



## The East China Sea territorial dispute Senkaku, Diaoyu, or Tiaoyutai Islands?

**SUMMARY** *Japan, China, and Taiwan all lay claim to a group of barren islands and rocks in the East China Sea (ECS). They see strategic and economic advantages in claiming sovereignty over them. Chinese and Taiwanese trawlers and other boats regularly approach the islands, which are under Japan's control. Taiwan recently tried to alleviate tensions by proposing an "East China Sea Peace initiative".*

*Important shipping lanes pass through the ECS. Many commentators say that China has become increasingly assertive, wanting to extend its sphere of influence. Japan's administration of the islands is backed up by the US, which nevertheless does not have a final stance on sovereignty. The ECS is also home to possibly abundant oil, gas and fishing grounds.*

*The UN Convention on the Law of the Sea (UNCLOS) provides rules for defining territorial seas and other maritime areas. Japan and China use different UNCLOS provisions to justify their claims to the waters around the islands.*

*Taiwan's peace initiative aims to explore and exploit resources jointly, independent of the territorial dispute, for which it is trying to get an equal seat at the negotiating table. Japan is refusing to negotiate sovereignty over the islands, but recently sent a high level envoy to China.*



Frigate on sea patrol

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### Timeline

**1556:** Ming dynasty annexes the islands (according to China and Taiwan)

**1885:** Japan annexes the islands, claiming they were not under any state's control

**1945:** The islands are placed under US administration after Japan's surrender

**1968:** UN [ECALE](#) study points to the possibility of oil reserves around the islands

**1971:** Okinawa Reversion Treaty returns the islands to Japanese administration; Taiwan also lays claims to them, China follows suit

**2010:** Collision of a Chinese trawler with Japanese coastguard boats

**April, September 2012:** Japanese decision, then purchase of some of the islands from their private owners

**August 2012:** Taiwan's East China Sea Peace Initiative

### Introduction

Japan, China (People's Republic of China, PRC) and Taiwan all lay claim to five uninhabited islands and three rocks<sup>1</sup> in the East China Sea (ECS), between Japanese Okinawa and Formosa (Taiwan<sup>2</sup>). Japan calls the islands the **Senkaku**, China the **Diaoyu**, and Taiwan the **Diaoyutai** or **Tiaoyutai**. The islands themselves are barren, but the competing states see military and economic advantages in owning them.

Japan, which holds administrative control over the archipelago, denies that there is a

territorial dispute. China agrees with Taiwan that the islands should be Taiwanese, but claims, in turn, sovereignty over all of Taiwan, including the islands.

### Recent developments

A number of incidents<sup>3</sup> mainly during the 2000s involving Chinese, Taiwanese and Hong Kong incursions in the waters close to the islands created tensions among the three claimant parties. These appeared to become ever more dangerous, and in 2010, a Chinese trawler collided with two Japanese coastguard ships near the islands. The incident provoked a diplomatic crisis between the two countries. The nationalist Governor of Tokyo [announced](#), in April 2012, his intention to buy three of the islands from their private owners, which caused protests in China. Japan's government pre-empted the governor and bought the islands in September 2012. China adopted a legal framework unilaterally defining its territorial waters and empowering it to expel foreign vessels from disputed waters in the ECS. Taiwan's President Ma announced an "East China Sea Peace Initiative" on 5 August 2012. It proposes peaceful collaborative development of the resources found around the islands, such as fisheries, oil, and gas, as well as different forms of diplomacy to seek a solution to the dispute.

## Possible root causes of the dispute and geopolitical context

### Strategic importance

The ECS provides important shipping lanes, so peace and open access to this area is in the interest of all nations profiting from naval commerce. Several analysts describe an expansive or at least increasingly assertive Chinese policy on maritime and territorial disputes.<sup>4</sup> Some say that it aims to control the "[First Island Chain](#)", a semi-circle of islands around mainland China in the ECS and South China Sea (SCS)<sup>5</sup>. China claims nearly the entire SCS, which it now considers of "[core national interest](#)", on the same level as Tibet, Xinjiang or Taiwan. The Japanese

professor Masako Ikegami (Stockholm University) voices the [opinion](#) that China's real agenda in the ECS territorial squabble could be Taiwan. She explains that China has already taken some SCS islands by force from Vietnam, and if it were also to take control of other islands there, as well as the Senkaku / Diaoyu islands, Taiwan's territorial waters and other waters effectively under its control would be "completely besieged". In that case, she goes as far as to predict the end of US hegemony in the Asia-Pacific region. A Council on Foreign Relations [analysis](#) relates an opinion of Chinese think-tanks that the US cannot allow China to gain true maritime power because that would be detrimental to its national interests. Accordingly, the Congressional Research Service ([CRS](#)) reports China to be unhappy about the US policy of "[rebalancing towards the Asia/Pacific region](#)".

The [CRS](#) and [other commentators](#) explain that the Senkaku / Diaoyu / Tiaoyutai islands are covered by the 1960 US-Japan Security Treaty. In the event of an attack, the US would come to Japan's aid in return for being allowed to station US troops on the Japanese archipelago. The US, although prepared to defend Japanese administration of the islands, however [maintains](#) that it takes a neutral position as to which state should have sovereignty over them.

### Economic motivations

Owing to its rapid development, China's need for **oil and gas** is constantly growing. The US Energy Information Administration ([EIA](#)) reports that China recently became the second largest net oil importer behind the US. Japan is the third. Reserves in the ECS are under-explored due to the dispute, with foreign companies hesitant to invest, but the EIA estimates it to hold 60 to 100 million barrels of oil and 1 to 2 trillion cubic feet of natural gas. There is some cooperation between Japan and China on oil pipelines. Gas seems to be a slightly more delicate issue, as China has been producing it from a field in a disputed part of the ECS, claiming it

to be within its Exclusive Economic Zone (EEZ, see UNCLOS chapter below). Gas is a priority for the Chinese government, to reduce its dependence on polluting fossil fuels such as coal. Japan protested against this unilateral move in 2009 and in stronger language in July [2013](#), since the two countries had agreed in 2008 to explore gas resources together and halt development in contested areas. CRS [confirms](#) that this agreement has not been implemented. Taiwan has not actively pursued such resources in the ECS on its own, but its national oil corporation has entered into a joint venture with the Chinese one.

Many recent incidents have been related to **fisheries**. China and Taiwan use the fact that their population has traditionally used the ECS as fishing grounds as justification for their claims to the islands. It is however difficult to determine which came first: the interest in fishing or wider power considerations. When Taiwanese or Chinese coastguard vessels accompany their fishermen to the islands, this can be seen as an end in itself, or as using fisheries to assert sovereignty. CRS writes that an increase in Chinese maritime patrols could be observed from 2006, and in fisheries law enforcement voyages in the area from 2010.

Some analysts also consider that **nationalism and domestic politics**, both in Japan and China, are to blame for the recent tensions and incidents. Japanese Premier Shinzo Abe, [re-elected](#) on 21 July 2013, is widely seen as nationalist and promised a hard line on the islands during his campaign. Stimson analysts, Richard Cronin and Zachary Dubel, report nationalist rhetoric from China and say that its Communist Party, compromised by slowing economic growth and corruption, is using this with the aim of regaining legitimacy in public opinion.

## UNCLOS and its use in the dispute

Sovereignty over the islands would be advantageous for each of the competing

states, because they could use them to justify rights under the 1982 [United Nations Convention on the Law of Sea](#). UNCLOS, in force since 1994, provides rules to define the extent of more or less exclusive maritime areas in relation to coastlines, islands and other features in the open sea (coral reefs, rocks, sandbanks etc). The Stimson analysts [stress](#) that UNCLOS does not deal with determining ownership of these landlike features. While its [Tribunal for the Law of the Sea](#) can adjudicate on maritime boundaries, it does so only at the mutual request of the relevant parties. Nevertheless, the rights derived from UNCLOS can be seen as rendering the interaction of the contesting parties [more contentious](#). UNCLOS confers states the right to:

- a) **Territorial Sea**: a zone of 12 nm (nautical miles) around a coastal state. Foreign vessels are granted "innocent passage", but have to respect the country's legislation.
- b) **Contiguous Zone**: a further 12 nm so that a state can protect its territory and territorial seas.<sup>6</sup>
- c) **Exclusive Economic Zone (EEZ)**: up to 200 nm from the baseline of its territorial waters, states are granted certain economic rights, including exploitation and conservation of natural resources (living and non-living) in the sea and seabed. Only habitable islands can generate an EEZ. EEZ are delimited by bilateral agreements in cases where the distance between countries is less than 400 nm. Such deals are concluded according to the 1958 [Geneva Convention on the Law of the Sea](#), using the criterion of the median line as the basis to divide the continental shelf.

For formal claims that go beyond 200 nm, UNCLOS has a special body, the [Commission on the Limits of the Continental Shelf](#).

### How the disputing parties use UNCLOS

Japan and China use UNCLOS to justify their claims to the sea around the islands, not the territory itself. **China** made a continental shelf [claim](#) on the East China Sea in December 2012. It argued that the whole ECS continental shelf, on which the islands are located, is the "natural prolongation of China's land territory". If the UN Commission approves this claim, China may be given additional economic rights (albeit less extensive than for the EEZ<sup>7</sup>) for up to 350 nm from the baseline of its territorial sea.<sup>8</sup> The CRS [explains](#) that **Japan** claims the same continental shelf up to a median line between its undisputed territory and that of China, using an EEZ as justification. Both states thus interpret UNCLOS differently, according to their interests. The EIA [reports](#) that China rejects Japan's claim.

### US view

The US has not [ratified](#) UNCLOS, but CRS explains that it implements it more consistently than China. The US is, moreover, concerned about Chinese cherry-picking of provisions: China considers that military craft need permission to operate in another nation's EEZ. US surveillance and military activity worldwide would become affected if this view became widely accepted. According to [Stimson](#), the US view is that UNCLOS only allows states to restrict military vessels in their territorial seas.

### Taiwan's East China Sea Peace Initiative

On the 60th anniversary of the 1952 peace treaty between Japan and Taiwan (Taipei Treaty), Taiwan's President Ma Ying-jeou proposed the [ECS Peace Initiative](#), calling on the other parties to the dispute to lay aside their disagreements and proceed towards peaceful development of the abundant

resources found in the ECS. Nevertheless, the initiative reiterates **Taiwan's claim** to the islands, justifying it with different treaties and historical documents: the islands were not *terra nullius* (land without an owner) when Japan annexed them during the Sino-Japanese war in 1895. Taiwan claims that they should have been returned to them after 1945, according to the Cairo Declaration, the Potsdam Proclamation, the Instrument of Surrender of Japan, the Treaty of San Francisco and the Taipei Treaty.

Solutions to the territorial dispute should be sought through bilateral **negotiations** between the three claimants, which would

#### EU activities

EU High Representative Catherine [Ashton](#) called on 25 September 2012 on all parties to calm the situation in East Asia's maritime areas, using UNCLOS and other international rules to resolve disputes.

The EP, in its [resolution](#) of 14 March 2013 on EU-China relations, describes the ECS dispute as overshadowing China's positive role in economic regionalisation. It takes note of Taiwan's ECS Peace Initiative.

later be upgraded to trilateral talks. Bilateral negotiations would involve Track I diplomacy, passing through official channels, as well as [Track II diplomacy](#). This sort of unofficial diplomacy uses eminent persons (often academics, NGO or church representatives), who do not officially represent any country,

to build relationships and generate fresh ideas. These can then feed into the official policy process.

In a second stage, the Taiwanese initiative proposes to jointly develop and manage **resources** through:

- organising bilateral and multilateral fishing industry meetings;
- promoting joint exploration of waters for the mining industry;
- conducting multinational marine and ecological research projects;
- collaborating in maritime and unconventional security: law enforcement exchanges, marine rescue agency operations.

Collaboration in most of these sectors

should lead to mechanisms to perpetuate joint management.

Taiwan furthermore proposes to establish an **ECS code of conduct**, along the lines of that [under negotiation](#) for the SCS. This ASEAN declaration, if converted into a code of conduct, would commit states to peaceful resolutions to sovereignty disputes.

### Reactions and opinions on the initiative

Japan agreed in April 2013 to make the fisheries in the EEZ around the islands accessible to Taiwanese fishing boats. On 6 June 2013, the country however [rejected](#) Ma's proposal for trilateral talks, arguing that Japan's sovereignty over the islands was established – historically and according to international law.

Analyst [Brian Benedictus](#) takes a more critical stance on the initiative, suggesting that Ma has "complicated Taiwan's already difficult position in the East Asian diplomatic arena". China could seize the moment and present Taiwan's claims, which are on the same grounds as China's, as bolstering their own. Taiwan's long-term allies, Japan and the US, could start to doubt Taiwan's reliability and see the country moving more under China's influence.

According to a DG EXPO Policy Department [note](#), China has indeed asked Taiwan to present a united front on the issue against Japan. With its initiative, Taiwan preferred to try to get an equal seat at a triangular negotiating table. Academic [Michal Thim](#)

considers that for Japan, though interested in good relations with Taiwan, the major problem is China's position. On 29 July 2013, a Japanese [vice foreign minister](#) travelled to China to discuss the situation, with the intention of improving relations.

### Main references

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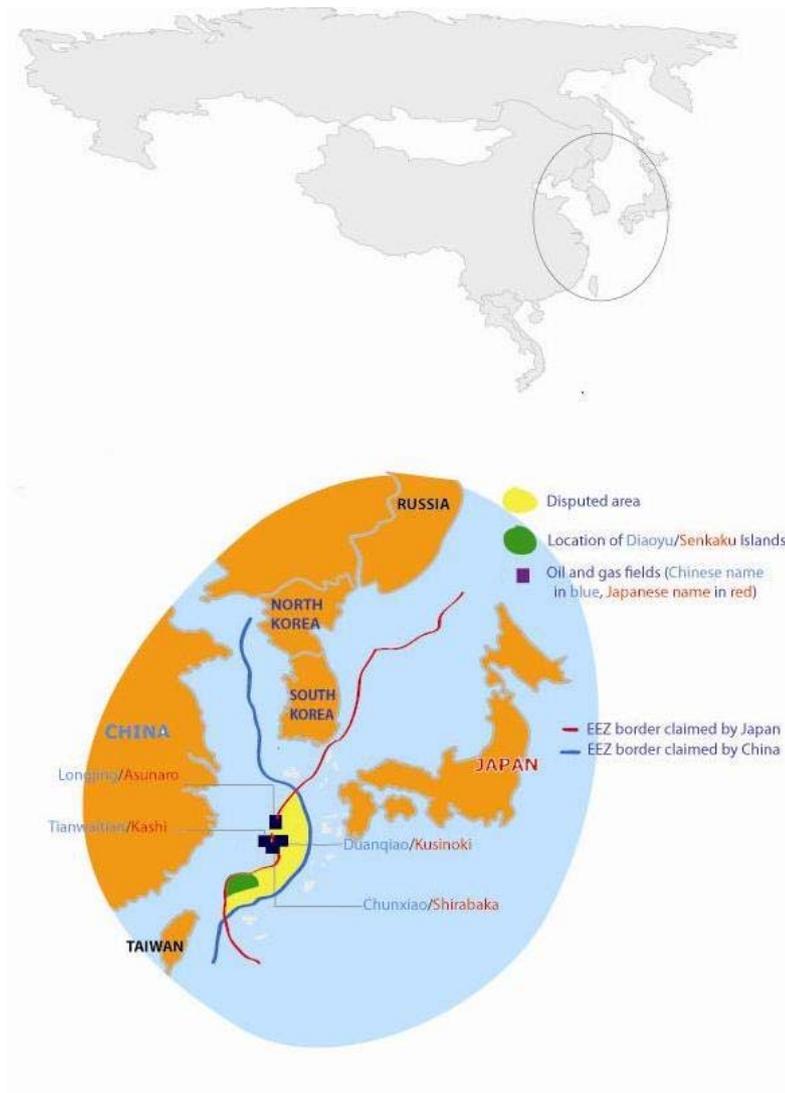
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## Annex: Map of the islands



## Endnotes

- <sup>1</sup> There is a legal difference between the two terms "islands" and "rocks", which is relevant for claims under UNCLOS. For simplicity, the term "islands" is used for both islands and rocks in this briefing.
- <sup>2</sup> Taiwan calls itself Republic of China (ROC). The EU, according to its [One China Policy](#), does not recognise Taiwan as a state, but collaborates with it at bilateral and multilateral level where this does not require statehood.
- <sup>3</sup> See also [Escalating tensions between Japan and China in East Asia's maritime areas, quick policy insight, 2012](#) / Sandro D'Angelo, DG EXPO Policy Department, 1.12.2012, and for a more complete enumeration of incidents [East China Sea Disputes - A Japanese Perspective](#), Annex to Stimson report, Yuki Tatsumi, August 2012
- <sup>4</sup> See also [Japan and the East China Sea Dispute](#) / Sheila A. Smith, Council on Foreign Relations, Summer 2012.
- <sup>5</sup> Some of the contested features in the SCS are islands, but most are rocks that are only above water at low tide, or coral reefs. The main features are the Paracel and Spratly islands, the Macclesfield Bank, and the Scarborough Shoal.
- <sup>6</sup> UNCLOS, [Part II](#), Territorial Sea and Contiguous Zone, for the latter see Art. 33
- <sup>7</sup> [Maritime Security in East Asia: Boundary Disputes, Resources, and the Future of Regional Stability](#) / Richard Cronin, Zachary Dubel, Stimson, 2012, 29 p.
- <sup>8</sup> UNCLOS, [Part VI](#), Continental Shelf