

# A Contingent Liability: Why resolution of the Senkaku/Diaoyu Islands dispute is in Australia's national interest

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Captain Scott Lockey, RAN joined ADFA in 1988. He studied aeronautical engineering and graduated with an honours degree in 1991. Since then, he has held a wide variety of positions in helicopter design and maintenance, aviation regulation development, and helicopter-related project management. He has worked extensively with the Navy's Seahawk 'Classic' helicopter fleet, having served on 816 Squadron three times. He has worked at sea with multiple types of helicopters on a number of ship classes, including Adelaide class frigates, landing platforms amphibious, hydrographic ships, and Royal Fleet Auxiliary. He has also served on exchange with the Royal Navy. From August 2009 to December 2013, he was Project Director for Air 9000 Phase 8, the Seahawk 'Romeo' acquisition project.

Captain Lockey attended the inaugural Australian Command and Staff Course in 2001, gaining a Masters of Management in Defence Studies from the University of Canberra. He is currently attending the Defence and Strategic Studies Course at the Centre for Defence and Strategic Studies at the Australian Defence College.

#### **Abstract**

This paper examines Australia's national interest in the ongoing dispute between Japan and China over the Senkaku/Diaoyu Islands. It provides an overview of the history of the dispute, and analyses the potential implications for Australia of any escalation between the claimants.

It contends that non-resolution of the dispute could result in an escalation of tension, including the possibility of conflict between Japan and China. It also asserts that any such conflict would likely disadvantage Australia in a number of ways, including an adverse impact on Australia's significant trading relations with the key states in Northeast Asia. It concludes that the dispute presents a 'contingent liability' to Australia, and that Australia's national interest is best served by a non-military resolution to the dispute, based on rule-based negotiation and arbitration.

# A Contingent Liability: Why resolution of the Senkaku/ Diaoyu Islands dispute is in Australia's national interest

# Captain Scott Lockey, RAN

It matters very little to the direct Australian national interest who owns a pile of rocks in the East China Sea. What matters is that Japan and China don't go to war over them and risk Asia's (and hence our) security and prosperity in the process.¹

#### Introduction

At a distance of over 7000 kilometres from Canberra, it is not surprising that a collection of five barren, uninhabited islands and three small rocks in the East China Sea do not immediately feature in the forefront of Australians' minds when discussing Australia's national interests.

However, as suggested by Daryl Morini, Australia's security and prosperity could be impacted by the decisions made, and actions taken, by Japan and China to resolve conflict over this island group. Known as the Senkaku Islands to the Japanese, and the Diaoyu Islands to the Chinese, this collection of volcanic rocks has been the source of dispute between China and Japan for over four decades<sup>2</sup>—and tensions have escalated in recent years.

With China's economic rise commencing in the early 1980s, Chinese military spending has been consistently increasing since the mid 2000s, with a notable 15 per cent increase in its military budget between 2008 and 2009.³ China is rapidly modernising its naval and air forces, with its naval forces shifting focus from direct protection of the Chinese mainland to force projection in the East and South China Seas.⁴

At the same time, Japan is shifting its military priorities from the mainland to the Ryukyu Islands chain, which stretches from Kyushu towards Taiwan, and includes the Senkaku Islands.<sup>5</sup> Low-level, non-militarised maritime incidents have occurred in the vicinity of the islands on many occasions in the last 40 years but the potential for an accident or military miscalculation to result in larger-scale conflict has increased as a result of the naval build-ups of Japan and China.<sup>6</sup> With international economic interdependence throughout and beyond the region, East China Sea maritime disputes are no longer a regional issue; they have become a global issue.<sup>7</sup> Many nations, therefore, have an interest in the resolution of this issue.

This paper will argue that it is in Australia's national interest for the Senkaku/Diaoyu Islands dispute between Japan and China to be resolved through non-military means. Commencing with an overview of the history of the dispute, the paper then analyses the potential implications to Australia of any escalation between the claimants. <sup>8</sup> It will conclude that the dispute presents a 'contingent liability'9 to Australia, with Australia's national interest best served by a non-military resolution based on arbitration and negotiation.

### An abridged history of the dispute

Historians, academics and citizens of China and Japan have differing perspectives about how the islands have come into dispute, <sup>10</sup> while their respective Governments cannot even agree that there is a dispute. Japan denies the existence of a territorial dispute, claiming that the islands are an integral part of Japanese territory, while China claims 'indisputable sovereignty' over the islands. <sup>11</sup> Regardless of the semantics, it is clear that sovereignty of the islands and control of the area is not agreed between the two nations.

Written historical records date back to at least the early 1500s, in the midst of the Chinese Ming Dynasty. China has often asserted its territorial rights over the islands based on the written historical material of this time. 12 However, as part of the "Treaty of Shimonoseki" following the Sino-Japanese War, Japan acquired the islands from China in 1895, and control of the islands remained with Japan until the end of World War 2. At the end of the war, the US military took over administration of the islands under the provisions of the 1951 'San Francisco Peace

Treaty'. After the 'Okinawa Reversion Agreement' was signed in June 1971, the islands were handed back to Japan on 15 May 1972. 4

Aware of but not party to the negotiations between the US and Japan regarding the reversion of Okinawa, China formally lodged its claim for the islands on 30 December 1971. Subsequently, in May 1972, the Chinese Ministry of Foreign Affairs issued a statement regarding the US handover of Okinawa, making the following assertions regarding the Senkaku/Diaoyu Islands:

China's claim to this territory is indisputable in every respect – in terms of the islets geographical location and geological structure, historical circumstance, their continuous use over a long period of time, and the law.... Given its sacred duty to protect its territory, the People's Republic of China will never, under any circumstances whatsoever, renounce its claim to the Diaoyutai Islets. <sup>15</sup>

Prior to the signing of the 'Okinawa Reversion Agreement', a survey of the seabed of the East China Sea, conducted in 1968 by the UN Economic Commission for Asia and the Far East, and supported by the US Navy, revealed the possibility of oil fields beneath the seabed on the continental shelf to the northeast of Taiwan. Despite this finding and China's claim on the territory, tensions between China and Japan over the region remained relatively benign during the 1970s. Indeed, when the 'Sino-Japanese Treaty of Peace and Friendship' was signed in 1978, both nations agreed to shelve the Senkaku/Diaoyu Islands issue for resolution at a later point in time. 17

Over the three decades from 1978 to 2008, China made militarised and diplomatic threats against Japan on 26 occasions regarding the islands. China has always claimed large regions of the East and South China Seas but these claims have rarely been associated with serious enforcement efforts. However, the recent growth of the Chinese Navy and Air Force has arguably allowed the Chinese leadership to take a more assertive stance.

As the end of 2013 approached, tensions over the islands were at an historic peak, spurred on by nationalism on both sides of the East China Sea. In October 2013, a fleet of seven Chinese Navy ships passed through the contiguous zone separating the Yonagunijima and Iriomotejima Islands.<sup>20</sup> While the passage of these ships was most likely a demonstration of China's intent to exercise the 'right of free passage' under UN Convention on the Law of the Sea (UNCLOS) provisions, and not directly related to the Senkaku/Diaoyu Islands issue, the transit emphasised China's increasing naval presence in the region. Then, in November 2013, China announced its creation of an Air Defence Identification Zone (ADIZ) over the East China Sea, with the zone encompassing the Senkaku/Diaoyu Islands, as well as some reefs controlled by South Korea.<sup>21</sup>

While ADIZs are not uncommon, with around 20 countries worldwide having such zones (including Japan), China's imposition of the ADIZ was a significant escalation.<sup>22</sup> Japan's response to the ADIZ declaration was restrained. However, it was reinforced by the unannounced and unchallenged flight of two US bombers through the airspace, which arguably also provided an indication of China's current inability or resolve to enforce the ADIZ, at least in relation to the US.

Although Japan's responses to Chinese provocations appear to be mainly rhetorical, John Chisholm nonetheless suggests that Japan's highly nationalistic Prime Minister, Shinzo Abe, has a domestic political agenda which forces him to adopt a 'tough guy' approach to China, and that Abe's 'political right' constituency would likely desert him if he was not sufficiently firm with China.<sup>23</sup> However, Abe's strong rhetoric fuels Chinese domestic politics because demonising the Japanese works well for the Chinese population, as it portrays Japan as obstructing China's natural desire to recover lost territory.<sup>24</sup> Richard Tanter suggests that China is projecting its rising military presence in the vicinity of the islands to remind the Japanese Government 'that if your neighbour says there is an argument about your shared fence line, then there is a dispute, and it has to be faced'.<sup>25</sup>

# **Implications for Australia**

Australia has strong and economically-essential trade relationships with Japan and China; a strengthening economic, security and military relationship with Japan; an important trade relationship with South Korea that relies on open and safe sea lines of communication (SLOC); and a treaty with the US that could draw Australia into the dispute. All of these issues result in the Senkaku/Diaoyu Islands dispute having potential implications for Australia.

Australia's trade relationship with China is essential to its economic security. China is Australia's largest export market, with \$78.1 billion or 31.6 per cent of the nation's merchandise exports heading to China in 2012-13.26 Major commodity exports include iron ore, coal, gold and crude petroleum, with China receiving approximately one third of Australia's natural resource exports in 2012-13.27 China is also Australia's largest importer, with \$44.5 billion or 18.8 per cent of imports arriving from China in 2012-13, including telecommunications equipment, clothing, computers and furniture.28 China is the leading trade partner for 124 countries but Australia is its largest target for foreign investment, with \$22.9 billion invested in 2012.29 Australia is ranked China's eleventh export market and sixth principal import source and, in 2012-13, total trade between the two nations reached \$122.5 billion.

In 2013, the Australian Government's assessment—articulated in its *Australia in the Asian Century White Paper*—was that 'China's importance to Australia, economically and politically, will only grow in decades to come'.<sup>30</sup> In a scenario where Australia's policy position on the Senkaku/Diaoyu Islands issue displeased China, the trade relationship could be adversely impacted, putting Australia in a disadvantageous position. It is, therefore, in Australia's national interest to ensure that the resolution of the Senkaku/Diaoyu Islands issue does not impede the strengthening of its economic relationship with China.

Commencing with a mutually-complementary trade relationship in the post-war period, cooperation between Australia and Japan has similarly continued to expand and now encompasses economic, security and military cooperation.<sup>31</sup> Japan is Australia's second largest export market, third largest source of imports, and second largest trading partner overall, with a total of \$64.8 billion in imports and exports traded between the two nations in 2012-13. Japanese investment in Australia is also significant, standing at \$126.4 million.<sup>32</sup> Security cooperation with Japan is based on a number of factors, including Australia's location in the Western Pacific, a common alliance with the US, a shared interest in maintaining the US presence in the Western Pacific, both being long-established advanced democracies in a politically-diverse region, and the complementary character of their two economies.<sup>33</sup>

Defence cooperation between Japan and Australia has also developed rapidly since 1995, resulting in a series of agreements and initiatives, commencing with the 'Joint Declaration in the Australia-Japan Partnership' in September 1995; the most recent agreement was the 'Acquisition and Cross Servicing Agreement' signed in May 2010.<sup>34</sup> Australia's relationship with Japan is likely to become even more important over the coming years in building sustainable security in the region, and efforts to maintain and improve that relationship are clearly in Australia's national interest.<sup>35</sup>

South Korea is Australia's fourth largest trade partner with \$28.3 billion of imports and exports traded in 2012-13, representing almost 6 per cent of Australia's total international trade.<sup>36</sup> The export products are coal, iron ore, crude petroleum and beef, while major imports include refined petroleum, vehicles and consumer electrical products. All major imports and exports travel via SLOC between Australia and South Korea, with the most direct and economical route transiting the East China Sea. Any militarised conflict between Japan and China would disrupt shipping in the region, impacting on Australia's trade relationship with South Korea.

Australia's alliance with the US has the potential to draw Australia into the Senkaku/Diaoyu Islands dispute should the issue degenerate. Although the US does not have a formal position on ultimate sovereignty of the islands, the US acknowledges the Senkaku Islands as remaining under Japan's administrative control and, therefore, that the US is obliged to defend them in accordance with the 'US-Japan Mutual Security Treaty'.<sup>37</sup> While the possibility of Australia being drawn into

the dispute has generated recent debate in Australia, <sup>38</sup> a militarised conflict between China, Japan and the US would clearly not be in Australia's national interests. <sup>39</sup>

Australia's national security policy is based on eight pillars, three of which are promoting a secure international environment conducive to advancing Australia's interests; the Australia–US alliance; and understanding and being influential in the world, particularly the Asia-Pacific. As noted in the Australia in the Asian Century White Paper:

Cooperative relations among the pre-eminent powers in the region – China, India, Indonesia, Japan and the United States – will be fundamental to regional security and prosperity.  $^{40}$ 

Australia has not 'taken sides' in the dispute. However, any escalation would have the potential to generate a significant geopolitical shift in the Asia-Pacific security environment. Australia's policy position and strategy, therefore, needs to be broad enough to cope with the possible range of outcomes. As Richard Tanter asserts, it is in Australia's interest to encourage a rule-based, peaceful resolution to the dispute based on negotiation and arbitration.

Given the importance of Australia's trade relations with China, Japan and South Korea; the importance of Australia's security and military relationship with Japan; its formal alliance with the US; and the Australian Government's declaratory policy regarding the importance of security and stability in the Asia-Pacific region; it is in Australia's national interests that the Senkaku/Diaoyu Islands dispute be resolved peacefully.

#### Conclusion

Non-resolution of the dispute over the Senkaku/Diaoyu Islands could result in ongoing tension and possibly conflict between Japan and China, which would likely disadvantage Australia in a number of ways. Depending on Australia's reaction, its significant trade relationship with China could be damaged or its growth hindered. Australia's steadily improving security, trade and military relationship with Japan could be impeded. Security and stability in the Asia Pacific region would also be disrupted, with potential impact on Australia's trade relationship with South Korea. The benefits of the longstanding ANZUS alliance could also be brought into question. This paper has argued, therefore, that the prospect of conflict over the Senkaku/Diaoyu Islands is a 'contingent liability' for Australia.

In attempting to protect themselves from exposure to similar liabilities, it is axiomatic that corporations, businesses and even households engage in a range of strategies, such as documenting risk management plans, implementing risk management procedures, taking out insurance to transfer the risk, and continually monitoring risk exposure over time. However, Australian foreign policy on the Senkaku/Diaoyu Islands dispute would currently seem somewhat non-committal, with one commentator suggesting that 'prudence and evenhandedness don't equate to a diplomatic strategy'. Given the strategic importance of this particular contingent liability, Australia should arguably do more to ensure that its national interest is best served by peaceful resolution of the Senkaku/Diaoyu Islands dispute, based on rule-based negotiation and arbitration.

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<sup>2</sup> Krista E. Wiegand, 'China's Strategy in the Senkaku/Diaoyu Islands Dispute: issue linkage and coercive diplomacy', *Asian Security*, Vol. 5, No. 2, 2009, pp. 170-2.

<sup>3</sup> Kazuhiko Togo, 'Regional Security Cooperation in East Asia: what can Japan and Australia usefully do together?', *Australian Journal of International Affairs*, Vol. 65, No. 1, 2011, p. 42.

<sup>4</sup> Suk Kyoon Kim, 'China and Japan Maritime Disputes in the East China Sea: a note on recent developments', *Ocean Development and International Law*, Vol. 43, No. 3, 2012, p. 303.

- 5 Kim, 'China and Japan Maritime Disputes in the East China Sea', p. 303. Japanese Ministry of Defense, *Defense of Japan 2013*, Japanese Government: Tokyo, 2013, Chapter 2, Section 3; available at <a href="http://www.mod.go.ip/e/publ/w-paper/2013.html">http://www.mod.go.ip/e/publ/w-paper/2013.html</a> accessed 1 April 2014.
- 6 Kim, 'China and Japan Maritime Disputes in the East China Sea', p. 304.
- 7 Kim, 'China and Japan Maritime Disputes in the East China Sea', p. 304.
- While acknowledging that the islands are also claimed by Taiwan, the scope of this paper is limited to an analysis only of the Chinese and Japanese positions. For the wider claims, see Shin Kawashima, "The Origins of the Senkaku/Diaoyu Islands Issue', *Asia-Pacific Review*, Vol. 20, No. 2, 2014, p. 122.
- A 'liability' can be described as a hindrance, something that puts an entity at a disadvantage, or something that places an obligation on an entity; whereas a 'contingent liability' is an obligation that may be incurred by an entity due to the occurrence of one or more uncertain future events not wholly within the control of the entity: see Australian Accounting Standards Board, *AASB Standard 137 Provisions, Contingent Liabilities and Contingent Assets*, Australian Government: Canberra, 2010, p. 12.
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