereby strengthening the fundamental preconditions for war.

This is a possible concern in at least two ways. If the U.S. shows less interest in East

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<sup>78</sup> Ibid.

Asian affairs, withdraws and downgrades its alliance relationships, China would be in a more favorable position to advance its interests and expand its footprint at the expense of its neighbors. If this were to transpire Japan would be hard pressed to resist China. To thwart China's ambitions in the region and protect its own position, Tokyo may need to resort to extreme measures, such as acquiring a nuclear deterrent. At the moment, the U.S. abandonment of its East Asian allies seems very unlikely. Washington and its partners are convinced that China is in fact challenging the global order in an attempt to gain influence and power. The alliance with Japan is the key to preserving presence and influence in East Asia and as long as the U.S. sees a need to balance China, it will retain strong ties with Japan.

China's behavior, however, results in a stronger challenge to international order in its immediate vicinity than at the global level. In East Asia, territorial issues and relationships with its neighbors has become the main issue influencing China's internal political processes and the attempts by Beijing to keep the country from splintering. Territorial claims and historic grievances are being pursued to expand power and rally support for the regime. Therefore, even if China is not challenging the Washington centered global order, it is challenging the regional order in East Asia. As a consequence, old cultural rivalries, especially those between Japan and China, are intensifying, thereby strengthening the risk of war between Japan and China. It is not certain that the Japan-U.S. alliance is capable of warding off or managing this local challenge in the long run, and it is not certain whether Japan can resist China's attempts to expand its territorial, economic and political influence in its near abroad. Therefore, even if war is improbable in the near term, there is enough evidence to suggest that China's expansion in East Asia does constitute an increased risk, at least with regards to historic precedence and the Thucydides trap. Rivalry is on the rise, fear is increasing, and hedging behavior is becoming more dominant.

## CHAPTER 2

# Balancing China's Maritime Power in the East and South China Seas

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## INTRODUCTION

Tensions in the East and South China Seas have increased for several reasons. First, there is no consensus on the legal basis for maritime boundaries in postwar Asia. The national sea boundaries in Asia are based on the 1951 San Francisco Peace Treaty signed between Japan and 48 other countries; however, as those countries were not party to the treaty, they are not bound by its provisions.

For example, none of Japan's immediate neighbors was party to the San Francisco Peace Treaty, and for that reason Takeshima and the Northern Territories, despite being recognized as Japanese territories in the San Francisco Treaty, remain occupied to this day by South Korea and Russia respectively. The Senkaku Islands were also treated as Japanese territory in the San Francisco Peace Treaty, but both Taiwan and China have voiced objections to this status.

Circumstances in the South China Sea are even more complex. Japan relinquished the Paracel Islands and the Spratly Islands as part of the San Francisco Peace Treaty. Vietnam, the Philippines, Brunei, Malaysia, China, and Taiwan all claim some of the land features in the South China Sea. Both Vietnam and the Philippines were

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signatories to the San Francisco Peace Treaty but their interpretations of this treaty differ. While not a party to the San Francisco Peace Treaty, Taiwan and China drew a “nine-dash line” in the South China Sea and declared territorial rights to all of the islands within based on a historical claim dating back 2000 years. These differences in the grounds on which these countries have asserted territorial claims makes the problems surrounding the South China Sea all the more difficult.

Second, there is little consensus on the peaceful resolution of maritime disputes. The United Nations Charter and the United Nations Convention on the Law of the Sea (UNCLOS) are the foundation of today's open and stable maritime order. However, some states have been reluctant to resolve territorial disputes by arbitration mechanisms such as the International Court of Justice and the International Tribunal for the Law of the Sea, even if negotiations fail. China sometimes does not refrain from using force to change the territorial status quo. Different states interpret the UNCLOS differently on the delimiting of maritime boundaries, disagreements about which have at times sparked diplomatic disputes and precarious military encounters.

Third, the faltering of the maritime order in Asia is not unrelated to changes in the global power balance as regional order must be backed by power. Indeed, it has been U.S. power that has maintained the San Francisco treaty requirements to date; however, with emerging countries such as China and India on the rise, the US role in maintaining regional order has been diminishing in relative terms, which has prompted some coastal countries to seek to change the status quo.

China is at the center of the maritime disputes in the East and South China Seas. Given China's assertiveness, other claimant states have responded by building up their defense and constabulary capabilities (internal balancing) and strengthening their ties with other like-minded partners (external balancing). Those claimant states have also sought to establish risk mitigation mechanisms with China. This paper reviews these efforts in the East and South China Seas to understand the regional approaches to maritime dispute management.

## MANAGING TENSION IN THE EAST CHINA SEA

China's government ships have been intruding into the Japanese territorial waters around the Senkaku Islands since December 2008. A Chinese fishing boat, which was conducting illegal fishing in the Japanese territorial waters around the Senkaku Islands, rammed two Japanese coast guard patrol vessels in September 2010. After the arrest of the fishing boat skipper by Japan, China strongly protested and ceased rare earth metal exports to Japan.

The frequency of intrusions by Chinese ships increased dramatically after September 2012 when the Japanese government purchased three of the Senkaku Islands from a private owner, then gradually declined from the latter half of 2013. The number of Chinese public vessels and the frequency of their intrusions gradually stabilized to a pattern known as the 3-3-2 method, in which three public Chinese vessels enter Japanese territorial waters around the Senkaku Islands for two hours, three times a month.<sup>2</sup>

By increasing the presence of its government ships around the Senkaku Islands, China is challenging Japan's administrative sovereignty. In August 2016, hundreds of Chinese fishing boats escorted by 20 Chinese coast guard vessels appeared in and around the territorial waters of the Senkaku Islands.<sup>3</sup> In 2015, China had 120 large coast guard vessels, with the number expected to increase to 135 by 2019.

Since 2008, China's naval activities have grown increasingly frequent in the wider East China Sea and beyond. Improved access to the open ocean through the Japanese straits is sought in an effort to develop its anti-access/area-denial (A2/AD) and counter-intervention capabilities. A Japanese annual defense white

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<sup>2</sup> For the data of Chinese intrusions, see Ministry of Foreign Affairs, "Trends in Chinese Government and Other Vessels in the Waters Surrounding the Senkaku Islands, and Japan's Response," [http://www.mofa.go.jp/region/page23e\\_000021.html](http://www.mofa.go.jp/region/page23e_000021.html).

<sup>3</sup> Ministry of Foreign Affairs, "Status of Activities by Chinese Government Vessels and Chinese Fishing Vessels in Waters Surrounding the Senkaku Islands," August 26, 2016, <http://www.mofa.go.jp/files/000180283.pdf>.

paper described Chinese naval activities around Japan, <sup>4</sup> claiming that the most frequently used route was the Miyako Strait, the widest channel along the first island chain, and that the Chinese Navy used most of Japan's major straits on a more regular basis.



China has taken some provocative actions. In January 2013, for example, a Chinese naval ship directed fire-control radar at a Japanese destroyer near the medium line of the East China Sea. The Chinese government denied this incident but criticized Japanese surveillance activities as a “source of the safety problem.” In June 2016, a Chinese frigate entered Japan's contiguous zone near the Senkaku Islands, which was the first time a Chinese Navy combatant vessel had ever entered the zone.

Intrusions have taken place in the sky as well as at sea. The number of Chinese naval aviation and air force aircraft approaching Japanese territorial airspace has increased since 2010, with Japan's Air Self-Defense Force conducting scrambles

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<sup>4</sup> Every year Japan's defense white paper updates China's maritime activities around Japan. The most recent one is Ministry of Defense, *Defense of Japan 2016*, July 2016, pp. 52-54, [http://www.mod.go.jp/e/publ/w\\_paper/pdf/2016/DOJ2016\\_1-2-3\\_web.pdf](http://www.mod.go.jp/e/publ/w_paper/pdf/2016/DOJ2016_1-2-3_web.pdf).

vis-à-vis Chinese aircraft more than 550 times in 2015.<sup>5</sup> After the announcement of the “East China Sea Air Defense Identification Zone” in November 2013, the Chinese military commenced scrambles against Japanese and US military aircraft with the intention of restricting foreign military aircraft overflight freedom above the Chinese-claimed EEZ.<sup>6</sup>

With the increases Chinese assertiveness in the East China Sea, Tokyo revised the National Defense Program Guidelines in 2013, which called for a dynamic joint defense force. Under this concept, the quantity and quality of Japan's Self-Defense Force (JSDF) is to be strengthened to defend the Nansei (Southwestern) Islands.<sup>7</sup> The dynamic joint defense force concept envisions air and maritime superiority with active and regular surveillance, as well as a rapid deployment of combat troops, armored vehicles, air-defense units, and surface-to-ship missile launchers. In essence, it is a Japanese version of the anti-access/area-denial (A2/AD) strategy along the Nansei Islands. This enhanced defense posturing has been designed to send a message of deterrence to Beijing.

To more effectively deal with the Chinese challenges in the East China Sea, Japan has strengthened its alliance with the United States. Beijing became more assertive when the Democratic Party of Japan's administration mismanaged the US-Japan alliance, in particular over the base problem in Okinawa. Prime Minister Abe pledged to restore the alliance, and the then US President Obama confirmed the treaty commitment to the Senkaku Islands during his visit to Tokyo in April 2014<sup>8</sup>.

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<sup>5</sup> *Defense of Japan 2016*, p. 55.

<sup>6</sup> For the analysis on China's ADIZ practices, see Tetsuo Kotani, “Reviewing the First Year of China's ADIZ: A Japanese Perspective,” CSIS Asia Maritime Transparency Initiative, November 25, 2014,

<http://amti.csis.org/reviewing-the-first-year-of-chinas-adiz-a-japanese-perspective/>.

<sup>7</sup> The English text of the NDPG is available at the Ministry of Defense website, [http://www.mod.go.jp/e/d\\_act/d\\_policy/national.html](http://www.mod.go.jp/e/d_act/d_policy/national.html); the NDPG was first written in 1976 and revised in 1995 and 2004, 2010, and 2013.

<sup>8</sup> The White House, “Joint Press Conference with President Obama and Prime Minister Abe of Japan,” April 24, 2014,

<https://obamawhitehouse.archives.gov/the-press-office/2014/04/24/joint-press-conference-president-obama-and-prime-minister-abe-japan>.

Tokyo and Washington then revised their bilateral defense cooperation guidelines to upgrade bilateral operational cooperation and enhance the alliance structure.<sup>9</sup> Under the new Guidelines, the JSDF has the primary responsibility for the defense of the Nasei Islands, while the US military has a supporting role with long-range strategic strike capabilities.<sup>10</sup> The new Alliance Coordination Mechanism (ACM) is expected to endorse this upgraded operational cooperation, as under this ACM, Japan and the United States are going to share information and situational awareness from peacetime to contingencies, while coordinating their bilateral responses.<sup>11</sup>

In addition to the deterrence enhancement, Japan has been seeking crisis management discussions with China. Japan and China essentially reached an understanding on the structure of a military to military maritime and air communication mechanism in June 2012, under which the two defense authorities would establish hotlines, have regular consultations, and implement common communication methods between ships for risk mitigation. However, after September 2012, Beijing refused to talk about this mechanism and demanded concessions for territorial and historical issues. In November 2014, Beijing finally agreed to disagree with Tokyo on these issues, and talks on the communication and crisis management mechanisms resumed.<sup>12</sup>

Tokyo and Beijing have agreed on the structure of the mechanism but cannot agree on the geographical coverage. Tokyo does not assume the communication mechanism is to be applied to the 12 nautical mile territorial seas and skies, while Beijing insists the mechanism is to be applied to the territorial seas and skies.<sup>13</sup>

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<sup>9</sup> The Guidelines for Japan-U.S. Defense Cooperation, April 27, 2015, [http://www.mod.go.jp/e/d\\_act/anpo/pdf/shishin\\_20150427e.pdf](http://www.mod.go.jp/e/d_act/anpo/pdf/shishin_20150427e.pdf).

<sup>10</sup> For the analysis of the NDPG, see Tetsuo Kotani, "U.S.-Japan Allied Maritime Strategy: Balancing the Rise of Maritime China," CSIS Strategic Japan, April 2014, [http://csis.org/files/publication/140422\\_Kotani\\_USJapanAlliance.pdf](http://csis.org/files/publication/140422_Kotani_USJapanAlliance.pdf).

<sup>11</sup> For the analysis of the US-Japan defense guidelines, see Tetsuo Kotani, "The Maritime Security Implications of the New U.S.-Japan Guidelines," <http://amti.csis.org/the-maritime-security-implications-of-the-new-u-s-japan-guidelines/>.

<sup>12</sup> For the analysis of Japan-China crisis management, see Tetsuo Kotani, Crisis Management in the East China Sea, "SIPRI Policy Brief, February 2015, <http://books.sipri.org/files/misc/SIPRIPB1502b.pdf>.

<sup>13</sup> *Yomiuri Shimbun*, October 5, 2015.



Beijing is attempting to use the mechanism to justify its presence and intrusions into Japanese territorial space; therefore, Beijing continues to use the crisis management issue to achieve its political purposes.

The overall military balance still favors Japan and the United States, and China therefore takes measures it believes are below the threshold that would prompt military intervention by Japan and the US — constituting gray-zone coercion that is short of war. China has not attempted to take the Senkaku Islands by force, indicating that China is deterred by the US-Japan alliance. On the other hand, China has regularized the presence of its coast guard in the vicinity of the Islands and has recently dispatched armed vessels converted from warships—making the gray zone increasingly darker.<sup>14</sup> Chinese gray-zone coercion, therefore, has not been deterred by the strengthened US-Japan alliance.

To respond to China's gray-zone coercion, Tokyo has been reinforcing the Japan Coast Guard (JCG), the first responder to such coercion. The JCG is establishing a special unit for the Senkaku patrol, with 10 patrol ships now present at Ishigaki Island.<sup>15</sup> However, as Beijing has greater coast guard shipbuilding capacity, Tokyo has also changed its procedures for issuing maritime security orders so that the JSDF is able to conduct law enforcement operations in support of the JCG, meaning that the JSDF can be swiftly dispatched; however, a JSDF presence in such as gray-zone environment could only serve to escalate tensions.

## **INCREASED TENSION IN THE SOUTH CHINA SEA**

Beijing has increased its footprints in the South China Sea by exploiting power vacuums since the 1950s. However, in recent years Beijing has become more assertive despite the US rebalancing in Asia. For example, China took control of the Scarborough Shoal from the Philippines in 2012, which was a challenge to the US interests in Asia as well as a test of the US's reliability as a security guarantor to its

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<sup>14</sup> *Mainichi Shimbun*, January 5, 2016.

<sup>15</sup> This is explained in the annual JCG report 2014 (in Japanese), [http://www.kaiho.mlit.go.jp/info/books/report2014/html/tokushu/toku14\\_01-3.html](http://www.kaiho.mlit.go.jp/info/books/report2014/html/tokushu/toku14_01-3.html).

regional allies.<sup>16</sup>

China's rapid and massive land reclamation of seven land features in the Spratly Islands has been intensifying tensions in the South China Sea. Despite its public pledge not to militarize the South China Sea, China has been building facilities and introducing equipment that could be used for military purposes. The Japanese Defense Ministry has concluded that the militarization of these artificial islands is improving China's law enforcement, intelligence, surveillance, and reconnaissance (ISR) capabilities, as well as its air power and has warned that China's ability to interrupt navigation and overflight freedoms has expanded as a result.<sup>17</sup>

China is on the verge of acquiring modernized and reliable second-strike capabilities with the development of the JL-2 SLBMs in addition to the already operational DF-31 and DF-41 road-mobile intercontinental ballistic missiles (ICBMs). In addition, China has plans to introduce up to five Type 094, or Jin-class, strategic nuclear ballistic missile submarines (SSBNs) armed with JL-2 missiles, and is constructing an underwater submarine base on Hainan Island in the South China Sea.<sup>18</sup> As China acquires more credible second strike capabilities, the credibility of the US extended deterrence for Japan and other US allies in the region might be undermined over the longer term.

Regional states are responding to China's assertiveness by increasing defense spending, particularly their navy and coast guard potential: Singapore, Malaysia, Vietnam, Indonesia, and Thailand are all acquiring or upgrading their submarine fleets; Hanoi's request to lift the 40-year ban on lethal weapon sales was accepted by Washington; the Philippines has received patrol vessels from the United States and Australia, and the United States is going to provide two additional ships to the

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<sup>16</sup> Ely Ratner, "Learning the Lessons of Scarborough Reef," *The National Interest*, November 21, 2013, <http://nationalinterest.org/commentary/learning-the-lessons-scarborough-reef-9442?page=snow>.

<sup>17</sup> Ministry of Defense, "China's Activities in the South China Sea, December 2016," [http://www.mod.go.jp/j/approach/surround/pdf/ch\\_d-act\\_20161222e.pdf](http://www.mod.go.jp/j/approach/surround/pdf/ch_d-act_20161222e.pdf).

<sup>18</sup> Office of the Secretary of Defense, *Annual Report to Congress: Military and Security Developments Involving the People's Republic of China 2016*, April 2016, p. 58.

Philippines; and Japan is providing patrol vessels to the Philippines, Vietnam, and Malaysia.

The ten ASEAN member states are expected to spend \$58 billion on new military capabilities over the next few years, mostly on maritime procurement. However, while the maritime shopping lists are long, Southeast Asian budgets are tight everywhere except Singapore.<sup>19</sup> Despite its slowing economic growth, China is still spending large to bolster its military and maritime capabilities. Overall, however, the regional military balance favors China, as the internal balancing by several ASEAN members is insufficient to manage the increasing tensions in the South China Sea.

Despite China's opposition, Vietnam and the Philippines have internationalized the South China Sea dispute as part of their external balancing, with both countries seeking to involve major powers outside the region such as the United States and Japan. In July 2010, Hanoi hosted the ASEAN Regional Forum (ARF) and included the South China Sea issue in the agenda. The then US Secretary of State, Hillary Clinton, stated in her speech that freedom of navigation in the South China Sea was a US "national interest." However, ASEAN cannot take a unified position against China's assertive actions in the South China Sea primarily because of the members' economic dependence on China.

At the request of Vietnam and the Philippines, Washington and Tokyo doubled their capacity building efforts in providing maritime capabilities and joint training. In addition, they reinforced their military engagements in the South China Sea: Hanoi opened Cam Ranh Bay for US, Japanese, and other foreign navies; Manila signed an enhanced defense cooperation agreement with Washington in 2014; US Navy port visits to Subic Bay are on the rise; President Obama pledged \$250 million in maritime security assistance to allies and partners in the region over two years.<sup>20</sup>; and Manila is seeking a similar visiting forces agreement with Tokyo as

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<sup>19</sup> "Southeast Asia Maritime Build-up Accelerates, Raising Risks in Disputed Seas," *Reuters*, May 26, 2015,

<http://uk.reuters.com/article/southchinasea-maritime-buildup-idUKL3N0YC60W20150525>.

<sup>20</sup> "Obama Boosts Philippine Navy, Sends China A Message Not to Expand Presence," *USA Today*,

well as agreements to refuel Japanese naval forces operating in the South China Sea.<sup>21</sup>

External balancing has had limited effect in influencing Beijing's diplomatic behavior. ASEAN and China signed a Declaration on Conduct (DOC) in the South China Sea in 2002, which set out the basic principles for the peaceful resolution and management of any disputes. The DOC envisioned a legally binding code of conduct (COC) for better management of any disputes; however, China has been reluctant to discuss this, preferring bilateral negotiations.

Manila's efforts to bring Beijing to arbitration under the UN Convention on the Law of the Sea (UNCLOS) were an important external balancing strategy by the Philippines. The arbitration award announced on July 12, 2016 rejected China's "historic rights" in the South China Sea based on the nine-dash line and designated China's activities as a violation of international law.<sup>22</sup> However, China's rejection of the legitimacy of the arbitration is a challenge to the entire UNCLOS regime and could have a negative impact on events in the East China Sea and other regional waters.

## CONCLUSION

Upholding the rule of law in the East and South China Seas is essential for the stability of the Indo-Pacific region. In reality, however, as there has been no consensus on the legal basis for maritime boundaries in postwar Asia, there is little incentive for the peaceful resolution of maritime disputes among the regional

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November 17, 2015,

<http://www.usatoday.com/story/news/world/2015/11/17/obama-boosts-philippine-navy-sends-china-message-not-expand-presence/75935378/>.

<sup>21</sup> "Tokyo, Manila Eye 'Visiting Forces' Pact to Rein in China," *Japan Times*, June 5, 2015, [http://www.japantimes.co.jp/news/2015/06/05/national/politics-diplomacy/japan-will-help-boost-philippine-coast-guard-abe/#.VpMKPN\\_hBE5](http://www.japantimes.co.jp/news/2015/06/05/national/politics-diplomacy/japan-will-help-boost-philippine-coast-guard-abe/#.VpMKPN_hBE5).

<sup>22</sup> Permanent Court of Arbitration, Press Release: The South China Sea Arbitration (The Republic of the Philippines V. The Peoples Republic of China), July 12, 2016, <https://pca-cpa.org/wp-content/uploads/sites/175/2016/07/PH-CN-20160712-Press-Release-No-11-English.pdf>.

countries.

The tension between Japan and China in the East China Sea has been managed by Japanese internal and external balancing; however, China's gray-zone coercion continues to be a significant challenge in the East China Sea. For Japan, it is important to effectively respond to China's gray-zone coercion by controlling the escalation while at the same time maintaining its overall military superiority.

The situation in the South China Sea continues to be difficult to manage given China's proactive assertiveness. Because the military balance favors China in the South China Sea, internal and external balancing by the regional states has had little effect on Chinese behavior. Beijing is expected to continue to militarize the South China Sea while carefully avoiding US military intervention.

Regional players need to develop a better response to Chinese gray zone challenges by reinforcing their internal and external balancing and upholding the rule of law. As it is difficult to deter gray zone coercion, regional countries need to develop flexible deterrent options for escalation control.

## CHAPTER 3

# The Rule of Law versus Lawfare in Asian Security:

## A Regional Variation of International Law

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### INTRODUCTION

Amidst growing regional military tensions, international law is now central to the national security strategies of many Asian countries, with a number of key countries embarking on a (re-)construction of the law so as to advance their national interests in the face of their changing security environments, occasionally creating a legal divergence in the region.

It remains to be seen whether, when and how these strategies can converge into a single legal order in Asian security. The question is, however, why these countries rely on international law in the first place? What roles and functions do they expect from the law for their security strategies? In this respect, how international law is conceived by these countries, and notably by China and Japan, is important in understanding the future of Asian Security in the coming decades.

With this in mind, this paper aims to present the ‘the rule of law versus lawfare’ perspective, which will be discussed below, to shed light on Asian security issues, highlighting the roles and functions of international law as well as the conflicting

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approaches of the regional states in their operationalization of the law.

In so doing, this paper focuses on the regional aspects of international law. International law is a multi-layered normative system composed of a cluster of general (or universal) and special principles, rules, and regimes involving regionalism in their creation, interpretation and application.<sup>2</sup> A great deal of attention has been paid to the dynamic process of integration and fragmentation of international law. To discuss the 'the rule of law versus lawfare' in an Asian perspective allows for a reflection on the implications of such regional or geographical international law variations from a juridical and legislative point of view.

## **GENERAL ROLES AND FUNCTIONS OF INTERNATIONAL LAW**

### **NORMATIVE STATUS OF INTERNATIONAL LAW**

Despite imperfections in the centralized enforcement mechanisms, international law has been invoked by many states to justify their conduct in cases of conflict.<sup>3</sup> This is not unrelated to the fact that the structure of international relations has changed dramatically in the last half century and can no longer be analyzed from a Thucydidean viewpoint of anarchical power politics in interstate security.

Indeed, the major international relations actors have become diverse, with many

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<sup>2</sup> See *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*. Report of the Study Group of the International Law Commission Finalized by Martti Koskenniemi, Fifty-Eighth Session, Geneva, 1 May-9 June and 3 July-11 August 2006, U.N. Doc. A/CN.4/L.682, April 13, 2006, pp. 102-113.

<sup>3</sup> As Louis Henkin famously wrote, '[i]t is probably the case that almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time.' Louis Henkin, *How Nations Behave: Law and Foreign Policy*, 2<sup>nd</sup> ed. (Columbia University Press, 1979), p. 47. Other international law scholars likewise put forward the general propensity of states to comply with international law. See, e.g., Abram Chayes and Antonia Handler Chayes, "On Compliance," *International Organization*, Vol. 47(2) (1993), p.178; *The New Sovereignty Compliance with International Regulatory Agreements* (Harvard University Press, 1995), pp. 3-9.

non-state actors and international organizations that represent multiple interests beyond the states now actively participating in the operationalization of international law in terms of creation, interpretation, and application. The rapid development of communitarian norms has thus been made possible through interactive international law expert networks focused on international crimes, human rights, trade, investment, environment, and so on.<sup>4</sup> This increased involvement in global issues has brought about the ‘legalization’<sup>5</sup> and ‘constitutionalization’<sup>6</sup> of international relations and boosted the normative credibility of international law. As a result, many international relations scholars; liberalists,<sup>7</sup> the English School (British institutionalism),<sup>8</sup> constructivists<sup>9</sup> rational choice theorists<sup>10</sup>, and international lawyers;<sup>11</sup> now take the normative status or validity of international law seriously from their respective perspectives and question why states obey or comply with international law. It appears that the focus is now shifting towards empirical evaluations of how international law works on the premise of its normative status and effectiveness.

Admittedly, there is still strong skepticism by some realist scholars.<sup>12</sup> It would

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<sup>4</sup> See, e.g., Holly Cullen, Joanna Harrington and Catherine Renshaw (eds.), *The Role of Experts and Networks in International Law* (Cambridge University Press, 2017).

<sup>5</sup> See, e.g., Judith L. Goldstein, Miles Kahler, Robert O. Keohane and Anne-Marie Slaughter, *Legalization and World Politics* (The MIT Press, 2001).

<sup>6</sup> See, e.g., Jan Klabbers, Anne Peters and Geir Ulfstein, *The Constitutionalization of International Law* (Oxford University Press, 2009).

<sup>7</sup> See, e.g., Stephen D. Krasner, *Organized Hypocrisy* (Princeton University Press, 1999); Robert O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (Princeton University Press, 1984).

<sup>8</sup> See, e.g., Hedley Bull, *The Anarchical Society: Study in World Politics, with Forewords by Andrew Hurrell and Stanley Hoffmann*, 3rd ed. (Columbia University Press, 2002); Tim Dunne, *Inventing International Society: A History of the English School* (Macmillan, 1998).

<sup>9</sup> See, e.g., Martha Finnemore and Kathryn Sikkink, “International Norm Dynamics and Political Change,” *International Organization*, Vol. 52 (1998) pp. 887-917; Jonathan Mercer, *Reputation and International Politics* (Cornell University Press, 1996); Alexander Wendt, *Social Theory of International Politics* (Cambridge University Press, 1999).

<sup>10</sup> See, e.g., Jack L. Goldsmith and Eric A. Posner, *The Limits of International Law* (Oxford University Press, 2005); Andrew T. Guzman, *How International Law Works: A Rational Choice Theory* (Oxford University Press, 2008).

<sup>11</sup> See, e.g., Abraham Chayes and Antonia Handler Chayes, *The New Sovereignty: Compliance with International Regulatory Agreements* (Harvard University Press, 1995); Harold Hongju Koh, “Why Do Nations Obey International Law?,” *Yale Law Journal*, Vol. 106(8) (1997).

<sup>12</sup> See, e.g., Hans Morgenthau, *Politics Among Nations: The Struggle for Power and Peace*, 5th ed.



nevertheless be appropriate to say that, at the very least, a state would be highly unlikely to accept the disregard of international law due to the following roles and functions that international law has achieved against the above background.

#### **INTERNATIONAL LAW AS UNIVERSAL COMMON SENSE**

First, international law is reflection of common sense in international society. If a state violates the law, it is considered to lack common sense and also tends to lose its credibility and reputation, which undermines its diplomatic relations with others as no other state would seek to establish an economic partnership with a non-law-abiding country which behaves unpredictably or irrationally. The more global, interdependent, and communitarian international society becomes, the more an international law violator becomes vulnerable, which is one of the main reasons that states do not wish to admit to any actions that may have broken international laws.

#### **INTERNATIONAL LAW AS THE COMMON LANGUAGE OF DIPLOMACY**

Secondly, international law serves as a common language for diplomacy. Should a state wishes to explain and justify its policies and convince others, it is necessary to rely on an adherence to relevant international laws followed by all respectable nations. Therefore, as international law is the operating system (OS) for international relations,<sup>13</sup> it incentivizes states to take it seriously when conducting international relations.

#### **REGIONAL VARIATIONS IN INTERNATIONAL LAW FOR ASIAN SECURITY**

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(Knopf, 1973); Kenneth Waltz, *Theory of International Politics* (Addison-Wesley, 1979); John J. Mearsheimer, "The False Promise of International Institutions," *International Security*, Vol. 19(3) (1995), pp. 5-49.

<sup>13</sup> See, e.g., Charlotte Ku and Paul F. Diehl, "International Law as Operating and Normative Systems: An Overview," in Charlotte Ku and Paul F. Diehl (eds.), *International Law: Classic and Contemporary Readings*, 3<sup>rd</sup> ed. (Lynne Rienner Publishers, 2009), pp. 1-18.

### CONFLICTING APPROACHES TO INTERNATIONAL LAW

This certainly holds true for strategic Asian security issues. It should be noted that even the Democratic People's Republic of Korea (DPRK) and China have reiterated that they attach high value to international law and have stressed that their conduct is in accordance with it. On the other hand, it is also true that these two states have rejected the validity of international law when they have found the rules in question lack support for their causes. This can be clearly seen in the controversies over the DPRK's withdrawal from the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) as well as its fierce criticism against the US-led UN sanctions resolutions for the lack of legitimacy and fairness backed by the UN member states for the validity of legal norms.<sup>14</sup> For China, it has manifested itself in the South China Sea arbitration case under Annex VII of the UNCLOS<sup>15</sup>, which China rejected.<sup>16</sup> While sometimes criticized as a double

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<sup>14</sup> See, e.g., Korean Central News Agency Network, Korean Lawyers Committee Sheds Light on Criminal Truth of UN "Resolutions on Sanctions," 16 March 2017, at <<http://kcna.co.jp/item/2017/201703/news16/20170316-14ee.html>>; also available in full text at <<http://dprk-doc.com/en/archives/574>>. It argues: 'the "sanctions resolutions" of the UN Security Council are criminal documents stained with high-handedness and arbitrariness of the United States. The "Sanctions Resolutions" of the United Nations against the DPRK are criminal documents devoid of legality, morality and impartiality ... The UN Security Council is not a legislative organ creating new laws. Neither has it the authority to do so. Not a single provision of any international laws including the UN Charter, UNGA resolutions, CTBT, NPT, Outer Space Treaty stipulates that nuclear test or satellite and ballistic missile launches themselves constitute a threat to international peace and security. ... Our nuclear tests and ballistic missile launches are just and righteous self-defensive measures to safeguard the sovereignty and right to existence to cope with the nuclear threat of the United States persisting for more than half a century and they do not run counter to any international law including Article 51 (right to self-defense) of the UN Charter. ... As our withdrawal from the NPT followed the legitimate procedure, it is not the issue to be approved or disapproved by anyone. If the United States has anything to say they should come out and speak out at a forum of international legal experts, instead of disseminating unreasonable words by using those who do not even know international laws.'

<sup>15</sup> In the Matter of the South China Sea Arbitration, Republic of Philippines v People's Republic of China, Arbitral Tribunal Constituted under Annex VII to the 1982 United Nations Law of the Sea Convention, Case No. 2013-19, Award of July 12, 2016, at <<http://www.pcacases.com/web/sendAttach/2086>>.

<sup>16</sup> Ministry of Foreign Affairs of the People's Republic of China, Foreign Ministry Spokesperson Lu Kang's Remarks on Statement by Spokesperson of US State Department on South China Sea Arbitration Ruling, July 13, 2016, at

standard or the selective operation of international law,<sup>17</sup> neither country has denied the effectiveness, roles, and functions of the law per se; rather, they have expressed dissenting views on the way in which the international laws are created, interpreted, and applied.<sup>18</sup> It could be argued, therefore, that they are challenging the western approach to international law, leading to a controversy regarding the rule of law versus lawfare.

## RULE OF LAW

The rule of law, which was first formulated by a British jurist, A.V. Dicey,<sup>19</sup> is generally understood as the normative idea that all (natural or legal) persons shall

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<[http://www.fmprc.gov.cn/mfa\\_eng/xwfw\\_665399/s2510\\_665401/t1424544.shtml](http://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/t1424544.shtml)>: ‘the arbitration ..., which violated international law, is a political farce under the cloak of law. What the arbitral tribunal did and ruled severely deviated from the common practice of international arbitration. The ruling is null and void with no binding force.’

<sup>17</sup> China too criticized the United States for its selective operation of international law in the South China Sea issue, claiming that “[t]he US is always selective when it comes to the application of international law: citing international law when it sees fit and discarding international law when it sees otherwise. It keeps urging others to abide by the United Nations Convention on the Law of the Sea (UNCLOS) while refusing to ratify the Convention to this day. What makes the US think that it is in a position to make all these irresponsible remarks against others? We urge the US to think over its words and deeds, stop advertising the illegal arbitration and meddling with the South China Sea issue, and cease undermining China's sovereignty and security interests and escalating regional tensions.” *Ibid.*

<sup>18</sup> This vividly illustrates the recent failure of the UN Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security, tasked with clarifying the common understanding of international law applicable to cyberspace. *See, e.g.*, Michael Schmitt and Liis Vihul, International Cyber Law Politicized: The UN GGE's Failure to Advance Cyber Norms, *Just Security*, June 30, 2017 at <<https://www.justsecurity.org/42768/international-cyber-law-politicized-gges-failure-advance-cyber-norms/>>; Arun Mohan Sukumar, The UN GGE Failed. Is International Law in Cyberspace Doomed As Well?, *Lawfare*, July 4, 2017, at <<https://lawfareblog.com/un-gge-failed-international-law-cyberspace-doomed-well>>; Elaine Korzak, UN GGE on Cybersecurity: The End of an Era?: What the Apparent GGE Failure Means for International Norms and Confidence-Building Measures in Cyberspace, *The Diplomat*, July 31, 2017, at <<https://thediplomat.com/2017/07/un-gge-on-cybersecurity-have-china-and-russia-just-made-cyberspace-less-safe/>>.

<sup>19</sup> *See, e.g.*, Albert Venn Dicey, *Introduction to the Study of the Law of the Constitution*, 10<sup>th</sup> ed. (Macmillan, 1959).

abide by the rules that have been created and rendered legitimate through constitutionally prescribed law making processes, which is a multifaceted notion that comprises, but is not limited to, certainty, predictability, even-handedness, impartiality, and universality. Albeit elusive, 'its essence is the prohibition of the exercise of arbitrary power'<sup>20</sup> by the impartial application of a law that is detached from politics. From this viewpoint, international law is perceived to govern sovereign states from the outside as a communitarian norm inherent in a constitutionalized international society.<sup>21</sup>

Sharing the idea of 'the superiority of the law over all other forms of power,'<sup>22</sup> Japan has characterized 'the rule of law in the international community as one of the pillars of its foreign policy'<sup>23</sup> and 'been making significant and constructive contributions toward' its establishment.<sup>24</sup> This is exactly what Japan is currently exploring to ensure security and stability at regional (Asian-Pacific) and global

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<sup>20</sup> B. S. Chimni, "Legitimizing the International Rule of Law," in James Crawford and Martti Koskeniemi (eds.), *The Cambridge Companion to International Law* (Cambridge University Press, 2012), p. 290.

<sup>21</sup> The UN characterizes international human rights norms and standards as the central communitarian norm for the rule of law within its organizational system: "For the United Nations system, the rule of law is a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires as well measures to ensure adherence to the principles of supremacy of the law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness, and procedural and legal transparency. Justice is an ideal of accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs. Its administration involves both formal judicial and informal/customary/traditional mechanisms. Within this paradigm, a range of terms are used to describe various approaches and activities that strengthen the rule of law, such as security sector reform, administration of justice, protection, combating impunity." United Nations, Guidance Note of the Secretary-General: UN Approach to Rule of Law Assistance, April 2008, p. 1, at <<https://www.un.org/ruleoflaw/files/RoL%20Guidance%20Note%20UN%20Approach%20FINAL.pdf>>.

<sup>22</sup> Ministry of Foreign Affairs of Japan, Diplomatic Bluebook 2016, Chapter 3(6): The Rule of Law in the International Community, at <<http://www.mofa.go.jp/policy/other/bluebook/2016/html/chapter3/c030106.html>>.

<sup>23</sup> *Ibid.*

<sup>24</sup> Ministry of Foreign Affairs of Japan, International Law, January 24, 2017, at <[http://www.mofa.go.jp/policy/inter\\_law/law/index.html](http://www.mofa.go.jp/policy/inter_law/law/index.html)>.

levels. Japan has not only confirmed the importance of the rule of law in bilateral security with the United States for the maintenance of international peace and security in the Far East,<sup>25</sup> but it has also devoted itself to the propagation of this idea to its Asia-Pacific regional partners.<sup>26</sup> Japanese Prime Minister, Shinzo Abe, made the following statement in a speech entitled ‘Peace and prosperity in Asia, forevermore: Japan for the rule of law, Asia for the rule of law, and the rule of law for all of us’ at the 13th IISS Asian Security Summit:

[A]ll countries must observe international law. ... This law was not created by any particular country or countries, nor was it the product of some sort of group. Instead, it is the product of our own wisdom, cultivated over a great many years for the well-being and the prosperity of all humankind.<sup>27</sup>

## LAWFARE

On the other hand, some have criticized the idea of the rule of law, claiming that it assumes ‘superiority and universal applicability of the Western model.’<sup>28</sup> Asserting that the principle of sovereign equality is crucial for the stability of international relations and, as such, must be considered universal and supreme, they have expressed great concerns about delegating sovereignty to the international community and have striven to shield their authority and independence from the

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<sup>25</sup> In the Preamble of the Japan-US Security Treaty, Japan and the United States emphasize their desire “to uphold the principles of democracy, individual liberty, and the rule of law” in the region for mutual cooperation and security. *See also*, Ministry of Foreign Affairs of Japan, The Senkaku Islands: Seeking Maritime Peace based on the Rule of Law, Not Force or Coercion, at <<http://www.mofa.go.jp/files/000018519.pdf>>.

<sup>26</sup> This can also be confirmed in Japan’s recent joint statements with the Philippines, Australia, Indonesia and Vietnam in the beginning of 2017. The rule of law was highlighted therein as the basic principle of international order in the region primarily in the context of the South China Sea. *See* Ministry of Foreign Affairs of Japan, Prime Minister Abe Visits Southeast Asia (Philippines, Indonesia, Viet Nam) and Australia (January 12-17, 2017), January 16, 2017, at <[http://www.mofa.go.jp/s\\_sa/sea1/page3e\\_000639.html#section1](http://www.mofa.go.jp/s_sa/sea1/page3e_000639.html#section1)>.

<sup>27</sup> “Peace and prosperity in Asia, forevermore: Japan for the rule of law, Asia for the rule of law, and the rule of law for all of us,” The 13th IISS Asian Security Summit --The Shangri-La Dialogue-- Keynote Address by Shinzo ABE, Prime Minister, Japan, May 30, 2014, at <[http://www.mofa.go.jp/fp/nsp/page4e\\_000086.html](http://www.mofa.go.jp/fp/nsp/page4e_000086.html)>.

<sup>28</sup> Chimni, *supra* note 20, p. 291.

Western-centric standards of international law.<sup>29</sup> This can be seen in a series of criticisms from non-Western countries and exemplified in the (albeit backtracked later) withdrawal of African countries from the International Criminal Court (ICC)<sup>30</sup>, Russia's 'unsignature' of the ICC Statute,<sup>31</sup> Russia's and Iran's harsh protests against the US military strikes on Syrian air base,<sup>32</sup> and the problems associated with the Eurocentric hegemony that permeates the progressive human rights jurisprudence developed in the European Court of Human Rights.<sup>33</sup> From this

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<sup>29</sup> In this respect, it is worthy of note that Russia and China made a joint declaration on the operation of international law centered on the principles of sovereign equality and non-intervention in the internal or external affairs of states. The Declaration of the Russian Federation and the People's Republic of China on the Promotion of International Law, June 25, 2016, at

<[http://www.mid.ru/en/foreign\\_policy/news/-/asset\\_publisher/cKNonkJE02Bw/content/id/2331698](http://www.mid.ru/en/foreign_policy/news/-/asset_publisher/cKNonkJE02Bw/content/id/2331698)>.

<sup>30</sup> See South Africa: Withdrawal of Notification of Withdrawal, C.N.121.2017.TREATIES-XVIII.10, at

<<https://treaties.un.org/doc/Publication/CN/2017/CN.121.2017-Eng.pdf>>.

<sup>31</sup> See, e.g., Embassy of the Russian Federation in Malaysia, Press Releases: Statement by the Russian Foreign Ministry on signing the Decree «On the intention not to become a party to the Rome Statute of the International Criminal Court», November 17, 2016, at

<[http://argentina.mid.ru/web/malaysia-en/archive-2015/-/asset\\_publisher/C22pu9HTgY10/content/17-11-16-statement-by-the-russian-foreign-ministry-on-signing-the-decree-on-the-intention-not-to-become-a-party-to-the-rome-statute-of-the-international-criminal-court?inheritRedirect=false](http://argentina.mid.ru/web/malaysia-en/archive-2015/-/asset_publisher/C22pu9HTgY10/content/17-11-16-statement-by-the-russian-foreign-ministry-on-signing-the-decree-on-the-intention-not-to-become-a-party-to-the-rome-statute-of-the-international-criminal-court?inheritRedirect=false)>

It says: “[u]nfortunately the Court failed to meet the expectations to become a truly independent, authoritative international tribunal. The work of the Court is characterized in a principled way as ineffective and one-sided in different fora”.

<sup>32</sup> See the Ministry of Foreign Affairs of the Russian Federation, Foreign Ministry Statement on US Military Action in Syria on April 7, 2017, at

<[http://www.mid.ru/en/foreign\\_policy/news/-/asset\\_publisher/cKNonkJE02Bw/content/id/2717798](http://www.mid.ru/en/foreign_policy/news/-/asset_publisher/cKNonkJE02Bw/content/id/2717798)>; President of the Islamic Republic of Iran, US Missile Attack on Syria Aggression, against Int'l Laws, UN Charter/Washington Attack Helping Terrorists/Stressing Need for Supporting Syrian People, 9 April 2017, at <<http://www.president.ir/en/98626>>.

In contrast, the United States claimed that its military action was in humanitarian response to the alleged use of chemical weapons against innocent civilians in Khan Sheikhoun by the Assad regime. At the moment, however, it has not yet made clear its legal justification for the action. See US Department of Defense, Statement from Pentagon Spokesman Capt. Jeff Davis on US strike in Syria, Release No: NR-126-17, April 6, 2017, at

<<https://www.defense.gov/News/News-Releases/News-Release-View/Article/1144598/state-ment-from-pentagon-spokesman-capt-jeff-davis-on-us-strike-in-syria>>.

<sup>33</sup> E.g., Aaron Matta and Armen Mazmanyanyan, “Russia: In Quest for a European Identity,” in Patricia Popelier, Koen Lemmens and Sarah Lambrecht (eds.), *Criticism of the European Court of Human Rights: Shifting the Convention System: Counter-dynamics at the National and EU Level* (Intersentia Publishers, 2016).

perspective, many countries see that the rule of law is nothing more than a Western ideological political instrument to legitimize Western-centric values such as 'liberal interventionism' in the name of global order.<sup>34</sup>

Most notably, China has forcefully advocated its own proactive legal strategy, which has sometimes been called 'lawfare (legal warfare)'<sup>35</sup>, which, according to Charles J. Dunlap, Jr., can be defined as 'the strategy of using— or misusing— law as a substitute for traditional military means to achieve an operational objective.'<sup>36</sup> For the Chinese, its purpose is 'to gain international support and manage the possible political repercussions of China's military actions'<sup>37</sup> under the precept that the law is an instrument of politics rather than 'a check on politics and an autonomous, objective arbiter of justice'<sup>38</sup> as assumed in the Western rule of law.<sup>39</sup> At its core, China's lawfare strategy is in sharp contrast to the Western or 'Westernized' legal order in Japan and other Asian states, which is symbolized by the rule of law notion that subjugates politics to the law.

For all the conflicting approaches to international law in its creation, interpretation, and application, however, it is important that China continues to optimize a

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<sup>34</sup> See, e.g., Andrew Gamble, "The Western Ideology," *Government and Opposition*, Vol. 44(1) (2009).

<sup>35</sup> The notion, allegedly coined by Charles J. Dunlap, Jr., has become prevalent in recent years in international law and IR scholarship to describe the concept of law as a weapon of war although there is no consensus of the definition. See, e.g., Orde F. Kittrie, *Lawfare: Law as a Weapon of War* (Oxford University Press, 2015), pp. 1-27. See also David Kennedy, "Lawfare and Warfare," in Crawford and Koskenniemi (eds.), *supra* note 20.

<sup>36</sup> Charles J. Dunlap, Jr., "Lawfare Today," *Yale Journal of International Affairs*, Winter 2008, p.14.

<sup>37</sup> U.S. Department of Defense, Annual Report to Congress: Military Power of the People's Republic of China 2008, at 19 (Office of the Secretary of Defense, March 2008), at <[http://archive.defense.gov/pubs/pdfs/China\\_Military\\_Report\\_08.pdf](http://archive.defense.gov/pubs/pdfs/China_Military_Report_08.pdf)>.

<sup>38</sup> Kittrie, *supra* note 35, at 163. See also Samuli Seppänen, *Ideological Conflict and the Rule of Law in Contemporary China* (Cambridge University Press, 2016).

<sup>39</sup> See, e.g., Katrin Blasek, *Rule of Law in China: A Comparative Approach* (Springer, 2015); Paul Gewirtz, What China Means by 'Rule of Law,' *New York Times*, October 19, 2014. Carl Minzner, "Rule of Law in China: Past, Present, and Future: Beijing has turned against legal reforms it had launched in the 1990's. Will this change after the 18th Party Congress?," *The Diplomat*, September 7, 2012 at <<http://thediplomat.com/2012/09/rule-of-law-in-china-past-present-and-future/>>.

universal common sense and common diplomatic language to justify its military actions for regional primacy.<sup>40</sup> No doubt, the strategy has taken a dramatic turn in the past few years with China's escalating militarization and provocative actions across several operational domains (on land, at sea, in the air, in outer space, and in cyberspace). Suffice to say, China has been actively engaged in legal claims against neighboring countries that involve the United States in the East and South China Seas, which has culminated in controversies over the 'nine-dash line' claim based on historic rights in the South China Sea over the land reclamation in the Spratly Islands and the challenges to the high seas freedom of navigation and overflights including military activities as well as several military activities such as the capture of a US (sovereign immune) underwater drone.<sup>41</sup> In the same vein, Japan now faces intense contestations with China over the passage, navigation, and overflight rights in the Straits of Japan (Tokara, Miyako, etc.) and in the question surrounding the sovereignty of the Senkaku/Diaoyu Islands.<sup>42</sup>

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<sup>40</sup> See, e.g., Charles J. Dunlap, Jr., "Lawfare," in John Norton Moore, Guy B. Roberts and Robert F. Turner (eds.), *National Security Law & Policy*, 3<sup>rd</sup> ed. (Carolina Academic Press, 2015), pp. 825-826.

<sup>41</sup> See, e.g., US Department of Defense, Statement by Pentagon Press Secretary Peter Cook on Incident in South China Sea, Releas No: NR-448-16, December 16, 2016, at <<https://www.defense.gov/News/News-Releases/News-Release-View/Article/1032611/statement-by-pentagon-press-secretary-peter-cook-on-incident-in-south-china-sea>>; Statement by Pentagon Press Secretary Peter Cook on Return of U.S. Navy UUV, Release No: NR-451-16, December 19, 2016, at <<https://www.defense.gov/News/News-Releases/News-Release-View/Article/1034224/statement-by-pentagon-press-secretary-peter-cook-on-return-of-us-navy-uuv>>. See also Terri Moon Cronk, "Chinese Seize U.S. Navy Underwater Drone in South China Sea," DoD News, Defense Media Activity, December 16, 2016, at <<https://www.defense.gov/News/Article/Article/1032823/chinese-seize-us-navy-underwater-drone-in-south-china-sea>>. See also Xinhua, China to Hand over Underwater Drone to U.S. in Appropriate Manner, December 18, 2016, at <[http://english.chinamil.com.cn/view/2016-12/18/content\\_7412715.htm](http://english.chinamil.com.cn/view/2016-12/18/content_7412715.htm)>; China Hands over Underwater Drone to U.S., December 20, 2016, at <[http://english.chinamil.com.cn/view/2016-12/20/content\\_7415536.htm](http://english.chinamil.com.cn/view/2016-12/20/content_7415536.htm)>. In the meantime, China has recently been reported to advance a new legal theory for its territorial claim in the South China Sea instead of the Nine-Dash Line. See, e.g., Julian Ku and Chris Mirasola, The South China Sea and China's "Four Sha" Claim: New Legal Theory, Same Bad Argument, Lawfare, September 25, 2017, at <<https://www.lawfareblog.com/south-china-sea-and-chinas-four-sha-claim-new-legal-theory-same-bad-argument>>.

<sup>42</sup> See, e.g., Japan Ministry of Defense, Reading the Chinese Ministry of National Defense's Press Release Dated December 10, 2016, titled "China Urges Japan to Stop Interfering with Its High



## **A REMNANT OF THE THUCYDIDEAN WORLD? IMPLICATIONS FOR THE ABSENCE OF REGIONAL ORGANIZATIONS IN ASIA**

Asian security has therefore witnessed a bifurcated and divergent operationalization of international law with these rule of law versus lawfare approaches. As indicated in the introduction, if international law is influenced by regional factors in its creation, interpretation and application, how do these factors engage with these conflicting approaches? It seems safe to assume that such disparities can be partly ascribed to the regional or geographical specialties in Asia; namely, the lack of a dynamic regional integration that accommodates the gaps in perception and characterization of international law in the Asian states.

As some scholars have pointed out, Asia's under-participation in and under-representation of international law <sup>43</sup> suggest that its regional or

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Sea Military Training," 11 December 2016, at

<<http://www.mod.go.jp/e/press/release/2016/12/11a.html>>; China's Ministry of National Defense, China Urges Japan to Stop Interfering with its High Sea Military Training, 10 December 2016, at

<[http://english.chinamil.com.cn/view/2016-12/10/content\\_7400920.htm](http://english.chinamil.com.cn/view/2016-12/10/content_7400920.htm)>.

<sup>43</sup> Simon Chesterman argues this in light of Asia's deep-rooted skepticism of international law that comes from the past negative experiences with the law as an arbitrary instrument to justify colonial rule and to impose Western standards and victors' justice. Simon Chesterman, "Asia's Ambivalence about International Law and Institutions: Past, Present and Futures," *European Journal of International Law*, Vol. 27(4) (2017). The article was followed by the online debate among prominent experts in the *EJIL: Talk!* and the *Opinio Juris*. Simon Chesterman, "Asia's Ambivalence About International Law & Institutions: Introduction to Opinio Juris and EJIL:Talk! mini-symposium," *EJIL: Talk!*, January 16, 2017, at <<http://www.ejiltalk.org/asias-ambivalence-about-international-law-institutions-introduction-to-opinio-juris-and-ejiltalk-mini-symposium/>>; Eyal Benvenisti, "Will the Asian Vision of International Law become Dominant in 2017?," *ibid.*, January 16, 2017, at <<http://www.ejiltalk.org/will-the-asian-vision-of-international-law-become-dominant-in-2017/>>; Robert McCorquodale, "Clarity and Ambivalence: Asia and International Law," *ibid.*, January 17, 2017, at

<<http://www.ejiltalk.org/clarity-and-ambivalence-asia-and-international-law/>>; Antony Anghie, "Comment on Simon Chesterman, 'Asia's Ambivalence about International Law and Institutions: Past, Present and Futures,'" *Opinio Juris*, January 16, 2017 at <<http://opiniojuris.org/2017/01/16/comment-on-simon-chesterman-asias-ambivalence-about-international-law-and-institutions-past-present-and-futures/>>; Judge Jin-Hyun Paik, "Asian States' Participation in International Adjudication: Comments," *EJIL: Talk!*, January 18, 2017, at <<http://www.ejiltalk.org/asian-states-participation-in-international-adjudication-comments/>>

geographical commitment to the international community as a whole is possibly uncertain. Of particular relevance is that there is no single united regional organization such as the EU, AU or OAS, or any regional treaties that enforce core human-rights principles, such as the European Convention on Human Rights (ECHR), the Inter-American Convention on Human Rights (IACHR), and the African Charter on Human and Peoples' Rights (the Banjul Charter), primarily because of a lack of underlying regional values and identities. Leaving aside the appropriateness of denominating a certain region as 'Asia,' this geographical area is thus not truly 'constitutionalized' or less 'legalized' at the regional level compared to other areas of the world.<sup>44</sup>

The lack of common values within the Asian region has hampered the actions of individuals, NGOs, and international organizations such as international courts and tribunals from participating in the any regional international law operations to strengthen the implementation of communitarian norms. Asia, therefore, could be seen to be a remnant of the Thucydidean world; with no regional integration mechanism, an Asian state remains an independent normative hegemon in which international law operates only to advance its own national policy, staying outside of the communitarian regimes of general international law that allows for the participation of diverse non-state actors in its operationalization. This renders the regional operation of international law more susceptible to power swings and instrumental uses. Either way, the current situation is that key countries like China and Japan (as well as India) are political power rivals, with each seeking to take the initiative to develop a regional regime to implement an international law that can maximize their own regional security interests. The rule of law approach is no exception in this regard; even if the basic idea detaches the law from politics, the implementation is nothing more than a policy-oriented strategy to achieve that goal, not to mention the lawfare strategy.<sup>45</sup>

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>; Judge Xue Hanqin, "An Asian Perspective," *Opinio Juris*, January 18, 2017, at <<http://opiniojuris.org/2017/01/18/an-asian-perspective/>>.

<sup>44</sup> Therefore, Judge Xue Hanqin of the International Court of Justice states that "[a]bove all, Asia has the least prospect for regional integration." Hanqin, *ibid*.

<sup>45</sup> In this context, Japan's new optional clause declaration at the ICJ on October 6, 2015 following its judgement in the *Whaling in the Antarctic* case might be worthy of analysis. The declaration appears to seek to confine disputes regarding living marine resources to being heard under other dispute settlement mechanisms than the ICJ, such as the relevant

## CONCLUSION

International law is not merely a matter of diplomatic rhetoric. As has been illustrated, international law has become intrinsically intertwined with security policy issues in and across Asian countries. At the risk of oversimplification, it could be concluded that current security tensions in the Asia-Pacific display a conflict between the communitarian-based (Western) rule of law and the sovereignty-based lawfare.

International law provides all states with equal opportunity in international relations. As tensions rise between the Asian states, it is increasingly important that international law be seen as a universal common sense and a common language of diplomacy in the region so as to gain international support for their communitarian or national policies and operational objectives.

On the other hand, in the absence of a regional integration mechanism to coordinate the involvement of those states, the regional operation of international law has become more susceptible to power swings and instrumental uses, which could lead up to a serious legal divergence and thus deprive the law of regulatory power throughout the region. As we are in a period of power transition at both regional and global levels amidst concerns of the reduced US engagement in the Asia-Pacific region,<sup>46</sup> it is now critical that Asian states wishing for peace and

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mechanisms of the 1982 UN Convention on the Law of the Sea. *See* Declarations Recognizing the Jurisdiction of the Court as Compulsory, at <http://www.icj-cij.org/jurisdiction/?p1=5&p2=1&p3=3&code=JP>.

<sup>46</sup> In this respect, it is worthy of note that China's commitment to international organizations is reported to become conspicuous, as opposed to the US. *See* Elias Groll, As U.S. Retreats From World Organizations, China Steps in to Fill the Void: Beijing is Trying to Repurpose Abandoned International Agencies like UNESCO to Serve its Strategic Interests — such as Controlling the Internet, *Foreign Policy*, October 6, 2017, at <http://foreignpolicy.com/2017/10/06/as-u-s-retreats-from-world-organizations-china-steps-in-the-fill-the-void/>. On the other hand, Slaughter and Hooper argue that America's Asian allies who have grown accustomed to America's predictable commitment to their security should establish 'their regional security network from a US-centric star to a mesh-like pattern' by 'building and institutionalizing ties among themselves' to prepare and 'strengthen stability for unsteady times' in the Trump administration. Anne-Marie Slaughter and Mira-Rapp Hooper,

stability in the region take the lead in the creation, interpretation and application of international law in a way that maximizes their security interests.<sup>47</sup> However, in that context, the ‘the rule of law versus lawfare’ perspective would be, from a strategic point of view, conducive to an assessment of future prospects for ongoing and emerging issues in Asian security.

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“How America’s Asian Allies Can Survive Trump,” Project Syndicate, January 24, 2017, at <<https://www.project-syndicate.org/print/trump-security-guarantees-asia-allies-by-anne-marie-slaughter-and-mira-rapp-hooper-2017-01>>.

<sup>47</sup> Sceats claims that ‘China will not eclipse the US as an international law powerhouse anytime soon, but if Trump’s campaign rhetoric is translated into US policy, the tables may begin to turn,’ given that ‘China has begun to project its stronger capabilities via an international law training and exchange programme with Asian and African countries,’ and that ‘[i]t is also experimenting with norm entrepreneurship in newer areas of international law, where it hopes to exert more influence, including cyber governance.’ Sonya Sceats, “Trumpian Isolationism Could Help China Become a Leader in International Law,” Chatham House Expert Comment, January 19, 2017, at <<https://www.chathamhouse.org/expert/comment/trumpian-isolationism-could-help-china-become-leader-international-law>>.

## CHAPTER 4

# China vs. Taiwan: Growing Uncertainties

*Jerker Hellström*

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## INTRODUCTION

Despite several crises since the 1990s, the relationship between China and Taiwan has remained at status quo, which can be broadly defined as de facto Taiwanese independence. Today, economic interests still appear to outweigh the nationalistic sentiments on both sides of the Taiwan Straits. Nevertheless, in the long run, the Chinese Communist Party (CCP) may have to deliver on its pledge to eventually unify Taiwan with the People's Republic of China (PRC). The U.S., for its part, has reaffirmed its commitment to Taiwan despite initial signals from President Trump that the decades-old bilateral agreements could be revised.

Even though it is still claimed by the PRC, which sees the Taiwanese flag as a separatist symbol, Taiwan has been self-governing for seven decades. As part of the "One China principle," Beijing has continued to block Taiwan's aspirations to engage in international fora. Despite the island's de facto independence, only 20 governments officially recognize Taiwan as a sovereign state.

At the core of the dispute between Beijing and Taipei is the question of how to define the status quo in the relationship. From the PRC's standpoint, as Taiwan is regarded as a Chinese province that "has belonged to China since ancient times", it does not have the right to represent itself internationally. Beijing's understanding of the status quo is based on the so-called "1992 Consensus" (九二共识), which was a term coined by the Taiwanese official Su Chi in 2000, in which both Beijing

and Taipei acknowledge that there is only “one China.” However, as both parties have their own interpretation of what the ambiguous concept “one China” entails, there have been few attempts to define it in detail.

Taipei’s definition of the status quo varies between political parties. During the Nationalist Party (Kuomintang, KMT) Government from 2008-2016, President Ma Ying-jeou based his interpretation on the so-called “three noes” formula; no unification, no independence, and no use of force. President Tsai Ing-wen of the Democratic Progressive Party (DPP), for her part, asserted that the status quo was based on the Constitution of the Republic of China (ROC) and previous agreements signed between Taiwan and China.

For at least two decades, the Taiwanese public has consistently been in favor of maintaining the status quo in their relationship with the mainland; defined as de facto independence. Opinion polls conducted in 2016 found that the vast majority of Taiwanese were in favor of maintaining the status quo;<sup>1</sup> therefore, public support for Taiwanese de jure independence, let alone for unification with the PRC, is limited. From the standpoint of the current DPP-led government in Taipei, a stable relationship with the mainland is the prerequisite for its ability to deliver on important policy objectives such as job creation and economic growth. The PRC has been Taiwan’s largest trade partner for more than a decade.

### **KMT, DPP AND BEIJING’S ROLE**

Taiwan became a Japanese colony in 1895 when it was ceded by the Qing government in Beijing to Japan. After Japan’s World War II surrender in 1945, the ROC, under the leadership of the Kuomintang (KMT) became Taiwan’s new legitimate government. After having lost the civil war against the communists in 1949, the nationalists fled to Taiwan and continued to govern the island as the ROC.

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<sup>1</sup> National Chengchi University Election Study Center, “Taiwan Independence vs. Unification with the Mainland Trend Distribution in Taiwan(1992/06-2016/12)”. URL: <http://esc.nccu.edu.tw/course/news.php?Sn=167#>

Today's Taiwan is a relatively young democracy. While the ROC began holding local elections in the 1940s, the first direct presidential elections were not held until 1996. The DPP became the KMT's first political opponent on its founding in 1986 and ruled as a minority government from 2000 to 2008. This period was characterized by weak relations with Beijing due to the Chen Shui-bian administration's pro-independence stance. Ironically, the KMT is today the party with stronger ties to the CCP; while the KMT identifies with the idea of a "Chinese nation," the DPP is the main advocate for a Taiwanese, as opposed to a common Chinese, identity and is therefore more outspoken in terms of pro-independence.

Despite a doubling in cross-strait trade and a rapid rise in the flow of tourists between Taiwan and the mainland during the Ma Ying-jeou presidency (2008-2016), Taiwan's citizens have in recent years become increasingly concerned over political deals with the mainland after the Ma administration attempted to accommodate China's interests on issues such as Tibet, Xinjiang, and human rights. In 2013, the KMT signed a controversial trade agreement with China that fueled concerns that Taiwan would become vulnerable to Chinese political pressure that could negatively affect the economy. At the same time, Beijing has continued to block Taiwan's aspirations to engage internationally in organizations such as the World Health Organization (WHO).

Concerns over the KMT's policies towards the mainland contributed to the DPP's landslide victory in the 2016 national elections, when Tsai Ing-wen became Taiwan's first female president. Importantly, the DPP for the first time gained a majority in the parliament, the Legislative Yuan, which had been KMT-controlled since its creation in 1950. Despite the change in government, Beijing has maintained close communications with the KMT while keeping the new ruling party at arm's length.

## **CROSS-STRAIT TENSIONS**

Since the founding of the PRC in 1949, Taiwan and China have gone through several crises that have raised concerns in the region and internationally over the risk of

armed clashes and potentially with the U.S. The most serious crisis to-date was the Taiwan Strait Missile Crisis in 1995, which was sparked by ROC President Lee Teng-hui's private visit to the United States. Despite U.S. assurances that it was not an official visit, China interpreted it as the latest in a series of pro-independence provocations, and responded by conducting missile tests from its eastern coast.

Other Chinese military exercises followed later the same year and tensions culminated ahead of Taiwan's presidential elections in March 1996. Prompted by concerns that a pro-independence candidate would win the elections, Beijing carried out joint air, ground, and naval exercises in the Taiwan Strait and tested its nuclear-capable missiles. In response, the U.S. deployed two aircraft carrier battle groups near Taiwan. The tensions however quickly cooled after Lee won the elections and toned down his stance on Taiwan independence.

Relations between Beijing and Taipei deteriorated even further over the following decade, as President Lee and, to a greater extent, his successor, Chen Shui-bian of the DPP, were perceived by Beijing as deviating from the "One China principle". However, frictions remained within the diplomatic sphere and did not escalate to the level seen during the 1995-96 crisis. However, there was no noticeable thaw in the relationship until 2008, when KMT leader Ma Ying-jeou was elected president. Ma pursued a policy of cross-strait "peaceful development" on the basis of a party-to-party agreement made between the KMT and the CCP in 2005.

After one year with Tsai at the helm, it has become clear that the old frictions with the CCP remain. In May 2016, President Tsai gave her inaugural address, in which she refrained from explicitly mentioning the "1992 Consensus." The omission of the term prompted strong criticism from Beijing which suspended all official contact with Taiwan the following month. During 2016, Beijing attempted to exert pressure on Taiwan by limiting the flow of Chinese tourists to the island, acceding to requests from Taipei's diplomatic allies to switch recognition to the PRC, and by blocking Taiwanese participation in international high-level meetings.



## STATUS QUO AT RISK?

Amid the deterioration of cross-Strait contact in 2016, many observers concluded that the potential of armed conflict in the Taiwan Strait had increased. However, it should be noted that regardless of the diplomatic tensions, there is little enthusiasm from Taiwan or the United States and China to change the current situation. All parties realize that any significant changes in the status quo could trigger a military conflict which would put regional security at risk and have potential global repercussions. As Beijing, Washington, and Taipei all have a vested interest in stable cross-Strait relations, the likelihood of a change in the status quo is low; however, in the long run, there are several uncertainties.

The CCP has declared that the Taiwanese “separatist forces” are threatening peace in the Taiwan Strait, but does not specify the constituents of those forces. Beijing has also vowed to “employ non-peaceful means and other necessary measures” if Taiwan were to declare independence from China.<sup>2</sup> In light of the strong support of the Taiwanese public for a continuation of the status quo, the likelihood of a formal declaration of independence in the foreseeable future is low; therefore, the risk that China could resort to military aggression to unify Taiwan with the PRC is also low.

That said, China has refused to provide a clear definition of the actions it regards as declarations of independence. Moreover, while China has stated that non-peaceful means shall be used in the event that “possibilities for a peaceful reunification should be completely exhausted,” the Chinese government has not specified on what grounds this will be assessed in the future if all efforts to rein in Taiwan fail. Further, there has been no clear deadline for any possible reunification; however, the CCP Chairman, Xi Jinping, hinted that it should at least be before the 100th anniversary of the People’s Republic in 2049 as the inclusion of Taiwan in the PRC remains one of Beijing’s most important “core interests” for territorial integrity.

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<sup>2</sup> China Internet Information Center, “Anti-Secession Law,” Adopted at the Third Session of the Tenth National People’s Congress on March 14, 2005. URL: <http://www.china.org.cn/english/2005lh/122724.htm>

Taiwan, for its part, is concerned about the military pressure China continues to exert on the island. According to Taiwan's Ministry of National Defense, China has deployed no less than a thousand short- and medium-range ballistic missiles along the coastal areas facing the Taiwan Strait. In its National Defense Report 2015, the Ministry stated that the Chinese People's Liberation Army (PLA) plans to establish "a formidable military arsenal for conduct military operations against Taiwan" before 2020.<sup>3</sup>

The United States Department of Defense noted that China's development of military capabilities "to coerce Taiwan or to attempt an invasion" pose major challenges to Taiwan's security. While the PLA has been increasingly focused on potential contingencies in the East and South China Seas, according to the Pentagon, the Taiwan Strait has remained the primary driver of Chinese military investment.

### **WILL THE U.S. DEFEND TAIWAN?**

A fundamental factor in Taiwan's defense planning is its military relationship with the United States. When the U.S. shifted diplomatic recognition from Taiwan to the PRC in 1979, it agreed to continue relations with Taipei under the Taiwan Relations Act (TRA), which was drawn up to "help maintain peace, security, and stability in the Western Pacific", but has often been misinterpreted as a legal obligation on the U.S. to defend Taiwan. In the TRA, a policy is stated that maintains the capacity to resist coercion against Taiwan; however, it is not an explicit commitment to use those capabilities.<sup>4</sup>

The TRA was, in fact, more of an intention to assist Taiwan to maintain its own defensive capabilities rather than a vow to defend Taiwan. As such, it states that the U.S. will provide military equipment to the Taiwanese armed forces "in such

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<sup>3</sup> Ministry of National Defense, ROC, "2015 National Defense Report," Chapter 2, Section 2. URL: <http://report.mnd.gov.tw/pagee495.html?sn=9&lang=en>

<sup>4</sup> See, for example: Ku, Julian, "Taiwan's U.S. Defense Guarantee is Not Strong, But It Isn't That Weak Either," *Lawfare*, January 15, 2016. URL: <https://www.lawfareblog.com/taiwans-us-defense-guarantee-not-strong-it-isnt-weak-either>

quantity as may be necessary to enable Taiwan to maintain a sufficient self-defense capability”.

In 1979, Taiwan had the capabilities to deter and defend itself from a Chinese invasion; however, with China’s ambitious military build-up, especially since the late 1990s, it has become difficult for Taiwan to maintain these capabilities. Under the TRA, Taiwan has become one of the top recipients of U.S. arms; for example, from 2004-2007, Taiwan received U.S. defense equipment worth \$4.3 billion, making it the fourth-largest recipient of U.S. arms globally, and from 2008-2011, Taiwan ranked fifth.<sup>5</sup>

American arms transfers to Taiwan have led to frustration in Beijing and have prompted strongly-worded statements by the CCP leadership. China requires that the U.S. abide by its commitments in the 1982 Sino-U.S. joint communiqué, which stated that the U.S. “intends gradually to reduce its sales of arms to Taiwan”.

In response to Chinese concerns, the Obama administration did not authorize any arms sales to Taiwan for four years until December 2015 when it offered an arms package worth \$1.8 billion,<sup>6</sup> which was the longest gap between notifications to Congress of planned arms sales to Taiwan since the U.S. diplomatic recognition of the PRC in 1979. The 2015 arms deal came just months before the Taiwanese presidential elections.

## LOOKING AHEAD

Going forward, cross-strait stability rests on three major uncertainties.

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<sup>5</sup> Grimmett, Richard F, “U.S. Arms Sales: Agreements with and Deliveries to Major Clients, 2004-2011,” *Congressional Research Service*, September 19, 2012, p.6. URL: [https://www.sipri.org/sites/default/files/research/armaments/transfers/transparency/national\\_reports/united\\_states/USCRS\\_2004-2011.pdf](https://www.sipri.org/sites/default/files/research/armaments/transfers/transparency/national_reports/united_states/USCRS_2004-2011.pdf)

<sup>6</sup> Brunnstrom, David and Zengerle, Patricia, “Obama administration authorizes \$1.83-billion arms sale to Taiwan,” *Reuters*, December 17, 2015. URL: <http://www.reuters.com/article/us-usa-taiwan-arms-idUSKBN0TZ2C520151217>

First, Beijing's red lines are highly uncertain; in other words, it is not known under what circumstances the CCP would resort to "non-peaceful means" to rein in Taiwan. Beijing has intentionally refrained from stating explicitly when it would no longer be possible to unify with Taiwan using peaceful means, or whether there is a unification deadline.

Second, it is uncertain whether the U.S. would intervene militarily in the event of Chinese aggression towards Taiwan. These uncertainties may increase with the Trump administration, which, while reaffirming its commitments towards Taipei in early 2017, has sent mixed messages as far as its China policy is concerned. In terms of military engagement, it is clear that the TRA does not require the U.S. to defend Taiwan in the event of a clash with China; that said, there may be several reasons for Washington to show its resolve in responding to Chinese assertiveness in the Asia-Pacific, not least in order to send a message of continued resolve to its allies.

Finally, it is uncertain whether Taiwan's stance towards independence will change. Few observers expect the decades-long public support for the status quo in the relationship to change substantially. Still, it cannot be ruled out that pro-independence or pro-unification sentiment may grow 10-15 years down the road. In such a scenario, Taipei might adjust its policies in line with "the will of the Taiwanese people", which President Tsai has vowed to respect.

One of the Tsai administration's main challenges in the years ahead will be to balance stable and peaceful relations with the PRC against concerns by the Taiwanese public. Taiwan knows that it would not be able to defeat China in the event of an armed conflict; therefore, the overarching aim of the Taiwanese national defense strategy is to ensure Beijing does not resort to force in the first place.

## CHAPTER 5

# North Korea's Nuclear and Missile Threats and Their Impact on Japanese Security<sup>1</sup>

*Hiroyasu Akutsu*<sup>2</sup>

National Institute for Defense Studies (NIDS)

## INTRODUCTION

Since Kim Jong Un came in power in the DPRK, the country's military threat has significantly increased both globally and regionally, with its 4th and 5th nuclear tests and the series of launches of various types of missiles only reinforcing the already strained security situation in Northeast Asia.<sup>3</sup> For Japan in particular, the series of Nodong/Rodong missile launches in 2016 significantly raised the threat level. North Korea's development of these capabilities has outpaced the general assessments of the country's military capabilities. The Japanese defense whitepaper now describes North Korea's nuclear and missile developments as "a serious and imminent threat" to regional and global security.<sup>4</sup> Further, North Korea's nuclear and missile activities as well as the country's non-traditional offensive activities such as cyber and other asymmetric capabilities have reinforced Japanese security concerns. What is behind North Korea's assertive and aggressive behavior and how has Japan reacted

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<sup>1</sup> This paper is a revised version of the paper originally presented at the workshop on January 25, 2017. The original version was based on Hiroyasu Akutsu, "Assessing North Korean Security and Military Threats: A Japanese Perspective," a background paper for *Alliance Policy for Today's North Korea* at the Carnegie Endowment for International Peace on December 15, 2016.

<http://carnegieendowment.org/2016/12/15/assessing-north-korean-security-and-military-threats-japanese-perspective-pub-67743>

<sup>2</sup> The author is a professor and senior fellow at the National Institute for Defense Studies (NIDS). The views in this paper are solely of his own and do not represent those of NIDS or of any other institutions including Government of Japan.

<sup>3</sup> The DPRK conducted its 6<sup>th</sup> nuclear test on September 3, 2017. It should be reminded that this paper reflects the situation before the latest test.

<sup>4</sup> Japanese Ministry of Defense, *Defense of Japan* (Tokyo: Japanese Ministry of Defense, 2016), p. 19.

to North Korea's recent nuclear and missile provocations?

This paper aims to answer these questions by briefly examining North Korea's military strategy as well as North Korea's nuclear and missile development and its implications for Japanese security.

## **NORTH KOREA'S SECURITY STRATEGY**

Kim Jong Un has consolidated his power base since officially becoming the supreme leader of North Korea in 2012 through a reign of terror. This has been demonstrated through his purges of many of his father's loyalists. He has also aggressively pursued and expanded the DPRK's military and strategic legacies inherited from his father. The new regime has thus reaffirmed their grand strategy of making the DPRK into a strong and prosperous nation (強盛國家)<sup>5</sup>, and terminating the U.S. hostile policy toward the country (敵視政策). It has also adopted a new strategy, called Byungjin (並進路線), to develop the economy while at the same time acquiring a robust nuclear deterrence. This policy for the simultaneous development of DPRK's military and economic capabilities was originally announced by Kim Il Sung, the founding father of the DPRK and Kim Jong Un's grandfather; however, the renewed strategy has given de facto legitimacy to the security strategies and military policies of the Kim Jong Un regime.

While the DPRK's economy has been recognized as one of the weakest in the world, and despite the financial and economic sanctions imposed by the international community, some indicators have shown that the country's economic growth rate has been positive and is better than during the later periods of the Kim Jong Il regime.<sup>6</sup>

However, the development of its nuclear capabilities has probably been the DPRK's number one priority. As a declared policy, the DPRK's position as a nuclear weapons state was stipulated in the preamble to the 2012 constitution and was at the heart of key legislation

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<sup>5</sup> The concept of "strong and prosperous nation" involves at least three aspects or stages: a politico-ideological giant, a military giant and an economic giant.

<sup>6</sup> For more detailed analyses, see, for example, National Institute for Defense Studies, *East Asia Strategic Review 2015* (Tokyo: National Institute for Defense Studies, 2015), pp. 62-74; and National Institute for Defense Studies, *East Asia Strategic Review 2016* (Tokyo: National Institute for Defense Studies, 2016), pp. 78-90.

adopted by the Supreme Peoples' Assembly in 2013.<sup>7</sup> This law appears to have been North Korea's first-ever official "nuclear doctrine" as its 10 articles involved provisions that stated; no first use, safe and secure storage and management of nuclear weapons, nonproliferation of nuclear weapons, technology and weapons-grade nuclear materials, and so on.<sup>8</sup> Statements issued after North Korea's 4th and 5th nuclear tests reinforced the spirit of this nuclear doctrine. Importantly, the language used by North Korea suggested that the regime was aiming to not only force the U.S. to acknowledge North Korea as a nuclear weapons state officially or unofficially, but also to make such an acknowledgement a precondition for any future negotiations. In such negotiations, North Korea appears to hope to reach an agreement with the U.S. that North Korea is fully committed to nuclear non-proliferation as "a responsible nuclear weapons state." In return, North Korea would expect the U.S., its allies, and friends to lift existing financial and economic sanctions, guaranteeing North Korea's security and economic sustainability. Of course, this does not mean that North Korea's main goal is to maneuver diplomatically to openly negotiating with the U.S.; on the contrary, the country is hell-bent on becoming a nuclear weapons state. Nonetheless, the country's past behavior suggests that it has a holistic and sophisticated idea on how to use its nuclear program both militarily and diplomatically.

## **NORTH KOREA'S NUCLEAR AND MISSILE THREATS**

While North Korea's actual nuclear weapons capabilities involve many uncertainties, there is little doubt that the country has made significant progress in its nuclear testing. The management and control of the test environment for nuclear devices have significantly evolved and yields have increased as testing has progressed. Although North Korea claimed that the 4th test in January, 2016 was a hydrogen bomb test, the magnitude of the explosion indicated that was probably not. However, the yield size of the 5th test in September, 2016 was approximately 11-12kt, which is roughly equivalent to the yield of the nuclear bomb (15kt) dropped on Hiroshima in August, 1945. As such, this test could not be dismissed as just another provocation.

However, North Korea has not yet demonstrated the ability to mount a nuclear warhead on a ballistic missile; however, given its technological progress in other areas, the accelerated pace

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<sup>7</sup> "Law on Consolidating Position of Nuclear Weapons State Adopted," *Korean Central News Agency*, April 1, 2013.

<sup>8</sup> See the author's chapter in the forthcoming report on the NIDS 19<sup>th</sup> International Symposium on Security Affairs, held on July 25, 2016. The agenda of the symposium was "The Kim Jong Un Regime and the Future Security Environment Surrounding the Korean Peninsula."

of the nuclear program, and especially the country's determination to achieve its strategic goals, it is reasonable to assume that North Korea already has this capability.

North Korea's missile capabilities also appear to be advanced and diversified, as it now has multiple missile types with different target ranges and strategic utilities. During the last few decades, the DPRK has developed the Toksa/KN02, the Scud series, the Nodong, Musudan, Taepodong I/II, KN08/14, and SLBM (Submarine Launched Ballistic Missile) (KN-11) missiles. Except for the Taepodong series, the missile launchers have been generally mobile and therefore difficult to detect. North Korea has also hinted that a solid fuel missile engine was tested, and it is likely that solid fuel was used in the SLBM that was test-launched in 2017. A series of SLBM and Nodong missile launches in 2016 were especially threatening because they were even more difficult to detect; which poses a greater challenge to existing U.S.-led ballistic missile defense (BMD) posturing and to Japan's missile defense capabilities. Further, especially from a Japanese perspective, if the DPRK's Nodong/Rodong missiles have been modified to carry a nuclear warhead, this would be a major game changer and seriously disrupt existing strategic balances in the region.

## **POLICY IMPLICATIONS FOR JAPANESE SECURITY**

As stated at the beginning, the threat of the DPRK's nuclear and missile development to Japan has been reinforced over the past 23 years, especially since the Rodong/Nodong missile was launched toward Japan in 1993. Defense of Japan, released in 1993, stated that North Korea was probably developing Nodong/Rodong I missiles and also claimed that the DPRK had test-launched a ballistic missile that might have been a Nodong/Rodong I, which flew about 500km into the Sea of Japan. The report also suggested that the test was suboptimal or restricted as the missile was believed to have a maximum range of 1,000km and thus could have targeted Western Japan.<sup>9</sup> As the Japanese defense whitepaper stated, Japan was already back then "strongly concerned" about the possibilities of North Korean nuclear and missile capability developments as this would destabilize the international community as a whole.<sup>10</sup>

The first nuclear crisis on the Korean Peninsula in 1994 reinforced Japanese concerns, and the current DPRK nuclear and missile developments have significantly raised the level of

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<sup>9</sup> Japanese Ministry of Defense, Defense of Japan 1993, Archive ([http://www.clearing.mod.go.jp/hakusho\\_data/1993/w1993\\_01.html](http://www.clearing.mod.go.jp/hakusho_data/1993/w1993_01.html)).

<sup>10</sup> Ibid.



concern about a real security threat to Japan. In response to the continued missile launches by North Korea, in August 2016, Japan's Ministry of Defense issued an order to destroy any North Korea's missiles and their fragments that fall on Japanese territory. Of the two Nodong/Rodong missiles launched towards Japan, one fell within Japan's exclusive economic zone (EEZ) on August 3, and of the Nodong/Rodong or Scud ER missiles launched on September 5, 2016, all fell within the Japanese EEZ; all of which has led to increased concern about Japan's security, as all were launched from transporter erector launchers (TELS), which were fired simultaneously without warning. Fortunately, there were no active Japanese fishing vessels or civilian aircraft flying in the areas in which the missiles fell; nonetheless, these missile launches demonstrated that regardless of whether they were nuclear tipped or not, they could pose existential threats to Japan.

The series of SLBM launches by North Korea have also increased the alert levels in Japan's national defense as the country has been continuously developing these technologies. While the general level and quality of North Korea's military and dual-use technologies might still be far behind those of the most advanced western countries, the accelerated pace of the North Korean developments and the improved capabilities have forced Prime Minister Shinzo Abe to describe North Korea's missile (as well as nuclear) threat as "a new dimension" at a press conference after North Korea's 5th nuclear test on September 9, 2016.<sup>11</sup>

While maintaining a basic, comprehensive policy approach of "dialogue and pressure" and toughening the financial and economic sanctions on North Korea both individually and within the framework of the United Nations Security Council,<sup>12</sup> it is important for Japan to enhance its deterrence capabilities, most of which are provided by the U.S., in response to North Korea's continued military provocations. It has also becoming critical for Japan to maintain and enhance Japanese-U.S.-ROK trilateral defense cooperation to further improve interoperability through joint exercises. It is encouraging that the U.S., South Korea, and Japan conducted the first-ever trilateral joint BMD exercise (Pacific Dragon) in June, 2016;<sup>13</sup> however, these three partners need to build on these exercises and further enhance their interoperability. Further, a long overdue General Security of Military Information Agreement

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<sup>11</sup> "Address by Prime Minister Shinzo Abe at the Seventy-First Session of the United Nations General Assembly," Prime Minister of Japan and His Cabinet, September 21, 2016.

[http://japan.kantei.go.jp/97\\_abe/statement/201609/71unga.html](http://japan.kantei.go.jp/97_abe/statement/201609/71unga.html)

<sup>12</sup> For Japan's existing policy framework for North Korea, see Hiroyasu Akutsu, "A Japanese Perspective on North Korea at the Crossroad," *Journal of International Strategic Studies* (European Centre of International Strategic Researches (CERIS), 2012), pp. 44-49.

<http://ceris.be/fileadmin/library/Publications/Journal-N5-E.pdf>

<sup>13</sup> "Trilateral Pacific Dragon ballistic missile defense exercise concludes," *US Navy News* (U.S. Third Fleet Public Affairs), June 27, 2016. <http://www.cpf.navy.mil/news.aspx/130035>

(GSOMIA) was signed between Japan and South Korea on November 23, 2016, which should contribute to the enhancement of Japanese-ROK bilateral security cooperation and promote Japanese-U.S.-ROK trilateral interoperability.

### **CONCLUDING REMARKS**

As this paper has highlighted, North Korea's nuclear and missile threats have grown significantly, with North Korea's missile capabilities now a serious and imminent threat to Japanese security, as it is speculated that North Korea probably already has the capability to mount a nuclear warhead on a medium-range missile. With the threat from North Korea rapidly growing, Japan needs to continue to enhance its alliance with the U.S., strengthen its security cooperation with South Korea, and strengthen its own defense capabilities.

**SEMINAR PROGRAM****NDA-FOI\* Joint Seminar on  
“The Future of East Asian Security”**

January 25, 2017

At the Conference Room No.2 at the Head Quarter Building of National Defense  
Academy, 1-10-20 Hashirimizu, Yokosukashi, Kanagawa 2398686 JAPAN

9:20-9:50 Registration at Conference Room

9:50 Opening Remarks

- Japan side: Prof. Yasuhiro Takeda  
Director of GS, NDA
- Swedish side: Dr. Adriana Lins de Albuquerque  
Project Manager, FOI

10:00-12:30 Morning Session Moderator: Prof. Ryuichi Shoji,  
Head of Research Division, GS, NDA

(1) “Sino – Japanese Rivalry and the Future of Asia-Pacific Security: What  
Risks of War?”

- Paper presenter: Mr. John Rydqvist, FOI
- Commentator: Associate Prof. Norihiro Sasaki, NDA

(2-1) “Maritime Security”

- Paper presenter: Dr. Testuo Kotani, Senior Fellow, JIIA
- Commentator: Mr. John Rydqvist  
Prof. Teruhiko Fukushima, NDA

(2-2) “Lawfare versus the Rule of Law in Asian Security”

- Paper presenter: Associate Prof. Masahiro Kurosaki, NDA
- Commentator: Dr. Adriana Lins de Albuquerque, FOI

12:40-14:00 Working Lunch at Conference Room

- “Trump Administration and the Future of the Japan-U.S. Alliance ”
- Speaker: Prof. Mataka Kamiya, NDA

## 14:10-18:00 Afternoon Session

Moderator: Dr. Adriana Lins de Albuquerque

## (3) "China vs. Taiwan: Growing Uncertainties"

- Paper Presenter: Mr. Jerker Hellström, FOI
- Commentator: Associate Prof. Norihiro Sasaki, NDA

## (4-1) "North Korea's Advanced Military Capabilities and Their Impact on Japanese Security"

- Paper Presenter: Dr. Hiroyasu Akutsu, NIDS
- Commentator: Mr. Jerker Hellström, FOI

## (4-2) "South Korea under Security Readjustment"

- Paper Presenter: Prof. Hideya Kurata, NDA
- Commentator: Mr. John Rydqvist, FOI

## (5) "Conflict or Cooperation in the Sino-Indo-Pakistani Strategic Triangle?"

- Presenter: Mr. Samuel Bergenwall, FOI (absence)
- Commentator: Associate Prof. Toru Ito, NDA

18:30- Farewell Reception at *Wasabi*

\*FOI: Swedish Defence Research Agency

NDA: National Defense Academy

GS: Center for Global Security

NIDS: National Institute for Defense Studies

JIIA: Japan Institution of International Affairs

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