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## Senkaku/Diaoyu Islands

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## A. General Description of the Islands

1 The Senkaku Islands (in Japanese) or Diaoyu/Tiaoyu Islands (in Chinese) ('Diaoyu/Senkaku') are located in the East China Sea, 150km north of the Yaeyama Islands of Japan and 170km north-east of → *Taiwan*. They are composed of Uotsurijima/Diaoyu Dao Island (3.6km<sup>2</sup>) and four other smaller → *islands* and three rocks, and have an area of 6.3km<sup>2</sup> in total. Although a Japanese population once lived on Uotsurijima/Diaoyu Dao Island, all the islands are now uninhabited. They had been considered to be almost valueless economically, except for fishing and feather-collecting activities, until a survey by the → *United Nations Economic Commission for Asia and the Far East* in 1968 revealed the possibility of rich petroleum resources on the → *continental shelf* around Diaoyu/Senkaku.

2 Diaoyu/Senkaku are presently under the effective control of Japan. In March 2004, when several anti-Japanese activists from the People's Republic of → *China* landed on Uotsurijima/Diaoyu Dao Island, the Japanese police arrested them on a charge of contravening the Immigration Control and Refugee Recognition Act of Japan and deported them back to China.

## B. Origin of the Dispute

3 After World War II, the United States of America ('US') administered Diaoyu/Senkaku first de facto and then de iure in accordance with Art. 3 → *Peace Treaty with Japan (1951)*. On 17 June 1971, it was agreed between Japan and the US that the powers of administration, legislation, and jurisdiction over Diaoyu/Senkaku were returned to Japan along with other islands in the Agreement concerning the Ryukyu Islands and the Daito Islands, which entered into force on 15 May 1972.

4 On 30 December 1971, the People's Republic of China made its first official claim to → *sovereignty* over Diaoyu/Senkaku and thus a dispute arose between Japan and the People's Republic of China. The Republic of China or Taiwan had presented separate but essentially the same claims on 11 June 1971. Japan denies the existence of a territorial issue over Diaoyu/Senkaku by asserting that there can be no doubt about its possession of these islands.

5 The US has taken a neutral position with regard to the competing Japanese and Chinese claims, although it is of the view that Art. 5 Treaty of Mutual Co-operation and Security between Japan and the US of 1960 applies to Diaoyu/Senkaku. Article 5 provides that:

Each Party recognizes that an armed attack against either Party in the *territories under the administration of Japan* would be dangerous to its own peace and safety and declares that it would act to meet the common danger in accordance with its constitutional provisions and processes. (emphasis added)

## C. Claims of Japan and China

6 Concerning the sovereignty over Diaoyu/Senkaku, China claims it mainly from a historical perspective, while Japan resorts to the legal doctrine of occupation of terra nullius.

### 1. China

7 The Chinese (People's Republic of China) position as reflected in a statement of the Ministry of Foreign Affairs of 30 December 1971 is that Diaoyu/Senkaku have been China's territory since ancient times. According to that statement, Diaoyu/Senkaku were already within China's sea defence area back in the Ming dynasty (1368–1644), and they were islands appertaining to China's Taiwan but not to Ryukyu. China held that the Japanese

government stole Diaoyu/Senkaku during the Sino-Japanese War of 1894–95, and forced it to conclude the unequal Treaty of Shimonoseki of 17 April 1895 (entering into force on 8 May 1895), by which '[t]he island of Formosa [ie Taiwan], together with all islands appertaining or belonging to the said island of Formosa' (at Art. 2 (b)) and the Pescadores Islands were ceded to Japan. After World War II, according to China, Japan illicitly handed Diaoyu/Senkaku over to the US, and the latter unilaterally declared that it enjoyed the administrative rights over the islands, which in itself was illegal.

**8** The facts relevant to Japan's post-World War II territorial settlement are as follows. On 14 August 1945, Japan accepted the Potsdam Proclamation of 26 July 1945, Art. 8 of which endorsed the Cairo Declaration of 27 November 1943, the latter declaration providing that 'all the territories that Japan has stolen from the Chinese, such as Manchuria, Formosa and Pescadores, shall be restored to the Republic of China'. The ultimate peace settlement concerning Japan was reached by concluding the Peace Treaty with Japan in September 1951 ('San Francisco Peace Treaty'). By that treaty, Japan renounced all right, title, and claim to 'Formosa and the Pescadores' (Art. 2 (b)), while it accepted the administration by the US of 'the Ryukyu Islands and the Daito Islands' (Art. 3), including Diaoyu/Senkaku. Although China is not Party to the San Francisco Peace Treaty, the Republic of China recognized the above disposition of Formosa and the Pescadores in that treaty when it concluded the Treaty of Peace between the Republic of China and Japan in April 1952 (at Art. 2). On the other hand, the People's Republic of China has maintained that both the San Francisco Peace Treaty and the Treaty of Peace between the Republic of China and Japan are null and void.

## **2. Japan**

**9** In the Ministry of Foreign Affairs' statement entitled 'Basic View on the Sovereignty over the Senkaku Islands' ('Basic View Statement'), issued on 8 March 1972, Japan claimed that for 10 years from 1885 it conducted a series of thorough surveys of Diaoyu/Senkaku and found no trace of control by China, and that based on this confirmation the Japanese government made a Cabinet decision on 14 January 1895 to erect a marker on Diaoyu/Senkaku to incorporate Diaoyu/Senkaku formally into the Japanese territory. Since then Japan had exercised effective control over Diaoyu/Senkaku until the end of World War II by, for instance, leasing or disposing of State-owned land, collecting land-rents and land-taxes, and issuing licences for guano mining.

**10** Japan contended in the Basic View Statement that Diaoyu/Senkaku were neither part of Taiwan nor part of the Pescadores Islands that were ceded to Japan from China in accordance with the Shimonoseki Treaty, because the incorporation of the former islands into the Japanese territory predated the conclusion of that treaty. Accordingly, it claimed, Diaoyu/Senkaku were not included in the territory ('Formosa and the Pescadores', see para. 8 above) that it renounced under Art. 2 San Francisco Peace Treaty; instead, they were placed under the administration of the US in accordance with Art. 3 San Francisco Peace Treaty.

**11** In addition, Japan also pointed out in the Basic View Statement that for a long time since the entry into force of the San Francisco Peace Treaty, China had raised no objection to the fact that Diaoyu/Senkaku were included in the area placed under US administration; it was not until 1970 when movements relating to exploitation of oil resources deposited in the East China Sea continental shelf surfaced, that the People's Republic of China and the Republic of China started to raise questions regarding Diaoyu/Senkaku. All this, according

to Japan, clearly indicated that China had not until recently regarded Diaoyu/Senkaku as part of Taiwan (→ *Acquiescence*).

**12** The question of sovereignty over Diaoyu/Senkaku could have been discussed in 1972 when Japan and the People's Republic of China normalized their relations and in 1978 when they concluded the Treaty of Peace and Friendship between them. At those times, it was agreed between the two States that they would not touch on the issue, according to Deng Xiaoping's press interview on 25 October 1978.

## **D. Recent Developments**

### **1. Conflicting Maritime Claims**

**13** The United Nations Convention on the Law of the Sea of 1982, to which both Japan and China are parties, allows coastal States to establish an exclusive economic zone ('EEZ') up to 200 nautical miles from the baselines from which to measure the breadth of the territorial sea (Art. 57 UN Convention on the Law of the Sea). It also provides that coastal States have a continental shelf that extends to a distance of 200 nautical miles from the baselines where the outer edge of the continental margin does not extend up to that distance (Art. 76 UN Convention on the Law of the Sea). The fact that Japan and China share a continental shelf and that their potential EEZs overlap in the East China Sea, as well as the fact that the distance between the two States' coasts in that ocean area is less than 400 miles, requires the two States to agree on delimitation of the shelf and the zones. Since Diaoyu/Senkaku are located in the East China Sea, they may have some influence on the maritime boundary dispute if the islands are considered to be one of the relevant circumstances for the delimitation (→ *Boundary Disputes in Asia*).

**14** In this maritime boundary dispute Japan contends that the boundary, both for the continental shelf and EEZ, should be established on the basis of the median line to be drawn between the baselines of both States, while at the same time claiming that it is entitled to a 200-mile continental shelf. China claims that the Chinese continental shelf extends beyond the 200-mile area to Okinawa Trough, north-west of the Ryukyu Islands, and that delimitation based on the median line is not acceptable.

**15** These differing claims and positions are reflected in their respective legislation enacted regarding the EEZ and continental shelf. Concerning the conflicting claims, the Chinese legislation—Exclusive Economic Zone and Continental Shelf Act of 1998—provides that they 'shall be settled, on the basis of international law and in accordance with the principle of equity, by an agreement delimiting the areas so claimed' (at Art. 2). The Japanese legislation—Law on the Exclusive Economic Zone and the Continental Shelf of 1996—provides that where any part of the 200-nautical-mile line lies beyond the median line as measured from the baseline of Japan, 'the median line (or the line which may be agreed upon between Japan and a foreign country as a substitute for the median line) shall be substituted for that part of the line' (at Arts. 1 (2) and 2).

### **2. Dispute over Gas Exploitation**

**16** In the late 1990s, against the background of rapid growth of economy and energy demand, China started to drill exploratory wells for natural gas in an area on the Chinese side of—but close to—the median line between Japan and China in the East China Sea (distant from Diaoyu/Senkaku). It was reported in May 2004 that China had started to construct an exploitation facility in the area. As oil/gas resources may lie across the median

line underground, this generated Japanese concerns about losing its resources on the Japanese side of the line, and led to the bilateral consultations on the issue in October 2004.

**17** The Japanese government had long been reluctant to give exploitation licences even on the Japanese side of the median line, taking into account Art. 83 (3) UN Convention on the Law of the Sea. However, in view of the Chinese activities, it gave a licence to a Japanese oil company in July 2005 to drill a test well in areas that are on the Japanese side of—but close to—the median line.

**18** Currently, one of the most promising ways of resolving the differences is considered to be a joint exploitation of the resources. During the bilateral consultations in September–October 2005, Japan proposed to China a joint project of exploiting natural gas resources in an area that included the above Chinese wells (→ *Joint Exploitation Areas*). China rejected the Japanese proposal and made a counter-proposal in March 2006 for a joint exploitation project in two areas, one of which was close to Diaoyu/Senkaku.

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