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**NAVAL
POSTGRADUATE
SCHOOL**

MONTEREY, CALIFORNIA

THESIS

**FACTORS SHAPING JAPAN'S FOREIGN POLICY
TOWARD THE SENKAKU ISLANDS**

by

Jason C. DeJesus

March 2018

Thesis Advisor:
Second Reader:

Robert Weiner
Wade Huntley

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**FACTORS SHAPING JAPAN'S FOREIGN POLICY TOWARD THE SENKAKU
ISLANDS**

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Submitted in partial fulfillment of the
requirements for the degree of

**MASTER OF ARTS IN SECURITY STUDIES
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ABSTRACT

China's behavior regarding the Senkaku Islands has evolved from civilian fishing vessels entering territorial waters around the Islands to military vessels showing force in the region. Japan's usual response to China's behavior had been non-aggressive and proportional to China's actions. Such use of diplomacy, combined with minimal improvements to defense capabilities, can be labeled as cooperative engagement. But China's recent escalatory behavior has caused the Japanese government to change to a competitive, hard-hedge form of engagement, with greater focus on defense capabilities than on policy. This study argues that individual Japanese political leaders, domestic constraints, and international law have encouraged this moderate but significant shift of Japanese Senkakus policy toward more aggressive engagement.

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LIST OF ACRONYMS AND ABBREVIATIONS

ADIZ	Air Defense Identification Zone
ASW	Anti-submarine Warfare
DFAA	Defense Facilities Administration Agency
ECS	East China Sea
EEZ	Exclusive Economic Zone
FDI	Foreign Direct Investments
ISR	Intelligence, Surveillance, and Reconnaissance
ICJ	International Court Justice's
JCG	Japanese Coast Guard
JMSDF	Japanese Maritime Self Defense Force
JSDF	Japanese Self-Defense Forces
NDPG	National Defense Program Guidelines
ODA	official development assistance
PRC	People's Republic of China
UNCLOS	United Nations Convention on the Law of the Seas

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I. INTRODUCTION

China's military buildup and escalatory behavior in the last ten years towards Japan's claim on the Senkaku Islands is raising security concerns with the Government of Japan (the islands are known in China as the Diaoyu Islands, but below will often simply be called the Senkakus for simplicity's sake). Both countries express claims over the East China Sea territories through diplomatic declarations and a physical presence. China's claims to the islands are historical and originate from 15th century administration of the islands, and the country currently claims that "China's activities in the area is [sic] the legitimate exercise of its jurisdiction . . . and should not be seen as an attempt to change the status quo."¹ Japan's claim to the islands relies on effective and administrative control of the islands including the surrounding water space. Japan's Ministry of Foreign Affairs maintains the Senkaku Islands are "clearly an inherent part of the territory of Japan" and "under the valid control of Japan."² China's recent provocative behavior regarding the Senkakus has evolved from civilian fishing vessels' entering territorial waters around the Islands to military vessels' showing force in the region. In late 2013, China's pattern of challenging Japanese claims evolved further with its declaration of an expanded air defense identification zone (ADIZ) that includes the Senkaku Islands.

Japan's typical response to what it perceives as Chinese provocations had been non-aggressive and proportional to China's actions. Japan's Coast Guard responded to Chinese intrusions into territorial waters. Statements from Japan's Ministry of Foreign Affairs countered Chinese declarations concerning the disputed islands. Japan's moderate response reaffirmed Japanese claims, opposed China's actions, and prevailed upon the

¹ "The Evolving Security Situation in Asia and the Role of China—Speech by H.E. Vice Foreign Minister Liu Zhenmin at the Luncheon of the 9th CSCAP Conference," *Ministry of Foreign Affairs of the People's Republic of China*, December 3, 2013, http://www.fmprc.gov.cn/mfa_eng/wjdt_665385/zyjh_665391/t1105034.shtml.

² "The Basic View on the Sovereignty over the Senkaku Islands," Ministry of Foreign Affairs of Japan, accessed September 24, 2014, /region/asia-paci/senkaku/basic_view.html.

international community to cooperate in resolving the issue.³ Such use of diplomacy, combined with minimal improvements to defense capabilities, is labeled below as cooperative engagement. But China's recent escalating behavior has caused the Japanese government to change from cooperative to a competitive, hard-hedge form of engagement, with greater focus on defense capabilities than on policy. But such competitive engagement is approaching the administrative limits of Japan's Self-Defense Forces. Historically, post-World War II Japan has adopted a pacifist identity complemented by constitutional restrictions to this end, in the context of security provision by the United States.

What explains how, and the degree to which, Japan balances these two opposing considerations? Which factors push Japan toward increasing the robustness of its response to China, and how; and which factors continue to constrain Japan's response? This study investigates domestic political leadership, national defense limitations, and the international law of territorial disputes as factors that both restrict Japan's foreign policy, limiting aggressive responses beyond tit-for-tat behavior, and, more recently, fuel a drive to loosen these restrictions.

An understanding of the Japanese perspective is important to anticipate Japan's foreign policy behavior, especially involving the Senkaku Islands. China and Japan are arguably the strongest states in the region, both militarily and economically. The Senkakus dispute has caused a persistent rift in Sino-Japanese relations. Over the past 60 years, the rift has widened due to actions by both sides.

More broadly, Andrew Oros holds that three scenarios could change Japan's security practices: "policy evolution" based on status quo antimilitarism identity, an event "shocking" the region and resulting in Japan discarding pacifist policies, or "societal actors" within Japan's leadership who prove able to slowly introduce "central

³ "Statement by the Minister for Foreign Affairs on the Announcement on the "East China Sea Air Defen..." *Ministry of Foreign Affairs of Japan*, accessed September 24, 2014, /press/release/press4e_000098.html.

tenets” aligning to a future security identity.⁴ The Senkakus Islands could be the center of Oros’ scenarios and ultimately change Japan’s security identity. Japan’s gradual shift to cooperative engagement also leads to questions of how Tokyo is to achieve this state without violating constitutional restrictions, while regional states previously invaded, including China and Korea, reluctantly anticipate the return of a potentially aggressive Japan.

A. SINO-JAPANESE CONDITIONS

1. Chinese Encroachments

Despite positive economic ties, an escalating pattern of Chinese political and perceived military threats in the region increasingly became a concern for Japan’s political elite as well as its general public well before China’s increased presence near the Senkaku Islands. During the 1990s, several Chinese actions increased tension with Japan. First, China’s Patriotic Education Campaign of 1991, aimed at developing Chinese nationalism, provoked anti-Japanese sentiment.⁵ Second, Chinese nuclear tests in 1995 threatened Japan as well as other regional states.

Chinese naval activity within the near-seas and into the far seas supports Beijing’s commitment to protect China’s global interests.⁶ Near- and far-seas operational boundaries are defined by the first and second island chains in the Western Pacific Ocean, respectively. The first island chain borders several bodies of water including the Sea of Japan, Yellow Sea, the East China Sea, and the South China Sea. This chain is comprised of Japan, Taiwan, the Philippines, and Borneo. The second island chain expands the area to include the Kurile Islands in the north, the Marianas Islands, and Australia. Water space between the two island chains is defined as the middle seas and outside the second island chain is considered the far seas.

⁴ Andrew Oros, *Normalizing Japan: Politics, Identity, and the Evolution of Security Practice* (Stanford, Calif.; London: Stanford University Press ; Eurospan [distributor], 2010), 188.

⁵ Mike M. Mochizuki, “Japan’s Shifting Strategy toward the Rise of China,” *Journal of Strategic Studies* 30, no. 4–5 (August 2007): 750, <https://doi.org/10.1080/01402390701431832>.

⁶ Geoffrey Till, *Asia’s Naval Expansion: An Arms Race in the Making?*, Adelphi 432-433 (London: The International Institute for Strategic Studies : Routledge, 2012), 71.

China's interests have expanded beyond the far-seas and require a naval force capable of operating beyond the near seas for long periods. China's military showcased power projection capabilities during 1996 exercises in the Taiwan Strait.⁷ The last decade has shown an increase in Chinese military activity in the East China Sea that may pose a threat to Japan's security. Occurrences of PRC naval vessels' traveling through Japanese straits have become annual events and began in November 2004 when "a Chinese *Han*-class nuclear powered submarine travel[ed] submerged through the Ishigaki Strait."⁸ Each year between 2008 and 2012, the number of PRC vessels passing through Japanese straits increased from the previous year. Additionally, the capabilities of the naval units improved as newer vessel classes, such as the Luzhou and the newly modified *Sovremenny* class destroyers, traversed the Miyako Strait.⁹ These transits did not violate UNCLOS articles pertaining to Japan's territorial waters, but the increased activity triggered additional JMSDF patrols towards the southwestern region of Japan's archipelago. Unintended provocations from either nation are more likely to occur as the two navies interact more frequently.

Misunderstood Chinese actions could quickly escalate Sino-Japanese relations to armed conflict. Without a proper communications channel to government leadership, naval unit commanders are left to decipher and decide whether the actions of the opposing vessels are threatening to sovereign territory. Two instances of this provocative behavior occurred in early 2013 when Chinese naval vessels allegedly trained fire control radars on Japanese Maritime Self Defense Force (JMSDF) assets. The first incident occurred in the East China Sea on 19 January 2013, when fire control radars on a *Jiangkai I* –class frigate locked onto a helicopter assigned to a nearby JMSDF destroyer.

⁷ Mochizuki, "Japan's Shifting Strategy toward the Rise of China," 750; Jeffrey W. Hornung, "Japan's Growing Hard Hedge Against China," *Asian Security* 10, no. 2 (May 4, 2014): 101, <https://doi.org/10.1080/14799855.2014.914497>.

⁸ Christopher W. Hughes, *Japan's Remilitarisation*, Adelphi 403 (London, UK : New York, NY: International Institute for Strategic Studies ; Routledge, 2009), 29; William Choong, *The Ties That Divide: History, Honour and Territory in Sino-Japanese Relations* (London: International Institute for Strategic Studies, 2014), 10.

⁹ Choong, *The Ties That Divide*, 2014, 10.

The second event occurred on 30 January 2013, when a *Jiangwei* II class frigate targeted a JMSDF destroyer operating near the Senkaku Islands.¹⁰

Another dimension of Japan's security was threatened in the latter part of 2013. On 23 November 2013, China declared an expanded air defense identification zone (ADIZ) that overlapped with Japan's ADIZ over the Senkaku Islands. Declaring an ADIZ beyond territorial waters is legal according to the Convention on International Civil Aviation (Chicago Convention), but these zones apply only to civilian aircraft.¹¹ The requirements for aircraft entering into the Chinese ADIZ are that flight plans must be submitted to the Chinese government; aircraft must maintain and respond to radio communications; aircraft must maintain a radar transponder, and nationality and logos must be clearly displayed on the aircraft.¹² The requirement for all aircraft, civil and military, to submit reports to the Chinese Government is the one unusual requirement. Despite China's goal of protecting its territorial and airspace security, this requirement does not coincide with UNCLOS Article 87, which provides open accessibility for the freedom of navigation and over flight in water space designated as high seas.¹³ Shortly after China's declaration, the United States challenged the declared zone by flying military bombers stationed in Guam through the ADIZ and claimed freedom of over flight. The airspace over the Senkaku Islands still requires permission from the sovereign owner, whether China or Japan, prior to entry.

The probability of an increase in unintended confrontations is directly proportional to the increased aerial and maritime traffic in the vicinity of the Senkaku Islands. The aggressive behavior of the Chinese government compounds the potential for accidental collisions in either domain. In 2001, a U.S. EP-3 and a Chinese F-8 fighter-

¹⁰ Choong, 11, 80–1.

¹¹ Peter A. Dutton, "Caelum Liberum: Air Defense Identification Zones Outside Sovereign Airspace," *The American Journal of International Law* 103, no. 4 (October 2009): 692.

¹² "Announcement of the Aircraft Identification Rules for the East China Sea Air Defense Identification Zone of the P.R.C.," Ministry of Foreign Affairs of the People's Republic of China, November 23, 2013, http://eng.mod.gov.cn/Press/2013-11/23/content_4476143.htm.

¹³ "United Nations Convention on the Law of the Sea (UNCLOS)," accessed December 15, 2014, http://www.un.org/depts/los/convention_agreements/texts/unclos/closindx.htm.

interceptor collided in international airspace, 70 nautical miles south of Hainan Island.¹⁴ Chinese interceptions were frequent and regular, but either pilot had the potential to view the other's actions as threatening. The question for future engagements within the overlapping ADIZ covering the Senkakus is this: what is defined as a threat? Loosely defined rules of engagement combined with a unit commander's aggressive behavior would compound these interactions and leave both nations vulnerable to armed conflict. Expanding the Chinese ADIZ creates more opportunities for accidents to occur between air-to-air, surface to air, air to surface, as well as surface-to-surface units and more reasons for Japan to shift to cooperative engagement and further expanding internal military strength.

2. Benign Interactions?

More recent Sino-Japanese activities in the East China Sea displayed attempts by the Chinese to establish, or by the Japanese to maintain, effective control of claimed water space. Sino-Japanese competition for administrative control of the Senkaku Islands has been ongoing since 1972. During the 1990s, Japan's Coast Guard and Maritime Self-Defense Forces prevented Chinese activists from disembarking Chinese flagged fishing vessels onto the Senkakus. China increased the volume of fishing vessel attempts and incorporated government research vessels in landing groups to show national support for the cause. In 1992, China established laws governing Chinese territorial seas and contiguous zones that specifically included the Senkaku Islands. Japan's "tit-for-tat" reaction incidentally declared ownership of the disputed islands when Tokyo declared the expansion of its EEZ originating from the Senkaku Islands.¹⁵ China and Japan's escalating sovereignty claims demonstrate each nation's commitment to controlling, either effectively or administratively, the islands and waterspace. Observers are left to speculate whether China's intent is malign or benign.

¹⁴ Dutton, "Caelum Liberum: Air Defense Identification Zones Outside Sovereign Airspace," 703.

¹⁵ Zhongqi Pan, "Sino-Japanese Dispute over the Diaoyu/Senkaku Islands: The Pending Controversy from the Chinese Perspective," *Journal of Chinese Political Science* 12, no. 1 (June 21, 2007): 75, <https://doi.org/10.1007/s11366-007-9002-6>.

On 25 February 1992, The People's Republic of China (PRC) released the Law on the Territorial Sea and the Contiguous Zone and included questionable language regarding the Daiyou Dao Islands. Within the document, China declared ownership of named island chains and detailed laws that pertained to the sovereign territories. The territorial and contiguous zones, at 12 and 24 nautical miles, respectively, were established, as were access requirements for all vessels and aircraft within those zones. Although China's ownership of these territories is not universally accepted, Beijing has claimed sovereignty over its territorial sea, airspace, seabed, and subsoil.¹⁶ A suggested use of force is embedded within the document and introduces an ambiguous level of intent regarding vessels or aircraft that violate this law. Article 8 states: "People's Republic of China has the right to adopt all necessary measures to prevent and stop the passage of a ship which is not innocent through its territorial sea."¹⁷ An issue with this article is the unknown answer to questions of what is meant by "necessary measures." Despite declarations of benign intentions, China has escalated from diplomatic and economic pressure against Japanese administration of the Senkakus to military pressure, with Chinese military vessels directing fire control radars towards Japanese Maritime Self-Defense Force destroyers, and with increased aerial engagements resulting from the Japanese and Chinese ADIZ overlapping the Senkaku Islands.

Several actions in the last five years have been perceived in Japan to pose a more direct potential threat to the sovereignty of the Senkaku Islands. Japanese Coast Guard reveals a significant spike in the number of intrusions within Japanese territorial and contiguous seas. Although these statistics do not specifically focus on Chinese vessels, several known instances have been documented: Japanese Coast Guard vessels intercepted two Chinese government vessels within territorial waters around the Senkaku Islands in December 2008; a collision between a Chinese fishing vessel and Japanese Coast Guard vessel occurred within the Senkaku Islands territorial waters in September 2010; and in September 2012, only days after the Japanese purchased the island, an

¹⁶ "Law on the Territorial Sea and the Contiguous Zone of 25 February 1992," United Nations, n.d., 1, http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/CHN_1992_Law.pdf.

¹⁷ "February 25, 1992," 2.

increased number of Chinese government vessels began entering the Senkaku Islands' territorial waters daily.¹⁸

Since 2009, appearances of Chinese (and Taiwanese) flagged vessels carrying nationalists protesting Japan's territorial claims have increased and evolved toward more threatening actions. The frequency of Chinese-flagged territorial intrusions has also increased to match this escalating behavior. On 8 December 2008, two Chinese government research vessels entered Japanese-claimed territorial waters near the Senkaku Islands. The vessels ignored multiple radio calls from Japanese Coast Guard vessels to exit Japanese territorial waters, and they remained there for approximately nine hours.¹⁹ A collision between a Chinese fishing trawler and a Japanese Coast Guard vessel on 7 September 2010 led to the arrest (and quick subsequent release) of the trawler's captain and elevated Sino-Japanese tensions. According to statistics from Japan's Coast Guard, a spike in contiguous sea intrusions correlates with this incident.²⁰ Despite heightened tensions, only one territorial sea intrusion occurred in 2011 and involved two Chinese fishing patrol vessels briefly loitering within territorial waters near the Senkaku Islands.²¹

A persistent Chinese maritime presence began in 2012 and has escalated to military involvement. Within three months of Japan's September 2012 nationalization of the Senkaku Islands, provocative occurrences of government vessels and aircraft transiting the maritime and aerial domains of the Senkakus began to increase. From August to September 2012, monthly territorial sea intrusions increased from 0 to 13 and

¹⁸ "Trends in Chinese Government and Other Vessels in the Waters Surrounding the Senkaku Islands, and Japan's Respo.," Ministry of Foreign Affairs of Japan, accessed March 25, 2015, /region/page23e_000021.html.

¹⁹ "China Boats Enter Waters off Senkakus | MaritimeSecurity.Asia," accessed September 21, 2014, <http://maritimesecurity.asia/free-2/maritime-security-asia/china-boats-enter-waters-off-senkakus/>; "Trends in Chinese Government and Other Vessels in the Waters Surrounding the Senkaku Islands, and Japan's Respo.," Ministry of Foreign Affairs of Japan, accessed September 18, 2014, /region/page23e_000021.html.

²⁰ "Trends in Chinese Government and Other Vessels in the Waters Surrounding the Senkaku Islands, and Japan's Respo.."

²¹ "Trends in Chinese Government and Other Vessels in the Waters Surrounding the Senkaku Islands, and Japan's Respo.," "China Boats Enter Waters off Senkakus | MaritimeSecurity.Asia."

contiguous sea intrusions from 2 to 122.²² Two representative examples include a Chinese State Oceanic Administration aircraft that flew over one of the Senkaku Islands on 13 December 2012 and a 30 January 2013 incident in which Chinese naval vessels directed fire control radar towards Japanese Maritime Self-Defense Forces assets in the vicinity of the Senkaku Islands.²³ On 23 November 2013, as noted above, a significantly controversial Chinese action was the expansion of its ADIZ to include airspace over the disputed territory in the East China Sea.²⁴

3. Japan's Institutional Interactions

Japan's responses are restricted to maintaining the status quo and remaining non-aggressive. The question for the Government of Japan is this: what Chinese action will push the two countries into a kinetic interaction resulting in a potential conflict? In the meantime, Japan is able to use organizations like the Japanese Coast Guard to intercept Chinese vessels crossing Japanese territorial waters without use of the more overtly threatening Self-Defense Forces. As noted above, a moderate response would reaffirm Japanese claims, oppose China's actions, and prevail upon the international community to cooperate in resolving the issue; and such use of diplomacy, combined with minimal

²² "Trends in Chinese Government and Other Vessels in the Waters Surrounding the Senkaku Islands, and Japan's Respo.."

²³ "Back to the Future," *The Economist*, January 5, 2013, <http://www.economist.com/news/asia/21569046-shinzo-abes-appointment-scarily-right-wing-cabinet-bodes-ill-region-back-future>; "Position Paper: Japan-China Relations Surrounding the Situation of the Senkaku Islands -In Response to China's Airs..," Ministry of Foreign Affairs of Japan, accessed September 21, 2014, /region/asia-paci/senkaku/position_paper2_en.html; "Japan Protests Chinese Plane Entering Their Airspace," December 13, 2012, sec. World, <http://www.telegraph.co.uk/news/worldnews/asia/japan/9741746/Japan-protests-Chinese-plane-entering-their-airspace.html>.

²⁴ China has also used economic tactics as a secondary approach to the Senkakus. The Chinese government retaliated with trade restrictions after the 2010 collision, embargoing rare earth metal exports to Japan affecting such high-tech industries as hybrid cars, wind turbines, and guided missiles, and requiring a longer customs process on Japanese imports. Japan has responded by attempting to reduce its economic dependency on China, reducing its rare earth imports from China and, between 2010 and 2012, nearly doubling imports from France, Vietnam and Estonia. See Keith Bradsher, "Amid Tension, China Blocks Crucial Exports to Japan," *The New York Times*, September 23, 2010, sec. Business / Global Business, <http://www.nytimes.com/2010/09/24/business/global/24rare.html>; Hornung, "Japan's Growing Hard Hedge Against China," 104.; and Hornung, 112.

improvements to defense capabilities, can be labeled cooperative engagement.²⁵ With both countries improving defensive capabilities, though, the relationship is slowly shifting to one of competitive engagement, since policy has reached a standstill in terms of resolving the Sino-Japanese territorial dispute.

Increased Chinese activity over the last 20 years has motivated Japan to boost presence operations within surrounding waterways, especially around outlying islands like the Senkakus. Continued JSDF and Japanese Coast Guard support exhibits administrative control over the disputed islands and maintains a foothold on the Senkakus despite China's escalating actions over the years. Japan has taken a subtle sovereignty approach, with Japanese citizens, especially nationalistic fishermen, landing on the islands in a display of effective control and erecting government structures like lighthouses.

Scholars consider 1996–2010 a period of Japanese soft hedging against China's rise.²⁶ Japan adopted an approach of cooperative engagement, relying on policies whose aim was to cultivate mutual "benign intentions" with China and to preserve the status quo between both countries, without building up Japanese military capabilities (in contrast, competitive engagement is primarily focused on improving internal or external military capabilities in response to a state projecting malign intentions).²⁷ Japan offered financial support to build a cooperative relationship with China. The Japanese government's official development assistance (ODA) contributions and Japanese business owners' foreign direct investments (FDI) helped finance China's economic growth. Japan's contributions to China's economy were in part an attempt to facilitate China's acceptance into the international community after the 1989 Tiananmen Square incident, but eventually resulted in more general and increasingly mutual economic interdependence

²⁵ "Statement on the East China Sea Air Defense Identification Zone," *M2 Presswire*, November 25, 2013, <http://search.proquest.com.libproxy.nps.edu/docview/1461266429/A3B0070D758347D3PQ?accountid=12702>.

²⁶ Hornung, "Japan's Growing Hard Hedge Against China," 99.

²⁷ Mochizuki, "Japan's Shifting Strategy toward the Rise of China," 744; Hornung, "Japan's Growing Hard Hedge Against China," 99.

between the two nations.²⁸ By 2007, “China became Japan’s largest trading partner on the calendar basis.”²⁹

The typical Japanese response to foreign vessels entering Japan’s sovereign contiguous or territorial waters had been to dispatch the Japanese Coast Guard (JCG) to intercept and query intruders. In a majority of these encounters, the JCG warded off Chinese or Taiwanese fishing vessels carrying activists protesting Japan’s claim on the islands.³⁰ A smaller number of these instances escalated to at-sea collisions between foreign fishing vessels and the JCG.

Japan has also adjusted its broader, programmatic security approach in response. Japan’s National Defense Program Guidelines (NDPG) of 2011 was the first NDPG to specifically mention the importance of the southwestern region, where the Senkaku Islands are located, calling for a relocation of forces from northern self-defense stations to strategic locations in close proximity to southwestern Japan, in contrast with the Cold War-driven focus in earlier versions of that document on Russia to the Northeast.³¹ Gronning interprets this move as “shifting Japan’s military weight toward the southwestern maritime region in an obvious attempt to counterbalance Chinese military power in that area.”³² Additionally, Tokyo’s new focus on improving intelligence, surveillance, and reconnaissance (ISR), anti-submarine warfare (ASW), and amphibious

²⁸ Mochizuki, “Japan’s Shifting Strategy toward the Rise of China,” 749.

²⁹ “2008 JETRO White Paper on ‘International Trade and Foreign Direct Investment’” (Japan External Trade Organization (JETRO) Overseas Research Department, n.d.), 65, http://www.jetro.go.jp/en/reports/white_paper/trade_invest_2008.pdf.

³⁰ “Taiwan Boat Leaves Islands after Japan Water Cannon Duel,” <http://www.livemint.com/>, accessed September 18, 2014, <http://www.livemint.com/Politics/ZZN7BUoMwUTskTMOUzbyO/Taiwan-boat-leaves-islands-after-Japan-water-cannon-duel.html>; “Taiwan, Japan Coastguards Collide near Disputed Islands,” [InterAksyon.com](http://www.interaksyon.com), accessed September 18, 2014, <http://www.interaksyon.com/article/36527/taiwan-japan-coastguards-collide-near-disputed-islands>; “Japan Deporting Chinese Held over Island Landing,” CNN, accessed September 18, 2014, <http://www.cnn.com/2012/08/17/world/asia/japan-china-island-dispute/index.html>; Sheila A. Smith, “Why Japan, South Korea, and China Are So Riled Up Over a Few Tiny Islands,” *The Atlantic*, August 16, 2012, <http://www.theatlantic.com/international/archive/2012/08/why-japan-south-korea-and-china-are-so-riled-up-over-a-few-tiny-islands/261224/>.

³¹ “National Defense Program Guidelines for FY 2011 and beyond” (Ministry of Defense of Japan, December 17, 2010), 13, http://www.mod.go.jp/e/d_act/d_policy/pdf/guidelinesFY2011.pdf.

³² Bjørn Elias Mikalsen Grønning, “Japan’s Shifting Military Priorities: Counterbalancing China’s Rise,” *Asian Security* 10, no. 1 (January 2, 2014): 4, <https://doi.org/10.1080/14799855.2013.870157>.

capabilities aligns with the defense of Japan's southwestern territories as specified in the 2011 NDPG.³³

Meanwhile, more passive pushback within the Sino-Japanese relationship included intermittently discontinuing ODA to China, improving the U.S. alliance through participating in international campaigns led by the US, and building better strategic relationships with other countries also facing unfavorable pressure from China.³⁴

With the expansion of the Chinese ADIZ in November 2013, the airspace dimension has become a new Chinese focus alongside the maritime surface and sub-surface realms. China's territorial intrusions have steadily increased from 2009–2014, but maritime incursions steadily decreased during the few months approaching and through the declaration of the expanded Chinese ADIZ, and into 2014, while aerial intrusions increased. Meanwhile, the Japanese Air Self Defense Force's responses to aircraft entering the Japanese ADIZ increased from approximately 300 to 410 times between 2012 and 2013.³⁵ This increase seems to correspond with China's expanded ADIZ and the enforcement of the zone. As noted above, Japan's policy toward the Senkakus appears to have evolved from cooperative engagement in 2010 to a competitive, hard-hedge form of engagement today.

B. DOMESTIC POLITICS: INTEREST GROUPS AND POLITICAL LEADERS

As in any democracy, Japanese politicians must respond to the opinions of their constituencies.³⁶ On matters of foreign and security policy, which often take a back seat to more day-to-day concerns like the economy as a driver of individual citizens' voting decisions, organized interest groups may enjoy somewhat disproportionate influence. Hirano broadly defines interest groups (or what he calls "agencies") to include the news

³³ Hornung, "Japan's Growing Hard Hedge Against China," 105–6.

³⁴ Hornung, 104.

³⁵ "China's Activities Surrounding Japan's Airspace," Japan Ministry of Defense, accessed September 18, 2014, http://www.mod.go.jp/e/d_act/ryouku/.

³⁶ Walter Carlsnaes, Thomas Risse-Kappen, and Beth A. Simmons, eds., *Handbook of International Relations* (Thousand Oaks, CA: SAGE Publications, 2002), 316.

media, scholars, activists, and oil and energy businesses (along with local politicians and opposition parties).³⁷ Oil and energy businesses, for example, are attentive to political elites' actions and eager for Japanese politicians to resolve the territorial dispute, so as to remove obstacles and uncertainties hampering the legal extraction of oil from the seabed reserves around the Senkaku Islands. Large corporations dependent on rare earth metals also have an indirect interest in resolving the dispute, in light of China's prior embargo of these materials. Vocal local political activist groups, meanwhile, whose numbers may be small but who are sometimes concentrated in the districts of powerful Japanese policymakers, are more often found on the side favoring more aggressive Japanese responses.³⁸

Perhaps more important in recent years, though, is the role of individual politicians in simultaneously shaping public opinion as well as policy—in particular, the role of Prime Minister Shinzo Abe. Scholars refer to Abe as a “serious and collegial pragmatist,” but also as a nationalist, and “the most ideological of Japan's postwar prime ministers.”³⁹ Both Abe and former Prime Minister Junichiro Koizumi have also displayed comparative disdain for Chinese objections toward Japan's perceived failure to fully grapple with its wartime behavior—avoiding responsibility for “comfort women,” supporting publication of history textbooks deemed inaccurate by China, and visiting the controversial Yasukuni Shrine—in a way that spills over to China-Japan tension over the Senkakus.⁴⁰ Abe's nationalist identity might greatly improve his popularity domestically, and in the process may produce a more aggressive stance toward China (and increased

³⁷ Mutsumi Hirano, “The Maritime Dispute in Sino-Japanese Relations: Domestic Dimensions,” *Asian Perspective* 38, no. 2 (April 1, 2014): 263–4, <https://doi.org/10.5555/0258-9184-38.2.263>.

³⁸ Simon Xu Hui Shen, “Special Issue Introduction: Domestic Politics in Japan and Sino-Japanese Relations,” *East Asia* 31, no. 1 (March 2014): 3, <https://doi.org/10.1007/s12140-014-9206-2>.

³⁹ Richard Katz and Peter Ennis, “How Able Is Abe?,” *Foreign Affairs* 86, no. 2 (April 2007): 75–91; Gerald L. Curtis, “Japan's Cautious Hawks,” *Foreign Affairs*, March 1, 2013, <http://www.foreignaffairs.com/articles/138816/gerald-l-curtis/japans-cautious-hawks>.

⁴⁰ Takashi Inoguchi, “A Call for a New Japanese Foreign Policy: The Dilemmas of a Stakeholder State,” *International Affairs* 90, no. 4 (July 1, 2014): 953, <https://doi.org/10.1111/1468-2346.12149>; Katz and Ennis, “How Able Is Abe?”; John Hemmings and Maiko Kuroki, “Tokyo Trade-Offs: Shinzo Abe's Hedging Strategy Against China,” *RUSI Journal* 158, no. 2 (2013): 58, [doi:http://dx.doi.org.libproxy.nps.edu/10.1080/03071847.2013.787738](http://dx.doi.org.libproxy.nps.edu/10.1080/03071847.2013.787738).

risk of a further soured relationship between the two countries). This is an approach that may be a significant driver of Japan's stance toward the Senkakus—one that may operate independent of the particular threat China is seen to pose at any given point, and that also, by implication, might not persist under other Japanese leaders.

C. DOMESTIC CONSTRAINTS ON MILITARY POWER

As discussed above, China's provocative actions have centered on the Senkaku Islands and escalated in the previous ten years. These incidents increase fear of potential aggressive Chinese actions to seize the disputed Senkaku islands. According to its National Security Strategy dated December 17, 2013, Japan's first security objective is to protect Japanese sovereignty by expanding its deterrence capabilities and discouraging aggressive actions by other nations.⁴¹ At the same time, Article 9 of the Japanese Constitution prohibits the Self-Defense Force from transitioning into a full military that includes assets providing offensive capabilities—although the interpretation of Article 9 is gradually evolving away from this constraint.

Japan's constitutional restrictions on the SDF generally remained unchanged from the Yoshida Doctrine up to the first Gulf War. During the Cold War era, Jennifer Lind argues Japan's focus was buck-passing with the United States to avoid any constitutional violations while protecting the Kurile Islands, Sino-Russian disputed territory in Northern Japan.⁴² The Japanese Coast Guard remains the current solution and a temporary answer to Chinese provocations in the East China Sea. An amendment removing offensive limitations would change the Japanese response to foreign vessels or aircraft, specifically Chinese flagged, entering the Japanese exclusive economic zone (EEZ), territorial waters extending from the Senkaku islands, or Japanese airspace over the disputed islands. Japan's Constitutional reinterpretation trajectory has been linked to deep political ties

⁴¹ "National Security Strategy" (Ministry of Defense of Japan, December 17, 2013), 5, <http://www.cas.go.jp/jp/siryou/131217anzenhoshou/nss-e.pdf>.

⁴² Jennifer Lind, "Japan's Security Evolution," Cato Institute, February 25, 2016, 3–4, <https://www.cato.org/publications/policy-analysis/japans-security-evolution>.

with the United States in a majority of studies.⁴³ The connection between the Senkaku Islands and reinterpretation has been less remarked upon.

Consonant with Japan's constitutional restrictions is a broad security identity that hews to a generally pacifist view of the military, and which remains wary of outright amendment of the Constitution, even as interpretation of the unamended Constitution continues to evolve. The SDF's own identity, similarly, views this quasi-military as a non-traditional armed force that may respond with force when directly attacked and is prohibited from participating in foreign wars.⁴⁴ SDF actions must be legally justified when responding to Chinese-flagged aircraft and vessels entering Japanese-claimed territorial waters. These offensive limitations constrain the SDF to defensive measures that improve chances of successfully repelling a hostile attack. Some of these measures include reallocating forces from Northern Japan to Southern Japan and investing in improved ISR capabilities for early threat detection.

Procedurally, too, revising the Constitution is difficult. Amending Article 9 (or any other part of the Constitution) would require a two-thirds vote in each house of the Diet, plus a public referendum supported by more than 50 percent of the population.⁴⁵ Together, these ideational and procedural supports for the constitutional status quo restrict Japan's foreign policy to competitive engagement and prevent a full balancing response.

D. INTERNATIONAL LAW

The Sino-Japanese relationship can be traced at least as early as the 15th century as both countries expanded at different times peacefully and forcefully throughout the centuries to acquire new territories.⁴⁶ As a result of disputed sovereignty changes, China

⁴³ Adam P. Liff, "Policy by Other Means: Collective Self-Defense and the Politics of Japan's Postwar Constitutional Reinterpretations," *Asia Policy* 24, no. 1 (2017): 171, <https://doi.org/10.1353/asp.2017.0035>.

⁴⁴ Oros, *Normalizing Japan*, 10.

⁴⁵ Yuji Hosaka, "The Abe Administration's Domestic Strategy and Northeast Asia," *SERI Quarterly* 6, no. 2 (April 2013): 34; Inoguchi, "A Call for a New Japanese Foreign Policy," 955.

⁴⁶ Tao Cheng, "Sino-Japanese Dispute over the Tiao-Yu-Tai (Senkaku) Islands and the Law of Territorial Acquisition," *Virginia Journal of International Law* 14 (1974 1973): 754.

and Japan claimed an island group located between Taiwan and the westernmost Japanese islands. The island group consists of five uninhabited islands and three rocks that presently lack significant resources on any of the land masses. Water space surrounding the islands has substantial fishing resources, making the island group valuable to fishermen as a satellite base.

In 1968, the Committee for Coordination of Joint Prospecting for Mineral Resources, sponsored by the United Nations, released a report stating the continental shelf off the coast of Taiwan has substantial oil and gas reserves that rivals the most productive reserves in the world.⁴⁷ This continental shelf surrounds the Senkaku Islands and became a bargaining chip in Sino-Japanese dispute escalation.

Japan claims the islands' acquisition was legal under the doctrine of *terra nullius* and later supported by international agreements transferring sovereign rights; China makes historical as well as treaty claims. An International Court Justice's adjudication has potential to emerge if an official Sino-Japanese dispute submission actually reached the court for arbitration. International law reinforces Japan's identity with regard to the Senkakus by shaping the administration of the territory, and "gray areas" in the law might be perceived within Japan as legitimating more aggressive responses.

E. CONCLUSION

Many factors, individually or combined, likely contribute to explaining the maintenance of territorial disputes between two independent sovereign states—and, in this case in particular, to explain Japan's gradual evolution from cooperative to competitive engagement, but a constrained form of competitive engagement. This thesis investigates the roles of domestic politics (chiefly political leadership), domestic institutional constraints on Japan's military, and the constraints (or lack thereof) posed by international legal infrastructure.

⁴⁷ Hungdah Chiu, University of Maryland at Baltimore, and School of Law, *An Analysis of the Sino-Japanese Dispute over the T'iao-yutai Islets (Senkaku Gunto)* (Baltimore, MD: University of Maryland School of Law, 1999), 4.

The thesis argues that domestic politics is a particularly influential factor shaping Japan's Senkakus policy and its evolution. Nationalist local politicians, supported by their respective electorates (or at least not opposed by those electorates) circumvented the government's more-wary stance toward the Senkakus by promoting and ultimately provoking nationalization of the islands in 2012, forcing the hand of the national government, which ultimately spearheaded nationalization preemptively in order to make sure a more-responsible party led this effort. Meanwhile, political elites, and Prime Minister Abe in particular, have successfully exploited the political capital earned through successful economic reforms in order to proceed with pre-existing aims to strengthen the role of Japan's SDF and the claims of Japan vis-à-vis the Islands.⁴⁸

In this context, domestic institutional constraints on the Japanese military and the framework of international law primarily establish outer-boundary limitations, within which politicians retain significant discretion to implement foreign policy regarding the administration of the Senkakus, developing national strategic plans aligned with Japanese territorial identity and international community norms.

⁴⁸ Hosaka, "The Abe Administration's Domestic Strategy and Northeast Asia," 35.

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II. POLITICAL LEADERS

Tokyo has generally been a reactive government, especially in its response to Japanese public opinion involving the Senkaku Islands. As addressed in Chapter I, interest groups are more focused on the economic components of the territorial disputes than with the foreign and security issues themselves. Individual leaders are often better able to sway policymakers toward accepting their shared or private agendas. And with regard to the Senkakus in particular, this thesis argues that the individual leaders have mattered. More specifically, Prime Ministers Koizumi and Abe have espoused similar views on “comfort women,” inaccurate history textbooks, and Yasukuni Shrine visits; and by maintaining a strong nationalistic stance are able to slowly gain political capital by addressing Sino-Japanese issues separately rather than collectively. Their separate victories progressively normalize their actions and eventually lead the public not to be alarmed when political leaders lean toward a more aggressive, or competitive, approach to territorial disputes in particular.

A. KOIZUMI

Specific political leaders act differently when presented with major issues within his or her purview. Relatedly, Ellis Krauss argues that there also existed significant differences in how Japan’s Liberal Democratic Party and the Democratic Party of Japan managed crises while in power. Krauss used three unrelated policy areas to compare governments: Okinawan military bases, the Senkaku Islands confrontations, and disaster management.⁴⁹ Krauss used the 1995 Okinawan crisis and the 2009 U.S. force reduction movement to compare the parties. The two Senkaku Island events used to compare political parties were the 2008 sinking of a Taiwanese sport-fishing vessel and the 2010 Chinese fishing boat collision. Although the affected nations are different, both of these events originated in close proximity to the disputed Sino-Japanese Islands. A final political party comparison between the 1995 Hanshin quake and the 2011 Fukushima

⁴⁹ Ellis Krauss, “Crisis Management, LDP, and DPJ Style,” *Japanese Journal of Political Science* 14, no. 02 (June 2013): 177, <https://doi.org/10.1017/S1468109913000029>.

crisis was used to argue Krauss' thesis that crisis response and management significantly differed between the DPJ and the LDP.⁵⁰ Political leadership, by either the DPJ or the LDP, proved significant.

Krauss examined differences in responses by political parties, but comparing two political leaders belonging to the LDP shows that individuals can still overrule overall party viewpoints and exert independent power in policymaking. With regard to the Senkakus in particular, individual leaders are able to use stances on controversial issues involving China to slowly normalize nationalistic behavior. China's activities involving the Senkaku Islands eventually are met with a more competitive approach as Japanese citizens are led to recognize a need for an escalated response. Normalizing anti-Chinese sentiment builds national support and eventually develops political capital in that arena.

One foundation for this approach is visits by Prime Ministers and other Japanese leaders to the Yasukuni Shrine, despite domestic or international public opinion in opposition. These visits indirectly speak to the international community, specifically China, and openly cultivate anti-Chinese sentiment.

The Yasukuni Shrine was originally named Tokyo Shokonsha and established in 1869 under the Imperial Meiji government.⁵¹ This shrine provides a consolidated location for people to honor Japanese soldiers who paid the ultimate sacrifice for the Japanese Empire. Over 2.4 million soldiers are ceremonially enshrined there, from conflicts dating as far back as the Boshin War of the mid-19th century, to the Sino-Japanese and Russo-Japanese wars of the turn of the 20th century, and, more significant to this thesis, the Greater East Asian War (World War II).⁵² Unfortunately, in 1978, fourteen Class A war criminals executed as a result of the Tokyo Tribunals were secretly enshrined, leading to visits by the Prime Minister falling under increased scrutiny by other East Asian

⁵⁰ Krauss, 177.

⁵¹ "Yasukuni Shrine," Yasukuni Shrine, June 16, 2016, <http://www.yasukuni.or.jp/english/about/index.html>.

⁵² "Yasukuni Shrine."

countries, especially China.⁵³ Here lies the struggle for Prime Ministers when it comes to visiting the shrine and commemorating the lives of fallen Japanese soldiers. Prime Ministers are challenged to disregard or account for public opinion when deciding to visit the Yasukuni Shrine—the visits are necessarily politicized. Political leaders may have to suppress personal viewpoints for the greater good of the nation's foreign policy.

Koizumi's relatively long five-year tenure as Prime Minister allowed him to ample time to visit the shrine at opportunistic periods of decreasing political sensitivity. Longer-serving political leaders are able to exacerbate domestic and foreign relationships knowing a likely potential for recovery exists. During Koizumi's appointment, from 26 April 2001 to 26 September 2006, he visited the shrine six times, the most by a Prime Minister since Nakasone Yasuhiro's five year term in the 1980s.⁵⁴ Shrine visitations were a part of Koizumi's campaigns and bolstered his nationalistic stance, reinforcing his dedication to Japan. Chinese responses may have reacted to Koizumi's visits. The importance of these visits lies with what was Koizumi responding to with regard to the territorial dispute in the East China Sea (ECS).

Proving whether Koizumi's actions caused China to react one way or another is difficult to confirm, but the timeline of events suggests that Koizumi used shrine visits as a damper on relations with China, especially with regard to the Senkaku Islands. Most of Koizumi's Yasakuni Shrine visits occurred a few months either before or after contentious events related to the Senkakus. By pledging to visit the shrine annually, he was able to strategically use his actions, whether professional or personal, to promote his stance on Chinese foreign policy. Koizumi's dependence on the US-Japan security alliance showed his dedication in supporting the American's Chinese containment policy and allowed him to swing more towards an anti-status quo China policy.⁵⁵ On 26 July 2001, for example, a Japanese report was published recounting Chinese military and

⁵³ Mong Cheung, *Political Survival and Yasukuni in Japan's Relations with China* (New York, NY: Routledge, 2017), 31.

⁵⁴ Cheung, 35.

⁵⁵ Yew Meng Lai, *Nationalism and Power Politics in Japan's Relations with China: A Neoclassical Realist Interpretation*, Sheffield Centre for Japanese Studies/Routledge Series 46 (London ; New York: Routledge, Taylor & Francis Group, 2014), 132.

civilian maritime activities within the Japan's claimed EEZ.⁵⁶ Koizumi's shrine visit occurred 13 August 2001 and Chinese movements appeared to significantly decrease to the level of a few Chinese vessels prior to the new year. The next noteworthy visit occurred in January of 2003 and coincided with a Japanese media report stating the Japanese owner leased three small Senkaku islets to the government.⁵⁷

By coupling a Yasukuni visit with the government's island acquisition, Koizumi was able indirectly to project his overall Sino-Japanese political posture. Despite his controversial visits to the Yasukuni Shrine, Koizumi retained enough public support to be reelected in September of 2003. China's escalated response for the year occurred on 12 November 2003, when a Chinese Ming class submarine physically contested Japan's island claims by projecting a formidable military asset within Japan's EEZ. Finally, Koizumi's 17 October 2005 visit to the shrine was advantageously timed, halting negotiations to resolve the ECS gas dispute. The goal for these bilateral consultations was minimization of unilateral plans and an equitable Sino-Japanese settlement. With a fourth consultation on the horizon, Koizumi was able to prevent the meeting from taking place on 19 October, further delaying a resolution for the gas dispute.⁵⁸

Koizumi was able to leverage his leadership style to successfully influence not only his constituents, but also Chinese foreign policy. The Japanese public supported his decisions to visit the Yasukuni shrine annually and his interpretation of the ECS island dispute. Despite the history issue's heavily influencing Sino-Japanese foreign relations, Koizumi's popularity with the public carried him through multiple terms and expanded his "standing tall against China" reputation.⁵⁹ Due to constitutional restrictions on utilizing self-defense forces, Koizumi's visits to the Yasukuni Shrine were sufficient responses demonstrating Japan's disapproval of China's actions in the ECS. In conjunction with maintaining positive US-Japan ties, Koizumi's approach to the Senkaku

⁵⁶ Lai, 162.

⁵⁷ Lai, 162.

⁵⁸ Lai, 165.

⁵⁹ Lai, 145.

Islands dispute required him to be confident and decisive in protecting Japan's national resources. Additionally, timely responses to ECS Chinese activity subdued domestic pressures for an expeditious reaction.⁶⁰

B. ABE

Abe Shinzo is arguably even more nationalistic than Koizumi. Although Abe's term length as Prime Minister is now comparable Koizumi's, Abe has kept his visits to the Yasukuni Shrine to a single visit on 26 December 2013. His visit came shortly after China announced the establishment of an ADIZ that overlaps with Japan's; the share portion of the two ADIZs contains the Senkakus.⁶¹ As a clear challenge to Japan's effective control of the Senkaku Islands, China maintains the ADIZ as a "justified act of self-defence." Abe, like Koizumi, is able to use minor changes to policy and nationalistic actions to normalize anti-Chinese sentiment. Specific examples are the ongoing drive for constitutional revision and changes to Japanese history books portray a less aggressive Japanese past. These small steps towards a competitive response condition Japanese citizens to accept the progression as status quo, and they bring a kinetic response closer without courting national disapproval.

The overarching Sino-Japanese issue separate from but indirectly related to the Senkakus that Abe must deal with originates from Japan's avoiding "ownership" of its acts during World War II. The island dispute becomes just one of several historical topics that Japan tends to generally disregard, and is even overshadowed in that area by the issue of wartime "comfort women" and atrocities committed by then-Imperial forces. Visiting the Yasukuni Shrine largely falls under the history-conflict umbrella because of the Class A war criminals housed there.

Abe's use of Yasukuni visits as political statements relating to the Senkaku Islands is not the same as to that of Koizumi. The competitive nature of China's incursions would have sparked a visit by Koizumi, based on his prior history of visits.

⁶⁰ Lai, 174.

⁶¹ William Choong, *The Ties That Divide: History, Honour and Territory in Sino-Japanese Relations* (London: International Institute for Strategic Studies, 2014), 11.

But prior to the ADIZ establishment, Abe experienced three military aircraft and surface vessel incursions that did not trigger a visit. One Chinese surveillance aircraft entered the airspace over the Senkaku Islands, and on separate occasions two different Chinese frigates allegedly directed their fire control radars onto JMSDF assets.⁶²

Two main points of Prime Minister Abe's policy agenda include constitutional revision and the protection of trade to and from Japan, though Constitutional revision has been an uphill battle for his administration, from his first term to his most recent term as Prime Minister. The waterways surrounding the Senkaku Islands overlap with several main trade sea-lanes that allow commercial vessels access to freely transport goods to and from Japan. Additionally, an abundance of seabed oil fields and fishing rights within the EEZ are national resources related to the Sino-Japanese territorial dispute. Constitutional revision is an avenue for Abe to build depth in defending the sea-lanes and the EEZ surrounding the Senkaku Islands from Chinese encroachments. But domestically, constitution changes lack support by Japanese citizens, mostly due to an apparent desire to maintain the country's position as a defensive force in the region and avoid rekindling memories of Japan's pre-World War II expansion throughout Asia.

The more Abe is able to promote his constitutional agenda without the official changes, the easier it will be for Japan to accept the changes and allow a more robust reaction in defending the Senkaku Islands from Chinese encroachments. As remote islands, the Senkakus fall under the Basic Plan on Ocean Policy developed by the Japanese government in 2009 to manage and preserve the islands within its jurisdiction. Remote islands allow the protection of the territorial waters associated with the islands as well as the exclusive economic zones within the island waterways, the freedom to patrol Japanese jurisdiction, and maintaining the historical relationship between the people and the islands.⁶³ Establishing policies that justifies increased presence both militarily and economically additionally supports Abe's promise.'

⁶² Choong, 11.

⁶³ Yoshihiko Yamada, "Japan's New National Border Strategy and Maritime Security," *Journal of Borderlands Studies* 26, no. 3 (December 2011): 359, <https://doi.org/10.1080/08865655.2011.686972>.

Vocalizing a stance on global anti-piracy also provides a stepping-stone for Japan to boost its Coast Guard inventory and operations mostly surrounding Japan's waterways including the Senkaku Islands. Imported goods on merchant vessels transiting all areas of the world, including high piracy sea lanes such as near Somalian waters, stretches the Japanese Diet's interests to outside the nominal range Japan's Coast Guard vessel inventory. Vessel capability limitations prevent Japan from dispatching a formidable protection presence within main sea-lanes of commerce and restrict highly capable vessels high piracy areas or groups of less capable vessels to a shorter tether to Japan. The Japanese 2009 Anti-Piracy Law laid out strict consequences for high seas piracy acts and provides Maritime Self-Defense Force involvement with the prime minister's approval.⁶⁴ This Anti-Piracy Law contributed in constructing more long distance *Shikishima*-class patrol vessels and supported additional patrol units within Japanese claimed and disputed waters. With the Anti-Piracy Law as the new norm, Japan's overextension and construction of more capable JCG assets provides better trade protection including the waterways surrounding the Senkaku Islands.

Abe and his administration have also sought less direct options in driving Japan closer to Abe's promise of protecting "Japan's land and sea, and the lives of the Japanese people . . . over the territorial dispute with China."⁶⁵ One of Abe's tactics for projecting Japan's claim on the Senkaku Islands is changing how history is presented to his country. Two main issues, specifically, could change Japanese citizens' perception of Japan's actions during World War II. These issues illustrate how matters not directly related to the Senkakus can still, indirectly, shape the perceived history of the Senkaku Islands acquisition, and in turn Japan's approach to maintaining administrative control.

The first historical inconsistency between China and Japan is in their diverging approaches to the Nanking massacre. The international community views this event as an atrocity, but Japan has been distributing national textbooks downplaying the actions at

⁶⁴ Yamada, 365.

⁶⁵ Shiguenoli Miyamoto et al., "Towards an Uncertain Future? The Strengthening of Japan's Autonomy in Asia-Pacific," *Revista Brasileira de Política Internacional* 57, no. 1 (January 2014): 106, <https://doi.org/10.1590/0034-7329201400106>.

Nanking as a cost of war. Chinese historians estimate roughly 300,000 casualties versus Japan's significantly lower count of civilian men, women, and children who were killed by Japanese soldiers operating in Nanking.⁶⁶ The comfort women controversy—to do with foreign women who were captured and forced to be sex slaves while Japanese soldiers fought away from mainland Japan—is also another issue that Japan can suppress if it narrates its own story for Japanese youth and challenges China's and other countries' versions.

Postwar Japan has been viewed (and has viewed itself) as a pacifist country due to constitutional limitations and its projection of a non-aggressive posture, which reassures other East Asian countries that they need not fear another hostile Japanese invasion. But Prime Minister Abe has aimed to adjust this narrative within Japanese youths' education to soften the portrayal of Japan's aggressive history, which in turn builds Japan's nationalism by a relatedly sympathetic recounting of the Senkaku Islands' acquisition.⁶⁷

Individual personalities can influence policy over and above the influence exerted by political parties. Abe and Koizumi have adopted different approaches toward Sino-Japanese international relations in general and the Senkaku Island disputes in particular. Koizumi's ability to use Yasukuni Shrine visits as a retaliatory response to Chinese events was both significant and different from how Abe's leaning toward a more conservative political strategy. On the national government scale, both Abe and Koizumi were able to shape the future of Sino-Japanese relations.

C. ISHIHARA AND NODA

Local elected officials also have the capability to force the government's hand, even with regard to a foreign policy issue like the Senkakus. The prime example of a local official with enough political strength to directly and immediately affect the dispute

⁶⁶ Stephanie Lawson and Seiko Tannaka, "War Memories and Japan's 'normalization' as an International Actor: A Critical Analysis," *European Journal of International Relations* 17, no. 3 (September 2011): 410, <https://doi.org/10.1177/1354066110365972>.

⁶⁷ "The Origins and Ideological Drivers of the Abe Doctrine," in *Japan's Foreign and Security Policy Under the "Abe Doctrine,"* by Christopher W. Hughes (Palgrave Macmillan, 2015), 20, <http://www.palgraveconnect.com/doi/10.1057/9781137514257.0005>.

was connected to Japan's purchasing and nationalizing the Senkaku Islands in 2012. Shintaro Ishihara was the governor of Tokyo when he announced an unprecedented move to purchase the privately- and Japanese-owned islands from the Kurihara family.⁶⁸ Ishihara had significant public support due to (among other things) recent incidents involving Chinese fisherman transiting the territorial waters as well as numerous attempts to land and stake claims on the disputed islands. A steady strain of potential challenges to Japan's control of the islands supported Ishihara's purchase.

But Japan's national government decided it could not allow a regional, local, or any individual dictate Senkakus policy, especially if the interaction could lead to a potential conflict, as might have been the case given Ishihara's deep nationalism. Losing the islands to an individual could have amplified the island dispute if Ishihara were to develop and build structures on the land, solidifying Japan's effective control of the islands. Yoshihiko Noda, as Japanese Prime Minister, deflected locally-driven attention on the islands and transitioned it to the national level by buying and nationalizing the islands. Public support for purchasing the islands was overwhelming and Noda's administration was forced to counter Ishihara by submitting a bid.⁶⁹

The major difference between the purchase bids was the Japanese national government's ability to control and limit the rate of development on the island. This control could be used both to reply to China's attempts to claim the islands, and as an opportunity to immediately build on the islands to protect the surrounding water space. The islands were essentially transformed from private to nationally sovereign territory, thus allowing Japanese policies to protect the islands as territory instead of private property. Noda and Ishihara's push to gain official control of the Senkaku Islands was not a collaborative effort. Ishihara's nationalist decision to complete a monetary transaction in support of Tokyo's ownership quickly propelled Noda's decision to override Ishihara's purchase with one at the national level.

⁶⁸ "Dangerous Waters: China-Japan Relations on the Rocks," in *Asia Report N°245* (International Crisis Group (ICG), 2013), 5.

⁶⁹ "Dangerous Waters: China-Japan Relations on the Rocks," 5.

D. CONCLUSION

National policy is generally projected through guidance from political parties, but can also be shaped by individuals in key positions. As Prime Ministers, Koizumi and Abe have been able to use political capital to normalize Japan's behavior toward the Senkaku Islands. Koizumi used his visits to the Yasukuni Shrine as a political statement in response to Chinese encroachments on the disputed islands. Abe indirectly normalized anti-Chinese sentiment by promoting changed interpretations of Japan's history as well as pushing to interpret constitutional limitations in ways that might protect Japanese trade routes, specifically the Senkaku Islands' waterways. Noda and Ishihara acted to purchase the Senkaku Islands and thus go beyond the internationally accepted concept of effective control. Individual action does matter and tends to be less predictable than domestic constraints or international law.

III. DOMESTIC CONSTRAINTS

The Senkaku Islands and other outlying islands are at risk, especially as China increases maritime and aerial patrols inside Chinese-claimed waters that include the Japanese exclusive economic zone (EEZ), territorial waters extending from the Senkaku islands, or Japanese airspace over the disputed islands. But Article 9 of the Japanese Constitution prohibits the Self-Defense Force from transitioning to a full military, imposing institutional restraints on Japan's SDF and limiting the nation's ability to improve its defensive capabilities and match regional and international peers with offensive capabilities. Beijing is free to build up its military in order to project power inside the first island chain and, within the last decade, beyond the second-island chain, producing a military force that rivals the United States in the region. Tokyo's only option is to normalize the SDF as a deployable force through constitutional interpretations while strengthening the SDF's defensive capabilities. More specifically, while Japan's move from cooperative to competitive engagement has been enabled partly by Constitutional reinterpretation, Constitutional restrictions still do limit further moves toward an even more aggressive posture.

Expanding deterrence capabilities and discouraging aggressive actions by other nations are Japan's avenues for maintaining tit-for-tat responses to China's Senkaku Islands encroachments. Constitutional reinterpretations and improvements to the SDF might eventually lead Japan to revising the peace clause while shifting the country's generally pacifist view of the military and improving Tokyo's defensive posture through deterrence. Responses to China's quasi-aggressive actions around the Senkaku Islands may ultimately escalate, but will remain status quo in the interim.

A. CONSTITUTIONAL REINTERPRETATION

1. Gulf War (1990)

As a potential coalition partner in the US-led Gulf War (1990) war, Japan faced Constitutional limitations rooted in the original spirit and letter of Article 9 prohibiting offensive engagements that included supporting allies under collective self-defense. The

resulting compromise excluded military combat operations but allowed the JSDF to operate with the coalition in a supporting role to the campaign. This was proposed through 1990 legislation as a United Nations Peace Cooperation Corps (UNPCC) bill allowing SDF participation limited to logistical support and stipulating immediate extraction if the dispatched contingent encountered any hostile actions from opposing forces.⁷⁰

Dispatching SDF for disaster relief was viewed favorably, according to polls conducted in 1989, but the UNPCC bill did not translate to the Gulf War.⁷¹ Later in 1991, the UNPCC bill was followed by a subsequent attempt for a human (as opposed to monetary) contribution to the Gulf War. With major hostilities subsiding in April 1991, international trade in the Arabian Gulf required additional support for clearing mines to allow safe passage for commercial shipping traffic in and out of the region. Tokyo's proposal was to dispatch a minesweeper flotilla in hopes of improving trade while aligning with Japan's constitutional preamble promoting international stability.⁷² Approving minesweeping operations during a peacetime period established a precedent for using SDF units outside of Article 9 confines and began to drive public opinion closer to normalizing constitutional revision through interpretation.

2. Anti-terrorism Special Measures Law (2001)

Following the 9/11 attacks, Tokyo was again positioned to reinterpret constitutional restrictions on deploying SDF assets to satisfy a human contribution to the international community. With the US-Japanese alliance at risk, Japan's leadership expeditiously developed the Anti-terrorism Special Measures Law (ATSML) allowing the dispatch of MSDF vessels and logistical support to U.S. military combat operations in

⁷⁰ Paul Midford and East-West Center Washington, *Japanese Public Opinion and the War on Terrorism: Implications for Japan's Security Strategy* (Washington, D.C.: East-West Center Washington, 2006), 14, <http://www.eastwestcenter.org/stored/pdfs/PS027.pdf>.

⁷¹ Midford and East-West Center Washington, 14.

⁷² Christopher W. Hughes, "Why Japan Could Revise Its Constitution and What It Would Mean for Japanese Security Policy," *Orbis* 50, no. 4 (September 2006): 732, <https://doi.org/10.1016/j.orbis.2006.07.011>.

Afghanistan. Similar to the UNPCC bill, hostile actions in near deployed MSDF ships would force an immediate withdrawal, but supporting combat operations was the major difference.⁷³ Between the minesweeping dispatch and the ATSMML, the common thread was preserving international order within members of the United Nations as well as building upon the existing precedence for maintaining peace and stability. The entry point for the ATSMML and providing logistical support was again based on the constitution's preamble.

The MSDF's main mission was to remain on station in the Indian Ocean to provide a refueling platform for Operation Enduring Freedom vessels transiting to the area of operations. Supplying fuel to vessels participating in operations outside of Enduring Freedom was prohibited because of the potential constitutional violation involved with fueling units connected to an offensive war campaign. Although Japan's involvement straddled the constitutional fence, the MSDF conducted 794 refueling operations with multi-national warships between December 2001 and October 2007.⁷⁴ SDF operations were unpopular with the DPJ, which sought a reason to discontinue refueling support. Misreported fuel transfers to a vessel that later directly participated in the Iraq War served as the catalyst for raising suspicions of violating the constitution.⁷⁵ The Japanese public questioned these suspicions despite continued refueling operations until the end of 2007.

The war on terror created better conditions for Japan to change the constitutional interpretation status quo. The ATSMML was implemented with marginal public support, but, interestingly, with a 42 percent approval rating for logistical operations supporting the American military.⁷⁶ Although this numerically implies an overall disapproval, the expansion of Japan's non-combat operations overseas suggested an overall upward trend

⁷³ Midford and East-West Center Washington, *Japanese Public Opinion and the War on Terrorism*, 23.

⁷⁴ Christopher Hughes, "Chapter Five: Japan's External Military Commitments," *The Adelphi Papers* 48, no. 403 (December 2008): 81, <https://doi.org/10.1080/05679320902955260>.

⁷⁵ Hughes, 82.

⁷⁶ Midford and East-West Center Washington, *Japanese Public Opinion and the War on Terrorism*, 23.

towards a deployable force and potentially toward constitutional revision further propelling an SDF with offensive capabilities.

3. Iraq Reconstruction (2004-2006)

Japan's response to Iraq's reconstruction efforts was another example of Article 9 constitutional interpretations. The involvement in the Afghanistan and Iraq campaigns were differently portrayed within Japan as a war on terror for the former and a U.S. offensive unsanctioned by the United Nations for the latter. As described above, non-combat operations had public backing because of a constitutional understanding to maintain and preserve international peace against terrorism. Conversely, the U.S. Iraq invasion proceeded despite UN concurrence because of weapons of mass destruction inspection delays. Japan lost support for the Iraqi campaign because the public viewed "the Iraq War as a mistake," and the clear difference was UN involvement.⁷⁷ Japan's potential mission set changed after major hostilities ended and Japan's contribution to the reconstruction effort began in 2006.

In an attempt to maintain legitimacy as a coalition partner, Tokyo agreed to deploy 600 GSDF personnel to assist in humanitarian and reconstruction assignments in the mostly peaceful Samawah, Iraq, from December 2003 to July 2006.⁷⁸ The GSDF's main mission was to provide assistance for infrastructure and building repairs as well as water production. Dutch soldiers were assigned to defend the entrenched GSDF forces because of Japan's extremely conservative rules of engagement (ROE) limiting self-protection to situations without potential casualties. Japanese ROE required GSDF troops to execute actions delaying a kinetic response to an attack and would inevitably prevent timely self-preservation.⁷⁹ Constitutional restrictions guided ROE to prevent any offensive misunderstanding between the GSDF and insurgent attackers. The dispatch was solely in Iraq for reconstruction and Tokyo could not afford a negative domestic or international political reaction to a constitutional violation while deployed overseas.

⁷⁷ Midford and East-West Center Washington, 29.

⁷⁸ Hughes, "Chapter Five," 80.

⁷⁹ Midford and East-West Center Washington, *Japanese Public Opinion and the War on Terrorism*, 37.

The SDF's main mission of humanitarian aid was internationally displayed via positive images of Japan's human contribution to the foreign presence in Iraq. Again, the SDF deployment skirted the constitutional definition of an overseas deployment with minimal public disapproval. The constitutional precedent and, in turn, public opinion again shifted towards acceptance of SDF personnel being stationed in a hostile area and of the potential for major casualties.

4. Collective Self Defense

In late 2014, the Government of Japan broke through the Collective Self-Defense (CSD) barrier, more closely aligning itself with other United Nations members. Prior to the change, Japan's restriction on CSD was self-induced, ensuring Article 9 compliance despite provisions in Article 51 in United Nations Charter authorizing both self-defense and CSD.⁸⁰ Tokyo's fear of Washington abandoning Japan within the US's security umbrella has been present, and the CSD change represented a regional balancing tool to retain protection. Additionally, the progressing "perceived threats and military technologies" surrounding Japan compelled Tokyo to maintain or even improve the security status quo.⁸¹

Tokyo's recent CSD relaxation still maintains Japan's pacifist identity, largely through self-imposed conditions necessary to respond in self-defense. The first requirement still meets the defense of Japan criteria: the third-party attackee must be defending Japan's security. Secondly, the JSDF is restricted to using the minimum level of force necessary to defend the attackee. The second restriction may not necessitate a kinetic response, but may meet the intent with logistical rear support. Lastly, Japan's action for CSD would be viewed as the last resort to preserve both Japan's survival and the survival of the attackee.⁸² This CSD evolution has incorporated the examples

⁸⁰ United Nations. "Chapter VII," Charter of the United Nations, June 17, 2015, <http://www.un.org/en/sections/un-charter/chapter-vii/index.html>.

⁸¹ Adam P. Liff, "Japan's Defense Policy: Abe the Evolutionary," *The Washington Quarterly* 38, no. 2 (April 3, 2015): 86, <https://doi.org/10.1080/0163660X.2015.1064711>.

⁸² Liff, "Policy by Other Means," 161.

described in the Gulf War, ATSMML, and the Iraqi reconstruction, providing more freedom for the Government of Japan to react in crisis situations and avoid a lengthy process to certify JSDF deployment. By maintaining self-imposed requirements, though, Japan's pacifist identity is also maintained and further proactive military action checked.

B. NATIONAL DEFENSE PROGRAM GUIDELINES

Chinese provocations have sparked a need to ramp up the capabilities of the Japanese Self-Defense Forces (JSDF) without violating constitutional restrictions. Article 9 of Japan's Constitution is generally non-specific in terms of the limitations of forces. Article 9 states: "The Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes . . . In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized."⁸³ Conversely, the preamble to the Japanese constitution states that the nation intends to act in accordance with international norms and seek acceptance in the international community. "We desire to occupy an honored place in an international society striving for the preservation of peace, and the banishment of tyranny and slavery, oppression and intolerance for all time from the earth. We recognize that all peoples of the world have the right to live in peace, free from fear and want."⁸⁴

Protecting Japanese allies through collective security not only has direct impact on Japan's ability to address the Senkakus issues, but also opens additional capabilities to usher in potential constitutional revision. Washington has continued to stress to Tokyo the importance of dividing responsibility for protecting the region. Constitutional restrictions limit the extent the JSDF may respond to offensive actions against Japanese allies. And redirecting Japan's focus toward protecting Japanese interests, including

⁸³ "The Constitution of Japan," Government, Prime Minister of Japan and His Cabinet, accessed December 15, 2014, http://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html.

⁸⁴ "The Constitution of Japan."

allied military vessels and vessels transiting through sea-lanes of communication, allows Tokyo to invest in defensive assets that address the nation's primary threat in the region.

China's emphasis on expanding sea control on the near seas and beyond has initiated an arms race that Japan may not be able to match. The requirements necessary to fulfill the goals listed in the National Defense Program Guidelines (NDPG) demanded changes in the main focus of the JSDF. The overall strength of the JSDF during the Cold War was based on potential conflict involving invasion forces landing on Japanese soil. Between the first NDPG in 2004 and the most recent one in 2014, the focus has changed to a smaller, more mobile, and reactive force rather than large SDF units stationed to defend probable invasion points in Northern Japan.

The Government of Japan has redirected SDF resources to respond to China's escalating behavior in the southwestern region of Japan. Defense planning for a potential invasion of offshore islands was briefly addressed as one of the roles of the SDF in the 2004 NDPG.⁸⁵ Offshore islands were referred to generally and could have indicated any sovereign islands of Japan, including the disputed islands in the East China Sea. Shortly after the Chinese trawler incident in 2010, the Japanese Ministry of Defense released the 2011 NDPG and specifically identified Japan's southwestern region as an area where the "SDF will enhance its defense posture."⁸⁶ Between the 2011 and the 2014 NDPGs, the force structure shifted to a more flexible defense force focused on intelligence, surveillance, and reconnaissance (ISR) capabilities to ensure the Government of Japan has units in position to challenge Chinese provocations.

The 2014 NDPG specifically describes the composition of the Ground, Maritime, and Air Self-Defense Forces that will comply with constitutional restrictions and still adequately defend sovereign territory. Ground forces are projected to consolidate into smaller units that are easily deployed to react in several capacities including airborne

⁸⁵ "National Defense Program Guidelines, FY 2005-," Ministry of Defense, n.d., 8, http://www.mod.go.jp/e/d_act/d_policy/pdf/national_guidelines.pdf.

⁸⁶ "National Defense Program Guidelines, FY 2011-," Ministry of Defense, n.d., 13, http://www.mod.go.jp/e/d_act/d_policy/pdf/guidelinesFY2011.pdf.

operations, amphibious operations, and international peace cooperation activities.⁸⁷ Maritime Self Defense Forces substantially contributes to the overall ISR picture by increasing the number of antisubmarine warfare (ASW) capable units within the submarine and surface fleets. Additionally, Japan has undertaken upgrades of the maritime patrol aircraft from the older P-3C airframes to a newer P-X aircraft that will boast an extended range reaching as far as the South China Sea.⁸⁸ New platforms with strict defensive capabilities comply with constitutional restrictions despite a close resemblance to a United States Navy Amphibious Assault Ship used to deploy a contingent of Marines and close air support aircraft. The *Hyuga*-class DDH (destroyer-helicopter) is an example of a vessel used to launch and recover multiple aircraft to various missions, but designated by the Ministry of Defense as an ASW asset.⁸⁹ These are only a few examples of Japan disguising militarization by building a force with assets capable of transitioning into an offensive posture once an armed conflict is initiated or if the constitution is amended.

C. CONCLUSION

As stated by Article 9 of the Japanese Constitution, “In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained.”⁹⁰ New legislation, though, based partly on new Constitutional interpretations, has already expanded the roles of the SDF to include deploying ballistic missile defense systems, navy conducted sea-lane patrols in the East China Sea, anti-piracy operations, and providing Japanese service-members to assist with UN peacekeeping operations.⁹¹ Expanding beyond Japanese territorial waters and using SDF units to support allied countries’ local or regional missions mirrors China’s current power

⁸⁷ “National Defense Program Guidelines, FY 2014-,” Ministry of Defense, n.d., 9, http://www.mod.go.jp/j/approach/agenda/guideline/2014/pdf/20131217_e2.pdf.

⁸⁸ Hughes, *Japan’s Remilitarisation*, 46.

⁸⁹ Hughes, 45–6.

⁹⁰ Richard J. Samuels, *Securing Japan: Tokyo’s Grand Strategy and the Future of East Asia*, Cornell Studies in Security Affairs (Ithaca: Cornell University Press, 2008), 45.

⁹¹ Curtis, Gerald L. Curtis, “Japan’s Cautious Hawks,” *Foreign Affairs* 92, no. 2 (April 2013): 3.

projection campaign and allows Japan to meet it in the Senkakus in particular, though not in a manner that *exceeds* competitive engagement. The current security environment in the East China Sea and constitutional restrictions force Japan to patiently wait for the first shot to come from China. Such an event would ultimately change the outlook of island disputes and could fuel the overall trajectory of the SDF's role.

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IV. INTERNATIONAL LAW

A. INTRODUCTION

This chapter explains the relationship between Japanese and Chinese international law claims and compares the Sino-Japanese situation with a recent territorial dispute case study similar to the Senkaku Island dispute. The varied Japanese and Chinese interpretations of the law, along with the state of the relationship at specific times in history, has contributed to Japan's press away from a cooperative engagement with China. Given the prior status quo of cooperative engagement between these two countries, aggressively blatant actions on China's part to provoke a similar action from Japan may equalize how the international law community views the dispute. The Japanese perspective on the dispute in terms of international law is less threatening due to Japan's administrative control over the Senkaku Islands through the decades. This overt management of the islands allows Japan to less actively pursue legal resolution, since the international law community should be more favorable toward the Japanese.

Two sections of the chapter explain details of the dispute. First, specific details supporting China's historical and treaty claims explain Beijing's point of view regarding the sovereignty of the contested island group. Secondly, Japan's counterargument claims the islands' acquisition was legal under terra nullius and later supported by international agreements transferring sovereign rights. Last, the chapter examines similarities between a Nicaragua vs. Colombia case study and the present day Japan vs. China situation in order to identify international laws that might apply to the Senkaku Islands dispute. International Court of Justice (ICJ) adjudication has the potential to emerge if an official Sino-Japanese dispute submission were actually to reach the Court for arbitration.

B. CHINESE PERSPECTIVE

The arguments supporting China's claims to the Senkaku Islands rest on international laws of historical and agreed treaty claims. Key events dictate the applicability of each law and present a case for China's rights to the disputed islands. Historical claims over territory, such as China's in this case, should establish long-

standing interactions and administration of territories that were terra nullius or otherwise abandoned by the original owners. China's evidence supports a terra nullius claim of occupation before 1895 and Japanese Imperial expansion. Following two key events after 1895, these territorial transfers were deemed legal cessions by agreements between Japan and the United States of America.

China maintains initial ownership rights to the Senkaku Islands because of historical claims dating before the Ming Dynasty (1368-1644 C.E.). Specifically, between 1372 and 1879, the claims involve a functional use of the islands. The islands' proximity to China's coastline provided navigational aids for mariners' use in their eastward expeditions towards the Ryukyu Islands. The Emperor's court funded these missions and required the leader of each trip to submit an after-action report typically named "Record on the Mission to the Ryukyu Islands."⁹² These reports included text describing the use of the islands and all aspects of the journey. Several of these reports associated the Senkaku Islands with Taiwan and not the Ryukyu Islands or Japan.⁹³ The Chinese government considered these reports official documents, and thus, the contents of the reports were legally binding according to customary law.

The second historical claim is China's use of the Senkaku islands as a defensive line to combat piracy. Cheng Jo-tsung's book *Ch'ou-hei-t'u-pien* describes coastal affairs during the mid-16th century and documents regular surveillance of the disputed islands.⁹⁴ The Foochow Prefecture Coastal Defense Command was responsible for protecting the contested island chain and other patrol areas from piracy attacks against innocent vessels. The material for Cheng's book originated from his time spent advising the commander-in-chief of the Chinese Coastal Defense and his exposure to other senior government

⁹² Cheng, "Sino-Japanese Dispute over the Tiao-Yu-Tai (Senkaku) Islands and the Law of Territorial Acquisition," 254.

⁹³ Cheng, 255.

⁹⁴ Cheng, 256.

officials.⁹⁵ China documented its administrative control over the islands and surrounding areas, further supporting its historical claims.

The third Chinese historical claim of the Senkaku Islands involves the collection of natural resources on several of the disputed islands. China discovered an herbal medicine, native to several of the Senkaku Islands, used to relieve pain and regulate blood pressure.⁹⁶ The healing properties of this rare herb were valuable to any society and the Chinese government secured the limited supply. Documents from 1893 supported China's historical claim when Empress Dowager Tsu Hsi permitted a Chinese pharmacist to secure the herb's supply source on several of the disputed islands.⁹⁷ From China's perspective, the Empress' control over the accessibility of the islands proves the islands were Chinese territories.

Territorial transfer via the Treaty of Shimonoseki was significant in determining which country had sovereignty over the islands. Within this treaty, Japan negotiated terms favoring its interests, such as expanding territorial boundaries, finalizing a peace treaty that was unequal in nature since the defeated China was obligated to agree. Article II of the Treaty transfers full sovereignty of the southern Province of Feng-tien portion, the Island of Formosa and associated islands, and the Pescadores Island Group from China to Japan.⁹⁸ China associated the Senkaku islands with the Island of Formosa and therefore the sovereignty of the disputed islands, as well as the Island of Formosa, transferred to Japan. From the end of the Sino-Japanese War (1895) to the end of World War II in the Pacific Theater, Japan retained sovereign rights to the Senkaku Islands.

Chinese interpretations of international agreements following the first key event, the end of World War II in the Pacific, are the source of China's claim over the Senkaku

⁹⁵ Cheng, 256.

⁹⁶ Cheng, 257.

⁹⁷ Daniel Dzurek, "The Senkaku/Diaoyu Islands Dispute," *The Senkaku/Diaoyu Islands Dispute*, March 18, 2014, <http://www-ibru.dur.ac.uk/resources/docs/senkaku.html>.

⁹⁸ Mornosuke Kajima and Heiwa Kenkyujo Kajima, *The Diplomacy of Japan, 1894-1922 [Nihon Gaiko Shi. Selections. English]*, 1st ed. (Tokyo: Kajima Institute of International Peace: Distributed by Kajima Pub. Co., n.d.), 263.

Islands. The President of the United States, the Prime Minister of Great Britain, and the President of the National Government of the Republic of China were all present for the Cairo Declaration of 1943 and the Potsdam Proclamation of 1945. The Cairo Declaration states, “Japan shall be stripped of all the islands . . . which she has seized or occupied . . . and that all territories Japan has stolen from the Chinese, such as Manchuria, Formosa, and the Pescadores, shall be restored to the Republic of China.”⁹⁹ The Potsdam Proclamation defined the terms of Japan’s surrender in section 10: “The terms of the Cairo Declaration shall be carried out and Japanese sovereignty shall be limited to the islands of Honshu, Hokkaido, Kyushu, Shikoku, and such minor islands as we determine.”¹⁰⁰ China interpreted the Declaration and the Proclamation to mean Formosa along with all its associated islands should be returned to the sovereign owners before Japan seized these territories.

World War II ended upon the signing of the Treaty of Peace with Japan (1951) at San Francisco. This treaty dictated the transfer of multiple territories that Japan seized during its Imperial expansion. Specifically in the 1951 Peace Treaty Article II states, “Japan renounces all right, title and claim to Formosa and the Pescadores.”¹⁰¹ China expected these territories to be returned to the initial owners, like China in the case of the Senkaku Islands. Unfortunately, the government of China was not a signatory to the 1951 Peace Treaty and therefore was not able to clarify or contest the specifics of the treaty. The Cairo Declaration, Potsdam Proclamation, and the 1951 Peace Treaty all suggest to China that Formosa, as well as the surrounding islands associated with Formosa, was to be returned to China.

The second key event that spurs differing interpretations over the rightful owner of the Senkaku Islands was the Okinawa Reversion Agreement of 1972. According to Article 3 of the 1951 Peace Treaty, the United States would be the administrator over

⁹⁹ “The Avalon Project : CAIRO CONFERENCE 1943,” Text, accessed March 1, 2018, <http://avalon.law.yale.edu/wwii/cairo.asp>.

¹⁰⁰ D. M. Giangreco, *Hell to Pay: Operation Downfall and the Invasion of Japan, 1945-47* (Annapolis, MD: Naval Institute Press, 2009), 277.

¹⁰¹ “Treaty of Peace with Japan (with Two Declarations)” (San Francisco, September 8, 1951), 48.

Nansei Shoto, a Japanese island chain that included the Ryukyu and Daito Islands.¹⁰² The U.S. assumed effective control over Nansei Shoto until the Okinawa Reversion Agreement in 1972 transferred control back to Japan. US' overall administration of the specified area resulted in Japan's assumption that the Nansei Shoto included the Senkaku Islands' and contradicted China's view that the disputed islands were associated with the Island of Taiwan. This differing interpretation spawned the island disputes that exist today.

C. JAPANESE PERSPECTIVE

The arguments supporting Japan's claim to the Senkaku Islands revolve around the same key events that initiated China's previously discussed sovereignty claims. Japan's arguments against Chinese claims depend on interpretations of international agreements. The relevant agreements include the Treaty of Shimonoseki, the Cairo Declaration, the Potsdam Proclamation, the 1951 Peace Treaty, and the 1972 Okinawan Reversion Treaty. Japan's claims to the Senkaku Islands are supported by terra nullius, treaty interpretations, and effective control of the islands.

First, Japan's right to occupy an uninhabited and unowned island under terra nullius refutes China's historical claim to the Senkaku Islands. Prior to the Sino-Japanese War ending in 1895, Japan conducted several surveys to verify the islands were not under another government's control and established sovereignty over the disputed islands under terra nullius.¹⁰³ These surveys started in 1885 and confirmed Japan's suspicions that China's lack of presence on or around the islands displayed the islands as uncontrolled territory. Additionally, the Treaty of Shimonoseki further supports Japan's claims through a mutual agreement ceding several Chinese territories to Japan.

Second, treaty interpretations confuse both parties when contending the sovereignty of the Senkaku Islands. As the conquering nation, Japan assumed territorial control over multiple territories encompassing the Pescadores Island Group, the Province

¹⁰² "Treaty of Peace with Japan (with Two Declarations)," 50.

¹⁰³ Chiu, University of Maryland at Baltimore, and School of Law, *An Analysis of the Sino-Japanese Dispute over the T'iaoyutai Islets (Senkaku Gunto)*, 11.

of Feng-tien, and the Island of Formosa, along with the Senkaku Islands.¹⁰⁴ Although both parties do not contest that Japan had sovereignty over the islands from 1895 to the end of WWII, Japan and China's sovereignty presumptions of the Senkaku Islands became evident after the Japanese Imperial expansion ended. Following the end of WWII in the Pacific theater, three documents instructed the Japanese government to surrender seized territories foreign states during Japan's conquest throughout the East Asian region. The first two documents, the Cairo Declaration (1943) and the Potsdam Proclamation (1945), stated "that all the territories Japan has stolen [from] the Chinese . . . shall be restored to the Republic of China" and Japanese sovereignty shall be limited to the main islands of Japan, respectively.¹⁰⁵ The Cairo Declaration listed the return of the Island of Formosa that the Japanese did not associate with the Senkaku Islands and therefore should not be returned to China. The Potsdam Proclamation restricted Japanese sovereignty to the main islands of Honshu, Hokkaido, Kyushu, and Shikoku. In addition, the Proclamation also included the ambiguous phrase, "Japanese sovereignty shall be limited to . . . such minor islands as we determine"; that left the future of the Senkaku Islands unknown.¹⁰⁶ Article 3 of the last document, the Peace Treaty of 1951, explaining the terms of U.S. administrative control over the Nansei Shoto included the Ryukyu and Daito Islands—and, according to the Japanese, included the Senkaku Islands. The negotiated terms of the Okinawan Reversion Treaty transferred sovereignty of the disputed islands to Japan.

Third, Japan's effective control over the Senkaku Islands started before the Okinawan Reversion Treaty (1972) was finalized and continued with an increased presence. The Treaty was an agreement, between the United States and Japan, that provided the United States with the terms of relinquishing administrative control of the Ryukyu and Daito Islands, as detailed in the 1951 Peace Treaty, to Japan in exchange for

¹⁰⁴ Kajima and Kajima, *The Diplomacy of Japan, 1894-1922 [Nihon Gaiko Shi. Selections. English]*, 263.

¹⁰⁵ "The Avalon Project"; "Diaoyu Dao, an Inherent Territory of China," Government, Embassy of the People's Republic of China in the United States of America, February 11, 2014, <http://www.china-embassy.org/eng//xnyfgk/t974694.htm>.

¹⁰⁶ Giangreco, *Hell to Pay*, 277.

permanent American bases on sovereign Japanese territories. Prior to the Okinawan Reversion Treaty, Japan enacted its inherent administrative rights to the islands on at least two occasions. First, during the Ryukyu Islands negotiations, Washington and Tokyo acknowledged Japan's declared rights to the Okinawan Island chain and further legitimized Japanese claims over the Senkaku Islands. Tokyo understood the Senkaku Islands as a part of the Ryukyu Islands and assumed control of the territories as prescribed. Second, Japan in 1965 requested the U.S. State Department to increase maritime patrols in the vicinity of the Senkaku Islands to ward off Chinese attempts to claim the islands under prescription.¹⁰⁷

Japan's presence on and around the Senkaku Islands increased over time and effectively countered escalating Chinese actions. These actions represented nationalistic ideals surrounding the sovereignty of the island and Chinese protestors' resolve to regain control over the disputed islands. Within the last two decades, several examples of Japan's administrative control of the islands exhibited the government's support for permanent ownership validation in the international community. One typical Chinese action is an organized landing mission that generally involves multiple Chinese fishing vessels and protestors. Previous landing attempts made efforts to leave a symbolic object signifying a proclamation of Chinese sovereignty. Some of these objects, including Olympic torches and Chinese flags, represented physical claim to the island. Japanese Coast Guard units and occasionally Japanese Maritime Self-Defense vessels would participate in operations focused on disrupting these landing missions. These patrol operations represented a law enforcement force that actively served as a deterrence for future Chinese encroachments and a continuous presence surrounding sovereign territories.

Japanese citizens' uncontested access to the Senkaku Islands reinforces Japan's administrative control over the islands. Right wing groups from Japan have made several landings on the islands and built multiple structures. Both the lighthouse and shrine, built

¹⁰⁷ Paul J. Smith, "The Senkaku/Diaoyu Island Controversy: A Crisis Postponed," *Naval War College Review* 66, no. 2 (2013): 31.

on the northernmost island, in 1996, and on Uotsuri Island, in 2000, respectively, were building projects that were unchallenged by the Japanese government and by 2005 the lighthouse on Uotsuri Island was under state control.¹⁰⁸ These acts demonstrating control are slowly escalating to higher levels of control and government acknowledgment of Japan's sovereignty over the islands. Japan's confidence in its sovereign control over the islands spanned over decades and allowed access to Japanese nationals, including diplomats and right wing groups, culminating in the Japanese government's purchasing several of the islands in September of 2012.¹⁰⁹

D. TERRITORIAL CASE STUDY

The Nicaragua versus Colombia territorial dispute is similar in many ways to the Sino-Japanese claims to the Senkaku Islands. Both sets of maritime features are classified as islands under UNCLOS. Colombia's *uti possidetis* argument is closely aligned with Japan's claims in the East China Sea following multiple conflicts resulting in agreements such as the Treaty of Shimonoseki, the Cairo Declaration, the Potsdam Proclamation, the 1951 Peace Treaty, and the 1972 Okinawan Reversion Treaty. The advantage leans towards Japan's effective control claim because these agreements loosely grant administrative rights to the islands dependent on the critical date and Japan gains more traction after each. ICJ involvement and judgment sets these territorial cases apart since the Sino-Japanese dispute has yet to be adjudicated. Establishing a critical date shortly after a Sino-Japanese conflict could potentially shift effective control to Beijing if China is the conflict victor. These examples of effective control support Japan's effective control claims over the Senkaku Islands.

The geographical orientation of Nicaragua, Colombia, and contested maritime features between them are essential to understanding both parties' sovereignty claims. Located in Central America, Nicaragua's eastern border is the Caribbean Sea and western border is the Pacific Ocean. Honduras is to the North of Nicaragua and Costa Rica is to

¹⁰⁸ Pan, "Sino-Japanese Dispute over the Diaoyu/Senkaku Islands," 74–6.

¹⁰⁹ Smith, "The Senkaku/Diaoyu Island Controversy: A Crisis Postponed," 27.

the South. The islands of San Andres, Providencia, and Santa Catalina are located approximately 100 nautical miles east of Nicaragua's coast in the Caribbean Sea.¹¹⁰ Colombia is located in the northwestern part of South America. The shared border with Panama connects Central America and South America. The main territorial sovereignty dispute involves the previously listed maritime features near the Colombian owned San Andres Island, Providencia Island, and Santa Catalina Island.

Nicaragua submitted a territorial dispute case to the ICJ for arbitration on 6 December 2001. Nicaragua and Colombia claimed sovereignty over several maritime features between their respective coasts in the Caribbean Sea. A second portion of the ICJ Nicaragua vs. Colombia case is the delimitation of the shared maritime boundary. Details regarding the maritime boundary will not be discussed because the crux of the dispute depends on which country is granted sovereignty over the physical maritime features in question, atolls and islands. The ICJ defines a cay and an atoll as, "small, low islands composed largely of sand derived from the physical breakdown of coral reefs . . . An atoll is a coral reef enclosing a lagoon."¹¹¹ This case explanation will focus on the disputed maritime features that are a mixture of cays and atolls.

Starting from the south-west to the north-east Caribbean Sea the named features are: Albuquerque Cays, East-Southeast Cays, Roncador Atoll, Serrana Bank, Quitasueno Bank, Serranilla Bank, and Baja Nueva Bank.¹¹² Article 121 of the United Nations Convention on the Law of the Seas (UNCLOS) has defined an island as, "a naturally formed area of land, surrounded by water, which is above water at high tide."¹¹³ The Court concurred with Nicaragua and Colombia's assessment that all the disputed maritime features are declared islands except for Quitasueno.¹¹⁴ Based on a 1928 treaty signed at Managua on 24 March 1928, sovereignty of the three larger islands between

¹¹⁰ "Territorial and Maritime Dispute (Nicaragua v. Colombia) Judgement," I.C.J. Reports, 2012, 637.

¹¹¹ "Territorial and Maritime Dispute (Nicaragua v. Colombia) Judgement," 637-8.

¹¹² "Territorial and Maritime Dispute (Nicaragua v. Colombia) Judgement," 640-1.

¹¹³ "United Nations Convention on the Law of the Sea (UNCLOS)," n.d., accessed March 18, 2014.

¹¹⁴ "Territorial and Maritime Dispute (Nicaragua v. Colombia) Judgement," 642-4.

Nicaragua and Colombia, San Andres, Providencia, and Santa Catalina, resides with Colombia.¹¹⁵ The case outcome describes Nicaragua and Colombia's basis of claims over the maritime features and summarizes the court's final arbitration.

One key point of contention between the two parties involves interpretations of the 1928 Treaty. The Territorial and Maritime Dispute (Nicaragua v. Colombia) ICJ Report of 2012 included Article I of the 1928 Treaty, "the Republic of Colombia recognises the full and entire sovereignty of the Republic of Nicaragua over the Mosquito Coast . . . The Republic of Nicaragua recognises the full and entire sovereignty of the Republic of Colombia over the islands of San Andres, Providencia and Santa Catalina and over the other islands, islets, and reefs forming part of the San Andres Archipelago."¹¹⁶ According to the 1928 Treaty, Colombia has sovereign rights to the islands as listed, but information identifying the individual composition of the San Andres Archipelago was missing. Nicaragua argues that these maritime features were not specifically named in the 1928 Treaty belonging to Colombia nor were they part of the San Andres Archipelago. Additionally, the 1928 Treaty excluded reefs named Roncador, Quitasueno, and Serrana, thus not considered a part of the San Andres Archipelago.¹¹⁷ Based on the 1928 Treaty interpretation, Colombia claimed the disputed maritime features to the east of the 82nd meridian, which is the maritime boundary between Nicaragua and Colombia.¹¹⁸ This Treaty's explanation of the included maritime features is ambiguous and closely mirrors indefinite descriptions of the disputed territories within Sino-Japanese treaties.

The second argument supporting claims of sovereignty over the disputed maritime features is Nicaragua and Colombia's *uti possidetis* evidence originating from Spanish colonization. After Spanish independence, the Captaincy-General of Guatemala and the Viceroyalty of Santa Fe assumed control of the existing territories and later formally

¹¹⁵ "Territorial and Maritime Dispute (Nicaragua v. Colombia) Judgement," 638.

¹¹⁶ "Territorial and Maritime Dispute (Nicaragua v. Colombia) Judgement," 646.

¹¹⁷ "Territorial and Maritime Dispute (Nicaragua v. Colombia) Judgement," 647.

¹¹⁸ "Territorial and Maritime Dispute (Nicaragua v. Colombia) Judgement," 648.

ceded to Nicaragua and Colombia, respectively.¹¹⁹ Under the 28 June 1568 Royal Decree, Nicaragua claimed jurisdiction over the disputed maritime features and islands near the Nicaraguan coast.¹²⁰ Prior to independence, the main land masses and nearby maritime features were sovereign Spanish territories and not terra nullius. Since the Spanish laid claims to the islands and the maritime features, Nicaragua viewed all maritime features near the continental coast as Nicaraguan sovereign territory.¹²¹ In accordance with *uti possidetis*, Colombia's claim originated from Spain's Royal Order of 1803 that granted jurisdiction to the San Andres Archipelago to the Viceroyalty of Santa Fe that later became Colombia. Although the Order dictated the owner of the San Andres Archipelago, the explanation lacked the details naming specific physical maritime features included in the archipelago. Spain's interactions with the disputed maritime features originated from either Cartagena, Colombia or from San Andres Island, which are Colombian claimed territories and further supports the features to be the Archipelago associated with San Andres.

Both parties argued using the international law of effective control and provided evidence to establish administrative control over the disputed maritime features. The critical date is the date that opposing parties to a territorial dispute acknowledges differing opinions regarding the official ownership of the sovereign territory and must be defined to establish effective control. The Court decided the critical date was 12 June 1969 based on the date of Nicaragua's Note responding to Colombia's Note concerning oil exploration in the vicinity of Quitasueno.¹²² Nicaragua did not offer an argument defending its own effective control, but instead attacked Colombia's actions of administration over the disputed maritime features. Specifically, Nicaragua contested that the 1975 establishment of Colombian Navy infantry detachments responsible for the maintenance of the islands and the 1977 lighthouse replacements on Roncador and Serrana occurred well after the critical date. Colombia implemented administrative

¹¹⁹ "Territorial and Maritime Dispute (Nicaragua v. Colombia) Judgement," 649–50.

¹²⁰ "Territorial and Maritime Dispute (Nicaragua v. Colombia) Judgement," 649–50.

¹²¹ "Territorial and Maritime Dispute (Nicaragua v. Colombia) Judgement," 650.

¹²² "Territorial and Maritime Dispute (Nicaragua v. Colombia) Judgement," 652–3.

actions over the sovereign islands of San Andres, Providencia, and Santa Catalina, including the surround maritime features. Some of these actions included: “public administration and legislation, regulations of economic activities, public works, law enforcement measures, naval visits, search and rescue operations, and consular representation.”¹²³ Additionally, Nicaragua showed zero effort in establishing effective control nor contested any Colombian administrative actions over the maritime features. Overall effective control may be the deciding factor if the Sino-Japanese territorial dispute over the Senkaku Islands ever reached the ICJ.

The Court’s final decision granted Colombia full sovereignty over the islands at Albuquerque Cays, Bajo Nuevo Cays, East-Southeast Cays, Quitasueno Bank, Roncador Atoll, Serrana Bank, and Serranilla Bank.¹²⁴ The arbitration factored both parties’ arguments relating to the 1928 Treaty, *uti possidetis*, and effective control. The names and locations of the maritime features that composed the archipelago were not specifically listed in the 1928 Treaty. Although the language pertaining to the ownership of the archipelago within the 1928 Treaty favored Colombia, the Treaty was insufficient evidence in supporting either party’s territorial claims.¹²⁵ Similarly, official documents related to *uti possidetis* arguments were also insufficient in supporting Spain’s transfer of ownership because these documents lacked the specificity of naming the maritime features.¹²⁶ Colombia presented multiple examples of effective control over the disputed maritime features.

In accordance with UNCLOS Article 33, Colombia or Nicaragua may have exercised the control necessary within its territory or territorial sea.¹²⁷ During the time before and after the critical date, Colombia actively established new legislation and regulations that controlled private economic gain within the perceived sovereign territory.

¹²³ “Territorial and Maritime Dispute (Nicaragua v. Colombia) Judgement,” 656–7.

¹²⁴ “Territorial and Maritime Dispute (Nicaragua v. Colombia) Judgement,” 662.

¹²⁵ “Territorial and Maritime Dispute (Nicaragua v. Colombia) Judgement,” 649.

¹²⁶ “Territorial and Maritime Dispute (Nicaragua v. Colombia) Judgement,” 651.

¹²⁷ “United Nations Convention on the Law of the Sea (UNCLOS),” n.d.

Some of these requirements included the regulation and enforcement of guano collection and fishing rights on and around the disputed maritime features. Other examples of effective control include the maintenance of navigation aids located on the islands and search and rescue operations in the claimed territorial waters.

E. CONCLUSION

Taken at different times in history, the rights to the Japanese-named Senkaku Islands or to the Chinese-named Diaoyu Dao Islands may be argued for both parties. Evidence supporting Japan's claim over China, or vice versa, existed at several key junctures between the Sino-Japanese relationship. China does have a claim to the Senkaku Islands at certain specific reference points but loses legitimacy at more recent reference points.

In the Nicaragua vs. Colombia case, the critical date was crucial in deciding the validity of both parties' claims. Depending on the date, or reference point, one country would be favored as the rightful owner of the islands. By setting the critical date before the Treaty of Shimonoseki, China would have strong evidence establishing administrative control of the Senkaku Islands. Historical Chinese Government documents described the islands as aids to navigation and just prior to 1895 the Chinese Empress granted an individual full access to the islands to collect natural resources for China. The origins of what is known today as international law are derived from customary laws that established norms between societies. Recognizing a critical date preceding the Treaty of Shimonoseki reinforces these norms and supports China's claim under customary laws.

A second critical timeframe that could be selected is between the end of WWII and the 1951 Peace Treaty, when the contentious sovereignty of the Senkaku Islands could be claimed by three countries. With the addition of the United States, Japan and China's territorial claims became extremely convoluted because the released official documents lacked specificity within the terms of the territory transfers. The United States acted as an arbitrator with allied nations and negotiated an unequal treaty, the 1951 Peace Treaty, resolving the terms of Japan's surrender. If either party submitted a formal dispute to an international forum like the ICJ with a critical date shortly after 1951,

Chinese historical claims could take precedence, favoring China's territorial sovereignty to the disputed islands as a result of the ambiguity between the Declaration, Proclamation, and the 1951 Peace Treaty.

The third critical date that could be selected coincides with the United States' reverting the Okinawan territories to Japan through the Okinawan Reversion Treaty of 1972. Submitting a formal complaint contesting true ownership to the Senkaku Islands following the Okinawan Reversion Treaty would require a country to supplement the submission with sufficient evidence that showed either party as the administrator of the islands over an uncontested and prolonged period. Although China's pre-1895 historical claims are persuading, sovereign control from the 1951 Peace Treaty to the Okinawan Reversion Treaty would likely favor the United States since the U.S. is explicitly named in the treaty as the administrative state. The specific details within Article 3 of the 1951 Peace Treaty combined with the prolonged presence displayed the United States' control over the Ryukyu and Daito Islands including the disputed Senkaku Islands. Selecting a critical date after the Okinawan Treaty of 1972 would solely rely on which country exhibited effective control over the Senkaku Islands.

From 1972 to present day, Japan and China have been competing to establish official administrative control over the Senkaku Islands. Escalation of contending actions for sovereignty shows China and Japan's attempt to generate multiple angles representing an effort to exhibit which country has more control. Japan's Coast Guard and Maritime Self-Defense Forces repel protestor filled Chinese fishing vessels from landing on the Senkaku Islands. China responds with more fishing vessels accompanied by government research vessels. In 1992, China established laws governing Chinese territorial seas and contiguous zones that specifically include the Senkaku Islands within one of the articles. Four years later, Tokyo announced Japan's claim to the exclusive economic zone surrounding the Senkaku Islands, thus indirectly declaring ownership of the islands.¹²⁸

¹²⁸ Pan, "Sino-Japanese Dispute over the Diaoyu/Senkaku Islands," 75.

The escalation will continue until an armed conflict occurs, a Sino-Japanese bilateral agreement is negotiated, or a formal dispute is submitted to the ICJ for arbitration. China's effort to equalize the administrative control over the disputed islands with an expanded ADIZ, a military zone, elevates the importance of international laws between these Asian powerhouses. The Sino-Japanese cooperative engagement has indirectly shifted towards a competitive one in an attempt to balance administrative claims over the islands. Although international laws limit advancements by either nation towards an uncontested ownership of the disputed islands, these laws legitimately stabilize the status quo between the two countries and require less effort for Japan to convince the international community that disputed islands belong to the land of the rising sun.

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V. FINAL CONCLUSION

Japan observed a tit-for-tat maritime security response to China's ECS reclamation over several decades. The slow escalation displayed calculated responses to the many Chinese incursions within the ECS and established Japanese territorial waters. China's Law on the Territorial Sea and Contiguous Zone released in 1992 declared the PRC's ownership claim and in China's view established the respective 12 and 24 nautical mile territorial and contiguous zones. Japan's gradual showing of effective control began in 1996 and 2000 when Japanese citizens built structures on the northernmost island and on Uotsuri Island. By not disputing the construction, the Japanese government's perceived stance effectively recognized the occupation and by 2005 the island was under the government's control. The latter half of the decade showed an increase in Chinese intrusions within the ECS eventually leading to the gradual buildup of the JCG to counter the rising amount of Chinese flagged vessels in the area.

China incursions also ramped up with an upsurge of PRC naval vessels transiting through Japanese straits. Every year between 2008 and 2012 the number of events increased as capabilities of the vessels improved. JMSDF patrols became more frequent resulting in a higher probability of a misunderstanding between vessel JMSDF and PRC vessels. The most recent examples were in 2013 when PRC vessels allegedly trained fire control radars on JMSDF two assets (a helicopter and a destroyer).

This thesis investigates factors that help explain Japan's gradual evolution from cooperative to a constrained competitive engagement in this territorial dispute with China over the Senkaku Islands of the East China Sea. Those factors include the effects of individual political leaders; domestic-institution constraints, mainly in the form of constitutional restrictions; and resistance to changing the international law status quo. Each helps explain how Japan responds to its territorial dispute over the Senkaku Islands, but with different degrees of variability.

Individual political leaders in national and local governments seem to inject the most variability and impact with regard to Japan's policy evolution and potential future

change. This occurs not only through direct policy decisions regarding the Senkakus themselves, such as Prime Minister Kan, in the 2010 “fishing trawler” incident, appearing to vacillate over the Chinese trawler captain’s arrest. Prime Minister Koizumi and Abe’s personal policies with regard to the Yasukuni Shrine, too, affected Japan’s approach to the Senkakus. Koizumi was able to use his visits as a shaping tool regarding Chinese foreign policy and ECS negotiations. By maintaining public support for harder-line anti-China attitudes, Koizumi’s overall Sino-Japanese political posture was sustained and survived despite China’s dissatisfaction with his visits to the shrine. Both Koizumi and Abe used these visits to the shrine as strategic responses to ECS events. Abe’s one visit to the shrine was on 26 December 2013, shortly after China announced the establishment of an ADIZ that overlapped with Japan’s. This thesis argues that Abe’s visit was his trump card to display his opposition to China’s attempt to gain some effective control over the Senkaku Islands and the ECS. Abe’s visit served as a political statement expressing his displeasure of the event. Meanwhile, a nationalist governor of Tokyo and reactive but decisive Prime Minister used political discretion, in sequence, that directly resulted in Japan’s nationalization of the islands.

Meanwhile, constitutional reinterpretation expanded but fundamental constitutional restrictions also limited an equitable response to PRC’s military vessels. NDPG’s from 2004–2014 also addressed SDF resources by shifting the majority of the ASDF, JMSDF, and GSDF towards the southwestern region of the Japan to reduce response time if the PRC escalation resulted in a Chinese attack. Japan’s SDF investment was a gradual change over several years and put forces in defensive positions allowing the SDF to respond in self-defense.

Japan’s effective control over the islands remained stagnant despite Japan’s progressing engagement policy and China’s increased presence in the East China Sea. The status quo for the contested islands favors Japan’s long-term control of the islands dating to the most recent 1972 Okinawan Reversion Treaty to the Treaty of Shimonoseki. This both strengthens Japan’s approach and allows it not to rely excessively on military or other physical means of establishing claims. In comparison to the other two factors, individual leaders and maritime security, the law perspective is the least variable factor in

affecting the Sino-Japanese competitive engagement because of the established status quo Japan holds over the contested islands.

Ultimately, with the three above factors in mind, escalation will likely continue gradually. Escalation beyond competitive engagement and approaching armed conflict is more likely to be instigated by political leadership miscalculation than by the SDF's actions, structured as those are around constitutional rules of engagement that restrict Japan from initiating an offensive attack and rooted as they are in international legal claims that might encourage confident restraint.

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