

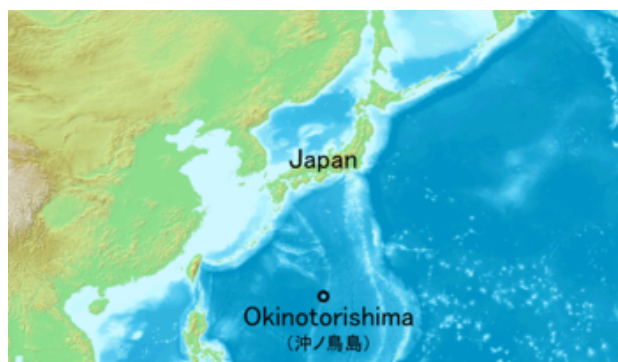
# The US-Japan-China Mistrust Spiral and Okinotorishima

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The southernmost island of the Japanese archipelago has been a source of contention between Japan and China since 2004, when Chinese officials started to refer to it as “rocks” not as an “island.” In international law, rocks cannot be a basis for claiming an Exclusive Economic Zone (EEZ). After the Chinese challenge to its territorial right over Okinotorishima, Japanese officials reacted vigorously, notably Tokyo Governor Ishihara Shintaro, within whose jurisdiction Okinotorishima falls. Ishihara ordered installation of a 330 million yen radar system for surveillance and set up an address plate at the “island.” The two countries continue to dispute the issue.



Okinotorishima is an unusual territorial issue in that this is not a case in which two or more countries claim control of a territory. China does not dispute Japanese territorial claims to Okinotorishima. The heart of the dispute is whether Japan can legitimately claim an EEZ

by defining the unmanned rocks as islands, thereby obtaining an EEZ. In denying the Japanese EEZ claim in the area, China lays claim to the right to freely investigate the seabed in the surrounding area. Chinese concerns also center on the right to conduct submarine operations in the event of military conflict involving Taiwan.

The underlying theme is the mutual mistrust illustrated by the Okinotorishima squabble. Ultimately, Japan will have to address China’s underlying concerns, especially regarding Taiwan, which is the key to solving the Okinotorishima issue, which is merely the tip of the iceberg of Sino-Japanese relations.

### I. Historical Background

The first record of Okinotorishima dates back to 1789 when the English ship Iphigenia found the territory. The territory was named “Douglass Reef” the following year. In 1922 and 1925, the Japanese navy ship Manshu investigated the territory. In 1931, confirming that no other country had claimed it, Japan declared it Japanese territory and placed it under the jurisdiction of City of Tokyo as a part of the Ogasawara Islands, which are south of Tokyo, and named it Okinotorishima.

The driving force behind the Japanese action was the Navy, which saw in the coral atoll with five “rocks” visible above sea level favorable conditions for building a hydroplane base. The location in the middle of the Philippines Sea was perfect from a military perspective, and the surrounding sea was deep. Though debatable whether a coral reef could be claimed as territory even from the viewpoint of

the international law at the time, the government made a *fait accompli* by claiming it. No country officially objected to the inclusion.

The Japanese government referred to the base in public statements as “a lighthouse and a meteorological observation site.” During 1939 and 1941, foundation work was completed for the buildings. However, construction was interrupted by the start of the Pacific War. [1]

After World War II, Japan lost sovereignty over the Ogasawara islands, including Okinotorishima until 1968 when the U.S. returned it. It did not attract much attention until the late 1970s, when nations started to claim EEZs. In 1983, Japan signed the United Nations Convention on the Law of the Sea, which sets forth the law on the EEZ. The U.N. Convention itself took effect in 1994 and for Japan in 1996. Based on its possession of Okinotorishima, Japan claimed an EEZ of approximately 154,500 square miles (400,000 Km<sup>2</sup>), larger than the area of Japan itself. [2]

To halt the physical erosion of Okinotorishima, which by the 1970s had been reduced to two rocks, the Metropolitan Tokyo, and later the central government, built steel breakwaters and concrete walls between 1987 and 1993. [3] The U.N. Law of the Sea states, “An island is a naturally formed area of land, surrounded by water, which is above water at high tide. ... The exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory.” It was necessary for Japan to maintain the “islands” above sea level at all times in order to substantiate its claim to the large EEZ.

On April 22nd, 2004, during bilateral talks in Beijing to discuss Chinese marine research activities within Japan's EEZ, Chinese diplomats stated that China did not regard Okinotorishima as an islet. While

acknowledging Japan's territorial rights to Okinotorishima, China insisted that it was simply rocks, not an island. The U.N. Law of the Sea states, “Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.”

Okinotorishima has never been inhabited and its economic life is disputable. The only man-made structure on the islands is a marine investigation facility built by the Japan Marine Science and Technology Center in 1988, which has been maintained since then despite repeated damage by typhoons. [4] In denying Japan's EEZ in the area, China insists that its research activities in the area in 2004 should not be counted as a violation of the U.N. Convention on the Law of the Sea. [5]

This Chinese view was supported in 1988 by Dr. Jon Van Dyke, a professor of law at the University of Hawaii. He wrote, “Okinotorishima - which consists of two eroding protrusions no larger than king-size beds - certainly meets the description of an uninhabitable rock that cannot sustain economic life of its own. It is not, therefore, entitled to generate a 200-mile exclusive economic zone.” [6] Experts point to the similarity of Japan's position to Britain's in its failed attempt to claim an EEZ around Rockall, an uninhabited granite outcrop in the Atlantic. London eventually dropped its claim in the 1990s when other countries objected. Dr. Van Dyke reiterated the point in 2005. [7]

On the other hand, Tadao Kuribayashi, a professor of law at Toyo Eiwa University in Tokyo, insists that the Japanese claim is justifiable as there is no definition of a “rock” in international law. Geologically speaking, he argues, coral reefs and rocks (objects consisting of hard continental soil) are different. He argues that a country can claim its own EEZ or continental shelf based on its possession of coral reefs. [8]

## II. The Spiral of Mistrust

Since April 2004, the Chinese government has been saying that it is prepared to recognize the territorial rights of Japan to Okinotorishima, but not on the basis that it is one or more “islands.” The Chinese definition precludes claims to an EEZ based on possession of Okinotorishima.

Okinotorishima, located at a latitude of 20 degree 20’ north and a longitude of 136 degree 05’ east, or roughly 1,100 miles (1,700km) south of Tokyo, is situated midway between Taiwan and Guam. The American fleet could well pass the area en route from Guam in the event of military engagement in the Taiwan straits. In such a case, the PRC would wish to exercise naval, including submarine, control of the area. [9] For this purpose, the PRC Navy would require a seabed map for use by its submarines in the area.

There is evidence of Chinese surveys in order to draft such a map. In March 2004 the Japanese press reported that Chinese marine research vessels had conducted illegal research activities in Japan's EEZ at least 11 times during the period from January to March of 2004. Japan Defense Agency (JDA) officials dated the activities as Feb 29 and March 2-4, 2004. [10] In July, a Chinese navy survey ship was spotted towing a wire, an act that could be interpreted as oceanographic research. [11] JDA said that a Japanese Self-Defense Forces (SDF) patrol aircraft discovered two different Chinese navy and government vessels in Japan's EEZ on five occasions that month. [12] In December another ship was found using sonar, apparently to map the sea floor for Chinese submarine activities. [13]

The U. N. Convention on the Law of the Sea stipulates that prior approval is required at least six months in advance from concerned countries when one country wants to conduct oceanographic research in the exclusive

economic zone of another. In the absence of such requests by China, Tokyo issued a series of protests to Beijing. [14] China responded that the surveys were conducted not in Japan's EEZ but in the high sea.

The history of contention over Chinese surveys in the East China Sea, said to have rich reserves of oil and natural gas, can be traced to 1999. After China conducted 33 surveys in 1999 and 19 in 2000 without notifying Japan, Japan protested. In February 2001, the two countries signed an accord under which Japan and China agreed to notify each other if they conducted marine resource surveys in the EEZ claimed by the other. The number of cases in which China failed to notify Japan before conducting such surveys subsequently sharply decreased. Nevertheless, China conducted four marine surveys without notifying Japan in 2001, two in 2002 and none in 2003 before increasing to four in 2004. [15] The issue remains a source of contention between the two nations.

In the past, when Japan protested oceanographic research in its waters, China discussed the matter calmly through diplomatic channels. But suddenly, in April 2004, eight years after Japan declared its EEZ, China raised tensions to a higher level by denying Japan's EEZ. It appears that Beijing perceived an urgent security threat to Taiwan in the events leading up to the April statement. On April 1, 2004, the Pentagon announced plans to sell Taiwan two long-range early-warning radars and associated equipment totaling nearly \$1.8 billion as part of an effort to bolster the island's defenses in the face of a Chinese missile buildup. [16] The U.S. decision was in response to the recent military buildup of a large missile arsenal facing Taiwan. [17] China's President Hu Jintao denounced the U.S. action in a telephone conversation with President Bush. [18] While the U.S. did not reverse course on the sale, it emphasized its commitment to a One-China policy. The conflict in the region thus involves the U.S., China,

## Japan and Taiwan.

The mistrust spiral continued to unfold. In November of 2004, a nuclear-powered Chinese submarine passed through Japanese territorial waters between two Japanese islands near Taiwan, alerting the Maritime SDF. In violation of international law, the submarine did not surface or identify itself. Japanese officials state that China later apologized. [19]

In February 2005, a U.S.-Japan statement following the Security Consultative Committee Conference, also known as the 2+2 meeting, for the first time proclaimed the maintenance of peace in the Taiwan Strait as a common strategic objective. China denounced the statement as an infringement on its sovereignty. Until then, both countries had adopted strategic ambiguity on the question of whether the scope of the US-Japanese alliance included the Taiwan Straits issue.

In April 2005, the EU delayed the decision to lift its arms embargo against China, primarily due to strong American pressure. In August 2005, Israel, which had canceled arms sales to China in 2000, agreed to consult with the U.S. before selling weapons to China. [20] This meant that Beijing's options with regard to supplies of modernized weaponry were limited, primarily due to American pressure.

Since 2005, the Pentagon has submitted annual reports on the Chinese military to Congress, asserting that Beijing's military buildup could pose a threat to U.S. allies in Asia and upset the regional balance of power. (Previously, the Pentagon's annual China report focused on Beijing's ability to conduct a war over Taiwan.) The study broadly assesses China's overall ambitions and cites its increased desire for energy resources as a growing factor in Beijing's military and diplomatic profile. [21] "U.S. Sees Broad China Threat in Asia", Wall Street Journal, Jul 20, 2005.

During August 18-25th, 2005, China engaged in a joint military exercise with Russia, for the first time involving the armies, navies, air forces and other units of the two countries' militaries. Its purpose was explained as improved coordination of the two armed forces to better handle "crises and meet new challenges and threats" including "international terrorism, extremism and separatism," according to the Chinese defense ministry. [22] "Separatism" sends a message that China does not preclude the military option against Taiwan.

In September 2005, China deployed five warships near a gas field in the East China Sea two days before the general election in Japan. [23] In December 2005, Foreign Minister Aso Taro called China a "considerable threat," noting that China's military spending had increased for 17 consecutive years. [24]

Continuing even to this day, in December 2006, the Chinese defense white paper warned of the enhanced US-Japan alliance and government efforts to amend Japan's peace constitution. [25] Two days after the Japanese Defense Agency was upgraded to become the Ministry of Defense in January 2007, [26] China conducted an Anti-Satellite weapon test. [27]

These events illustrate deep mistrust between Japan and the US on the one hand and a rising China on the other. With underlying mutual mistrust among the three regional powers, China has been taking measures to keep its options open with respect to the US and Japan. For example, it is enhancing its military capabilities, without much transparency. According to the Military Balance, 2007 edition, the defense expenditure of Japan in 2006 was only 16 percent greater than that of China, [28] whose GDP is approximately a third that of Japan. The recent modernization of the PLA has alarmed Japan. Since 1996, Japan's white paper on defense has expressed concerns about China's military build-up, especially

noting uncertainties caused by frequent tense relations between China and Taiwan.

Further, China is teaming with Central Asian nations and Russia to forming the Shanghai Cooperation Organization (SCO), engaging in joint military exercise with Russia in 2005, with Tajikistan in 2006 and with Kazakhstan, Kyrgyzstan, Russia, Tajikistan and Uzbekistan in 2007, under the SCO framework. In addition, China has built naval facilities in Pakistan and Myanmar and strengthened ties with Bangladesh, Cambodia and Thailand along searoutes from the Middle East to the South China Sea, in order to protect its oil shipments and further project its power. [29]

Of course, Japan and the US have held repeated military exercises including Rim of the Pacific (Rimpac), the latest held in 2006, and Cobra Gold, the latest held in 2007, along with Southeast Asian countries. Further, the US has engaged in joint military exercise with other countries, including India, Singapore, and the Philippines. In East Asia, the US has bases not only in Japan but also in Australia, South Korea, Singapore, and Indonesia, hosting about 80,000 active duty military personnel. [30] However, while the American military presence in East Asia has long been part of the regional power balance, about which China has every right to be concerned, recent Chinese activities can also be viewed as disrupting the power balance in the region, creating a new concern to the US and Japan.

These activities to shift the power balance, especially the military enhancement, could have the effect of increasing Japanese dependence on the US in line with the recent expansion in the scope and depth of the US-Japan military alliance.

On the other hand, the US view of China remains contradictory. China has become a vital business partner but the Bush administration has also recognized China as a

growing military and strategic threat. Washington's mixed messages have encouraged China to expand its reach both militarily and diplomatically.

While Chinese, Japanese and U.S. leaders have taken pains to avoid war in the region, the mistrust spiral could lead to the Rubicon. What is certain is that misunderstandings and misperceptions run deep.

### **III. The Japanese Response on Okinotorishima**

The Chinese statement of April 2004 prompted Chief Cabinet Secretary Fukuda Yasuo (and, from September 2007, Prime Minister) to comment that "The Chinese claim that the island is a rock is absolutely unacceptable. We designated the area around the island as an Exclusive Economic Zone based on international and domestic law. China is the only country that insists it is a rock." [31]

In November 2004 and March 2005, Japan's Nippon Foundation, formerly the Sasagawa Foundation, dispatched a mission to investigate how Okinotorishima and the surrounding EEZ could be utilized. The mission included experts in the fields of the international law, coral reef ecology and construction.

The report recommended the following: build a lighthouse; breed coral and in various ways such as planting glauconite and foraminifera (hard-shelled microscopic organisms whose bodies become sand as they die) develop an artificial reef; build an ocean-thermal energy conservation power plant; investigate mineral resources in the sea bottom; build social infrastructure such as a port and houses for human habitation, marine studies, and development; and promote sightseeing. [32]



With a lighthouse, the island would be added in the charts around the globe with the name Okinotorishima, and its presence would be enhanced. The breeding of the coral reef and sand were to enlarge the “island”, considering the trend of a rise in the sea level due to global warming, along with securing space for human habitation. The power plant is expected to make it possible to extract lithium, which Japan imports. [33]

Based on the first mission, a second mission was dispatched to conduct feasibility studies in the most promising fields of marine engineering, power generation, and building lighthouse. [34]

Encouraged by the Nippon Foundation’s activities, in May 2005, Ishihara Shintaro, the governor of Tokyo, paid a high profile visit. In the Sankei Shimbun on June 6th, he wrote that Japan has been spending money on Okinotorishima for future development since 1932 with some intervals, including 85 billion yen (approximately 740 million dollars) to build and maintain a residence. These historical facts cannot be reversed by the U.N. convention. He underlined the strategic importance of the area for national security and cited U.S. estimates that the number of Chinese submarines would reach 130 in ten years compared to 25 of the US Navy. He concluded that Japan should

establish effective control over the surrounding water through economic activities such as fishing in order to prevent China from developing the area as a base for submarines. [35]

In April 2005, a Japanese boat went to the area to fish at the request of Governor Ishihara, in order to demonstrate the existence of “economic life” in the area. [36] Japan decided to build a lighthouse. [37] Tokyo also decided to install a 330 million yen radar system for round-the-clock surveillance to detect vessels approaching Okinotorishima [38] and set up an address plate at the “island.” [39]

#### **IV. Conclusion: Confidence Building Measures are the True Solution**

The problem, here, is that Tokyo is preoccupied with the goal of making the area inhabitable, rather than addressing the root cause of the dispute: Chinese concern about US and Japanese intervention in the Taiwan issue.

Rather than intensifying tensions among the three powers, the mistrust spiral should be ended. In this trilateral relation, those who hold the key to breaking this mistrust cycle are the US and Japan, rather than China. Beijing’s various attempts to get real responses from the two have thus far been in vain. The issues are particularly critical for Japan. After all, China is its neighbor and the Chinese military threat is much more palpable for Japan than the US. China is a regional power with which Japan has been not quite successful in establishing a strategic relation, while the uncertainty of the regional security heavily depends on the relations between the two.

In order for both countries to avoid conflicts which they do not want, they should focus on confidence building measures. Unless Japan and China build mutual trust in their basic diplomatic policy, the two countries cannot solve the Okinotorishima issue or other

territorial issues such as the Diaoyutai/Senkaku Islands, peacefully. If Japanese efforts to legally call Okinotorishima an “island” should succeed, the price in mutual distrust between China and Japan will be high. It is only through mutual concessions that tensions in the region can be reduced and the substantial mutual relations between the two nations, as neighbors and major economic partners can be realized.

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## Notes

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