

TROUBLE ON
THE ROCKS:
U.S POLICY IN
EAST CHINA SEA
AND SOUTH CHINA
SEA DISPUTES

BY BENJAMIN TRACY

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By
Benjamin Tracy

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EXECUTIVE SUMMARY

The South and East China Seas are strategic not only for US security and commercial interests, but are vitally so for US treaty allies Japan and the Philippines. Both countries are involved in territorial disputes with China, a rising power and security concern for the US and its allies. Despite treaty alliances with both, the United States has consistently confirmed that the Senkaku Islands in the East China Sea are covered under Article V of the US-Japan Security Treaty while stating that Philippine-claimed islands in the South China Sea are not explicitly covered in the Mutual Defense Treaty. This research project aims to understand why US policy is inconsistent in defending treaty allies' territory. The methods used to solve this question are to look at the historical context of both disputes as well as strategic interests. UNCLOS is also analyzed to see whether international law influenced US policy. The result was that the US more consistently covered the Senkaku Islands due to the need to gain Japan's trust as an ally in the post-war order and the US has an interest in maintaining status-quo in the region. There are three recommendations for the US in order to create a more consistent policy, which include signing UNCLOS, reengaging with regional allies such as the Philippines to establish a stronger defense commitment, and strengthening alliances with actors such as the Quad as well as the UK and France.

INTRODUCTION

More than 70% of the Earth's surface is water. The oceans have long offered civilizations an abundance of natural resources such as fish, precious minerals, and oil. They are also vital to global trade: 80% of global trade is transported by sea. As a result, countries have struggled to control the world's oceans. Colin S. Gray once said that sea control is the “great enabler” which allows countries to project their power abroad.¹ Ever since the end of World War II, the United States has been the main security provider in the Indo-Pacific. It has security alliances with various countries in the region including Japan and the Philippines. Regional security has also been backed by the US-led rules-based order, centered on peaceful resolution to disputes, international cooperation, and free trade. With a rising China, this rules-based order is being challenged and the South and East China Seas are strategic in the struggle for regional dominance. There are two disputes involving US allies and China. In the South China Sea, the Philippines faces a dispute over the Scarborough Shoal and Spratly Islands while China vies for control of the Japanese-administered Senkaku Islands in the East China Sea. Not only are these features essential for natural resources, but also vital for maritime boundaries guaranteed under the United Nations Convention on the Law of the Sea. Since the Cold War, the United States has been more vocal in confirming that the Senkaku Islands are covered under the US-Japan Security Treaty, while the Scarborough Shoal and Spratly Islands are not explicitly covered under the US-Philippine Mutual Defense Treaty. With so much at stake for American allies in terms of maritime boundaries, resources, and security of trade routes, why does the US have an inconsistent policy on what territories its security treaties cover? The reasons were 1) the need to gain Japan's trust in the Cold War environment and 2) the US policy to maintain the status-quo in the region.

SENKAKU ISLANDS DISPUTE INTRODUCTION

In the middle of the East China Sea, a small group of islands have been the source of one of the most intense disputes in the Indo-Pacific region. The Senkaku Islands—known as Diaoyu Islands in China and Diaoyutai in Taiwan—have been contested since the 19th century. Japan claims that the islands are governed by Okinawa Prefecture and Japan had incorporated the islands into Japanese territory in 1895. From Japan's point of view, the Treaty of Shimonoseki, which ended the First Sino-Japanese War, recognized the islands as Japanese territory. China argues that the islands have been Chinese territory since the Ming Dynasty and that fishermen have long used the islands as a navigation hub. China argues that the Treaty of Shimonoseki were one of the many unequal treaties signed by the Qing government during the “Century of Humiliation.”² After the end of World War II, Japan yielded control of Taiwan to China, but the status of the Senkaku Islands remained unclear. The 1951 Treaty of San Francisco did not include the Senkaku Islands as territory which Japan had to surrender. Instead, the islands were administered by the United States Civil Administration of the Ryukyu Islands (USCAR). The United States returned the Ryukyu Islands to Japan in 1972. Many of the islands were privately owned and Japan “nationalized” the islands in 2012, sparking mass anti-Japanese protests in China and Taiwan.

¹ Colin S. Gray, “Sea Power: The Great Enabler.” *Naval War College Review*, vol. 47, no. 1, 1994, pp. 18-27.

² Yoichiro Sato, “The Sino-Japanese Maritime Dispute in the East China Sea.” Center for International Maritime Security. Sept. 16, 2020. <https://cimsec.org/the-sino-japanese-maritime-disputes-in-the-east-china-sea/>.



Source: *The Economist*

Although the Senkaku Islands are merely small volcanic rocks in the East China Sea, they are strategically important to China, Japan, and Taiwan. First, the islands are believed to have rich natural gas and oil deposits. Second, the East China Sea has rich fishing grounds and third, the islands are in the middle of strategic shipping lanes. Japan heavily relies on the shipping lanes in the East China Sea as most of its maritime commerce, including oil and food, crosses this body of water. If China were to take control of the Senkaku Islands and the East China Sea Japan's sea line of communication (SLOC) would be affected.

THE PHILIPPINES AND THE SOUTH CHINA SEA DISPUTE INTRODUCTION

The South China Sea is a large body of water that connects the strategic chokepoint, Malacca Strait with Southeast Asia and the rest of the Pacific region. It is also home to small reefs and islands that are claimed by seven countries including the Philippines. China claims that it has navigated and controlled the South China Sea since ancient times. During the 18th century, when the Philippines was under Spanish colonial rule, surveyors created the *Murillo Velarde* map, which listed the Scarborough Shoal as well as most of the Spratly Islands as Philippine territory. After the Japanese annexed Taiwan, they began to claim the South China Sea and the French claimed portions of the Spratly's from their colony in Vietnam. After World War II, both France and Japan relinquished their claims. The Philippines became independent from US rule and in 1947, Chiang Kai-shek's Republic of China established the controversial "nine-dash line" which claimed most of the South China Sea, including the Spratly Islands and Scarborough Shoal, as Chinese territory.



Source: *VOA News*

China expanded its claim of the South China Sea by taking over the Parcel Islands in 1974 from South Vietnam, Mischief Reef, and Scarborough Shoal from the Philippines in 1995 and 2012 respectively. In 2016, the Philippines successfully brought the issue of China’s “nine-dash line” to the International Court and won the case. However, the decision did little to deter China from further expanding its control. Like the East China Sea, the South China Sea is rich in natural resources including rare earth metals and oil. China, as well as most countries in Southeast Asia, strongly depend on shipping lanes in providing oil and resources. By controlling the Spratly Islands and Scarborough Shoal, China can exert control over the South China Sea as a whole and could potentially close off shipping lanes to US allies, including the Philippines and Japan.³ In addition, China’s expansion in the South China Sea threatens the US-based rules-based order as well as its alliance system in the Indo-Pacific region.

REVIEW OF LITERATURE

SENKAKU ISLANDS DISPUTE

The Senkaku Islands are one of the most complex disputes involving the United States and its allies. It has a long history of dispute between Japan and China. It is the focus of a long-running disagreement between Japan and China. US policy regarding the dispute during the Cold War was cautious and strategic. Kimie Hara looks at the Senkaku Islands dispute after the signing of the Treaty of San Francisco in 1951. She discusses how the United States government recognized the “residual sovereignty” over Okinawa and the Senkaku Islands, but the Treaty

³ Congressional Research Institute, “US- China Strategic Competition in South and East China Sea: Background and Issues for Congress.” R42784 Updated Aug. 4, 2021. <https://crsreports.congress.gov/product/pdf/R/R42784>.

of San Francisco was vague on the actual status of the islands. The Republic of China, which relocated to Taiwan, claimed the Senkaku Islands and Okinawa as its territory.⁴

Since the Nixon administration, the United States has maintained a policy of neutrality when it comes to the Senkaku Islands. Jean-Marc F. Blanchard reviews the US role in the Senkaku dispute during the early stages of the Cold War before Okinawa's reversion to Japan. After the Second World War, the United States took direct control of the Ryukyu Islands, but the status of the Senkaku Islands was initially unclear. The communist victory in the Chinese Civil War caused US policymakers to intensify activity in the Ryukyu islands to cut off a potential Sino-Soviet threat to the Pacific fleet. Blanchard points out that during the 1950s and 1960s, the US Navy paid rent to a Japanese family that owned the islands. He points out that the 1960 renewal of the security treaty was a turning point in US-Japan relations as it allowed the US military to maintain bases in Japan and maintain a foothold hole in Asia. However, he argues that the United States was not active enough in resolving the Senkaku dispute between Japan, China, and Taiwan and, as a result, the dispute intensified.⁵ Robert D. Eldridge discusses the process and negotiations between the United States and Japan to return Okinawa to Japanese control. Eldridge points out that during the negotiations in the early 1970s, Japanese Prime Minister Satō Eisaku wanted guarantees from the United States that the Security Treaty would cover the Senkaku Islands. Although the United States did initially agree to defend the islands during the Okinawa reversion negotiations, the Nixon administration began a policy of ambiguity after President Nixon's visit to China. The policy would continue until the Obama administration. Eldridge argues that the US policy of ambiguity and its unwillingness to consider the Senkaku Islands Japanese territory in the early stages of the Cold War emboldened China to claim the islands and intensify the dispute.⁶ Tongfi Kim looks at the role of the US-Japan mutual security treaty and whether it is influential in US policy regarding the Senkaku Island dispute. Kim discusses more recent policies the US has enacted and how, despite claiming neutrality, it has stated that the 1960 Mutual Defense Treaty obligates the United States to defend any attack on Japanese sovereignty. Therefore, the treaty applies to the Senkaku Islands. Lastly, Kim asserts that the Obama administration's "Pivot to Asia" policy has made the US more active in defending the "status quo" of the Senkaku Islands.⁷

SOUTH CHINA SEA

The US-Philippine Mutual Defense Treaty has been an important part of US policy in the South China Sea since the treaty's signing in 1951. However, Tongfi Kim points out the vagueness and uncertainty of whether the treaty covers disputed Philippine territory in the South China Sea. In 1974, the Department of State declared that South China Sea disputes had to be resolved

⁴ Kimie Hara, "50 Years from San Francisco: Re-Examining the Peace Treaty and Japan's Territorial Problems." *Pacific Affairs*, vol. 74, no. 3, 2001, pp. 361-382.

⁵ Jean-Marc F. Blanchard, "The US Role in the Sino-Japanese Dispute over the Diaoyu (Senkaku) Islands, 1945-1971." *The China Quarterly*, No. 161, 2000, pp. 95-123.

⁶ Robert D. Eldridge, *The Origins of US Policy in the East China Sea Islands Dispute: Okinawa's Reversion and The Senkaku Islands*. New York, Routledge, 2014.

⁷ Tongfi Kim, "Sino-Japanese Disputes and the US-Japan Alliance." Peace Research Institute Frankfurt, 2016, pp. 3-14, *US Alliance Obligations in the Disputes in the East and South China Seas: Issues of Applicability and Interpretations*, www.jstor.org/stable/resrep14540.4.

by the countries involved, not the United States.⁸ Joel Wuthnow discusses the difficulty of changing policy of the Mutual Defense Treaty to fully cover disputed islands. If the US draws a red line and fails to act, it could undermine their credibility and bolster China. However, if US policy becomes too assertive, China may become more aggressive, leaving no peaceful option to deescalate tensions. Wuthnow also argues that US policy in the South China Sea has failed to counter China's military strength and that deterrence is the best option.⁹ Euan Graham writes about the vagueness of the Mutual Defense Treaty with the Philippines regarding South China Sea disputes, but argues the United States is more willing to defend if there is a direct attack on Philippine troops by foreign actors.¹⁰

Jae-Jeok Park compares the US defense alliance with the Philippines and South Korea. Park argues that the US alliance with South Korea is stronger because of the threat of North Korea while the fall of communism and the withdrawal of US troops from the Philippines in 1992 caused this alliance to become dormant. This weakened American commitment to protecting the Philippines during the George H.W. Bush and Clinton presidencies. As a result, China was able to strengthen its power in the South China Sea. An example of US inaction to protect the Philippines was seen in China's seizure of Mischief Reef in 1995.¹¹ Aaron W. Steffens discusses the Obama administration's "Pivot to Asia" policy and how the United States has increased its role as the security enforcer in the South China Sea. After the Chinese takeover of the Scarborough Shoal, the US reaffirmed the Mutual Defense Treaty with the Philippines but was ambiguous on how it would defend disputed Philippine territory.¹² Madeline McLaughlin examines the Trump administration's South China Sea Policy, pointing out that the Trump administration use Freedom of Navigation Operations (FONOPs) to exert power in the region and to deter further Chinese expansion. She also asserts that the US not being a signee of UNCLOS makes it more difficult to enforce the international court case that declared China's "nine-dash line" illegal. Also, the US faces challenges to strengthen its alliance with the Philippines due to President Duterte's softer approach to Beijing.¹³

UNITED NATIONS CONVENTION ON THE LAW OF THE SEAS (UNCLOS)

The United Nations Convention on the Law of the Seas is an international agreement that was created from the 3rd UN Conference on the Law of the Sea in 1974. UNCLOS attempts to create an international standard of maritime law and to help settle international maritime disputes. UNCLOS III recognizes the limits a coastal country can claim. The first limit is "internal waters," or water that faces toward the land of the coastal state, except in archipelagic

⁸ Tongfi Kim, "Sino-Philippine Disputes and the US-Philippines Alliance," pp. 15-23, in *US Alliance Obligations in the Disputes in the East and South China Seas: Issues of Applicability and Interpretations*. Peace Research Institute Frankfurt, 2016.

⁹ Joel Wuthnow, "Beyond Imposing Costs: Recalibrating US Strategy in the South China Sea." *Asia Policy*, no. 24, 2017, pp. 123-138. www.jstor.org/stable/26403211.

¹⁰ Bronson Percival, "US Perspectives on the South China Sea: Here to Stay?" pp. 44-57, in *Navigating the Indo-Pacific Arc*, edited by Euan Graham and Henrick Z. Tsjeng, S. Rajaratnam School of International Studies, 2014.

¹¹ Jae-Jeok Park, "A Comparative Case Study of the US-Philippines Alliance in the 1990s and the US-South Korea Alliance between 1998 and 2008: Alliance (Dis)Continuation." *Asian Survey*, vol. 51, no. 2, 2011, pp. 268-289.

¹² Aaron W. Steffens, "Scramble in the South China Sea: Regional Conflict and US Strategy." *Strategic Studies Quarterly*, vol. 7, no. 3, 2013, pp. 88-107.

¹³ Madeline McLaughlin, "US Strategy in the South China Sea." American Security Project, 2020.

states. The coastal state has a right to regulate and use any resources and foreign vessels are prohibited from entering. Territorial waters extend 12 nautical miles from the coastal state's baseline, which is defined as a line along a state's coast that sets the limit of territorial waters. Foreign vessels can transit with "innocent passage" if the coastal state gives them permission. The contiguous zone is between 12 and 24 nautical miles from the coastal state's baseline and can enforce laws and regulations. Exclusive Economic Zones (EEZs) extend 200 nautical miles from the coastal state's baseline and it can exploit living and non-living resources, but foreign vessels are allowed the right of transit through freedom of navigation. Beyond a country's EEZ is the continental shelf, the edge of a country's baseline and the "high seas," not governed by any country.

Xavier Furtado argues that UNCLOS was flawed from the start in relation to the South China Sea disputes because it failed to recognize the complexity of the Spratly Island dispute. The concept of the Exclusive Economic Zone also further complicated the Spratly Island dispute because it emboldened countries to lay claim in the South China Sea.¹⁴ Furtado then argued that UNCLOS will not solve South China Sea disputes because the disputes have a long history and national pride is at stake.¹⁵ Robert Beckman (2013) discussed how countries such as the Philippines, China, Vietnam, and Malaysia modified their baselines in the South China Sea to justify their claims. Beckman predicted that disputed formations such as the Scarborough Shoal could be resolved easily because only two countries are involved and that fishing rights are the only concern.¹⁶

John E. Noyes examines the Philippines v. China tribunal, which challenged Chinese claims in the South China Sea. The Philippines filed the case because it viewed China's theoretical nine-dash line as invalid and that many of Spratly Islands are rocks and therefore, cannot produce an EEZ. Noyes views China's rejection of the tribunal as an issue and challenge to UNCLOS.¹⁷ The Philippines wanted features such as the Mischief Reef and Second Thomas Shoal to be considered low tide elevations, but the tribunal was indecisive. Sreenivasa Rao Pemmaraju (2016) analyzes the Philippines v. China case and whether the Scarborough Shoal and Spratly Islands are able to generate an EEZ.¹⁸ As an archipelagic state, the Philippines claims that the Scarborough Shoal and many of the Spratly Islands fall within its 200 nautical mile EEZ. However, Pemmaraju asserts that China's point of view cannot be disputed by simply looking at the geological features of the disputed islands.¹⁹ Constantinos Yiallourides (2021) analyzes the UNCLOS distinction between "island" and "rock" to observe whether or not the Senkaku Islands are an island capable of producing an EEZ. Yiallourides asserts that the Senkaku Islands fit the definition of being naturally formed islands under UNCLOS Article 121(1), but it is more complex on whether the Senkaku Islands fit the definition of an island set in UNCLOS

¹⁴ Xavier Furtado, "International Law and the Dispute over the Spratly Islands: Whither UNCLOS?" *Contemporary Southeast Asia*, vol. 21, no. 3, 1999, pp. 386-404.

¹⁵ *Ibid.*

¹⁶ Robert Beckman, "The UN Convention on the Law of the Sea and the Maritime Disputes in the South China Sea." *The American Journal of International Law*, vol. 107, no. 1, 2013, pp. 142-163.

¹⁷ John E. Noyes, "In Re Arbitration Between the Philippines and China." *The American Journal of International Law*, vol. 110, no. 1, 2016, pp. 102-108.

¹⁸ Sreenivasa Rao Pemmaraju, "The South China Sea Arbitration (The Philippines v. China): Assessment of the Award on Jurisdiction and Admissibility." *Chinese Journal of International Law*, vol. 15, issue 2, June 2016, Pages 265-307, <https://doi.org/10.1093/chinesejil/jmw019>

¹⁹ *Ibid.*

Article 121(3). The results are inconclusive due to the Senkaku islands' ability to support economic activity such as fishing and unexploited gas reserves, but it is not able to naturally host human habitation.²⁰

US SENKAKU ISLANDS POLICY SINCE 1945

After the devastating Battle of Okinawa and the Japanese surrender in World War II, the United States administered the Ryukyu Islands. The Ryukyu Islands include Okinawa, Yaeyama, Amami, Miyako, and Senkaku Islands. After the communists won in the Chinese Civil War in 1949 and the Korean War erupted in 1950, the US military sought to turn the Ryukyu chain into a barrier against communist expansion. In 1951, Japan and 49 different countries signed the Treaty of San Francisco, which officially ended the state of war against Japan. Article 3 of the treaty discussed the status of the Ryukyu Islands. The treaty recognized US administration over the Ryukyu Islands, but it did not explicitly mention the Senkaku Islands. Early US policy recognized Japanese "residual sovereignty" over the Ryukyu Islands, meaning that the United States would retain powers of administration, legislation and jurisdiction, but Japan would ultimately retain sovereignty. The concept of Japanese "residual sovereignty" was affirmed on several occasions throughout the US administration of Ryukyu Islands.²¹ While the Senkaku Islands were not explicitly mentioned in the Treaty of San Francisco, the US Navy used them as a firing range throughout the US occupation of the Ryukyu Islands and until 1978. The US government also paid a monthly rent to a family that were descendants of Japanese settlers on the islands during that period of time. One issue throughout the late 1960s was the intrusion of the fishing vessels and activists from Taiwan and Hong Kong near the waters around the Senkaku Islands. As a result, the United States Civil Administration of the Ryukyu Islands (USCAR) placed restrictions on entry of people, other than Ryukyu Island residents, which many interpreted as proof that the Senkaku Islands were also administered by the US.²²

During the negotiations between the United States and Japan to return Okinawa, the status of the Senkaku Islands was especially discussed. Prime Minister Satō wanted a clear confirmation that the US-Japan Security Treaty, more specifically Article 5 of the treaty, would apply to the Senkaku Islands in case they were invaded by China. One issue throughout the late 1960s was the intrusion of fishing vessels and activists near the waters around the Senkaku Islands. As a result, USCAR placed restrictions on entry of people other than Ryukyu Island residents, which many interpreted as proof that the Senkaku Islands were administered by the US Administration of the Ryukyu Islands.²³ In the midst of negotiations, the US Department of Defense officially recognized that the Senkaku Islands were a part of Ryukyu Islands and governed by the USCAR. Confirming the Senkaku Islands were inherently Japanese territory, the Okinawa Reversion Treaty did not mention China's claims to those islands.²⁴ After

²⁰ Constantinos Yiallourides, "Senkaku/Diaoyu: Are They Islands?" *The International Lawyer*, vol. 50, no. 2, 2017, pp. 347-366.

²¹ Paul J. Smith, "The Senkaku/Diaoyu Island Controversy: A Crisis Postponed." *Naval War College Review*, vol. 66, no. 2, 2013, pp. 27-44.

²² Robert D. Eldridge, *The Origins of US Policy in the East China Sea Islands Dispute: Okinawa's Reversion and The Senkaku Islands.* New York, Routledge, 2014.

²³ *Ibid.*

²⁴ Jean-Marc F. Blanchard, "The U. S. Role in the Sino-Japanese Dispute over the Diaoyu (Senkaku) Islands, 1945-1971." *The China Quarterly*, no. 161, 2000, pp. 95-123.

Okinawa returned to the Japanese control in 1972, the Nixon administration began to take a more neutral stance in the dispute. This coincided with Nixon's visit to China that same year.²⁵ The Nixon administration's normalization of relations with the People's Republic of China meant it did not want the United States to be caught in the middle of Sino-Japanese territorial dispute and tried to make the appearance that US forces in Okinawa are not a threat to China.²⁶

The US policy of neutrality continued throughout the 1970s to the 2000s. Despite this, the United States has confirmed on multiple occasions that Article 5 of the US-Japan Security Treaty covers the Senkaku Islands. In 1996, Japan ratified the United Nations Convention on the Law of the Seas (UNCLOS) and established an Exclusive Economic Zone around the disputed islands, causing tensions to increase with China. Even though US Ambassador to Japan Walter F. Mondale said the security treaty may not cover the Senkaku Islands, with the growth of tensions Secretary of Defense William Perry confirmed that Article 5 does in fact cover the islands.²⁷ The Obama administration's "Pivot to Asia" led the US to play a more active role in East Asia affairs. In 2010, Secretary of State Hillary Clinton reaffirmed the US commitment to defend Japan including the Senkaku Islands, and in 2012, the Department of State again confirmed that Article 5 covers the Senkaku Islands.²⁸ In that same year, the Japanese government "purchased" the islands from private owners, sparking outrage in China and Taiwan. In 2013, China established a no-fly zone over the islands, and the United States released a statement saying it would oppose any actions by China that would undermine Japanese administration of the islands.²⁹

The Trump administration took a more hardline stance against China. Early into his presidency, Trump affirmed that Article 5 does indeed apply to the Senkaku Islands. This commitment was reiterated by Secretary of State Rex Tillerson and later, Mike Pompeo. With the rise of Chinese naval power in the East China Sea, the United States and Japan reaffirmed the Security Treaty and increased the number of naval and military exercises together. In 2021, China passed its Maritime Safety Act, which gave its coast guard the authority to patrol the waters of the East China Sea and to effectively wear out Japanese administration over the Senkaku Islands. Chinese naval activity has also increased in the Miyako Strait between Miyako-Jima and Okinawa. The Miyako Strait is strategically important because it acts as a bridge between the East China Sea and the Pacific Ocean. Facing the increasing Chinese presence in the area, the Biden administration has reaffirmed the Security Treaty with Secretary of Defense Lloyd Austin stating that Article 5 does apply to the Senkaku Islands and that the United States and Japan. China and Russia held joint naval drills in October 2021 and in a provocative move, sailed through the Tsugaru Strait which divides the Japanese islands of Hokkaido and Honshu.³⁰ At the same time, Chinese Coast Guard vessels have stepped up activity in the waters near the disputed Senkaku Islands. Meanwhile, the US and Japan held air drills in Okinawa Prefecture.

²⁵ Kimie Hara, "50 Years from San Francisco: Re-Examining the Peace Treaty and Japan's Territorial Problems." *Pacific Affairs*, vol. 74, no. 3, 2001, pp. 361-382.

²⁶ *Ibid.*

²⁷ Tongfi Kim, "US Alliance Obligations in the Disputes in the East and South China Seas: Issues of Applicability and Interpretations," Peace Research Institute Frankfurt, 2016, pp. 3-14.

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ "China, Russia navy ships jointly sail through Japan strait." *Reuters*, Oct. 19, 2021.

<https://www.reuters.com/world/asia-pacific/china-russia-navy-ships-jointly-sail-through-japan-strait-2021-10-19/>.

US POLICY IN PHILIPPINE MARITIME DISPUTES SINCE 1945

The Philippines was a US colony throughout the first half of the 20th century. After the end of World War II, the Philippines became independent. When the United States was creating its new alliance system in East Asia, the Philippines was a natural ally. The Philippines was already home to US naval bases and their security partnership was solidified in 1951 with the Mutual Defense Treaty.³¹ The Japanese were forced to renounce their claims in the South China Sea after the signing of the Treaty of San Francisco and as a result, multiple countries sought to stake their claims of the islands. Early on, the United States government stated that it would remain neutral in the Spratly Islands disputes. The then-US ally Republic of China claimed the South China Sea with its “nine-dash line” and the United States did not want to become involved in a dispute between two allies.

During the Nixon presidency, the United States insisted that the South China Sea disputes must be resolved between countries involved.³² In 1975, Secretary of State Henry Kissinger stated that the treaty does not cover the Spratly Islands and Philippine forces stationed on the disputed islands. A complaint by Philippine President, Ferdinand Marcos was that the Mutual Defense Treaty was not explicit enough in defending Philippine territory and it was too ambiguous in what the US responsibilities were.³³ The United States neutrality policy remained uninterrupted throughout the 1970s and 1980s. US government officials announced that the Mutual Defense Treaty refers to the Pacific area and does not cover disputed territory. After Marcos left office in 1986, US-Philippine relations became colder; the Philippine Senate voted to end an agreement to allow US bases on Philippine soil. The US military withdrew its forces in 1992.³⁴ Three years later, China seized Mischief Reef and there was no reaction from the United States government.

With the Obama administration’s “Pivot to Asia” policy, the South China Sea was seen as a strategic location in containing China.³⁵ Tensions in the South China Sea flared with the 2012 Scarborough Shoal standoff. Chinese and Philippine naval vessels confronted each other near the uninhabited island, eventually resulting in China taking control of the Scarborough Shoal. The United States initially did not react to the standoff, but later released a statement announcing its support for the Philippines.³⁶ In 2013, the Philippines filed an international court case against China’s “nine-dash line.” Three years later, the International Tribunal for the Law of the Sea decided that under UNCLOS, the “nine-dash line” was invalid. The United States supported the court’s decision and since the Obama administration, has conducted air patrols near the Scarborough Shoal and Spratly Islands.

³¹ Tongfi Kim, “Sino-Philippine Disputes and the US-Philippines Alliance,” Peace Research Institute Frankfurt, 2016, pp. 15-23, *US Alliance Obligations in the Disputes in the East and South China Seas: Issues of Applicability and Interpretations*.

³² *Ibid.*

³³ *Ibid.*

³⁴ Jae-Jeok Park, “A Comparative Case Study of the US-Philippines Alliance in the 1990s and the US-South Korea Alliance between 1998 and 2008: Alliance (Dis)Continuation.” *Asian Survey*, vol. 51, no. 2, 2011, pp. 268-289.

³⁵ David Shambaugh, “Assessing the US ‘Pivot’ to Asia.” *Strategic Studies Quarterly*, vol. 7, no. 2, 2013, pp. 10-19. *JSTOR*, www.jstor.org/stable/26270763.

³⁶ Tongfi Kim 2016.

Another policy that the United States has continued since the Obama administration is the use of Freedom of Navigation Operations (FONOPs). The purpose of these operations is to enforce international law, especially UNCLOS.³⁷ The US Navy has conducted these operations in the South China Sea near disputed territory, including the Scarborough Shoal and Spratly Islands. It also conducted a FONOP near Mischief Reef in 2015, which was taken by China 20 years earlier. Under UNCLOS, foreign vessels must have permission to transit through territorial waters and the EEZ of the coastal state, but the United States does not seek China's permission to sail through the South China Sea in order to challenge Chinese claims. The United States and the Philippines have participated in naval exercises in the South China Sea to challenge China's claims. Despite this, the Duterte administration in the Philippines has sought closer relations with China, making it more difficult for the US to revive a strategic security relationship. Nonetheless, under the Trump and Biden administrations, the US has shown desire to play a more active role in preserving freedom of navigation in the South China Sea. The Biden administration has amped up rhetoric regarding disputed territories in the South China Sea. In November 2021, Chinese Coast Guard vessels fired water cannons at two Philippine supply boats near the Second Thomas Shoal. This incident sparked outrage among the US and its allies. The EU stated that it supported the Philippines in the dispute, Japan offered aid, and, in an unprecedented move, the United States officially announced that any armed attack on the Philippines in the South China Sea would invoke the Mutual Defense Treaty.³⁸

US SECURITY TREATIES WITH JAPAN & THE PHILIPPINES IN DETAIL

Understanding the strength of security alliances should be considered when comparing US responses to the Senkaku and South China Sea disputes. US-Philippine Mutual Defense Treaty was signed in 1951, while the renewed Security Treaty with Japan went into effect in 1960. In the preamble of the US-Japan Security Treaty, it states that both signatories will commit to upholding principles of democracy, individual liberty, and rule of law. It then states that US and Japan share the common interest of maintaining stability in the Far East region. On the other hand, the US-Philippine Mutual Defense Treaty's preamble notes the US-Philippine partnership during World War II and their shared pride. Unlike the Japan treaty, the US-Philippine Mutual Defense Treaty is dedicated to peace in the "Pacific area."

In terms of the articles of each treaty, the US-Japan Security Treaty concerns itself more with democratization of institutions. Article II of the Security Treaty urges both parties to strengthen their democratic and free institutions as well as increase economic cooperation. This article likely went into effect due to Japan's authoritarian past. There is no article urging democratization in the US-Philippine Mutual Defense Treaty. Both treaties contain articles recognizing that an armed attack against either party will be dangerous to their own security. Article V of the US-Japan Security Treaty recognizes that an attack on any territory administered by Japan will lead to mutual military action. Meanwhile, Articles IV and V of the

³⁷ Madeline McLaughlin, "US Strategy in the South China Sea." American Security Project, 2020.

³⁸ "US warns China after South China Sea standoff with Philippines," *Reuters*, Nov. 20, 2021.

<https://www.reuters.com/world/china/us-warns-china-after-south-china-sea-standoff-with-philippines-2021-11-19/>.

Mutual Defense Treaty will only go into effect if the “Pacific area” is attacked. Therefore, each treaty has different responsibilities for both signatories.

EAST ASIA SECURITY ENVIRONMENT

In order to understand the context of US defense treaties with Japan and the Philippines, we must look at the security environment of Asia during the treaties’ formation. The end of World War II and the establishment of the “San Francisco System” shaped US security policy in the region. A multilateral security alliance was never established in East Asia; instead, the United States established a network of bilateral security alliances with countries such as Japan, South Korea, the Philippines, Australia, and Thailand.

After World War II, a concern of the United States as well as the rest of East Asia was the possibility of Japan becoming a strong military power again. Many countries in the region did not trust Japan and were reluctant to establish relations. In 1949, the communists defeated the US-backed Kuomintang (Nationalists) in China, causing a shift in US security policy. Policymakers decided to create an island chain to stop the expansion of communism in the region. This island chain stretched from the Japanese archipelago to the Philippines. The United States assisted Japan’s economic recovery while allowing for a small-scale defense force. As a result, the US sought to “win” Japan as an ally and make it a bulwark against communism in the region.³⁹ There was also a desire to control Japan’s relations with China to ensure that it did not gravitate towards the communist sphere of influence.⁴⁰ In the early 1950s, a security crisis occurred on the Korean Peninsula when the North invaded the South. Japan played an important role in the Korean War by acting as a supplier and base for US troops. After the stalemate, and the presence of a hostile North Korea made US troop presence in Northeast Asia that much more important.

Another security concern during the Cold War was the so-called “Domino Theory,” stating believed if one country in Asia becoming communist, more would follow suit. This theory was most visible in US policy in Southeast Asia. The Vietnam War expanded beyond Vietnam and into the neighboring countries Laos and Cambodia. Since the Philippines hosted a large number of American bases, it became an important hub for supplies and support for the war effort in Vietnam as well as an observation point to monitor Soviet activity in Southeast Asia.⁴¹ After the Fall of Saigon in 1975, the Korean Peninsula became a security concern due to its potential to be a flashpoint in a major war in the region. Soviet naval presence in the Kamchatka Peninsula was also a threat to US naval presence. The Soviet Union collapsed in 1991 and the threat of North Korea remained a security concern in the region.

US bases closed in the Philippines in 1992 as a new security environment began to emerge in the region. While North Korea remained a consistent security threat, the United States and its allies began to focus more on China. As mentioned previously, China seized control of Mischief Reef from the Philippines in 1995 and in 1996, the US and Chinese navies confronted each

³⁹ Victor D. Cha, “Powerplay: Origins of the US Alliance System in Asia.” *International Security*, vol. 34, no. 3, 2009, pp. 158-196.

⁴⁰ *Ibid.*

⁴¹ Gregory P. Corning, “The Philippine Bases and US Pacific Strategy.” *Pacific Affairs*, vol. 63, no. 1, 1990, pp. 6-23.

other in the Taiwan Strait.⁴² Since the 1990s, instead of directly confronting China on behalf of the Philippines, the United States' main security interest in the South China Sea has been to protect freedom of navigation and keep the sealine of communication open.⁴³ The Obama administration's "Pivot to Asia" (later dubbed the "Rebalance to Asia") sought to engage China in the region and ensure that it does not become the hegemon. The US sought to peacefully integrate China into the international system as well as denuclearizing the Korean Peninsula. After failing to respond to China in the South China Sea, the United States began to conduct more FONOPs in 2012.

Northeast Asia has consistently been a security priority for US policymakers since the Cold War. The presence of Soviet naval vessels, along with the threat of North Korea and China, preventing Japan from becoming a militaristic power made the United States focus on Northeast Asia at the expense of Southeast Asia. However, previous administrations have focused on engaging Southeast Asia and protecting freedom of navigation in the South China Sea. The East Asian security environment and defense treaties may explain why the US chooses to engage with Japan more than the Philippines, but since the United States has become more involved in the South China Sea, why hasn't it declared the Spratly Islands and Scarborough Shoal as territories covered in the Mutual Defense Treaty? Next, this research will examine the United Nations Convention on the Law to see whether international law shapes US policy.

UNCLOS AND US POLICY

The United Nations Convention on the Law of the Sea (UNCLOS) has served as the most important instrument of international law in the maritime realm since it was signed in 1982. It was established to define maritime boundaries, settle maritime disputes, and set an international standard for conduct at sea. Maritime zones are divided into six sections: coastal states have direct sovereignty over its internal waters and territorial sea.⁴⁴ The coastal state exercises control over the contiguous zone to punish infringements within its territorial waters. The last two maritime zones are Exclusive Economic Zone (EEZ), in which a coastal state can utilize and manage natural resources and continental shelf, which coastal state exercises sovereign rights with regard to the exploration and exploitation of natural resources. The high seas are not governed by any country.

⁴² Robert S. Ross, "US Grand Strategy, the Rise of China, and US National Security Strategy for East Asia." *Strategic Studies Quarterly*, vol. 7, no. 2, 2013, pp. 20–40.

⁴³ Jae-Jeok Park, "A Comparative Case Study of the US-Philippines Alliance in the 1990s and the US-South Korea Alliance between 1998 and 2008: Alliance (Dis)Continuation." *Asian Survey*, vol. 51, no. 2, 2011, pp. 268–289.

⁴⁴ "Arbitration Case Between the Philippines and China Under the United Nations Convention on the Law of the Sea (UNCLOS)." Congressional Research Institute, July 16, 2016. <https://crsreports.congress.gov/product/pdf/R/R44555/4>.



Source: *Batongbacal and Baviera*

UNCLOS also created the category of “archipelagic states.” An example of an archipelagic state is the Philippines. Archipelagic states are defined in Article 46 as “a group of islands, including parts of islands, interconnecting waters and other natural features which are so closely interrelated that such islands, waters and other natural features form an intrinsic geographical, economic and political entity, or which historically have been regarded as such.” Japan is not considered an archipelagic state because it does not meet the water-land ratio set in Article 47 which states that the area of water to area of land ratio must be between 1 to 1 or 9 to 1.⁴⁵ Another concern for the Japanese government is that under Article 53, foreign vessels have the right of passage through archipelagic waters. Therefore, Japan has not sought status as an archipelagic state.

Despite not ratifying UNCLOS, the United States recognizes it as customary international law. Some in congress oppose joining UNCLOS because, in their view, it conflicts with US security interests. The United States Navy and Department of Defense have stated that the United States should ratify UNCLOS to establish credibility in the region. The United States government has stated that its main concern in the South China Sea is to maintain international law and protect the free flow of international maritime commerce. In a US-ASEAN Summit in 2017, the United States government asserted its position that all nations must obey international maritime law that as codified in UNCLOS Freedom of Navigation Operations (FONOPs) are a tool of the United States to challenge unlawful maritime claims and actions that are contrary to UNCLOS. Maintaining international law is vital to protecting peaceful resolutions to disputes and challenging the idea that international law could be broken if it goes against a country’s interest.

A groundbreaking decision took place in 2016, when the International Tribunal on the Law of the Sea declared that under Article 121(3) the Scarborough Shoal is incapable of human habitation and can only generate territorial seas.⁴⁶ Mischief Reef and Second Thomas Shoal were declared low-tide elevations and that none of the high-tide features in the Spratly Islands were capable of human habitation. Although it did not address the sovereignty of the Spratly

⁴⁵ Raul Pedrozo, “Archipelagic States,” *International Law Studies*, vol. 97 iss 2375-2831, 2021, pp. 13-17. <https://digital-commons.usnwc.edu/cgi/viewcontent.cgi?article=2940&context=ils>.

⁴⁶ Center for Strategic International Studies. “Failing or Incomplete? Grading the South China Sea Arbitration.” Asia Maritime Transparency Initiative, July 11, 2019. <https://amti.csis.org/failing-or-incomplete-grading-the-south-china-sea-arbitration/>.

Islands and Scarborough Shoal, China's nine-dash line and historic claims to the South China Sea were declared invalid. The Philippines brought this case to the tribunal in 2013, a year after the tense standoff at Scarborough Shoal. The Philippine government argued that the Scarborough Shoal and most of the Spratly Islands did not meet the UNCLOS definition of an island and hence, cannot generate an EEZ. The Philippines argued that certain features, such as Mischief Reef and Second Thomas Shoal, are low tide elevations and cannot generate maritime zones. In addition, the Philippines argued that it is entitled to an EEZ of 200 nautical miles and China violated Philippine fishing rights.⁴⁷ Article 121 (3) of UNCLOS recognizes both "islands" and "rocks" as being natural structures that are above water at high tide but differentiates the two by their ability to sustain human habitation or economic activity. The international tribunal did indeed decide that the Spratly Islands and Scarborough Shoal are rocks, not islands. China flatly rejected the tribunal's ruling, while the United States firmly supported the decision and sought to enforce it. Freedom of Navigation Operations (FONOPs) are the main tool used by the United States Navy to challenge China's excessive claims in the South China Sea.⁴⁸ In the previous years, with the exception of 2020, the US and the Philippines have participated in naval exercises in the South China Sea, including areas near disputed islands. There have also been naval drills conducted with members of the Quad in order to deter China and preserve the international rules-based order in the South China Sea. The Balikatan exercises continued in 2021 due to the growing presence of China's so-called "maritime militia" in disputed water.⁴⁹ Despite the international tribunal's ruling, the United States has not confirmed that the Spratly Islands and Scarborough Shoal are covered by the Mutual Defense Treaty.

While UNCLOS has been referred to in addressing disputes in the South China Sea, it does not address the sovereignty of the Senkaku Islands because UNCLOS does not resolve territorial disputes. The Senkaku Islands do indeed fit the definition of naturally formed islands under Article 121 (1) of UNCLOS. Due to past fishing activity, presence of gas reserves, and records that the Senkaku Islands were inhabited by a small fishing community before World War II, the features may fall under the category of island under Article 121(3). However, the Senkaku Islands' soil is too poor to naturally grow food.⁵⁰ Therefore, it is unclear whether Japan, China or Taiwan can claim territorial waters. Another factor is that the Japanese government has not recognized that the Senkaku Islands are disputed at all.⁵¹ Japan has insisted that the islands have always been administered by Japan and are inherent Japanese territory. In order for there to be a dispute, all parties involved must recognize that there is a dispute. In terms of maritime boundaries in the East China Sea, there is a disagreement between Japan and China one where the boundary is. China claims that the disputed maritime territory is within its own EEZ due to being an extension of its continental shelf. However, Japan asserts that there should be a

⁴⁷ Sreenivasa Rao Pemmaraju, "The South China Sea Arbitration (The Philippines v. China): Assessment of the Award on Jurisdiction and Admissibility," *Chinese Journal of International Law*, vol. 15, issue 2, June 2016, pp. 265-307. <https://doi.org/10.1093/chinesejil/jmw019>.

⁴⁸ Madeline McLaughlin, "US Strategy in the South China Sea." American Security Project, 2020, p. 3.

⁴⁹ Cliff Venzon, "Philippines hits out at China's 'dangerous' move in the South China Sea." *Nikkei Asia Review*, 2021. <https://asia.nikkei.com/Politics/International-relations/South-China-Sea/Philippines-hits-out-at-China-s-dangerous-move-in-South-China-Sea>

⁵⁰ Constantinos Yiallourides, "Senkaku/Diaoyu: Are They Islands?" *The International Lawyer*, vol. 50, no. 2, 2017, pp. 347-366.

⁵¹ Zachary Keck, "Japan Has Not Recognized Senkaku Island Dispute." *The Diplomat*, Nov. 11, 2014. <https://thediplomat.com/2014/11/japan-has-not-recognized-senkaku-island-dispute/>

median division line of EEZs in the East China Sea. With the passing of the 2021 Coast Guard Law in China, fishing vessels and Chinese coast guard ships have challenged Japanese claims. China has adopted a “salami slicing” strategy to gain more control of disputed maritime boundaries and wear down Japanese administration of the Senkaku Islands. Since the official United States position is to oppose changing the status quo, it has reaffirmed its treaty obligations. The United States and Japan have conducted naval exercises in the East China Sea to challenge China’s excessive maritime claims and oppose the Chinese position that UNCLOS gives it the right to regulate military activity.

CONCLUSION

The United States has had a long and complicated history in both the East China Sea and South China Sea disputes. As essential treaty allies, the United States depends on maintaining strong security relations with Japan and the Philippines in order to protect the current rules-based order in the Indo-Pacific region. The Senkaku Islands, Spratly Islands, and Scarborough Shoal disputes are major concerns for regional maritime security and could potentially be deadly flashpoints. These islands are strategically located and contain important natural resources, rendering the peaceful resolution of disputes unlikely. United States defense policy is multifaceted, but there are two primary reasons why the US has consistently confirmed that the Senkaku Islands are covered by the US-Japan Security Treaty while the Spratly Islands and Scarborough Shoal are not covered in the Mutual Defense Treaty with the Philippines.

The first reason is that Japan is a more strategic ally. The United States saw Japan as a vital ally and a bulwark against communism in the Indo-Pacific and therefore, worked on developing the Japanese economy and political system. The US-Japan Security Treaty emphasized the need to protect democratic institutions and Article V is vague and open to interpretation by American and Japanese policymakers. The United States and Japan shared mutual interests in opposing the expansion of communism during the Cold War. Today in the 21st century security environment, both are concerned with North Korea’s growing nuclear threat and China’s expanding influence in the Indo-Pacific. Despite announcing a policy of neutrality, the United States recognized Japanese sovereignty over the Senkaku Islands after the reversion of the Ryukyu Islands in 1971. In addition, Japan hosts more US military personnel than any other country. Therefore, it is in the US’ strategic interest to maintain a close relationship and strong commitment to Japan. Meanwhile, US-Philippine Mutual Defense Treaty was heavily flawed and did not consider complex territorial disputes in the South China Sea. This problem caused the US-Philippine defense alliance to be weaker than the US-Japanese alliance from the very start. As seen during the Nixon administration, American policymakers interpreted this as excluding disputed territories in the South China Sea and defending Philippine troops there. Another issue is that US commitment to the Philippines cooled after the Philippine national government decided to not extend an agreement to allow US bases on their soil. The closing of American bases resulted in the current Visiting Forces Agreement.

The second reason is that although the East China Sea and South China Sea are equally important to the United States, policymakers have two different goals in the Senkaku Islands dispute and South China Sea disputes. The United States has recognized Japanese administration of the Senkaku Islands since Okinawa was returned to Japan in 1972. Former Secretary of State Hillary Clinton stated in 2012 that the US would oppose any attempt to

change the status quo including Japanese administration of the Senkaku Islands. A change in that status quo would deal a huge blow to the American alliance system or worse, a devastating conflict could erupt. Therefore, it is in the United States' best interest to support Japanese administration of the Senkaku Islands. American interests in the South China Sea are maintaining freedom of navigation and open commerce. The geopolitics of the South China Sea are more complex, and many actors are involved. As a result, the United States maintained a more cautious approach to the South China Sea. Since the role of UNCLOS in South China Sea disputes are clearer, the United States Navy serves as the enforcer of international law in the region. Chinese presence in the South China has the potential to harm the welfare of America's key allies, so rather than taking a more vocal stance on disputes, the United States conducts FONOPs to protest and challenge China's excessive maritime claims.

Understanding American policy in both the Senkaku Island and South China Sea disputes are important to consider when researching the United States' overall Indo-Pacific strategy. China presents a new and more sophisticated challenge to the US-led rules-based order. In order to have a stronger response to these disputes, the United States should follow these policy recommendations: first, the United States should sign and ratify UNCLOS. By doing so, the United States can gain more credibility and shape conversations in global maritime issues. Although the United States recognizes UNCLOS as customary international law, ratifying it would put the United States in the center of maritime governance. Both the Department of Defense and the Navy support ratifying UNCLOS.⁵² Second, the United States should reengage with its allies such as the Philippines and strengthen the Mutual Defense Treaty by being more clear on its commitment to defend territory within the Philippines' EEZ. Failing to protect treaty allies could harm the US' credibility and treaty allies may look to negotiate with China or find other security partners. Third, there should be more cooperation with other actors such as its Quad partners, as well as European allies like France and/or the United Kingdom. In fact, European allies have already shown a willingness to engage in the region and work together to balance Chinese naval presence. Working with allies will strengthen deterrence capabilities in the East and South China Sea and counter Chinese gray zone tactics. Defending the current rules-based order is not only vital for protecting international trade, but also preventing these disputes from escalating into a deadly conflict.

⁵² James W. Houck, "Alone on a Wide Wide Sea: A National Security Rationale for Joining the Law of the Sea Convention." *Penn State Journal of Law & International Affairs*, vol. 1, issue 1, April 2012.

ABOUT THE AUTHOR

Ben Tracy (benjamin@pacforum.org) received a BA in International Studies and Chinese Studies from Rhodes College in Memphis, Tennessee. He is currently working as an assistant language teacher with the Japan Exchange & Teaching Program. His interests are maritime security, the US-Japan Security Alliance, Chinese foreign policy as well as Chinese and Japanese domestic politics. He plans on pursuing a master's degree in security studies.