

ASIAN POLITICAL, ECONOMIC AND SECURITY ISSUES

Yuan Sun
Editor

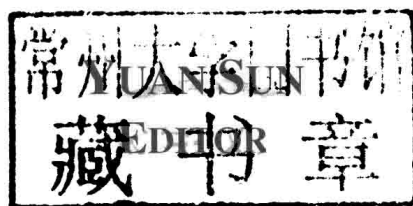
Maritime
Territorial Disputes
Involving China



NOVA

ASIAN POLITICAL, ECONOMIC AND SECURITY ISSUES

MARITIME TERRITORIAL DISPUTES INVOLVING CHINA



 **nova**
publishers
New York

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Additional color graphics may be available in the e-book version of this book.

Library of Congress Cataloging-in-Publication Data

ISBN: 978-1-62417-694-4

Published by Nova Science Publishers, Inc. † New York

PREFACE

This book presents policy and oversight issues for Congress arising from (1) maritime territorial disputes involving China in the South China Sea (SCS) and East China Sea (ECS) and (2) an additional dispute over whether China has a right under international law to regulate U.S. and other foreign military activities in its 200-nautical-mile maritime Exclusive Economic Zone (EEZ). China is a party to multiple maritime territorial disputes in the SCS and ECS, including, in particular, disputes over the Paracel Islands, Spratly Islands, and Scarborough Shoal in the SCS, and the Senkaku Islands in the ECS. Maritime territorial disputes involving China in the SCS and ECS date back many years, and have periodically led to incidents and periods of increased tension. The disputes have again intensified in the past few years, leading to numerous confrontations and incidents, and heightened tensions between China and other countries in the region, particularly Japan, the Philippines, and Vietnam.

Chapter 1 – This report presents policy and oversight issues for Congress arising from (1) maritime territorial disputes involving China in the South China Sea (SCS) and East China Sea (ECS) and (2) an additional dispute over whether China has a right under international law to regulate U.S. and other foreign military activities in its 200-nautical-mile maritime Exclusive Economic Zone (EEZ).

China is a party to multiple maritime territorial disputes in the SCS and ECS, including, in particular, disputes over the Paracel Islands, Spratly Islands, and Scarborough Shoal in the SCS, and the Senkaku Islands in the ECS. Maritime territorial disputes involving China in the SCS and ECS date back many years, and have periodically led to incidents and periods of increased tension. The disputes have again intensified in the past few years, leading to numerous confrontations and incidents, and heightened tensions

between China and other countries in the region, particularly Japan, the Philippines, and Vietnam.

In addition to maritime territorial disputes in the SCS and ECS, China is involved in a dispute, particularly with the United States, over whether China has a right under international law to regulate the activities of foreign military forces operating within China's EEZ. The dispute appears to be at the heart of multiple incidents between Chinese and U.S. ships and aircraft in international waters and airspace in 2001, 2002, and 2009.

The issue of whether China has a right under the United Nations Convention on the Law of the Sea (UNCLOS) to regulate foreign military activities in its EEZ is related to, but ultimately separate from, the issue of maritime territorial disputes in the SCS and ECS. The two issues are related because China can claim EEZs from inhabitable islands over which it has sovereignty, so accepting China's claims to islands in the SCS or ECS could permit China to expand the EEZ zone within which China claims a right to regulate foreign military activities.

The EEZ issue is ultimately separate from the territorial disputes issue because even if all the territorial disputes in the SCS and ECS were resolved, and none of China's claims in the SCS and ECS were accepted, China could continue to apply its concept of its EEZ rights to the EEZ that it unequivocally derives from its mainland coast—and it is in this unequivocal Chinese EEZ that most of the past U.S.-Chinese incidents at sea have occurred.

China depicts its maritime territorial claims in the SCS using the so-called map of the nine dashed lines that appears to enclose an area covering roughly 80% of the SCS. China prefers to discuss maritime territorial disputes with other parties to the disputes on a bilateral rather than multilateral basis, and has resisted U.S. involvement in the disputes. Some observers believe China is pursuing a policy of putting off a negotiated resolution of maritime territorial disputes so as to give itself time to implement a strategy of taking incremental unilateral actions that gradually enhance China's position in the disputes and consolidate China's de facto control of disputed areas. China's maritime territorial claims in the SCS and ECS appear to be motivated by a mix of factors, including potentially large undersea oil and gas reserves, fishing rights, nationalism, and security concerns.

The United States does not take a position (i.e., is neutral) regarding competing territorial claims over land features in the SCS and ECS. The U.S. position is that territorial disputes should be resolved peacefully—without coercion, intimidation, threats, or the use of force—and that claims of territorial waters and EEZs should be consistent with customary international

law of the sea, as reflected in UNCLOS. U.S. officials have stated that the United States has a national interest in the preservation of freedom of navigation as recognized in customary international law of the sea and reflected in UNCLOS. The United States, like most other countries, believes that coastal states under UNCLOS do not have the right to regulate foreign military activities in their EEZs. If China's position on the issue—that coastal states do have a right under UNCLOS to regulate the activities of foreign military forces in their EEZs—were to gain greater international acceptance under international law, it could substantially affect U.S. naval operations not only in the SCS and ECS, but around the world.

Chapter 2 – Since the mid-1990s, tensions have spiked periodically among Japan, China, and Taiwan over the disputed Senkaku (Diaoyu/ Diaoyutai) Islands in the East China Sea. These flare-ups run the risk, which most observers regard as remote, of involving the United States in an armed conflict in the region. Japan administers the eight small, uninhabited islands, which some geologists believe sit near significant oil and natural gas deposits. China and Taiwan both contest Japanese claims of sovereignty over the islands.

U.S. administrations going back at least to the Nixon Administration have stated that the United States takes no position on the territorial disputes. However, it also has been U.S. policy since 1972 that the 1960 U.S.-Japan Security Treaty covers the islands, because Article 5 of the treaty stipulates that the United States is bound to protect “the territories under the Administration of Japan” and Japan administers the Senkakus (Diaoyu Islands). Under the treaty, the United States guarantees Japan's security in return for the right to station U.S. troops—which currently number around 50,000—in dozens of bases throughout the Japanese archipelago. Although it is commonly understood that Japan will assume the primary responsibility for the defense of the treaty area, in the event of a significant armed conflict with either China or Taiwan, most Japanese would likely expect that the U.S. would honor its treaty obligations.

Each time tensions over the islands have flared, questions have arisen concerning the U.S. legal relationship to the islands. This report will focus on that issue, which has four elements:

1. U.S. administration of the Senkakus (Diaoyu Islands) from 1953 to 1971;
2. the application to the Senkakus (Diaoyu Islands) of the 1971 “Treaty Between Japan and the United States of America Concerning the Ryukyu Islands and the Daito Islands”—commonly known as the

Okinawa Reversion Treaty, approved by the Senate in 1971 and entered into force the following year (the Daito Islands lie to the east of Okinawa);

3. the U.S. view on the claims of the disputants; and
4. the relationship of the U.S.-Japan Security Treaty to the islands.

Members of Congress periodically have been involved or expressed interest in the Senkaku (Diaoyu) dispute over the decades, most prominently when the issue of the U.S.-Japan Security Treaty's application arose during the Senate's deliberations over the Okinawa Reversion Treaty. More recently, Congressional committees have explored the topic in hearings about maritime disputes in East Asia.

Chapter 3 – The United States and the Republic of the Philippines maintain close ties stemming from the U.S. colonial period (1898-1946), the bilateral security alliance, extensive military cooperation, and common strategic and economic interests. Although the United States closed its military bases in the Philippines in 1992, the two treaty allies have continued joint military activities related to counterterrorism and maritime security. The bilateral security relationship has gained prominence as a key link in the evolving U.S. foreign policy “pivot” or “rebalancing” toward Asia, and the two sides are discussing bolstering U.S. access to Philippine military facilities. On November 16, 2011, U.S. Secretary of State Hillary Clinton and Philippine Secretary of Foreign Affairs Albert F. del Rosario signed the “Manila Declaration,” which reaffirmed the bilateral security relationship and called for multilateral talks to resolve maritime disputes in the region. Broad U.S. policy objectives include the following: maintaining the U.S.-Philippine alliance; enhancing security and stability in the South China Sea; assisting the Armed Forces of the Philippines (AFP) in counterterrorism, maritime, modernization, and administrative reform efforts; supporting the peace process in Muslim areas of Mindanao; promoting broad-based economic growth; and helping the Philippines to develop more stable and responsive democratic institutions. The U.S. Congress has placed conditions upon a portion of U.S. military assistance to the Philippines in order to pressure the Philippine government and judicial institutions to hold the perpetrators of extrajudicial killings and violence against journalists accountable.

Since 2002, the United States has provided non-combat assistance to the AFP through the Joint Special Operations Task Force-Philippines—rotating units of approximately 600 U.S. military personnel. Philippine-U.S. counterterrorism efforts, along with development aid, have helped to

significantly reduce the size and strength of the Abu Sayyaf Group, a violent, Philippines-based Islamist organization that has acted as a bridge between Southeast Asian terrorist networks and Muslim separatist insurgencies such as the Moro Islamic Liberation Front.

In the past decade, the Philippines has been one of the largest recipients of U.S. foreign assistance in Southeast Asia. About 60% of the aid supported development programs in Muslim areas of Mindanao and the Sulu Archipelago, with the aim of mitigating the economic and political conditions that make extremist ideologies and activities attractive. In 2010, the U.S. Millennium Challenge Corporation approved a five-year, \$434 million compact with the Philippine government. Through the Partnership for Growth, the United States supports economic expansion and investment in the Philippines and Manila's goal of joining the Trans-Pacific Partnership, a multilateral free trade agreement.

In 2011, Chinese naval forces reportedly harassed Philippine fishing and oil exploration vessels and erected structures in disputed waters of the South China Sea near the Philippine island of Palawan. Philippine President Benigno Aquino responded in part by announcing increases in the country's military budget and welcoming increased security cooperation with the United States. The Philippine government has demanded that Beijing negotiate a code of conduct and settlement of claims with the principal regional body, the Association of Southeast Asian Nations (ASEAN). The U.S. government does not take a position on the territorial disputes, but supports a peaceful resolution that is based upon international law and involves a multilateral process. Washington also has promised greater military cooperation with, and assistance to, the Philippines, although no permanent U.S. bases are planned.

Chapter 4 – This is the Testimony of Kurt Campbell, Assistant Secretary of State, Bureau of East Asian and Pacific Affairs, U.S. Department of State.

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DISPUTES INVOLVING CHINA**

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Chapter 1

**MARITIME TERRITORIAL AND EXCLUSIVE
ECONOMIC ZONE (EEZ) DISPUTES
INVOLVING CHINA:
ISSUES FOR CONGRESS***

Ronald O'Rourke

SUMMARY

This report presents policy and oversight issues for Congress arising from (1) maritime territorial disputes involving China in the South China Sea (SCS) and East China Sea (ECS) and (2) an additional dispute over whether China has a right under international law to regulate U.S. and other foreign military activities in its 200-nautical-mile maritime Exclusive Economic Zone (EEZ).

China is a party to multiple maritime territorial disputes in the SCS and ECS, including, in particular, disputes over the Paracel Islands, Spratly Islands, and Scarborough Shoal in the SCS, and the Senkaku Islands in the ECS. Maritime territorial disputes involving China in the SCS and ECS date back many years, and have periodically led to incidents and periods of increased tension. The disputes have again intensified in the past few years, leading to numerous confrontations and

* This is an edited, reformatted and augmented version of a Congressional Research Service publication, CRS Report for Congress R42784, from www.crs.gov, prepared for Members and Committees of Congress, dated October 22, 2012.

incidents, and heightened tensions between China and other countries in the region, particularly Japan, the Philippines, and Vietnam.

In addition to maritime territorial disputes in the SCS and ECS, China is involved in a dispute, particularly with the United States, over whether China has a right under international law to regulate the activities of foreign military forces operating within China's EEZ. The dispute appears to be at the heart of multiple incidents between Chinese and U.S. ships and aircraft in international waters and airspace in 2001, 2002, and 2009.

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The United States does not take a position (i.e., is neutral) regarding competing territorial claims over land features in the SCS and ECS. The U.S. position is that territorial disputes should be resolved peacefully—without coercion, intimidation, threats, or the use of force—and that claims of territorial waters and EEZs should be consistent with customary international law of the sea, as reflected in UNCLOS. U.S. officials have stated that the United States has a national interest in the preservation of freedom of navigation as recognized in customary international law of the

sea and reflected in UNCLOS. The United States, like most other countries, believes that coastal states under UNCLOS do not have the right to regulate foreign military activities in their EEZs. If China's position on the issue—that coastal states do have a right under UNCLOS to regulate the activities of foreign military forces in their EEZs—were to gain greater international acceptance under international law, it could substantially affect U.S. naval operations not only in the SCS and ECS, but around the world.

Maritime territorial and EEZ disputes involving China in the SCS and ECS raise a number of policy and oversight issues for Congress, including the following:

- the risk that the United States might be drawn into a crisis or conflict over a territorial dispute involving China, particularly since the United States has bilateral defense treaties with Japan and the Philippines;
- the risk of future incidents between U.S. and Chinese ships and aircraft arising from U.S. military survey and surveillance activities in China's EEZ;
- the impact of maritime territorial and EEZ disputes involving China on the overall debate on whether the United States should become a party to UNCLOS;
- implications for U.S. arms sales and transfers to other countries in the region, particularly the Philippines, which currently has limited ability to monitor maritime activity in the SCS on a real-time basis, and relatively few modern ships larger than patrol craft in its navy or coast guard;
- implications for the stationing and operations of U.S. military forces in the region, and for U.S. military procurement programs;
- implications for interpreting the significance of China's rise as an economic and military power, particularly in terms of China's willingness to accept international norms and operate within an international rules-based order;
- the impact on overall U.S. relations with China and other countries in the region; and
- the effect on U.S. economic interests, including oil and gas exploration in the SCS and ECS by U.S. firms, and on international shipping through the SCS and ECS, which represents a large fraction of the world's seaborne trade.

Decisions that Congress makes on these issues could substantially affect U.S. political and economic interests in the Asia-Pacific region and U.S. military operations in both the Asia-Pacific region and elsewhere.

Legislation in the 112th Congress concerning maritime territorial and EEZ disputes involving China in the SCS and ECS includes S.Res. 217 and S.Res. 524, both of which have been agreed to by the Senate, and H.R. 6313, H.Res. 532, and H.Res. 616.

INTRODUCTION

This report presents policy and oversight issues for Congress arising from (1) maritime territorial disputes involving China in the South China Sea (SCS) and East China Sea (ECS) and (2) an additional dispute over whether China has a right under international law to regulate U.S. and other foreign military activities in its maritime Exclusive Economic Zone (EEZ).¹

Some of these disputes have intensified in recent years, increasing their prominence as a factor in U.S. relations with China and other countries in the region, and prompting heightened attention from U.S. policymakers.

Decisions that Congress makes on issues arising from these disputes could substantially affect U.S. political and economic interests in the Asia-Pacific region and U.S. military operations in both the Asia-Pacific region and elsewhere.

As a basis for discussing the policy and oversight issues for Congress, this report first provides a brief overview of the maritime territorial and EEZ disputes involving China. China's maritime territorial disputes with the Philippines and Japan are discussed in greater detail in other CRS reports.² Additional CRS reports cover other aspects of U.S. relations with China and other countries in the region.

BACKGROUND

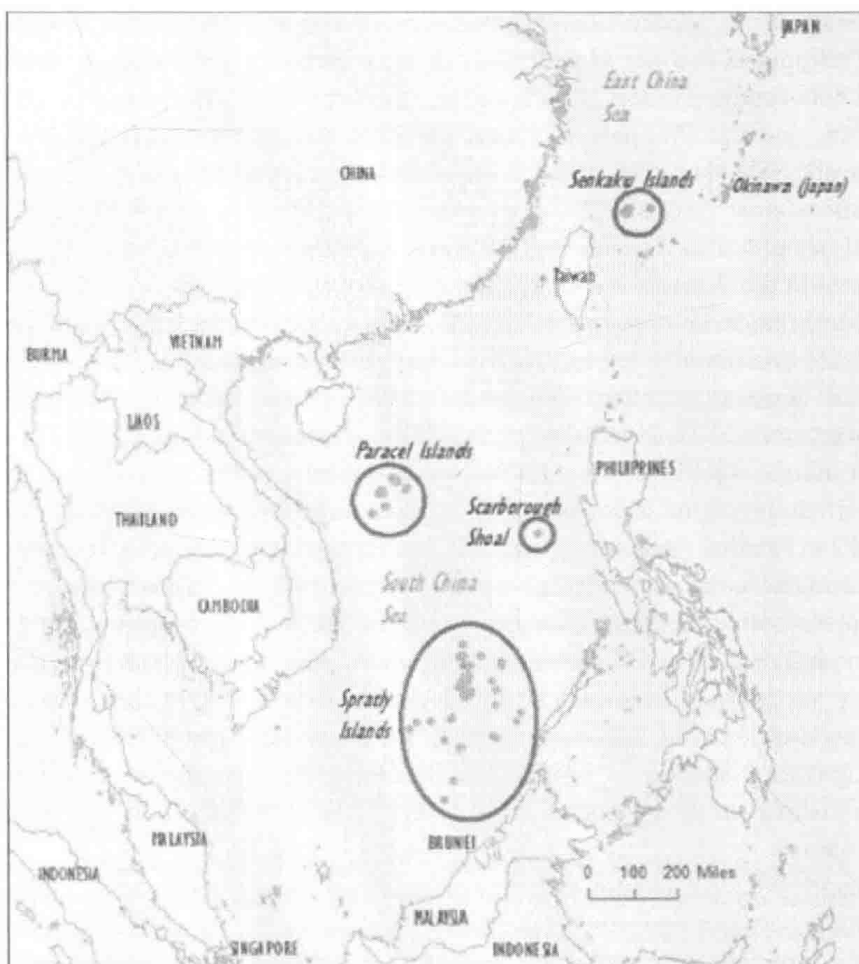
Overview of Disputes

Maritime Territorial Disputes

China is a party to multiple maritime territorial disputes in the SCS and ECS, including in particular the following (see *Figure 1* for locations of the island groups listed below):

- a dispute over the *Paracel Islands* in the SCS, which are claimed by China and Vietnam, and occupied by China;

- a dispute over the *Spratly Islands* in the SCS, which are claimed entirely by China, Taiwan, and Vietnam, and in part by the Philippines, Malaysia, and Brunei, and which are occupied in part by all these countries except Brunei;
- a dispute over *Scarborough Shoal* in the SCS, which is claimed by China, Taiwan, and the Philippines; and
- a dispute over the *Senkaku Islands* in the ECS, which are claimed by China, Taiwan, and Japan, and administered by Japan.



Source: Map prepared by CRS using base maps provided by Esri.

Notes: Disputed islands have been enlarged to make them more visible.

Figure 1. Maritime Territorial Disputes Involving China. Island groups involved in principal disputes.

The island names used above are the ones commonly used in the United States; in other countries, these islands are known by various other names. China, for example, refers to the Paracel Islands as the Xisha islands, to the Spratly Islands as the Nansha islands, to Scarborough Shoal as Huangyan island, and to the Senkaku Islands as the Diaoyu islands.

These island groups are not the only land features in the SCS and ECS—the two seas feature other islands, rocks, shoals, and reefs, as well as some near-surface submerged features. The territorial status of some of these other features is also in dispute. For example, the *Reed Bank*, a submerged atoll northeast of the Spratly Islands, is the subject of a dispute between China and the Philippines, and the *Macclesfield Bank*, a group of submerged shoals and reefs between the Paracel Islands and Scarborough Shoal, is claimed by China, Taiwan, and the Philippines. China refers to the Macclesfield Bank as the Zhongsha islands, even though they are submerged features rather than islands.

It should also be noted that there are additional maritime territorial disputes in the Western Pacific that do not involve China.³

Maritime territorial disputes in the SCS and ECS date back many years, and have periodically led to incidents and periods of increased tension.⁴ The disputes have again intensified in the past few years, leading to numerous confrontations and incidents involving fishing vessels, oil exploration vessels, paramilitary maritime law enforcement vessels, and naval ships. The intensification of the disputes is due in part to an increase in assertiveness by China in stating and defending its maritime territorial claims, and to increasingly assertive reactions by other countries, particularly Japan, the Philippines, and Vietnam. Energy exploration and fishing rights appear to be two underlying factors: China and other countries in the region have growing energy needs, and technological improvements in recent years have made oil and gas development in certain offshore locations more feasible. At the same time, growing demand for protein-rich foods and the depletion of certain near-shore fishing areas are encouraging fishing fleets to shift to waters further from shore.

Incidents over territorial disputes in the SCS and ECS have included standoffs between opposing vessels, ship collisions, the arrest and temporary detention of fishing vessel crew members, the roping off of waters between islands to prevent other ships from entering, the cutting of underwater cables, the firing of shots (including some with rubber bullets) from ships, the use of water cannons (high-pressure sprays) from ship to ship, and the throwing of objects such as bricks from ship to ship. Officials and private citizens have