JAPAN REVIEW

Vol.7 No.2
2024
ISSN 2433-4456

THE JAPAN INSTITUTE OF INTERNATIONAL AFFAIRS

The Japan Institute of International Affairs (JIIA), founded in 1959, is an independent nonpartisan policy thinktank specializing in foreign affairs and security policy. On top of a wide range of research programs, the institute promotes dialogues and joint studies with other institutions and experts at home and abroad, and makes foreign policy proposals to the government, and disseminates information on international relations to the public. The institute, together with a large network of affiliated scholars, aims to serve as an indispensable resource on international affairs in a complex world.

Publisher : Kenichiro Sasae, President, JIIA
Editor in Chief : Kotaro Tsukahara, Research Fellow, Center for Territory and History, JIIA

For subscription (subscription fee may apply) and any other inquiries, please write to:
Japan Review, the Japan Institute of International Affairs,
3rd Floor, Toranomon Daibiru-East Building, 3-8-1 Kasumigaseki Chiyoda-ku,
Tokyo Japan 100-0013

ISSN 2433-4456

Published by the Japan Institute of International Affairs
Designed and Printed in Japan by Taiheisha.Ltd

JAPAN REVIEW

Vol.7 No.2
2024

Dr. SATO Chie is a Professor of EU Law and Public International Law at the School of Law, Meiji University, Japan. She holds Dr. iur. from the Philipps-Universität Marburg (Germany) and LL.M. from the same university and from the Hitotsubashi University. Previously, she worked for the Ministry of Foreign Affairs and held an appointment as a researcher at the Hitotsubashi University. Her main research interest is the law of the sea, especially marine environmental law. In recent years, she has been particularly interested in the interaction of EU and international law in the field of environmental law.

Dr. Monika Chansoria is a Tokyo-based Senior Fellow at The Japan Institute of International Affairs (JIIA) since 2017. Previously, Dr. Chansoria has held many senior research appointments, including, at the Fondation Maison des Sciences de l'Homme (FMSH, Paris); at the Cooperative Monitoring Centre, Sandia National Laboratories (Albuquerque, U.S.); and, at the Hokkaido University (Sapporo, Japan). She has solely authored five books on Asia's security affairs, including *China, Japan, and Senkaku Islands: Conflict in the East China Sea Amid an American Shadow* (Routledge ©2018) and *Nuclear China: A Veiled Secret* (©2014) among others. Dr. Chansoria is also a Senior Contributing Author & Analyst at the JAPAN Forward Inc., Tokyo, where she writes a regular column on Asia's geopolitics and history.

Valérie Niquet, Ph.D. (Sorbonne University) is Director of Japan Program at FRS (Fondation pour la recherche stratégique), and senior fellow at the Japan Institute of International Affairs (JIIA). She was a lecturer at Keio University (Tokyo) on Sino-Japanese relations from 2014 to

2021. She has published extensively on strategic issues in Asia, Japan's foreign policy as well as the evolutions of the Chinese political system. Valérie Niquet is also a consultant for the French ministry of Foreign Affairs Center for prospective and strategy (CAPS). Her latest publications include Le Japon en 100 questions, Tallandier, 2025 Taiwan face à la Chine, Tallandier, 2022. Her latest media contributions include AFP, Le Monde, The Diplomat, the Japan Times as well as Radio programs such as Radio France Internationale, France Culture or the Voice of America. Valérie Niquet is Chevaier de l'ordre national du mérite.

Robert D. Eldridge, Ph.D., is a Senior Fellow, Japan Institute of International Affairs. He was formerly a tenured associate professor at the Osaka School of International Public Policy, Osaka University, and the Political and Public Diplomacy Advisor to the United States Marine Corps in Okinawa, Japan. He is the author, editor, and translator of dozens of books on Japanese political and diplomatic history, U.S.-Japan relations, and international security including: *The Origins of the Bilateral Okinawa Problem, Japanese Public Opinion and the War on Terrorism, The Origins of U.S. Policy in the East China Sea Islands Dispute, The Japanese Ground Self-Defense Force, Operation Tomodachi, The Japan Self-Defense Forces Law,* and *Japan in the 1960s.*

Dispute Settlement Pertaining to Law of the Sea Issues in the EU and Its Implications for Japan and/or Asia

Chie SATO*

Abstract

Reflecting the diversified usage of the oceans, many specific international and regional treaties have been developed to regulate problems pertaining to the oceans, such as fisheries, exploitation of non-living marine resources in the Area, or protection of the marine environment. Many of those specific ocean-related treaties also stipulate dispute settlement procedures. However, at the international level, dispute settlement systems among sovereign states do not necessarily solve problems. Since the EU consists of 27 Member States, it may be considered in some respects as analogous to a smaller form of the United Nations. There are certainly common issues to be resolved at the global level and at the EU level in terms of the oceans; however, there are also significant differences between the UN and the EU, beyond just the former being a global international organization and the latter a regional one. The purpose of this paper is to articulate how the EU and its Member States resolve disputes pertaining to the oceans and to clarify the characteristics of the EU's dispute settlements on Law of the Sea issues. Based on these considerations, moreover, it is possible to consider in what ways Japan and its neighboring states could potentially learn from EU practices.

1. Introduction

Human beings have long made use of the oceans as sources of food supply or as means of transport for goods and persons. In more recent times, many states have been promoting offshore renewable energy and/or seabed storage of carbon dioxide in order to combat climate change. The upshot of this trend is that ocean usage has diversified beyond traditional use patterns. Accordingly, the number of international rules pertaining to the oceans has been increasing, with multiple regulatory frameworks interacting with one another. As a sort of constitution for the ocean, international society adopted the United Nations Convention on the Law of the Sea (UNCLOS) in 1982,[1] which went on to be concluded by 170 states and the EU.[2] However, reflecting the diversified usage of the oceans, many specific international and regional treaties have been developed to regulate problems pertaining to the oceans, such as fisheries,[3] exploitation of non-living marine resources in the Area (referring to

* Professor, School of Law, Meiji University

1 United Nations, Treaty Series, vol. 1833, p. 3.

2 Except where necessary from historical perspective, the term "EU" is used.

3 For instance, there are several regional fisheries management organizations for managing highly-migratory species like tuna, such as International Commission for the Conservation of Atlantic Tunas (ICCAT), or for managing fish stocks by geographical area such as North-East Atlantic Fisheries Commission (NEAFC) and Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR).

the seabed, ocean floor, and subsoil thereof),[4] or protection of the marine environment.[5] Many of those specific ocean-related treaties also stipulate dispute settlement procedures.[6] However, at the international or global level, dispute settlement systems among sovereign states do not necessarily solve problems. To give but one example, the South China Sea Arbitration Award is one dispute that continues to remain unresolved.[7]

Since the EU consists of 27 Member States, it may be considered in some respects as analogous to a smaller form of the United Nations (UN), which is composed of almost 200 sovereign states and which has its own decision-making body (General Assembly), independent administrative body (Secretariat), and a judicial organization for dispute settlement (International Court of Justice). The structure of the EU is likewise similar to the UN, with decision-making institutions consisting of the European Council (Article 15 TEU[8]), the Council (Article 16 TEU), and the European Parliament (Article 14 TEU). The European Commission, meanwhile, is to be considered an independent legislative and administrative institution responsible for implementing EU laws and regulations, and proposing drafts of EU laws and regulations including the EU budget (Article 17 TEU). Finally, the Court of Justice of the European Union – comprised of the Court of Justice, the General Court, and specialized courts – serves as an independent judicial body of the EU (Article 19 TEU).

In terms of the use of the oceans, recently some EU Member States have been promoting offshore renewable energy, such as offshore wind or tidal energy, and for some Member States fishery represents one of the most important industries for their domestic economy and labor market.[9] This also reflects EU policies, in that the protection of the marine environment and the preservation of marine living resources such as fish stocks constitute significant interests for the EU. Furthermore, in the 1960s some Member States resolved maritime delimitation disputes before the International Court of Justice (ICJ). To sum up, there are certainly common issues to be resolved at the global level and at the EU level in terms of the oceans; however, there are also significant differences between the UN and the EU, beyond just the former being a global international organization and the latter a regional one. The purpose of this paper is to articulate how the EU and its Member States resolve disputes pertaining to the oceans and to clarify the characteristics of the EU's dispute settlements on Law of the Sea issues. Based on these considerations, moreover, it is possible to consider in what ways Japan and its neighboring states

---

4 Article 1.1(1) UNCLOS. See for instance, Part XI of UNCLOS and the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982.

5 For instance, in terms of land-based marine pollution, there are several regional treaties. See on this points, Y. Tanaka, *International Law of the Sea, fourth ed.*, Cambridge University Press, 2023, pp.369–371. In terms of protection of the marine biodiversity beyond national jurisdiction, the Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (BBNJ Agreement) was adopted in August 2023 in the General Assembly of the United Nations (UNGA) by the Resolution A/RES/77/321.

6 For instance, Part XV of UNCLOS.

7 The territorial disputes in the South China Sea have not been agreed between Philippine and China and in that area, violent clashes between Chinese and Philippine vessels occurred several times. See for instance, CNN, *US blasts 'aggressive' China over South China Sea collision with Philippine ship*, 18 June 2024, available in: https://edition.cnn.com/2024/06/18/asia/us-condemns-china-scs-collision-philippines-intl-hnk/index.html (accessed on 28 October. 2024).

8 Treaty on European Union, OJ C 202/1, 7 June 2016.

9 See on this point, European Parliament, *European Fisheries in Figures*, available in https://www.europarl.europa.eu/factsheets/en/sheet/122/european-fisheries-in-figures (accessed on 28 October. 2024).

could potentially learn from EU practices.

To that end, the next part of this paper (The EU, Its Member States, and the Oceans) briefly sets out the framework of the EU legal system, while the third part (Dispute Settlement in the EU) covers how ocean disputes in the EU have been resolved. Three topics relating to the oceans are separately analyzed, namely, fishery, protection of the marine environment, and maritime delimitation. Finally, the last part (Implications of the EU Legal System for Japan and/or Asia) assesses whether the EU's experience has meaningful implications for Japan and its neighboring states.

2. The EU, Its Member States, and the Oceans

The number of EU Member States had continuously increased from the establishment of the EEC (European Economic Community) by six Western European states in 1958 until the withdrawal of the United Kingdom on 31 January 2020. The increase in the number of EU Member States means that the geographical scope of EU Law has also continuously expanded. However, a far more significant aspect of the EU's "expansion" pertains to its competence. In 1958, when the EEC started with just six Member States, its main purpose was to establish a common market based on a customs union (Article 3(a)(b) EEC Treaty); consequently, economic aspects were emphasized in both its policy and legislation (for instance, Article 2 EEC Treaty). In terms of policies and legislation relating to the oceans, for instance, the free movement of goods such as fish/fishery products can be identified as central interests of the Member States at that time (Article 38(1) EEC Treaty), and in the EEC Treaty there was no article clearly determining the EU's competence to regulate such matters as the protection of the environment, including the marine environment.

More recently, however, the EU's competence has come to significantly expand. The upshot of this is that nowadays EU law regulates not only economic issues, but also highly political issues that exercise severe influence over the domestic policies of individual Member States. This also encompasses EU laws and regulations on the oceans including the marine environment. The oldest element of EU competence relating to the ocean was that pertaining to fishery. For the first time, the EU began to introduce the Common Fisheries Policy (CFP) in the 1970s, when it became clear that the UK, Ireland and Denmark would join the EU.[10] Simultaneously, in the same decade the EU started to take into consideration environmental aspects such as water quality[11] or the protection of wild birds that fly over the oceans.[12] During the 1970s, fishery and the marine environment were two of the most important issues regulated by the EU at the EU level. The situation developed further in the 1980s. In 1982, UNCLOS was adopted, and in 1996 it entered into force. The EU and its Member States are contracting parties of UNCLOS, and when the EU concluded UNCLOS it declared its competence in accordance with Article 2 of Annex IX to UNCLOS.[13] That declaration asserts that "the conservation and management of sea fishing resources" is the exclusive competence of the EU. Accordingly, only the EU can adopt relevant laws and regulations which are legally binding upon the Member States, and negotiate relevant

---

[10] See for instance, R. Churchill/D. Owen, *The EC Common Fisheries Policy*, Oxford University Press, 2010.

[11] For instance, Council Directive 78/659/EEC of 18 July 1978 on the quality of fresh waters needing protection or improvement in order to support fish life, OJ L 222/1, 14.8.1978; Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water, OJ L 31/1, 5.2.1976.

[12] Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, OJ L 103/1, 25.4.1979.

[13] Declaration Concerning the Competence of the European Community with regard to Matters governed by the United Nations Convention on the Law of the Sea of 10 December 1982 and the Agreement of 28 July 1994 relating to the Implementation of Part XI of the Convention, OJ L 179/129, 23.6.1998.

issues with third states and international/regional organizations.[14]

In terms of the protection and preservation of the marine environment the EU's declaration is vague in comparison with that covering fishing resources. As a result, when it comes to the marine environment, the EU shares competences with its Member States.[15] Consequently, the EU concluded some international and regional treaties aimed at protecting/preserving the marine environment with its Member States (so-called "mixed agreements"). When the EU concluded UNCLOS and submitted its declaration, the EU also stated that its own competence in terms of the Law of the Sea was "subject to continuous development" and that consequently the EU "will complete or amend this declaration."[16] However, although the EU treaties relevant to the EU's competences have been modified several times since the EU's conclusion of UNCLOS,[17] the EU has yet to submit a new declaration on its competence relating to Law of the Sea issues. From the perspective of EU law, the competences relating to the Law of the Sea need to be carefully categorized, because competence is a decisive factor in determining which entity (i.e., the EU and/or the Member State[s] in question) is liable for adopting the relevant laws and regulations, and accordingly, moreover, which entity is responsible for such matters as monitoring the environmental status of the oceans, providing compensation in the event that any activities cause damage to the marine environment, or prosecuting offenders who breach relevant laws and regulations and cause damage to the marine environment.

Based on the Lisbon Treaty,[18] only the EU has competence to regulate fishery, which involves the management of fish stocks (Article 3(1)(d) TFEU, exclusive competence of the EU). This situation has persisted since the EU's declaration on the conclusion of UNCLOS. So long as the EU maintains an exclusive competence based on the EU Treaties, it is required to not only adopt relevant rules and regulations on the issues concerned (Article 2(1) TFEU) but also to undertake negotiations with third states (non-EU Member States) or international/regional organizations.[19] Regarding other marine resources, such as rare metals or marine living resources aside from fish stocks, the division of competence between the EU and its Member States is to be decided based on the principle of conferral (Article 5(1) TEU). So long as the Member States have conferred their competence upon the EU, the EU is to adopt legally binding laws and regulations (Article 5(2) TFEU).

Thus, in terms of the marine environment in general – such as with regards to the preservation/protection of marine living resources (aside from fish stocks) or the fauna and flora in the oceans, or with regards to controlling marine pollution in the oceans – the EU shares competence with its Member States (Article 4(2)(d)(e) TFEU, shared competence).[20] This

[14] *Ibid.*, 1. Matters for which the Community has exclusive competence.

[15] *Ibid.*, 2. Matters for which the Community shares competence with its Member States, Second paragraph.

[16] *Ibid.*

[17] In 2001, Treaty of Nice amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts was signed (OJ C 80/1, 10.3.2001) which entered into force in 2003. In 2007, Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community was signed (OJ C 306/1, 17.12.2007) which entered into force in 2009.

[18] Treaty on European Union (consolidated version), OJ C 202/15, 7.6.2016; Treaty on the Functioning of the European Union (consolidated version), OJ C 202/47, 7.6.2016.

[19] Accordingly, in the EU's declaration on UNCLOS the EU stated that "in the field of sea fishing it is for the Community ... to enter into external undertakings with third states or competent international organisations." See on this point, *supra* note 13.

[20] For instance, Article 4(2) TFEU stipulates (a) internal market, (b) social policy, (c) social and territorial cohesion ... (i) energy as shared competence.

means that Member States are able to adopt domestic laws and regulations on the protection of the marine environment; however, were the EU to adopt relevant EU laws/regulations on the same issues, then the EU Member States in question would be obliged to implement the EU laws/regulations instead of their domestic ones (Article 2(2) TFEU). The Lisbon Treaty has categorized the EU's competences into three different types,[21] and stipulated that the "scope of and arrangements for exercising the Union's competences shall be determined by the provisions of the Treaties relating to each area" (Article 2(6) TFEU).

One of the remaining Law of the Sea issues not stipulated in the Lisbon Treaty is the maritime delimitation. Although the EU expanded its competences, and the scope of implementing EU law has been expanding since 1958, the EU Member States retain their competence relating to maritime delimitation. Accordingly, in the field of the maritime delimitation the Member States obey the rules stipulated in UNCLOS, relevant international rules, and case law. In other words, there is no room for application of the EU law in this area.

Based on the EU legal system, disputes relating to EU law are to be resolved by the Court of Justice of the European Union (CJEU, Article 19(1) TEU). Therefore, in fields in which the EU exercises exclusive competence, namely fishery, only EU institutions including the CJEU are responsible for resolving disputes. As for fields in which the EU has shared competence, it depends on whether the EU has adopted laws or regulations relevant to the matters concerned. If there exist relevant EU laws and regulations, then in such cases relevant disputes are to be resolved by EU institutions including the CJEU, in the same manner as those disputes occurring in areas in which the EU has exclusive competence. However, if there exist no relevant EU laws and regulations on the issues concerned, then the Member States are free to choose the way in which to resolve said dispute, whether through purely domestic or international dispute settlement. The following section will briefly cover dispute settlement procedure relating to the Law of the Sea issues within the EU.

3. Dispute Settlement in the EU

(1) Fishery

For some EU Member States fishery is an extremely important industry, and they already participated in relevant global or regional fishery management organizations before they became EU Member States.[22] Since the start of the 1970s, in the context of the UK, Ireland and Denmark being set to become EU Member States in 1973, the original six Member States quickly decided to regulate fishery at the EU level,[23] in order that the three new Member States, which themselves had strong interests in fishery, would not interject regarding EU fishery rules if these had already been determined. This was the first step for the EU to determine fishery policy and

[21] Articles 2, 3, 4 and 6 TFEU.

[22] For instance, France was a member of ICCAT already in 1968, before the EU became a member of that organization in 1997. Italy (1951), France (1952), Greece (1952), Spain (1953), Malta (1965), and Romania (1971) became members of the General Fisheries Commission for the Mediterranean, before the EU became its member in 1998.

[23] Regulation (EEC) No 2141/70 of the Council of 20 October 1970 laying down a common structural policy for the fishing industry, OJ L 236/1, 27.10.1970; Regulation (EEC) No 2142/70 of the Council of 20 October 1970 on the common organisation of the market in fishery products, OJ L 236/5, 27.10.1970.

rules.[24] Subsequently, the EU adopted the CFP,[25] which underwent periodical revision and with which EU Member States bear obligations to comply. The CFP stipulates the conservation of marine biological resources as well as the management of fisheries and fleets exploiting such resources (Article 1(1)(a) CFP 2013[26]). Within the framework of the CFP, the EU is to adopt multiannual plans to ensure the sustainable exploitation of fish stocks.[27] The most important role of the CFP is that it sets catch limits (total allowable catches, TAC) for each Member State in each sea basin (the Baltic Sea, North Sea, Celtic Seas, Bay of Biscay and the Iberian Coast, Mediterranean, Black Sea, etc.) on an annual basis.[28] The Member States are not to exceed the TAC set at the EU level.[29] If there are any disputes regarding fishery, moreover, they are to be resolved by the CJEU.[30] However, the CFP does not regulate all fish species,[31] and as a result there may occur between Member States disputes over fishery matters which are not regulated by the EU.

In addition to the CFP, as mentioned above the EU is a contracting party to UNCLOS,[32]

---

[24] Regarding to the historical development of the CFP, see, for instance, Craig McLean/Tim Gray, Liberal Intergovernmentalism, Historical Institutionalism, and British and German perceptions of the EU's Common Fisheries Policy, *Marine Policy*, Vol. 33(3), 2009, pp. 458–465.

[25] The first EU law on the CFP regulated in the same manner as actual CFP was the Council Regulation (EEC) No170/83 of 25 January 1983 establishing a Community system for the conservation and management of fishery resources, OJ L 24/1, 27.1.1983.

[26] Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC, OJ L 354/22, 28.12.2013.

[27] Articles 9, 10 and 16 CFP 2013. There are for instance a multiannual plan for the stocks of cod, herring and sprat in the Baltic Sea or a multiannual plan for the fisheries exploiting demersal stocks in the western Mediterranean Sea. See on this topic, European Commission, Multiannual plans, in: https://oceans-and-fisheries.ec.europa.eu/fisheries/rules/multiannual-plans_en (accessed on 7 October. 2024).

[28] See, Annexes of the Council Regulation (EU) 2023/194 of 30 January 2023 fixing for 2023 the fishing opportunities for certain fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters, as well as fixing for 2023 and 2024 such fishing opportunities for certain deep-sea fish stocks, OJ L 28/1, 31.1.2023 and Annexes of the Council Regulation (EU) 2024/257 of 10 January 2024 fixing for 2024, 2025 and 2026 the fishing opportunities for certain fish stocks, applicable in Union waters and, for Union fishing vessels, in certain non-Union waters, and amending Regulation (EU) 2023/194, OJ L 1/39, 11.1.2024.

[29] Article 51(1) of the Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006, OJ L 343/1, 22.12.2009.

[30] See for instance, on the TAC for Mediterranean swordfish based on the ICCAT negotiation, Case C-611/17, *Italy v Council*, ECLI:EU:C:2019:332.

[31] The target species regulated by the CFP are species which need "(M)easures for the conservation and sustainable exploitation of marine biological resources" (Article 7(1) CFP 2013).

[32] Council Decision 98/392/EC of 23 March 1998 concerning the conclusion by the European Community of the United Nations Convention of 10 December 1982 on the Law of the Sea and the Agreement of 28 July 1994 relating to the implementation of Part XI thereof, OJ L 179/1, 23.6.1998.

and, pursuant to Council Decision 98/414/EC,[33] to the United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks of 4 December 1995 (UN Fish Stocks Agreement).[34] These international treaties aim to regulate fishery and conserve fish stocks at sustainable levels. The CFP also has to take into account the EU's implementation of the international obligations imposed by these international treaties. For instance, the EU is a contracting party of the Regional Fishery Management Organization (RFMO) such as ICCAT. The catch limits for the EU decided in the ICCAT are allocated among the relevant EU Member States as a part of TAC,[35] based on the CFP Regulation. This means that even if a Member State of the EU is a contracting party of a RFMO,[36] if the EU is also a contracting party of said RFMO then the EU will exercise representative power in said RFMO's meetings, due to the management of fish resources already having been determined to fall under the exclusive competence of the EU.

In terms of the EU's CFP, there were disputes over the procedure for adopting CFP regulations.[37] If a Member State fails to ban fishing activities when particular quotas are near exhaustion, with the result that the TAC set by the EU's CFP are to be exceeded, such a Member State is subject to the infringement procedure based on the Articles 258 or 259 TFEU.[38] Those disputes were treated as internal problems for the EU. Therefore, they were to be judged before the CJEU as a last resort. The other fishery disputes included the so-called "scallop wars" between France and the UK (Member State of the EU until January 2020), which occurred in 2012, 2018 and 2020. The CFP itself did not stipulate any rules on TAC for scallop, nor did it stipulate any other rules relevant to scallop fishing. In cases in which Member States have an interest in species for which the relevant EU laws and regulations make no stipulation, said states are required, if necessary, to coordinate fishery management among themselves. In the case of France, scallop fishing has been well managed based on a historical collaboration between scientists and fishery organizations.[39] Consequently, in France the scallop fishing season has been set to run from October 1 to 15 May, and is closed the rest of the year; specific fishing licenses are required for scallop fishing; and the minimum size for caught fish has been set at a more restrictive level than that set by the EU regulations stipulating particular measures for the

---

[33] Council Decision 98/414/EC of 8 June 1998 on the ratification by the European Community of the Agreement for the implementing of the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the conservation and management of straddling stocks and highly migratory fish stocks, OJ L 189/14, 3.7.1998.

[34] United Nations, Treaty Series, vol. 2167, p. 3.

[35] See for instance, Annex ID of the Council Regulation (EU) 2023/194, and, Annex VI of the Council Regulation (EU) 2024/257. *Supra* note 28.

[36] In some RFMOs such as ICCAT or the General Fisheries Commission for the Mediterranean, both Member State(s) and the EU are contracting parties.

[37] Case C-330/22, *Friends of the Irish Environment*, ECLI:EU:C:2024:19.

[38] See for instance, Case C-454/99, *Commission v United Kingdom*, ECLI:EU:C:2002:652.

[39] European Commission, *Case Study Scallop in the EU*, November 2023, p.21.

conservation of fish resources.[40] On the contrary, however, there were no such strict management measures for scallop fishing in place for UK fishermen. There was a UK-France industry agreement on Great Atlantic Scallop fishery in the English Channel, which barred scallop fishery for all vessels over 15 m; however, the fishing season closure restriction did not apply to smaller vessels from the UK,[41] which caused altercations between fishermen of the two states in the English Channel.

UK and French fishing boats clashed in the Bay of Seine, for instance, in the summer of 2018 when the French fishermen, in accordance with French scallop management regulations, were prohibited from fishing for scallop. The altercations between UK and French fishing boats occurred in a region known to be a scallop-rich area.[42] While the UK fishing boats were entitled to fish in the area, "their presence has angered the French, who accuse the British of depleting shellfish stocks."[43] The altercations occurred beyond the 12 nautical mile sea area and so were not within the territorial waters of France.

The conflict was significant because of the importance of scallop for both countries. According to the Case Study Report on Scallop, France is the largest producer of Great Atlantic Scallop (*Pecten Maximus*) both within the EU and globally.[44] At the same time France is also the main importer of scallop, with the UK being its main supplier.[45] Great Atlantic Scallop constitutes 93% of the scallop produced in the EU, and is traded as premium scallop.[46] Therefore, Great Atlantic Scallop fishing is of great importance for the fishery industry in both the UK[47] and France.[48] In terms of the "scallop wars" between the two countries, tensions between the fishermen in the English Channel seemed to settle down in 2018 when the scallop fishing season opened in France. When the UK exited from the EU in January 2020, the UK-France industry agreement ceased,[49] whereupon in October 2020 a conflict over scallop arose once again. After BREXIT, the UK introduced a scallop fishery closure itself, based on pursuing "a balanced approach between stock protection and economic impacts."[50]

---

40 Regulation (EU) 2019/1241 of the European Parliament and of the Council of 20 June 2019 on the conservation of fisheries resources and the protection of marine ecosystems through technical measures, amending Council Regulations (EC) No 1967/2006, (EC) No 1224/2009 and Regulations (EU) No 1380/2013, (EU) 2016/1139, (EU) 2018/973, (EU) 2019/472 and (EU) 2019/1022 of the European Parliament and of the Council, and repealing Council Regulations (EC) No 894/97, (EC) No 850/98, (EC) No 2549/2000, (EC) No 254/2002, (EC) No 812/2004 and (EC) No 2187/2005, OJ L 198/105, 25.7.2019. According to the Annex V (North Sea) and Annex VI (North Western Water) the minimum size for scallop should be 100 mm. In France it is set 102 mm for the Bay of the Seine and 110 mm for the Bay of Saint Brieuc. See on this point, *Ibid*.

41 See on this point, for instance, Marine Management Organisation et. al, *Consultation on proposals for a king scallop fishery closure in ICES area 7d and Lyme Bay of area 7e in 2024*, p.6.

42 The other sea area for scallop fishing is Bay of Saint Brieuc. See on the scallop fishing area in France, *Supra* note 39, p.20. In the ICES maps this seems to be 7d area.

43 See on this "war," for instance, BBC, "Scallop war: French and British boats clash in Channel," 29.8.2018, available in: https://www.bbc.com/news/world-europe-45337091.

44 *Supra* note 39, p.5, p.14, and p.29.

45 *Ibid*. According to the Study Report, the UK Market for the scallop is not big and many scallop is exported to other states.

46 *Ibid*., p.15.

47 *Ibid*., p.6.

48 *Ibid*., p.5.

49 *Supra* note 41.

50 *Ibid*. However, small vessels under 10 m fleet are excluded from this rule. Therefore, the possibility to occur conflicts between UK and France scallop fishermen still remains.

The "scallop wars" indicate that in the event that there are no relevant EU laws and regulations, the Member States involved in a dispute need to resolve the conflict on their own. In the case of the scallop in the English Channel, there developed a form of agreement between the French and British industries before BREXIT nullified it. Aside from formal arrangements, then, bilateral agreements like that seen on scallop fishery are an alternative way to settle conflicts.

(2) Marine Environment

Unlike the EU's CFP discussed earlier, environmental policy involving the protection of the marine environment falls under the "shared competence" of the EU (Article 4(2)(e) TFEU). The marine environment involves a wide range of issues. In earlier times, marine pollution caused by tanker accidents or offshore oil and gas exploitation were serious issues from the viewpoint of their transboundary impact.[51] Subsequently, when the United Nations Environment Programme (UNEP) was established by a UN General Assembly Resolution in 1972,[52] activities to protect the marine environment were undertaken at the regional level in the form of the UNEP regional seas programme.

In the case of Europe, various regional seas programmes were adopted. For instance, the Action Plan for the Mediterranean was adopted in 1975 for the protection of the Mediterranean Sea,[53] while for the North-east Atlantic two conventions were adopted in 1972, namely the Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft (Oslo Convention, 1972) and the Convention on the Prevention of Marine Pollution from Land-Based Sources (Paris Convention). These two Conventions were unified at the Ministerial Meeting of the Oslo and Paris Commissions held on 22 September 1992 and subsequently renamed the Convention for the Protection of the Marine Environment of the North-East Atlantic ("OSPAR Convention").[54] In terms of the Baltic Sea, in 1974 the Convention on the Protection of the Marine Environment of the Baltic Sea Area (the Helsinki Convention) was signed by all Baltic Sea coastal states to address environmental challenges in the Baltic Sea caused by industry and other human activities. The EU decided to participate in the Mediterranean Regional Sea Programme with its Member States, such as Italy and France.[55] However, it did not participate in any other regional seas programmes in the 1970s, because the effectiveness of the EU's participation in such programmes was considered questionable.[56]

At any rate, at the same time that the UNEP and regional seas programmes were being established, the EU's institutions began to raise the necessity of drawing up an environmental policy for the EU. Specifically, in 1972 the EU Council asked the Commission to draft a proposal for the EU's environmental policy, and one year later the European Commission published its first

---

51 Y. Tanaka, *supra* note 5, p.352; M. D. Evans (ed), *International Law, Sixth ed*., Oxford University Press, 2024, p.696.

52 UNGA Resolution 2997 (XXVII) 2112th plenary meeting 15 December 1972.

53 In 1976, the Convention for Protection of the Mediterranean Sea against Pollution was adopted which amended in 1995 and renamed the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (Barcelona Convention).

54 For the history of the OSPAR Convention, see the website of the OSPAR Commission, https://www.ospar.org/convention (accessed on 7 October 2024).

55 Council Decision of 25 July 1977 concluding the Convention for the protection of the Mediterranean Sea against pollution and the Protocol for the prevention of the pollution of the Mediterranean Sea by dumping from ships and aircraft, OJ L 240/1, 19.9.1977.

56 However, in 1992 the EU decided to conclude the amended Helsinki Convention, and in 1998 the OSPAR Convention. Recently the EU became the contracting parties of several regional seas conventions which aim to protect and preserve the marine environment.

Action Plan on the Environment.[57] Accordingly, the scope of the marine environment regulated by the EU came to expand from just pollution to other issues related to the marine environment. For instance, the EU adopted the Bird Directive[58] in order to protect wild birds characterized by transboundary movement, and that Directive came to also be applied to sea birds. In 1987, the Single European Act (SEA)[59] entered into force, which amended the original EEC-Treaty, and as a result the EU treaty stipulated for the first time environmental policy as an EU policy area in Articles 130r, 130s and 130t. Consequently, EU laws and regulations on the environment were adopted based on these provisions.

Since the 1990s the EU has adopted various environmental laws and regulations which aimed to protect/preserve not only specific target species, such as those stipulated in the Bird Directive,[60] but also more widely fauna and flora,[61] biodiversity,[62] or more recently climate change[63]; in other words, it has come to increasingly address the environment *per se*. Furthermore, the EU came to enact procedural laws which were necessary to secure EU environmental law, such as environmental impact assessment[64] or environmental criminal law[65] which are to be applied in EU waters.[66] In terms of the protection of the marine environment the EU also adopted in 2008 the Marine Strategic Framework Directive (MSFD)[67] in order to secure good environmental status (GES) in the European sea basins in 2020.[68]

Up to the present, there have existed several infringement procedures relating to EU

---

57 Declaration of the Council of the European Communities and of the representatives of the Governments of the Member States meeting in the Council of 22 November 1973 on the programme of action of the European Communities on the environment, OJ C 112/1, 20.12.1973.

58 Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, OJ L 103/1, 25.4.1979.

59 Single European Act, OJ L 169/1, 29.6.1987.

60 The newest version is the Annex I of the Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds, OJ L 20/7, 26.1.2010.

61 See for instance, Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive), OJ L 164/19, 25.6.2008; Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, OJ L 206/7, 22.7.1992.

62 See for instance, Decision No 1386/2013/EU of the European Parliament and of the Council of 20 November 2013 on a General Union Environment Action Programme to 2020 'Living well, within the limits of our planet,' OJ L 354/171, 28.12.2013.

63 Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law'), OJ L 243/1, 9.7.2021.

64 Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, OJ L 26/1, 28.1.2012.

65 Directive (EU) 2024/1203 of the European Parliament and of the Council of 11 April 2024 on the protection of the environment through criminal law and replacing Directives 2008/99/EC and 2009/123/EC, OJ L 2024/1203, 30.4.2024.

66 According to the Article 3(1)(a) of the Directive 2008/56/EC, the geographical scope of the Directive is "waters, the seabed and subsoil on the seaward side of the baseline from which the extent of territorial waters is measured extending to the outmost reach of the area where a Member State has and/or exercises jurisdictional rights, in accordance with the Unclos." Accordingly, the EU law is to be applied also to the EEZ of the Member States.

67 Directive 2008/56/EC, OJ L 164/19, 25.6.2008.

68 Article 1(1) of the Directive 2008/56/EC.

environmental law.[69] Thus, if a given EU Member State fails to implement EU laws within its territory, said Member State will face a formal infringement procedure launched by the European Commission and accusations before the CJEU by the European Commission (Article 258 TFEU) or by the other EU Member State[s] (Article 259 TFEU) as a last resort. However, the latter procedure is rarely undertaken.[70] If the European Commission brings the case against the Member States in question before the CJEU, the usual pattern in such cases is that the court recognizes the Member States as being at fault, and requires the Member States concerned to immediately take measures so as to comply with the judgment (Article 260(1) TFEU). If the Member States concerned do not comply with the CJEU's judgment, the European Commission can again bring the case before the CJEU.[71] During this judicial procedure, the European Commission "shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned," and the Court is able to impose a lump sum or penalty payment on the Member States concerned (Article 260(2) TFEU). The EU judicial system possesses greater enforcement power than that of the international courts or tribunals, and plays an important role in ensuring that EU law is uniformly applied within the EU.

What if the Member State involved still refuses to acquiesce? If, following the judicial process based on Article 260 TFEU, the Member State concerned fails to rectify its illegal situation (i.e., the Member State continues to not fulfill its obligations under EU law), then based on the EU Treaty (Article 7 TEU) the EU Council is able to prohibit said Member State from voting in the Council decision-making process. As of the present date this type of sanction has never been imposed; however, in recent years EU Member States have seriously considered the possibility of imposing this kind of sanction against Poland and/or Hungary.[72]

All EU Member States are contracting parties of UNCLOS, and furthermore every EU Member State facing an ocean (i.e., coastal states) is a party to one or more of the regional agreements to protect/preserve the marine environment, such as OSPAR or the Mediterranean (Barcelona) Convention. This triple-layer legal framework (EU law, UNCLOS, and Regional Sea Conventions) to protect the marine environment can at times result in debates on how to resolve marine environmental disputes for EU Member States. One famous example to consider

---

[69] The European Commission has been publishing annual reports on its actions to ensure compliance with EU law including EU environmental law. See for instance, European Commission, *Report from the Commission Monitoring the application of European Union law 2023 Annual Report*, Brussels, COM (2024) 358 final, 25.7.2024, p.20.

[70] All infringement decisions taken by the European Commission have been published in the website of "European Commission at work." Based on that information, statistically, the European Commission sent 108 letters of formal notice based on the Article 258 TFEU in the year 2023. During the same year there were 13 infringement cases which the Commission referred before the CJEU. The results are similar for 2022.

[71] *Ibid*. There were 4 infringement cases which were brought before the CJEU for the second time in the year 2023.

[72] Infringement procedure against Poland taken on 20.12.2017 was closed on 24.5.2024 with the European Commission's Decision which stated that "The Commission believes that there is no longer a clear breach of the rule of law in Poland, so it has withdrawn its reasoned proposal that triggered this procedure in 2017." Infringement procedure against Hungary taken on 12.9.2018 has not closed yet. For both Member States the EU institutions and its Member States have seriously considered the possible application of the Article 7 TEU. See on this point, for instance, European Parliament resolution of 5 May 2022 on ongoing hearings under Article 7(1) TEU regarding Poland and Hungary, OJ C 465/147, 6.12.2022.

is the *MOX Plant* Case.[73] In that case, Ireland claimed before the OSPAR Arbitral Tribunal that the UK violated UNCLOS by polluting the Irish Sea. The Tribunal decided that the UK had not violated the obligations imposed by the OSPAR Convention. In 2001, Ireland swapped tactics, and submitted to the UK "a Notification and Statement of Claim instituting arbitral proceedings as provided for in Annex VII to the Convention (UNCLOS) in the dispute concerning the MOX plant," and shortly after that date, Ireland submitted a Request for Provisional Measures to the ITLOS,[74] which recognized the obligation to cooperate to protect the marine environment (i) based on Part XII of UNCLOS, and (ii) based on the general international law,[75] and consequently ordered Ireland and the UK to exchange relevant information and so forth. In 2003, the ad hoc Arbitral Tribunal decided to suspend the case and wait to see whether the CJEU had jurisdiction in the case.[76] Finally, the CJEU delivered a judgment in 2006 which stated that Ireland had breached the obligation imposed by Article 344 TFEU, which stipulates that Member States are to submit a dispute concerning the interpretation or application of EU laws only to the CJEU.[77]

The decisive factor in resolving disputes relating to the marine environment before the CJEU is whether there exists relevant EU law applicable to the dispute concerned. For instance, Ireland had complained that the UK had failed to fulfill its obligation to conduct environmental impact assessments based on Article 206 UNCLOS, but the same matter was already regulated by EU law, namely, Directive 85/337.[78] In terms of the lack of cooperation on the part of the UK, Articles 123 and 197 UNCLOS were to be taken into account. However, here again the same points were stipulated in EU law, namely in Council Directive 90/313/EEC.[79] To sum up, if there already exist EU laws and regulations relevant to the matter at hand, then disputes pertaining to said matter must be submitted to the EU Court (CJEU), not to an international tribunal such as ITLOS. This privileging of EU laws and regulations points to the autonomy of the EU Court and the EU legal system.

(3) Maritime Delimitation

Two of the most famous disputes on maritime delimitation between European states are a pair of cases on the delimitation of the continental shelf of the North Sea, brought before the ICJ in 1969,[80] involving on the one hand Germany vs. the Netherlands (both EU Member States at the time) and on the other Germany vs. Denmark (which joined the EU four years later). After that judgment, there still remained various maritime delimitation issues within EU waters. In the Mediterranean Sea, several EU Member States have been negotiating for agreements

[73] There are many references on the MOX Plant Case. See for instance, N. Lavranos, The Epilogue in the MOX Plant Dispute, *European Energy and Environmental Law Review*, June 2009, pp. 180–184; F. Baetens, Muddling the Waters of Treaty Interpretation? Relevant Rules of International Law in the *MOX Plant* OSPAR Arbitration and EC – *Biotech* Case, *Nordic Journal of International Law*, Vol. 77 (2008), pp. 197–216; N. Lavranos, The MOX Plant judgment of the ECJ: How exclusive is the jurisdiction of the ECJ, *European Energy and Environmental Law Review*, October 2006, pp. 291–297.

[74] ITLOS, *The MOX Plant Case (Ireland v. United Kingdom)*, Provisional Measures, available in: https://itlos.org/en/main/cases/list-of-cases/case-no-10/.

[75] *Ibid*., paras. 82 and 84.

[76] Permanent Court of Arbitration, *The MOX Plant Case, Ireland v United Kingdom*, Order No3, Suspension of Proceedings on Jurisdiction and Merits, and Request for further provisional measures, 24 June 2003, paras. 24, 25 and 28.

[77] Case C-459/03, *Commission v Ireland*, ECLI:EU:C:2006:345.

[78] *Ibid*., paras.111–115.

[79] *Ibid*., para.117.

[80] ICJ, North Sea Continental Cases, Germany/Denmark; Germany/Netherlands, Judgment of 20 February 1969.

on maritime delimitations. In 2015 Italy and France agreed on the delimitation of their EEZs; however, this bilateral agreement has not yet entered into force because Italy could not proceed with the ratification process.[81] Based on this "bitter experience,"[82] on June 9, 2020, Italy made an agreement with Greece on maritime delimitation in the Ionian Sea.[83]

In both of these cases all of the states involved were EU Member States, but in spite of this EU institutions, such as the European Commission or CJEU, did not intervene. The Member States in question negotiated directly each other and concluded agreements on their own, because when it comes to maritime delimitation the EU has no competence. Without said competence, the EU is unable to exercise its power to regulate such issues, and consequently, EU law does not govern maritime delimitation issues. In this matter neither EU law nor the EU judicial system are able to regulate anything. Therefore, the EU Member States can, and moreover are expected to, resolve maritime delimitation disputes through negotiation or any other methods they may choose. Accordingly, the international laws and relevant dispute settlement procedures, such as diplomatic negotiation or international courts (ICJ, ITLOS, or Arbitral Tribunal set by relevant international/regional treaties), are important institutions for resolving disputes on maritime delimitations. In this regard, EU Member States employ the same methods to resolve maritime delimitation disputes as any other state in the world.

(4) Dispute Settlement Characteristics of the EU

So long as the EU has competence on disputed issues, all disputes among the EU Member States can be resolved within the EU legal system including the CJEU. However, in cases in which the EU does not have competence on the issues concerned, such disputes have to be resolved by the Member States themselves, in the same manner as any other conflict between sovereign states. In Law of the Sea matters, the EU possesses wide competence except when it comes to maritime delimitation. In consequence, most Law of the Sea disputes are resolved between the relevant states through infringement procedures taken by the European Commission, which can then put the judicial process before the CJEU, the judgments of which are legally binding for EU Member States. In cases of a breach of EU law, the EU Member States or the European Commission are able to sue the Member State(s) accused of breaching the law in question without the consent of the Member State concerned. This differs from international court systems, such as the International Court of Justice, which, in most cases, require all states concerned to agree to bring a dispute for arbitration.

4. Implications of the EU Legal System for Japan and/or Asia

EU Member States and Asian countries share some notable common elements. For one thing, all states are contracting states/parties of UNCLOS. Accordingly, Asian states bear obligations based on UNCLOS in the same manner that EU Member States do. However, the EU and its Member States appear to be more successful in the settlement of Law of the Sea disputes, even in areas where the EU does not have competence and therefore the Member States concerned are themselves required to negotiate and resolve the issue (for instance, as indicated above, disputes on maritime delimitations in the Mediterranean Sea). At least, there seem to be no situations in which one side simply ignores the other(s) and attempts to effectively control the area of interest

[81] On this point, see, for instance, A. Marghelis, The maritime delimitation agreement between Greece and Italy of 9 June 2020: An analysis in the light of International Law, national interest and regional politics, *Marine Policy* 126 (2021), p.4; I. Papanicolopulu, Maritime Boundaries after Delimitation, *Portuguese Yearbook of the Law of the Sea*, Vol. 1(2024), p.147.

[82] *Ibid*., A. Marghelis, p.4.

[83] See on this agreement, for instance, *Ibid*., A. Marghelis, pp.1–11.

itself.

There may be several reasons why this is the case. The first reason lies in the autonomy of EU law, which has been established by the case law of the CJEU and by institutional frameworks such as the infringement procedures based on Articles 258 and 259 TFEU. A second reason is likely the obligation to cooperate based on EU law. Even if there is no EU competence in a given area, necessitating the Member States to resolve disputes such as maritime delimitation on their own, it does not follow that the Member States concerned are fully free from the EU's laws and institutional framework. It is important to remember that Member States are required to take "any appropriate measures ... to fulfillment of the obligations arising from the EU laws," and they should moreover "refrain from any measure which could jeopardise the attainment of the Union's objectives" (Article 4(3) TEU, Principle of Sincere Cooperation). Accordingly, even in the event that, for instance, there is an unresolved maritime delimitation dispute, the relevant EU Member States are required to cooperate to achieve the purpose of the EU's CFP in the area where said dispute has occurred, and they similarly have to cooperate to achieve the purpose of the Marine Strategy Framework Directive aimed at ensuring Good Environmental Status in the ocean where they are still negotiating the dispute in question. These obligations do not disappear simply because a delimitation dispute has occurred over the waters in question. To sum up, regardless of the existence of unresolved disputes on maritime delimitation, the Member States concerned are required to cooperate to achieve the purposes of the relevant EU laws, such as those pertaining to fishery or the protection of the marine environment, and if the Member States refuse to cooperate with each other, then they are likely to stand accused before the CJEU of a breach of the obligations imposed by EU law or a breach of the obligation of sincere cooperation based on Article 4(3) TEU.

In the Asian region, however, there is nothing like the sort of solid legal system in the EU which could force states to cooperate in Law of the Sea issues. However, it is important to note that the success of the EU in the area of Law of the Sea dispute settlements is rooted not only in the EU's solid legal system, but also in the cooperation obligation imposed by Article 4(3) TEU. In the judgments of international courts and tribunals, the importance of the obligation to cooperate has been repeatedly emphasized, especially in environmental law disputes.[84] Recently, for instance, the ITLOS connected the obligation to protect the marine environment based on Article 192 UNCLOS with the obligation to reduce green-house gases based on the Paris Agreement (Climate Change) in its Advisory Opinion in May 2024.[85] This trend may lead to extending the general obligations to protect the marine environment, which involve an obligation to cooperate based on Article 192 UNCLOS.

Essentially, in an international context, the obligation to cooperate to protect the marine environment is becoming increasingly significant and complex (particular as actions taken to counteract climate change involve various activities which are pursued not only in the ocean, such as offshore wind farms, but also on land, such as emission controls). Consequently, even if Asian states have Law of the Sea disputes, they are required to cooperate in order to maintain not only the marine environment, but also the environment *per se* at the global level. This broad-level obligation to cooperate can be expected to play a significant role in resolving Law of the Sea disputes in Asia.

---

[84] ICJ, *Pulp Mills on the River Uruguay (Argentina v Uruguay)*, Judgment of 20 April 2010, para.77; ITLOS, *MOX Plant (Ireland v United Kingdom), Provisional Measures*, Order of 3 December 2001, para.82; ITLOS, *Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission*, Advisory Opinion, 2 April 2015, para.210.

[85] ITLOS, *Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law*, Advisory Opinion, 24 May 2024, paras. 297 and 299.

Consolidation and Sustenance of the Indian Independence League in Japan and Southeast Asia during World War II: Appraising Notes from the *Memoirs of A.M. Nair*

Monika Chansoria*

Abstract

This paper primarily revisits and appraises the *Memoirs of A.M. Nair* which were first published in 1982 and brought out an in-depth, first-hand account of the numerous facts regarding Japan's association with the Indian Independence League, its inception during the World War II years, and how it was sustained during its initial phase, till the time its headquarters shifted from Tokyo to Bangkok, and finally to Singapore. The paper delves into analyzing details in the functioning of the League under its founder, Rash Behari Bose, and Nair as the Chief Liaison Officer for Indian Affairs. More significantly, it seeks to evaluate how the Indian Independence League in Japan and across the Southeast Asia consolidated itself as an organization, and became instrumental in promoting the cause of the Indian independence movement against the British Empire, especially in reference to the crucial role played by Japan's political and military leadership, especially the Second Bureau's *Eighth Section* at the Armed Forces headquarters in Kudan Hills.

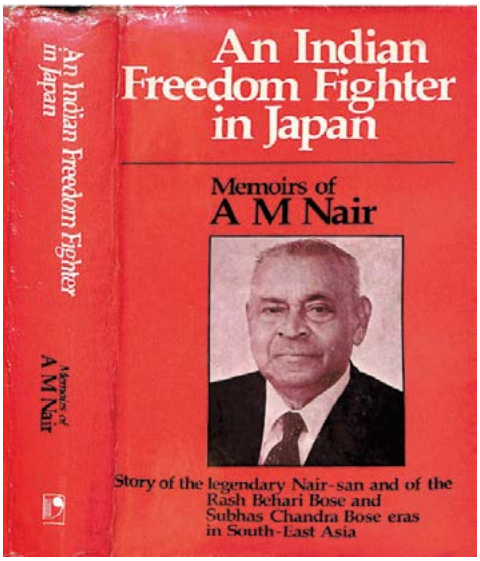
The Indian Independence League was an organization of the Indian diaspora mainly spread across Southeast Asia, Japan, China, and parts of South Asia prior to, and during, the years of World War II. It resiliently opposed the colonial British rule in India. The anti-colonial sentiment against the British Empire and a strong sense of Indian nationalism became binding factors among this Indian diaspora community. The Indian Independence League opened its headquarters in Tokyo in November 1942 under the leadership of Rash Behari Bose. An extraordinary Indian revolutionary leader and freedom fighter, Bose (1886–1945) became better known and recognized in Japan, where he lived in exile from 1915 until the time of his death. Despite attracting little attention within the historiography of India's independence, Rash Behari became the most wanted man in India during World War I and remained an implacable opponent of Britain's imperial rule till the very end.[1]

While the organization itself was based in Tokyo, the Indian Independence League's conferences were held in Bangkok, and Rangoon later during the World War II years. This paper primarily revisits and appraises the *Memoirs of A.M. Nair*, first published in 1982 as an in-depth, first-hand account of the facts regarding the Japanese association with the Indian Independence League from its inception through its initial years until its headquarters were relocated from Tokyo to Singapore. While several books have been written on the Indian Independence

* Dr. Monika Chansoria is a Senior Fellow at The Japan Institute of International Affairs (JIIA) in Tokyo, and a Senior Contributing Author on Asia's geopolitics for the JAPAN Forward Association Inc., Tokyo.

1 For a detailed further reading and reference on Rash Behari Bose, see, Monika Chansoria, "Rash Behari Bose of Nakamuraya: From Being Exiled in Japan to Founding the Indian National Army and Promoting a Pan-Asianist Discourse," *Policy Brief*, The Japan Institute of International Affairs, Tokyo, August 16, 2021, available at PolicyBrief_Chansoria_210816.pdf

movement in Southeast Asia, the *Memoirs of A.M. Nair* [2] fairly counters quite a few errors of fact and distortions of truth to set the record straight, given that he was at the League's helm working alongside its founder Rash Behari Bose. The paper seeks to analyze how the consolidation and sustenance of the Indian Independence League in Japan and across the Southeast Asian diaspora during World War II was instrumental in promoting the cause of the Indian independence movement against the British Empire.



Towards the end of November 1941, A.M. Nair received a message from the Kwantung Army headquarters requesting him to remain in Hsinking until further advice. Nair registered in his memoirs that it was "not difficult to guess the reason" in that, for the past several months, the military's high command had remained in a state of emergency and the communications room was being manned round the clock, collectively indicating that Japan was all set to enter World War II; on December 8, 1941 the world heard of Japan's attack on Pearl Harbor.[3] At dawn the same day, Radio Tokyo broadcast the Emperor's Rescript:

> ..... Patiently have we waited, and long have we endured the hope that our government might retrieve the situation in peace, but our adversaries, showing not the least spirit of conciliation, have unduly delayed a settlement and in the meantime, they have intensified the economic and political pressure to compel thereby Our Empire to submission. We have therefore resolutely declared war on the United States and Britain for the sake of the self-preservation and self-defense of the Empire and for the establishment of enduring peace in East Asia.....[4]

With the above pronouncement, the Greater East Asia War had begun. The very next day, on December 9, Nair confessed to have received a telephone call from the Kwantung Army General Staff asking him to reach their office, where he was told that the Japanese Navy had launched strikes against Singapore and that the British battleship *Prince of Wales* and battlecruiser

---

2 The primary document cited and referenced from, throughout this paper: *An Indian Freedom Fighter in Japan: Memoirs of A. M. Nair* (New Delhi: Vikas Publishing House Pvt. Ltd., 1985).

3 *Memoirs of A.M. Nair*, n. 2, Chapter 19: *The Second World War and The Indian Independence League in Southeast Asia,* p. 164.

4 Ibid., p. 165.

Repulse had been sunk. That moment was being regarded as the beginning of the end of British colonialism. Within the first month of the war, it was clear that Hong Kong and other centers would soon fall to the Japanese, and indeed they did by the end of December 1941, with Singapore formally surrendering in February 1942.

With colonial Britain taking a heavy beating from Japan, and India's long struggle for independence against British imperialism being all too well known, it was considered the perfect time for the Indian independence movement, and for its advocates spread across the world, to consolidate the final push to free India from colonial British rule. Nair knew that the struggle required immediate reorientation, and that it was time for him to move to the scene of the war, leaving Manchukuo on a mission aimed at furthering the cause of India's freedom.[5] Nair bid farewell to his family and friends at the Hsinking railway station and left for Tientsin to fly to Shanghai primarily to formally establish an Indian Independence Center there. The center was to be funded and maintained by the local Indian leadership owing to Shanghai's well-to-do Indian population, mostly engaged in trade. In addition, there was a large British presence in Shanghai and thus a substantial population of Sikhs employed in the police force. Nair notes in his memoirs that the Sikh community was extremely helpful and cooperated with him in setting up an organization to conduct effective publicity for the Indian freedom movement.[6]

Establishment of the Shanghai Office and the Bangkok-based *Tamura Kikan*

During this period, Nair recalled meeting several Japanese army officers to ensure proper protection for all the Indian residents. Nair specifically mentioned Major Mishina for his good offices in insisting that, although Indians were still British subjects technically, rendering them liable to be categorized by the Japanese forces ordinarily as "enemy nationals," special care should be taken to treat them as a favored community entitled to safety.[7] Following instructions from Tokyo, all Indians were soon given due protection through these local arrangements. Escorted by Major Mishina, Nair went to Nanking to meet General Jun Ushiroku at his headquarters and discussed the desirability of Indo-Japanese collaboration in eliminating British power in India, Burma, and elsewhere in East Asia.[8] It needs to be recalled that A.M. Nair's connection with Major Mishina went back to early 1939, when the Manchukuo Government decided to establish *Kenkoku Daigaku* (Kenkoku University) at Hsinking with specialist instructors in various faculties, including military science and tactics. General Seishirō Itagaki from Tokyo, General Kanji Ishiwara, Colonel Masanobu Tsuji, Lt. Colonel Kataoka and Major Mishina were sponsors of the new institution, and they invited Nair to join its teaching faculty dealing with national and international psychology. The institution was under the control of the Manchukuo Government's Ministry of Education, but technical support came from the Kwantung Army.[9]

The Shanghai office of the Indian freedom movement thus began to function well. In January 1942, Nair along with a prominent businessman, Mr. Osman, arranged for an Indian flag-hoisting ceremony to be conducted on the 26th of the month. A few ladies from the Indian state of Punjab sang the patriotic song *Vande Mātaram*[10] (translated: I bow to thee, mother[land]) in chorus. Nair wrote that it was the first time that Shanghai had witnessed an Indian ceremony of this kind in an

5 Ibid.

6 Ibid, p. 166.

7 Ibid.

8 Ibid., p. 167.

9 *Memoirs of A.M. Nair*, n. 2, Chapter 18: *Last Spell in Manchukuo*, p. 153.

10 *Vande Mātaram* is a renowned Indian poem penned by Bengali poet Bankim Chandra Chatterjee in the 1882 novel *Anandamath.* Written in Bengali and Sanskrit, the first two verses of this poem were adopted as India's national song by the Indian National Congress in October 1937.

open arena with nearly 500 members of the community being present. Following this, Nair sailed back from Shanghai to Japan. Before departing, he was pleasantly surprised when Major Mishina came to see him off and handed over a cash amount of 6,000 yen, sent by General Ushiroku with a message that Nair should use the amount for strengthening the work for the Indian freedom movement.[11]

Upon reaching Tokyo, Nair's first task at hand was to contact the military high command, especially the Second Bureau's Eighth Section at the Armed Forces headquarters in Kudan Hills. The large complex of offices there, the Imperial headquarters, and the General Staff were collectively called *Daihonei* (Imperial General Headquarters (IGHQ)).[12] Nair noted that, while the Japanese military high command had been diligently preparing for war for quite some time, it had also planned to secure the goodwill of the large Indian community residing across East Asia and Southeast Asia.

As early as September 1941, Japan began organizing a liaison group that was tasked to keep in touch with this community numbering almost two million, within which were many recognized supporters of the Indian independence movement.[13] Describing the Chief of the Army General Staff, General Hajime Sugiyama as a man of political foresight, Nair credited him as a key supporter of the idea that an office should be established for handling matters pertaining to the Indian community. General Sugiyama decided to have such an office in Bangkok under the watch of Colonel Hiroshi Tamura, Military Attaché in Japan's diplomatic mission. Being a central place with respect to the Indians located in various parts of Southeast Asia, the location was well suited for effective coordination; Major Iwaichi Fujiwara and a staff of about 20 personnel experienced in intelligence work were deputed to assist Colonel Tamura. A few of them had not just a fair knowledge of English but could also manage to speak a little Hindi. Within this network, A.M. Nair was chosen as the go-to link between the high-command in Tokyo and the new establishment in Bangkok more commonly referred to as the *Tamura Kikan* (Tamura Office).[14] At this point, the Indian community presented a request to the Japanese authorities via Nair that Rash Behari Bose be recognized as their leader in Japan and across Southeast Asia. The request was agreed to by the Japanese government readily. Moreover, it was also agreed upon that Nair would be the channel for discussions and communication of decisions on actions and programs between the two sides. Accordingly, Nair's official designation became Chief Liaison Officer for Indian Affairs.[15]

In this evolving backdrop, Colonel Tamura received instructions from Tokyo that Major Fujiwara and his staff should study the British military set-up in India, Malaya, and elsewhere in Southeast Asia. However, Fujiwara went beyond the scope set for him by the high command in Tokyo and sought the help of the Indian prisoners of war (POWs) in Malaya. He chose to place these POWs under the control of an Indian captain, Mohan Singh, who belonged to one of the early British Indian Army units which had lost to the Japanese at Jitra situated in the northern region of the Malay Peninsula. Singh decided not to join the retreating British army and instead began working with the Japanese. The Indian POWs were handed over by the Japanese to Mohan Singh, who then tried to recruit them into the Indian National Army. Following the crucial surrender of Singapore, where large numbers of Indian as well as British soldiers were seized, an alliance was formed between Fujiwara and Mohan Singh, as recorded in the *Memoirs of A.M*

---

11 *Memoirs of A.M. Nair*, n. 2, Chapter 19: *The Second World War and The Indian Independence League in Southeast Asia,* p. 168.

12 Ibid., p. 169.

13 Ibid.

14 Ibid., p. 170.

15 Ibid.

Nair.[16] The fall brought almost 45,000 Indian POWs into Mohan Singh's sphere of influence.

Inception of the Indian Independence League during World War II

While Nair was in Manchukuo, Rash Behari Bose was very active in Japan, and they both were engaged in anti-British work in their own ways. Although Indian freedom fighters were spread across Thailand, Malaya, Burma, Hong Kong, and Shanghai, what eventually came to be known as the Indian Independence League was formed under Rash Behari Bose after Japan's entry into World War II. This provided a formal shape to the Indian freedom struggle in all these areas in a coordinated way, the result of multiple rounds of discussions with the Japanese high command in Tokyo by Rash Behari Bose and Nair wherein the latter was the link between Bose and the Japanese military authorities headed by General Sugiyama.[17] While Rash Behari Bose had significant contacts with the higher echelons of Japan's political spectrum, Nair was the only Indian with access to the military, especially with the *Daihonei*'s Second Bureau. In fact, the first meeting between Rash Behari Bose and General Sugiyama was arranged by Nair through the officers directly concerned with Indian affairs. The aim was to evolve and create a proper organization for the Indian population beyond Japan across all of Southeast Asia. There was consensus that the time had come to consolidate all the scattered elements into one integrated machine under a centralized leadership.[18] Rash Behari Bose suggested in consultation with Nair that the proposed organization be named the Indian Independence League, to which General Sugiyama agreed.

Thus, in the first week of February 1942, it was announced over the radio from Tokyo and published in Japan's newspapers that the Indian Independence League had been established, with its headquarters in Room 302 of the Sanno Hotel in Tokyo.[19] Nair began meeting Bose regularly, and their immediate concern was the safety of the lives and properties of the nearly two million Indian nationals in areas either already occupied, or likely to be controlled, by Japanese forces, most significantly in Malaya, where practically half the total Indian population of Southeast Asia had been residing. The bulk of these Indians were laborers working on British plantations or engaged in trade, although there were substantial numbers in other categories, too, such as lawyers, doctors, technicians, and white-collar workers.[20] The Japanese Armed Forces had begun to sweep through the Malay Peninsula from the Thai border, marching towards Singapore. With British resistance completely broken, Nair noted a request he made to the military high command in Kudan Hills in strict confidence, that of issuing urgent instructions to their Malaya command to ensure that their troops would not harm Indians.[21] In his memoirs, Nair admits that it "was gratifying that orders accordingly were issued immediately" – and the effect was remarkable.

Except for a few unfortunate and isolated cases of ill-treatment/killing, the Indian civilian community was spared a dire fate. More significantly, Indian POWs were also unharmed.[22] For that matter, Nair went on to state further that, in various written records from those times in Malaya, India, and elsewhere, it has been acknowledged that the Indian nationals were saved on the orders of the military high command in Tokyo. The Malaya command in particular was

16 Ibid., p. 171.

17 Ibid., p. 172.

18 Ibid.

19 Ibid., p. 173.

20 Ibid.

21 Ibid.

22 Ibid.

instructed by Tokyo how to distinguish Indians from others, with the signal from Tokyo requiring Japanese armed men to identify Indians and to ask the question "Gandhi?" whenever in doubt. If the answer was in the affirmative, even if it were in the form of a mere nod, the persons were to be well cared for.[23] Had the orders not to treat Indians as enemy nationals not gone out in time from Tokyo, the community might have suffered indescribable horrors.[24]

By this time, *Nippon Hoso Kyokai* (NHK; Japan Broadcasting Corporation) had opened a short-wave station for daily broadcasts by the Tokyo-based Indian Independence League to India. Rash Behari Bose used this facility to communicate with the freedom-fighting leadership in India and explain the nature and purpose of the League, which began to be recognized as a united, impassioned body of Indians residing in Southeast Asia and the Far East and determined to support the struggle for India's independence.[25] It was also becoming clear that the Indian freedom campaign could be sustained in Japanese-occupied or Japanese-controlled territories, given the cooperation of the authorities in Tokyo and their regional commands. The situation was delicate, and needed to be negotiated judiciously and diplomatically with the Japanese high-command so that the League could function effectively without compromising its status as an autonomous Indian body.[26]

The League had taken off well in Thailand and Malaya under the local Indian leadership by establishing branches in all important centers. The network was channelized through programs devised from time to time by the central organization headed by Rash Behari Bose, who advocated for setting up national councils. In Malaya, for instance, the immediate frontline leadership was entrusted to Pritam Singh and, in Thailand, to Swamy Satyananda Puri.[27] Pritam Singh was a missionary Sikh who had initially gone to Thailand for work. There he met Major Fujiwara, however, and went to Malaya to call upon the Indian soldiers in the British Army to lay down their arms and switch over to the Japanese side. Swamy Satyananda Puri had been a member of the "Greater Indian Society" of Calcutta and had gone to Thailand in 1930 to study Thai culture and language. Later, he stayed on and involved himself in the Indian freedom movement.[28]

When Singapore fell to Japan in February 1942, General Archibald Percival surrendered himself and his troops to Lt. General Tomoyuki Yamashita of Japan's 25th Army. The prisoners of war included about 45,000 Indian soldiers. They were handed over formally to Major Fujiwara by Lt. Colonel Hunt of the British Army at Farrer Park. Among them was Colonel Niranjan Singh Gill, a highly-rated "King's Commission" officer belonging to the aristocratic family of the Majeethias of Punjab.[29] Major Fujiwara accepted the surrender of the Indian POWs, addressing them as "beloved Indian soldiers" and promised to work for good relations between them and the Japanese forces.

More importantly, there was a clandestine collaboration arrangement between him and one of the POWs, Captain Mohan Singh belonging to the first battalion of 14 Punjab Regiment stationed near Jitra on Malaya's border with Thailand. It was said that Singh had defected to the advancing Japanese army, although Nair mentions in his memoirs that there is no authentic account as to what transpired on the subject. Mohan Singh had joined the British-Indian Army in 1907 and

---

23 Ibid., p. 174.

24 Ibid.

25 Ibid., p. 175.

26 Ibid., pp. 175–176.

27 Ibid.

28 Ibid.

29 Ibid., pp. 176–177.

was an infantry soldier, working his way up to a commission from the Indian Military Academy in Dehradun.[30] Apparently, Major Fujiwara was highly impressed by Captain Singh and gave him greater latitude to deal with the rest of the Indian POWs.[31] Nair stated that, although there were a few who cast suspicions on the Fujiwara-Singh equation, Fujiwara's choice of Singh was based on the latter's qualification as the first Indian officer to switch allegiance.[32]

By this time, it had become firmly established that the Indian Independence League in Japan and Southeast Asia was founded by Rash Behari Bose, and that A.M. Nair was the main link between the League and the Japanese government, as they both were convinced that the cause of Indian freedom could be intensified in Japanese-occupied/Japanese-controlled territories with the cooperation of the military authorities in Tokyo and their regional commands. However, at the beginning of 1943, Rash Behari's health began to deteriorate.

The Tokyo Conference, March 1942

Speaking before the Japanese Diet in the first four months of 1942, Prime Minister Hideki Tōjō and Chief of the Army General Staff, General Hajime Sugiyama repeatedly called upon Indians to rise and shrug off the oppressive grip of British rule.[33] Soon after Tōjō had announced in the Diet the Japanese government's approach and its support for the Indian freedom movement, Rash Behari Bose and Nair, backed by the IGHQ, discussed the need to organize a conference in Tokyo in March. The invitees included all the important regional leaders of the League from Southeast Asia to exchange views and chalk out an action program. The meeting was set for March 28, 1942 with delegates from Malaya, Singapore, Hong Kong, and Shanghai to be in attendance.[34] Bose decided that, while he would continue as Founder President of the League and be Chairman of the proposed Tokyo Conference, there would also be a co-founder and an alternate to take on his responsibilities in the event of any emergency. Bose chose Nair for the said roles. In addition, Nair was to be Chief Liaison Officer for dealings on all important matters among the Indian Independence League, the Japanese government, and the military high command concerning all matters Indian.[35]

On the advice of the *Tamura Kikan* in Bangkok, under which Fujiwara was working in Singapore, Bose and Nair suggested to IGHQ that a couple of representatives of the Indian POWs be allowed to attend the Tokyo Conference since that would be helpful in maintaining the morale of the men who had to surrender and in utilizing them in any suitable future activity. Under Fujiwara's arrangements, the two representatives who attended the Tokyo Conference were Captain Mohan Singh and Colonel Niranjan Singh Gill.[36] About 25 delegates met at the Sanno Hotel for the conference, where Rash Behari Bose was unanimously elected President of the Indian Independence League.[37]

It was also decided to have further discussions in a plenary session of the League to be held in a more central place than Tokyo so that as wide a cross-section as possible of the Indian population in Southeast Asia could be involved in the deliberations. Bangkok was chosen as the

---

30 Ibid.

31 Ibid.

32 Ibid., p. 178.

33 Joyce Chapman Lebra, *The Indian National Army and Japan*, (Singapore: Asia Pacific Press Pte. Ltd., 1971), Chapter Thirteen: *Retrospect*, pp. 211–212.

34 *Memoirs of A.M. Nair*, n. 2, Chapter 20: *The Tokyo Conference of the Indian Independence League,* p. 180.

35 Ibid.

36 Ibid., p. 182.

37 Ibid.

venue for the next meeting of the League, scheduled to take place within the next six months. The appointment of a Council of Action, with Rash Behari Bose as President and N. Raghavan, K.P. Kesava Menon, S.C. Goho, and Captain Mohan Singh as members was also approved provisionally, subject to confirmation by the Bangkok Conference. The meetup at the Sanno Hotel concluded after three days, followed by a courtesy call on General Tōjō by Rash Behari Bose and all the delegates.[38]

The Bangkok Conference, June 1942

Preparations for the Bangkok Conference – the Conference of East Asia and Southeast Asian Indians – were far more elaborate because of the very nature of the proposed gathering. While preparations for the Bangkok Conference were in full swing following the fall of Singapore, Rangoon, too, fell to the Japanese in March 1942, along with the Dutch East Indies, Bataan, and Corregidor.[39] The conference was formally inaugurated in Bangkok on June 15, 1942, with about 120 delegates in all. The publicity campaign was being organized in Tokyo by means of Japanese radio, and additional propaganda work for India's freedom struggle was being undertaken from Bangkok. Representation in this conference far exceeded that in the Tokyo Conference, with delegates coming in from Burma, Japan, Thailand, China, Manchukuo, the Philippines, and Borneo.

Soon after the Tokyo Conference, the military headquarters in Tokyo established a special office in a portion of the Sanno Hotel to work in close liaison with the Indian Independence League. The new office was being headed by Colonel Hideo Iwakuro, a highly-rated officer who previously was Commanding Officer of the 5th Imperial Guards Regiment. As per Nair's account, the Japanese government knew fully well that the outcome of the Bangkok Conference would be vital for evolving a pattern of good relations with the Indian community spread across Southeast Asia. When arrangements for the Bangkok Conference were nearly complete, the Indian Independence League decided that it would relocate its headquarters to Bangkok – a logical step, since Bangkok would be a central location from where follow-up actions on the decisions taken at the conference could be conveniently launched. Simultaneously, Colonel Iwakuro too moved his establishment to Bangkok. The *Tamura Kikan* was wound up and replaced by the *Iwakuro Kikan*.[40] However, Colonel Iwakuro soon proposed that his office not be named after any particular individual, and it was thus renamed the *Hikari Kikan*.[41] The principal adviser was Mr. Senda, who had lived for 25 years in India, mostly in Calcutta, and was engaged in the jute business.[42] The *Hikari Kikan* had a department for political affairs and one for military matters. There was also a third wing for intelligence and counter-espionage, publicity and propaganda, with a sub-office located in Singapore. Administration was the concern of the fourth department. Nair's memoirs state that there was an unwritten arrangement under which all details of information relevant to promoting good relations between the Japanese authorities and the Indian community would be exchanged between Rash Behari Bose or Nair on the League's side and Colonel Iwakuro personally on the part of the *Hikari Kikan*.[43]

The Indian Independence League adopted the Indian national flag at the Bangkok Conference. A copy of the multiple resolutions passed during the conference were forwarded by Bose in

38 Ibid., p. 186.

39 *Memoirs of A.M. Nair*, n. 2, Chapter 21: *The Bangkok Conference,* p. 188.

40 Ibid., p. 191.

41 *Hikari Kikan*, was the group set up by the Japanese government chiefly to liaise with the Indian Independence League and later the Indian National Army.

42 *Memoirs of A.M. Nair*, n. 2, Chapter 21: *The Bangkok Conference,* p. 192.

43 Ibid.

his capacity as President of the League to Colonel Iwakuro for transmission to the Japanese government in Tokyo. Select significant resolutions passed included the following among others:

> ..... (xvi) On the severance of India from the British Empire, the Government of Japan would respect the territorial integrity and recognize the full sovereignty of India free from any foreign influence, control, or interference of a political, military, or economic nature;
> (xvii) the Government of Japan would exercise its influence with other powers and induce them to recognize the National Independence and absolute sovereignty of India;
> (xviii) Indians residing in the territories occupied by the Japanese forces should not be considered enemy nationals as long as they did not indulge in any action injurious to the Indian Independence League or hostile to the interest of Japan;
> (xx) The I.I.L. adopted the current National Flag of India and would request all friendly powers to recognize it.....[44]

Within about a fortnight, Colonel Iwakuro officially confirmed to Bose that the Government of Japan, in the spirit of its policy towards India as had already been announced by Prime Minister Tōjō, supported the Resolutions of the Bangkok Conference. As requested in one of the resolutions, the record of the decisions/recommendations of the conference would be kept secret by the Japanese government. Iwakuro requested the President of the League to preserve the secrecy of his reply as well, which Bose honored, thereby drawing the conference to an end on June 23, 1942.[45]

Rash Behari Bose saw the utility of the Indian Independence League and the Indian National Army in their role as a great source of moral support for the freedom movement within India. The large number of compatriots in Southeast Asia served as a source of powerful inspiration to the freedom fighters residing in British India at that time. Under the leadership of Rash Behari Bose, the League secured the Japanese government's undertaking that no Indian Army personnel would be required to do manual labor like other POWs, which was considered no mean achievement. The enlistment of public opinion strongly in India's favor throughout Southeast Asia was one of the Indian Independence League's greatest achievements.[46]

A "Volunteer Pass" issued by the Indian Independence League; *(World War II Records from Burma, 1938–1945) Southeast Asian Rare Book Collection, Library of Congress, Asian Division*

---

44 Ibid., p. 200.

45 Ibid., p. 201.

46 *Memoirs of A.M. Nair*, n. 2, Chapter 22: *The Indian National Army*, p. 212.

The Final Move from Bangkok to Singapore

Against the above backdrop, Rash Behari Bose decided to move to Singapore and relocate the headquarters of the Indian Independence League there. The responsibility for the transfer of the League's headquarters to the new venue was entrusted to A.M. Nair.[47] The transfer of the headquarters was fraught with many problems. Nair recalled travelling from Bangkok up to the Malay border in a passenger train to which were attached five wagons carrying the League's property, including furniture, office equipment, documents, etc. Before departing from the Bangkok station, a senior officer from the *Hikari Kikan* had instructed the Japanese officers travelling with the Indians to take care of their entourage and safeguard the cargo wagons containing the League's goods. More importantly, the League's belongings included a very large quantity of cash. The challenge was that Bangkok currency was of no use in Malaya. Therefore, Nair recalled in his memoirs that the *Hikari Kikan* helped the League to convert all its cash funds into Singaporean military currency.[48] At the Ipoh station, Nair noticed that a large number of the working staff included Malays, Chinese, Indians, and Ceylonese, with the Indians and Ceylonese together making up almost 80 percent of the workforce.[49]

Upon arriving in Singapore, Nair worked closely with the *Hikari Kikan* in setting up and organizing the League's new offices. The place allotted to the League was on Chancery Lane, off Malcolm Road, in the Bukit Tinna area, with the residences of many of the League's office bearers situated around it, including that of Rash Behari Bose. The *Hikari Kikan's* office was itself not very far from the League's. In addition to the League's radio station publicity, a newspaper in four different languages (English, Hindi, Tamil, and Malayalam) was launched. The newspaper was printed under the League's own arrangements and widely distributed to the large Indian population residing throughout Malaya and beyond. The League's radio broadcasts, which on average lasted about six hours daily, covered almost 15 Indian languages besides English.[50] The policy part of the League's programs was as per the directions of Bose and Nair, with the latter keeping the morse cable news receiving and transmitting arrangements under his control. Nair maintained close association with the Domei News Agency, which controlled the services. It had an office in Singapore linked to its headquarters in Tokyo.[51] Nair noted that the Domei channel was as efficient as, if not better than, the Associated Press or United Press news systems.

Nair had suggested even earlier that, in the event of an emergency, Subhash Chandra Bose[52] was adjudged to be the best person to whom the leadership of these Indian organizations in Japan and Southeast Asia could be handed over to be carried forward. Popularly known as *Netaji* (Respected Leader) among Indians the world over, he became the undisputed leader of the militant wing of India's nationalist movement. He had escaped from India in 1941 and was living in Berlin seeking to promote the Indian liberation struggle from outside. Notably, his historic and daring voyage from Germany to Sumatra, partly by a U-boat and partly by a Japanese submarine, was a rare feat of coordination between the navies of Germany and Japan. From Sumatra he flew to Tokyo and met General Tōjō, and thereafter arrived with Rash Behari in Singapore. Nair's description of the function where Rash Behari cheerfully handed over his leadership to his

47 Ibid., Chapter 23: *The Indian Independence League's Move from Bangkok to Singapore*, p. 213.

48 Ibid.

49 Ibid., p. 214.

50 Ibid., p. 215.

51 Ibid., p. 216.

52 For a detailed further reading and reference on *Netaji* Bose, the Indian National Army and Japan, see, Monika Chansoria, "Japan, *Hikari Kikan*, and Subhash Chandra Bose's Indian National Army: The Defining, Yet Unfinished 1940s Connect," *Policy Brief*, The Japan Institute of International Affairs, Tokyo, February 5, 2021, available at PolicyBrief_Chansoria_210205.pdf

chosen successor *Netaji* Bose is touching. When World War II ended with Japan's unconditional surrender, it automatically resulted in the disintegration of the Indian Independence League and the Indian National Army. In all, the founding and subsequent operations of the Indian Independence League spread in Japan and across Southeast Asia shall remain eternally etched in the history of the anti-colonial independence movement which sought to throw off the imperial yoke of the British to establish an independent Indian nation in 1947.

The Northern Territories Question in the Context of the War in Ukraine

Valérie Niquet

Abstract

The conflict over the Northern Territories is a key issue for Japan, with strategic implications for the Asia-Pacific region. These islands, located at the southern end of the Kuril Islands chain and occupied by the Soviet Union/Russia since 1945, are an integral part of Japan's territory. Their importance is strategic, economic, and emblematic in terms of international law. The war in Ukraine leading to the strategic rapprochement between Moscow and Pyongyang has worsened this dispute, putting a halt to peace negotiations with Russia and accelerating the militarization of the archipelago. In response, Japan is strengthening its defense and deepening cooperation with the United States and its allies in a context also marked by China's ambitions and growing regional tensions.

Introduction

The dispute over the Northern Territories remains a central issue for Japan, with strategic consequences that extend across the Asia-Pacific region. Since the Second World War, the issue has centered on the sovereignty of the islands at the southern end of the Kuril chain seized by the Soviet Union in 1945. Japan's position has not changed: the four islands that make up the Northern Territories – Etorofu, Kunashiri, Shikotan and the Habomai islets – are an inherent part of Japanese territory never administered by another country. The Soviet and then Russian occupation is therefore illegitimate. These islands have strategic, economic and symbolic importance. This historical and territorial issue is a key element of Japan's foreign policy in its relations with Russia, explaining both the tensions and the Japanese government's efforts at rapprochement as opportunities arise. Strategically, the Kuril chain and the Northern Territories provide major access to strategic sea routes between the Sea of Japan, the Sea of Okhotsk and the Pacific Ocean. Moreover, for Moscow, control of this passageway, which closes the Sea of Okhotsk, also potentially responds to China's naval ambitions in the region. While Moscow has authorized Chinese vessels to enter the Sea of Okhotsk, Russia intends to retain control of this area.[1] Economically, these islands are rich in natural resources, including rich fishing grounds and potential energy reserves. Symbolically, they embody historical tensions unresolved since the invasion of the Northern Territories by Soviet forces on August 18, 1945, and the desire of the local populations, relayed by several associations, to retain links with the places they were forced to abandon after the Second World War.

The war in Ukraine has introduced new complexities into this unresolved issue. Russia's invasion of Ukraine in 2022 not only intensified tensions on a global level, but also altered the dynamics of its bilateral relations with Japan. Tokyo's proper alignment with the G7 Western powers in imposing sanctions against Moscow has, by its very nature and despite its legitimacy, strained relations between Japan and Russia. The dispute over the Northern Territories, once the

[1] "Russia, China Warships Enter Sea of Okhotsk for Drills," Reuters, https://www.reuters.com/business/aerospace-defense/russia-china-warships-enter-sea-okhotsk-drills-interax-reports-2024-09-24/, September 24, 2024.

object of cautious diplomacy on Tokyo's part, has become increasingly intractable. In addition, Russia's increased militarization of the entire Kuril Islands chain and the strengthening of its military activities in the Pacific have heightened the strategic importance of these territories.

The consequences of the conflict in Ukraine for the Northern Territories are manifold. Diplomatic channels have largely closed, interrupting negotiations on a peace treaty between Japan and Russia, while Moscow has adopted an inflexible stance. At the same time, heightened security concerns in the Asia-Pacific region have prompted Japan to strengthen its defense strategy through closer collaboration with the US and other allies, including South Korea. This unstable security context, one of the most dangerous in decades, has heightened the global dimension of the dispute, as the strategic importance of the islands merges with tensions involving Chinese, North Korean and US influence in the region.[2]

Historical background and economic interests

The territorial argument between Japan and Russia over the Kuril Islands dates back to the first interactions between the two countries in the 18th and 19th centuries. During this period, the Russian Empire began to expand in Siberia and the Pacific towards the islands of Sakhalin, Hokkaido, and the Kuril chain with which Japan had long had cultural and economic links. As early as 1644, under the Tokugawa shogunate (Edo period), a first map was published, showing the islands of Kunashiri, Etorofu, Habomai and Shikotan.[3]

The 1855 Treaty of Shimoda marked the first formal agreement between Japan and the Russian Empire, establishing diplomatic and commercial relations and demarcating territorial boundaries. Under this treaty, Japan retained control of Etorofu, Kunashiri, Shikotan and the Habomai islets, while Russia controlled the islands to the north from the volcanic island of Urup, whose name comes from the Ainu language. Sakhalin became a non-militarized zone, shared between Russia and Japan with settlers from both countries.[4]

At the end of the 19th century, tensions over territorial claims resurfaced, as both post-Meiji Restoration Japan and Russia were able to extend their influence and capacity for action. The Treaty of St. Petersburg (1875) attempted to clarify the situation by granting Japan full control of the Kuril Islands chain beyond the Northern Territories, as well as fishing rights in the Sea of Okhotsk for Japanese vessels, in exchange for the cession of Sakhalin, where tensions were on the rise between Russian and Japanese settlers, to Russia. Japan did not have the capacity to control or buy Sakhalin from Russia at that time. However, this agreement did not eliminate the strategic competition between the two powers, with Russia intent on extending its influence and control over the Korean peninsula. This rivalry culminated in the Russo-Japanese War (1904–1905). Japan's victory in this conflict and the Treaty of Portsmouth which ended the war established its status as a rising power in Asia and gave it control of southern Sakhalin as far as the 50th parallel, while confirming its possession of the whole chain of the Kuril Islands.[5]

The consequences of the Second World War

The geopolitical landscape was profoundly altered by the Second World War. At the 1945 Yalta Conference, the Allied Powers, including the Soviet Union, agreed that the Kuril Islands and the whole of Sakhalin Island would be transferred to the USSR in exchange for its entry into the Pacific War against Japan, despite the neutrality pact signed between Moscow and Tokyo in 1941. The Soviet Union subsequently denounced the neutrality pact on April 5, 1945 and,

[2] https://www.mofa.go.jp/region/europe/russia/territory/edition92/index.html

[3] https://www.mofa.go.jp/region/europe/russia/territory/edition92/period1.html

[4] Idem

[5] Idem

although it should have waited a year before declaring war on Japan, it attacked on August 9, after the atomic bombing of Hiroshima. Soviet forces occupied all the Kuril Islands, including the Northern Territories, on September 2, 1945, the day Japan signed the surrender on the *Missouri*. On February 2, 1946, the USSR created the South Sakhalin and Kuril Oblast, attached to the Khabarovsk region.[6] President Truman had issued a directive on August 15, 1945 to the Supreme Commander of the Allied Powers in Asia, authorizing the occupation of the Kuril Islands by the Soviet Union, pending a peace treaty.

The 1951 San Francisco Peace Treaty, which officially ended the Second World War in Asia, did not resolve the question of sovereignty over the Northern Territories. Japan renounced its claim to the Kuril Islands without clarifying the territorial definition of the Northern Territories, which had never been administered or occupied by the Russian Empire or the USSR. The Soviet Union, which refused to sign the San Francisco Treaty, retained control of the islands occupied in 1945. This opposition fueled future dispute, as Japan considered the disputed islands – Etorofu, Kunashiri, Shikotan and the Habomai islets – not to be part of the Kuril chain renounced under the San Francisco Treaty.

On two occasions, however, at least a partial solution to the question of the Northern Territories was envisaged. In 1956, after Stalin's death and just as a period of détente was beginning at the global level, a joint declaration between Russia and Japan on putting an end to the state of war referred to the possible return of Habomai and Shikotan after the signing of a peace treaty. Article 9 of the declaration said: "Japan and the Union of Soviet Socialist Republics agree to continue, after the restoration of normal diplomatic relations between Japan and the Union of Soviet Socialist Republics, negotiations for the conclusion of a peace treaty. The Union of Soviet Socialist Republics, desiring to meet the wishes of Japan and taking into consideration the interests of Japan, agrees to hand over to Japan the Habomai Islands and the island of Shikotan. However, the actual handing over of these islands to Japan shall take place after the conclusion of a peace treaty between Japan and the Union of Soviet Socialist Republics."[7]

Progress was also made under the presidency of Boris Yeltsin after the collapse of the USSR in 1991.[8] In 1993, in the Tokyo Declaration, Boris Yeltsin recalled the terms of the 1956 declaration. In 1998, the "Moscow Declaration for a Creative Partnership between Russia and Japan" raised new hopes for accelerated negotiations on a peace treaty and economic cooperation, including in the Northern Territories. Moscow's five-stage plan included, firstly, official recognition of the problem, then demilitarization of the area; these would be followed by the creation of a special economic zone to promote economic development on the islands; finally, the plan foresaw the signing of a peace treaty and the mobilization of future generations to ensure the successful conclusion of the dispute. Based on the 1956 declaration, the plan also foresaw the return to Japan of the two islands already mentioned. This plan was not implemented.[9]

A series of documents that preceded the 1998 declaration provided for the administrative simplification of visits by former Japanese residents of the Northern Territories to the graves of their forebears, as well as a cooperation agreement on fisheries and maritime resources.[10] In 1999, Vladimir Putin, soon-to-be President of the Russian Federation, declared: "we acknowledge the

6 https://history.state.gov/historicaldocuments/frus1945v07/d390

7 https://www.cas.go.jp/jp/ryodo_eg/taiou/hoppou/hoppou02-01.html

8 Yoko Hirose, "Japan-Russia Relations: Can the Northern Territories Issue be Overcome?," https://helda.helsinki.fi/server/api/core/bitstreams/62f9003d-fcf1-4873-a87f-897350177e9b/content, 2018.

9 https://www.mofa.go.jp/region/europe/russia/territory/edition92/index/html

10 https://www.mofa.go.jp/region/europe/russia/territory/edition01/moscow.html

problem but transfer of the Kuril Islands is out of the question."[11] Nevertheless, in a declaration signed by the same Vladimir Putin and Japanese Prime Minister Yoshiro Mori in 2001, both parties pledged to continue negotiations on the basis of the 1993 Tokyo Declaration.[12]

The economic interest factor

The disputed islands, located in the north-western Pacific Ocean, are also a resource-rich region, due to the large Exclusive Economic Zone (EEZ) to which they give right.

The region's economic resources are potentially considerable. The surrounding waters are among the world's richest fishing grounds, supporting Japan's vital seafood industry. They could also offer new resources in energy (gas and oil) and rare metals through seabed mining. Beyond the economic aspect, the islands' strategic location in the Pacific increases their importance, as it enables Russia to control essential naval routes in an increasingly tense international context.

An essential sovereignty issue for Tokyo

The debate over the sovereignty of the Northern Territories in terms of international law lies at the heart of the dispute; the rule of law is an essential point for Japan, whereas the strategic and military importance of the Kuril chain and the nationalist dimension are more decisive factors for Russia. Japan's position is based on historical and legal arguments, asserting that the four disputed islands – Etorofu, Kunashiri, Shikotan and the Habomai islets – have been an integral part of its territory since the 19th century. Japan relies on principles of international law and international agreements to back its territorial claims. The Shimoda Treaty signed with Russia in 1855 is an essential element, clearly delimiting the borders and assigning the islands of Etorofu, Kunashiri, Shikotan and the Habomai islets to Japan; no one could argue that these islands were seized by force, as their assignment in 1855 resulted from a bilaterally accepted agreement between two powers. This agreement, the first of its kind between the two nations, explicitly recognized Japanese sovereignty over these territories and was confirmed by the absence of any disputes at the time. The occupation of the islands by the Soviet Union in 1945 following Japan's surrender therefore constitutes a violation of international law. This action, which took place after the end of hostilities, contravenes the rules prohibiting the annexation of territory after the cessation of hostilities. Furthermore, the Soviet Union had unilaterally denounced the Russo-Japanese neutrality pact in April 1945 without respecting the one-year period required before taking military action.

The Atlantic Charter of 1941, which proscribes any territorial change without the consent of the populations concerned, constitutes another legal basis for Japan. Prior to their annexation by the Soviet Union, the islands had been predominantly inhabited by Japanese from the 19th century, making their seizure by force contrary to the principles of self-determination. Moreover, Russia's invocation of the Yalta agreements is legally fragile, as these agreements, never ratified nor recognized as formal treaties, cannot serve as a legal basis to justify Russian sovereignty. The 1951 San Francisco Treaty, in which Japan renounced the "Kuril Islands," does not explicitly mention the group of four disputed islands that make up the Northern Territories. Japan maintains that these territories are historically part of its national territory and, as the Soviet Union did not sign this treaty, it cannot invoke its provisions to its benefit.

The role of international law therefore remains essential in the sovereignty debate. Japan has argued for arbitration or mediation through international legal bodies, but Russia has consistently

---

[11] Vlad M. Kaczynski, "The Kuril Islands Dispute Between Russia and Japan: Perspectives of Three Ocean Powers," *Russia Analytical Digest*, no. 20, 2007, https://css.ethz.ch/content/dam/ethz/special-interest/gess/cis/center-for-securities-studies/pdfs/RAD-20-6-8.pdf

[12] Yoko Hirose, op.cit.

rejected these approaches. This impasse reflects broader geopolitical tensions that have continued despite the end of the Cold War and the collapse of the USSR, with Russia desiring to reassert its power, particularly since Vladimir Putin's second election to the presidency.

A complex geopolitical context and the militarization of territories

The dispute over the Northern Territories remains a central issue in relations between Japan and Russia, influenced by regional and global strategic stakes. Russia has steadily increased its military presence on the islands since the 2010s, reinforcing its claims to sovereignty. In recent years, Moscow has developed military infrastructure, deployed advanced missile systems and conducted numerous military exercises in the region close to the Kuril Archipelago and the Northern Territories. Of particular note is an exercise carried out by Russian forces involving more than 3,000 men on one of the islands of the Kuril Islands chain in March 2022, after Moscow suspended bilateral talks on a peace treaty. Such measures underline the strategic importance of the Kuril Islands for Russia, which uses them as a buffer zone to secure its access routes to the Pacific and a tool to put pressure on Japan. The proximity of the islands to vital shipping lanes between the Sea of Japan, the Sea of Okhotsk and the Pacific Ocean, and their role in the projection of Russian power in the Asia-Pacific, reinforce their importance and complicate the prospect of a solution at a time when Russia, since the mid-2010s and the invasion of Crimea (2014), has chosen a strategy of military confrontation and assertion of power.

Japan for its part has maintained a consistent but cautious approach to the dispute. Despite an ever-present willingness to negotiate, the situation has not improved, particularly since 2022 in the context of the war in Ukraine. Successive administrations, notably that of Prime Minister Shinzo Abe, have pursued active diplomacy, emphasizing economic cooperation as a means of building a trusting, win-win relationship with Russia. In particular, the Abe government sought a potential solution based on the return of Shikotan and the Habomai islets, the smallest of the disputed territories, which account for just 7% of the Northern Territories' surface area, but these efforts ultimately came to nothing, contrary to the hopes raised in public opinion and the media by Vladimir Putin's visit to Japan in 2016. The challenge remains to strike a balance between the expectations of Japanese public opinion, relayed by political representation, regarding the return of the islands – even if, according to a poll published in 2016, 57% declared themselves in favor of easy access to the islands for humanitarian reasons but flexible regarding the return of the four islands – and the geopolitical realities of an increasingly aggressive and isolated Russia.[13] The other objective, which remained unresolved, was to develop a relationship of trust with Vladimir Putin's Russia in order to limit the negative strategic consequences for Japan of too close a rapprochement between Moscow and Beijing.

The ongoing conflict in Ukraine has thus heightened tensions between Japan and Russia. Japan, aligning itself with its Western allies, first and foremost the United States, imposed sanctions on Russia, including the freezing of assets and the restriction of trade. These measures drew sharp criticism from Moscow, which in turn suspended peace treaty negotiations with Tokyo in 2022. In a strategic continuum between Europe and Asia, the invasion of Ukraine has reinforced Russia's interest in its military bases on the Asian side of its territory, including the Kuril Islands and the Northern Territories. The aim is to counter the side of US allies, both in Europe and Asia.

Since 2015, Moscow has strengthened its permanent military presence in the Kuril Islands and Northern Territories it occupies with the construction of barracks, airstrips, ASM (Anti-Ship Missile) bases and S 300 anti-missile systems. In 2017, two battalions in charge of ASM missiles were based in Etorofu and Kunashiri. In 2020, S 300 anti-missile missile batteries were also

[13] *Mainichi Shimbun* poll, in Yoko Hirose, op.cit.

deployed in Etorofu, and militarization of the Northern Territories continued in 2022.[14]

Russia's new maritime doctrine, published in 2022, reinforces the importance of the Arctic and Pacific maritime territories. The Sea of Okhotsk and the straits of the Kuril Islands are designated as "zones of national interest," to be defended by force if necessary.[15] In this context, for Japan, the war in Ukraine has heightened the risks of regional instability, including around the Northern Territories, and the importance of strengthening alliances, particularly with the United States, unwillingly feeding the hostile stance of Russia's leaders.

In Russia's nuclear strategy, the bastion of the Sea of Okhotsk, where Russian nuclear-powered ballistic missile submarines (SSBNs) are based, has seen its strategic importance further reinforced since the war in Ukraine. The fleet of 16 SSBNs operating in the Arctic and the Pacific is an essential element of Russia's strategy of deterrence and intimidation, all the more important at a time when Putin has made repeated declarations about Russia's nuclear capabilities and approved a new version of its nuclear doctrine on November 19, 2024.[16] In line with this, Russian Foreign Ministry spokeswoman Maria Zakharova declared in November 2024 that Japan "should read Russia's updated nuclear doctrine."[17] According to the new document: Russia "reserves the right" to use nuclear weapons not only in response to a nuclear attack, but also to respond to a conventional weapons attack that constitutes a "critical threat" to its "sovereignty and territorial integrity."[18] Russia has accelerated the modernization of its fleet of nuclear-powered ballistic missile submarines, and has been strengthening its Pacific fleet since 2021 by deploying its most modern Borei-A-class submarines, each equipped with 16 Bulova mirved missiles with a range of 8,000 km.[19] Russia carried out major nuclear exercises in October 2024, firing missiles from a submarine in the Sea of Okhotsk and the Kamchatka peninsula. The Kuril archipelago, beyond the passageways to the Pacific, closes the bastion of the Sea of Okhotsk and establishes a bridge between the Russian SSBNs base at Petropavlovsk and the Pacific Fleet headquarters in Vladivostok.[20]

The geopolitical context of the Northern Territories dispute also reflects broader shifts in global power dynamics. Russia's actions on the islands are part of its strategy to increase its influence in the Pacific and put pressure on the US system of alliances in the region through its ally Japan. At the same time, Japan's approach underlines its commitment to international norms and alliances. Russia's occupation of the Northern Territories also strengthens its military pressure on Japan. On November 28, 2024, Russian Deputy Foreign Minister Sergei Ryabkov stated that Russia might consider deploying intermediate-range missiles on its territory in Asia should the US deploy such missiles on Japanese territory. The Kuril Islands and the Russian-occupied Northern Territories are indeed located in Asia and could be chosen as deployment

[14] Ike Barrash, "Russia's Militarization of the Kuril Islands," CSIS, https://www.csis.org/blogs/new-perspectives-asia/russias-militarization-kuril-islands, 27-09-2022.

[15] Daniel Rakov, "Russia's New Naval Doctrine: A 'Pivot to Asia'?," *The Diplomat*, 19-08-2022.

[16] Simon Saradzhyan, "New Principles of Russia's Nuclear Deterrence Liberalize Conditions for Use, Unsurprisingly," *Russia Matters*, https://www.belfercenter.org/research-analysis/new-principles-russias-nuclear-deterrence-liberalize-conditions-use, 19-11-2024.

[17] "Russia to Take Proportionate Steps, If US Missiles Appear in Japan–MFA," TASS, https://tass.com/politics/1878535, 27-11-2024.

[18] Daryl G. Kimball, "Russia Revises Nuclear Doctrine," https://www.armscontrol.org/act/2024-12/news/russia-revises-nuclear-use-doctrine, December 2024.

[19] Eliana Johns, "Upgrades to Russia's Nuclear-Capable Submarine Fleet," https://fas.org/publication/submarine-upgrades-russia/, 02-07-2024.

[20] Yu Koizumi, "Russian Pacific Fleet Redux: Japan's North as a New Center of Gravity," *War on the Rocks*, https://warontherocks.com/2024/10/russian-pacific-fleet-redux-japans-north-as-a-new-center-of-gravity/, 22-10-2024.

sites.[21]

The influence of other powers adds to the complexity of the dispute. The United States, as Japan's main ally, has always supported Tokyo's claims to the islands, framing the issue in the context of a rules-based international order as part of the US-Japan security alliance. The strategic importance of the islands is also linked to broader concerns about maintaining freedom of navigation and strategic balances in the Pacific. At the same time, the growing assertiveness of China, which has carried out several joint maritime exercises with Russia in Japan's immediate environment, indirectly affects Japan's position on the Northern Territories. Beijing's growing military presence and territorial claims in the East and South China Seas have made Japan more sensitive to issues of sovereignty and China's growing assertiveness on all fronts. The Kuril Islands occupy a critical position in the security environment of the Pacific. Japan sees this dispute as part of a wider effort to ensure regional stability.

Last but not least, the election of Donald Trump could change the course of the conflict in Ukraine as well as the relationship between Russia and the United States, imposing a new factor that Japan must take into account.

Economic sanctions and retaliation from Russia, a diplomatic dilemma

Beyond this overall strategic context, Japan's reaction to the invasion of Ukraine has considerably reshaped its relations with Russia, particularly in regard to the dispute over the Northern Territories. Following the February 2022 invasion, Japan aligned itself with its Western allies by imposing sanctions on Russia. These measures included freezing Russian assets, restricting exports of high-tech products and suspending major financial transactions. While these sanctions underlined Japan's commitment to international norms, they also exacerbated tensions with Russia, leading to a breakdown in diplomatic engagement.

In March 2022, Russia announced the suspension of peace treaty negotiations with Japan, citing Tokyo's hostile actions. At the same time, talks on economic cooperation were suspended, the fisheries agreement was also put on hold and, most importantly, on September 3, 2022, Russia reneged on the agreement allowing visa-free visits to the islands by former residents to visit the graves of their ancestors.[22] This development marked a major setback in bilateral relations, as these negotiations had been optimistically perceived on the Japanese side as a means of settling the territorial dispute over the Northern Territories. In December 2023, Russian Foreign Minister Lavrov declared that Russia had no territorial dispute with Japan, reversing Russia's acknowledgement of the existence of a dispute.[23] For Japan, this development has highlighted the complexity of balancing its geopolitical alliances with its long-standing efforts to resolve the issue of sovereignty. Despite these difficulties, Japan remains firm in its stance, stressing that economic sanctions are necessary to uphold the rules-based international order.

The influence of strategic cooperation between North Korea and Russia on the Northern Territories issue

The strengthening of strategic cooperation between North Korea and Russia since 2022, particularly with the signing of the Treaty on Comprehensive Strategic Partnership between the Russian Federation and the Democratic People's Republic of Korea in June 2024 and the

[21] "Russia Says It Will Respond If US Places Missiles in Japan," *Reuters*, https://www.reuters.com/world/russia-says-it-will-respond-if-us-places-missiles-japan-2024-11-27/ , 27-11-2024.

[22] "Russia Scraps Visa-Free Visits to Islands Disputed with Japan," https://english.kyodonews.net/news/2022/09/0e65c3011bf2-urgent-russia-scraps-visa-free-visits-to-islands-in-dispute-with-japan.html, 06-09-2022.

[23] "Russian Foreign Minister Says No Territorial Dispute with Japan," *Japan News*, https://japannews.yomiuri.co.jp/world/russia/20231219-156538/, 19-12-2023.

dispatch of a 10,000 to 12,000-strong North Korean contingent to Russia in November 2024, have considerably heightened geopolitical concerns from the perspective of Japan and its allies in Asia. This partnership, with arms contracts, economic collaboration and ideological and strategic rapprochement against the West, has repercussions on the balance of power in North-East Asia. For Japan, these developments are changing regional dynamics, affecting its security and weighing on territorial disputes.

The resurgence of cooperation between Moscow and Pyongyang, particularly in the context of international sanctions and geopolitical isolation in response to Russia's invasion of Ukraine, bears witness to a mutual interest in opposing the values of respect for international law upheld by Western-style democracies. North Korea seeks economic and military aid to strengthen its regime, while Russia sees Pyongyang as a potential ally in its wider conflict with the West, particularly in the context of the war in Ukraine, as well as a purveyor of arms and potential reinforcements on the ground. This renewed partnership includes agreements on arms sales, technological exchanges and diplomatic support in international forums like the UN as well vis-à-vis China, on which both partners are highly dependent.

The partnership between Russia and North Korea could prompt both states to act more aggressively in the region, increasing the risk of provocations in Japan's close maritime environment, missile tests by North Korea and Russian military exercises near Japanese waters. Furthermore, the growing complexity of threats emanating from a Russia–North Korea axis could strain allied resources and coordination, with the risk of multiplying fronts of tension.

Hence, Russia's growing cooperation with North Korea complicates the Northern Territories issue in several ways. Russia has already fortified the Kuril Islands with military installations, seeing them as a strategic asset. Closer collaboration with North Korea could lead to further militarization, making the region a more important flashpoint.

Conclusion

The dispute over the Northern Territories is much more than a simple territorial dispute between Japan and Russia. It represents a major strategic challenge for regional stability in Northeast Asia, and for Japan's geopolitical position in a rapidly changing international context. Resolving this issue is crucial not only for strengthening Japan's national security but also for contributing to a more stable regional dynamic in the long term. Indeed, beyond Russia, North-East Asia remains a region marked by complex tensions, fueled by North Korea's unpredictable nuclear ambitions and China's growing military assertiveness, which is redefining regional balances of power.

The role of Russia, which has intensified its pivot towards Asia after its invasion of Ukraine in the face of its growing isolation, adds a further dimension to the problem. By strengthening its strategic ties with Beijing, Moscow aims to counterbalance the influence of Western powers and reinforce its presence in the Asia-Pacific, including through increased military activities in disputed territories. These actions signal a clear desire to consolidate its strategic position in a region that has become central to its geopolitical and economic interests. This repositioning makes the question of the Northern Territories all the more sensitive in Japan's regional security calculations.

However, beyond the bilateral aspect, this dispute illustrates broader issues that touch on complex international dynamics. The evolutions of the strategic binomes Russia and the United States, the United States and China, and China and Russia are also important factors. Since 1945, the strategic priorities of the Soviet Union, then Russia, and those of Japan have rarely converged, making any lasting solution difficult. For Russia, the islands represent a strategic maritime space whose importance has been reaffirmed in the context of the war in Ukraine and its global repercussions. For Japan, the return of the Northern Territories is not only a question of national sovereignty, but also an important element in its positioning in a world order marked by growing

tensions between great powers.

However, as with other territorial or historical disputes, whether in Asia or Europe, the resolution of this conflict largely depends on the evolution of the political regimes involved. In Russia, a real breakthrough would require an authority that opts for negotiation and long-term cooperation rather than nationalism or populism, which are often used to justify aggressive diplomatic postures. A transition, currently unnoticeable, towards relations based on harmonious cohabitation and constructive dialogue would be essential to avoid escalating tensions.

(Un) Targeting the Senkaku Islands: Bombing Ranges in the Senkakus, the Decision by the United States to Suspend Their Use, and the Current Implications of that Moratorium, 1948-1978

Robert D. Eldridge*

Abstract

A few years after the end of World War II, with the U.S. military in control of Okinawa and the rest of the Nansei Islands, the United States announced in April 1948 that it would begin using Kōbi Sho, locally known as Kuba Island, for U.S. Air Force target practice and issued warnings to fishermen in the area. In April 1956, the U.S. military added neighboring Sekibi Sho, locally known as Taishō Island, to its list of bombing ranges, this time for the U.S. Navy. In the same year, management of the Kōbi Sho range was transferred to the U.S. Navy, and rent was paid to the island's owner, Koga Zenji. At the time of the return of Okinawa in 1972, Kōbi Sho and Sekibi Sho continued to be leased to the U.S. military by the Government of Japan as facilities no. 6084 and 6085, respectively, under the bilateral Status of Forces Agreement (of 1960). However, in 1978, the U.S. State Department issued a moratorium suspending the use of the ranges by U.S. forces, citing concerns about becoming involved in a Sino-Japanese dispute over claims to the islands. The two ranges have not been used since, despite the U.S. Navy's desire to do so. This article, based on declassified diplomatic and military documents as well as interviews, memoirs, and oral histories, examines the history of the acquisition and use of the islands as bombing ranges and the decision to discontinue their use in the late 1970s. It also explains the many problems and misunderstandings caused by the U.S. decision and argues that the ranges should be returned to use, including possible joint use with the Japan Self-Defense Forces, in light of the increasingly aggressive actions of the People's Republic of China in the area.

1. Introduction

In April 2021, Kyodo News published an explosive article on the decision of the U.S. government in June 1978 to instruct the U.S. Navy to suspend use of Taishō Island, also known as Sekibi Sho, as a firing range out of fear the United States would be entangled in a Sino-Japanese dispute over the Senkaku Islands (Senkaku Rettō or Senkaku Shotō), which the People's Republic of China (PRC) call the Diaoyu Islands and the Republic of China (Taiwan) previously called the Tiaoyutai Islets but now calls the Diaoyutai Islets. The following year in 1979, according to the declassified documents obtained by Kyodo News, the U.S. government once again rejected a request by the U.S. military to be able to resume use of Sekibi Sho.[1] Neither Sekibi Sho, nor nearby Kōbi Sho, otherwise known as Kuba Island, has been used since then, suggesting that the moratorium is not only still in effect but that it was also applied either formally

* Senior Fellow, Japan Institute of International Affairs.

1 "U.S. ceased using Senkakus firing range in 1978 to avoid riling China," *Kyodo News*, April 5, 2021 (https://english.kyodonews.net/news/2021/04/57606c2b9e0c-us-ceased-using-senkakus-firing-range-in-1978-to-avoid-riling-china.html).

or informally by extension, to Kōbi Sho.

More than 45 years have elapsed since that fateful decision, which understandably troubled the Government of Japan, and the damage to U.S.-Japan alliance interests is significant. Some of the negative effects include the wrong message it sends to the Japanese government and the citizens of Japan, as well as other countries in the region, that Japan's jurisdiction over the Senkaku Islands (despite the U.S. government's return of administrative rights to the Senkaku Islands to Japan in 1972) is imperfect and that the United States might not be there to support Japan if a conflict were to occur (despite U.S. repeated statements that Article 5 of the U.S.-Japan Treaty of Mutual Cooperation and Security applies to the Senkakus).[2] Furthermore, it created the dangerous precedent by which the PRC can theoretically or even practically influence the ability of the United States to use facilities, which are otherwise guaranteed by the U.S.-Japan Status of Forces Agreement (SOFA), in Japan. Moreover, it opens up the United States for criticism as being in violation of the SOFA, since it has not returned facilities it no longer uses to Japan, which is required of the SOFA.[3] Finally, the decision to suspend usage has deprived the U.S. military and presumably the Japan Self-Defense Forces (were the ranges to be made shared use with the JSDF which can be done through the Joint Committee established under Article XXV of the bilateral Status of Forces Agreement) of needed air-to-ground and other ranges in Japan to maintain or improve their respective warfighting capabilities.[4]

This study examines the history of the U.S. military's use of the two ranges in the Senkaku Islands during the postwar period and the sudden, unilateral, and unwise (in this writer's

---

2 Article 5 reads: "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. Any such armed attack and all measures taken as a result thereof shall be immediately reported to the Security Council of the United Nations in accordance with the provisions of Article 51 of the Charter. Such measures shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security." The latter clause is not particularly reassuring as, it should be remembered, the PRC is a permanent member of the UNSC since 1971, years after the 1960 U.S.-Japan security treaty went into effect. For a highly critical look at U.S. guarantees and policy as a whole, see Robert D. Eldridge, "U.S. Senkakus Policy and its Contradictions," *The Japan Institute of International Affairs/Resource Library*, September 2023 (https://www.jiia-jic.jp/en/resourcelibrary/pdf/ResourceLibrary_Territory_Eldridge_230906_r.pdf).

3 It can be argued that the U.S. government is in violation of Article II of the SOFA by not returning Kōbi Sho and Sekibi Sho, over the past half-century of non-use. Paragraph 3 of Article II states: "the facilities and areas used by the United States armed forces shall be returned to Japan whenever they are no longer needed for purposes of this Agreement, and the United States agrees to keep the needs for facilities and areas under continual observation with a view toward such return." Similarly, the preceding paragraph, Paragraph 2, states "At the request of either Government, the Governments of Japan and the United States shall review such arrangements and may agree that such facilities and areas shall be returned to Japan or that additional facilities and areas may be provided." Because the U.S. government has reportedly kept the Japanese government informed of its intentions regarding the two islands, the Japanese government has been unable to make the request to "review such arrangements." It can be surmised that the Japanese government wishes to keep the United States involved with the Senkakus and thus has not made the request for the return of the facilities (islands), but without the related documents regarding internal discussions within the GOJ, or between the GOJ and the USG, being declassified, it is difficult to know for sure.

4 It can be argued that the ranges would have eventually become joint or shared use under normal circumstances as is the case with many other previously exclusive use U.S. facilities in Japan as part of the increasingly closer degree of cooperation, coordination, and interoperability. As such, the political decision of the U.S. government to suspend use of the ranges has slowed the momentum toward a more interoperable alliance in addition to depriving the two militaries, plus any other allies and friendly nations training in Japan, for improving their capabilities.

opinion) decision of the U.S. government to discontinue use of them. The article is divided into six sections, including this Introduction and a Conclusion, and is based on declassified U.S. and Government of the Ryukyu Islands documents, as well as memoirs, oral histories, and interviews with officials involved in policy at that time. Section 2 looks at the decisions to use Kuba Island (Kōbi Sho) and Taishō Island (Sekibi Sho) as ranges beginning in 1948 and 1956 respectively, and the challenges that arose over the management of the islands by the U.S. military. The section after that looks at the contract to lease Kuba Island from its owner, Koga Zenji, and a little about the history of Kuba and Taishō Islands prior to being utilized by the U.S. military. Section 4 explores the handling of the ranges at the time of return of Okinawa and the Senkaku Islands to Japan in 1972, and Section 5 examines the decision by the United States to suspend use of the ranges. The Conclusion looks at the problems this decision has caused for the U.S.-Japan alliance over the years and the status of the islands today.

2. The Respective Decisions to Use Kuba Island and Taishō Island as Ranges and Their Management by the U.S. Military

In light of tensions that were building in the region with the civil war on the Chinese mainland in the latter half of the 1940s, and the need for the U.S. military, especially its pilots, to be trained and ready, Captain Millard O. Engen of the U.S. Military Government of the Ryukyu Islands, a World War II veteran who later served in Korea after North Korea launched its attack in June 1950, announced on April 16, 1948, that Kuba Island, or Kōbi Sho, and the surrounding area would be used for target practice.[5]

This announcement was based on an earlier decision in January 1948 by the U.S. Air Force's 1st Air Division to identify ten locations under its command as air-to-ground training ranges, around which would be designated as "permanently dangerous areas."[6] The 1st Air Division, which had replaced the 8th Army Air Force in early June 1946 and was at Kadena until December 1, 1948, when it was inactivated, would be the first organization to use the range.[7]

The 1st Air Division had been assigned to Far East Air Forces on June 1, 1946 when it was activated and served as an air defense organization. Some of the components of the 1st Air Division on Okinawa included the 301st Fighter Wing, 51st Fighter Group, 337th Air Support Group (ASG), 316th Bomber Wing, 559th ASG, 822nd EAG, and 23rd Recon Squadron. It is unclear which units specifically used the Kuba Island (Kōbi Sho) range. Subsequently, when the

---

5 See "Oral History with Millard Engen," Cactus Hills Arizona Heritage Project (www.azhp.org/index-3.html, accessed June 2012). Although it is generally understood that the U.S. military began using Kuba Island in 1948, it appears that the U.S. Air Force used it as early as November 1945 according to a November 2, 1945 *Kanpo* (Gazette) announcement. The Japanese Navy Ministry's Military Affairs Bureau was responsible for sharing the information. The author is indebted to local Senkaku Islands researcher Kuniyoshi Makomo for bringing this announcement to my attention.

6 "Memorandum from Commanding General, 1st Air Force, revising 1st Air Force Directive 55-8 of October 15, 1946," January 15, 1948, USCAR Files, Okinawa Prefectural Archives, Haebaru Town, Okinawa Prefecture, Japan.

7 Miyako Minseifu, ed., "Kōkyū Kiken Kuiki (Permanent Danger Area)," *Kōhō "Shin Miyako"* (Public Announcement, "New Miyako"), No. 3 (May 6, 1948), cited in Senkaku Shotō Bunken Shiryō Hensankai, ed., *Senkaku Kenkyū Senkaku Shotō Kaiiki no Gyogyō ni Kansuru Chōsa Hōkoku: Okinawaken ni Okeru Senzen-Nihon Fukki (1972) no Ugoki* (Senkakus Research A Report on Fishing in the Vicinity of the Senkaku Islands Focusing on the Prewar and Pre-Reversion (1972) Period in Okinawa Prefecture), (Naha: Senkaku Shotō Bunken Shiryō Hensankai, 2010), p. 215.

1st Air Division was inactivated on December 1, 1948, it was the 20th Air Force that took over.[8]

With the announcement, Kuba Island and the surrounding vicinity were designated as "permanently dangerous areas" and fishing or other entry within the immediate area was banned. The following month more details were released, namely that fishermen and others were not to enter a five-nautical mile area around the island due to the dangers associated with the bombing range.[9]

These announcements, however, apparently did not get fully relayed to the fishermen (or perhaps were outright ignored by them due to the importance of the area as one of the best fishing areas) and the Air Force reported problems with the bombing training due to fishermen and others being in the vicinity.[10] Major Merle M. Glover, the military government officer of the Yaeyama Civil Administration Team, or YCAT, which had been stood up in March 1947 after the Yaeyama Provisional Government was disbanded, directed Yoshino Kōzen, governor of the Yaeyama Civil Government (*Yaeyama Guntō Seifu Chiji*), to ensure the word got out to all of the fishermen through the newspapers and public notices.[11]

To be on the safe side, early the next year, the military government dropped notices to fishermen to inform them about avoiding the range at Kōbi Sho and not entering the five-nautical mile circumference area.[12] There was some confusion around this time, however, as a second area (Tori Island) had been declared off-limits as well. Locally, Minami Island and Kita Island were known collectively as Tori Island, but the actual training range was on another island named

---

8 Established in World War II, the 20th Air Force had shifted from its original mission of strategic bombing over Japan to becoming a central component of nuclear deterrence and strategic air command in the 1950s with its primary mission shifting to nuclear deterrence against the Soviet Union. Under the umbrella of the Strategic Air Command (SAC), which it had become a part of in 1946, the 20th Air Force was responsible for maintaining a fleet of bombers ready to deliver nuclear strikes. Its bombers, including B-29 Superfortresses, B-36 Peacemakers, and later the B-47 Stratojets, were positioned to carry out long-range nuclear bombing missions if conflict erupted. During this period, the 20th Air Force operated various bomber wings responsible for conducting both nuclear and conventional missions. Bomber crews were trained to conduct strategic bombing missions deep into enemy territory, with bombers capable of reaching the Soviet Union from bases in the United States and allied countries. The 20th Air Force was also involved in strategic support during the Korean War, with its strategic bombers on standby for potential use if the conflict escalated. It did not participate directly in day-to-day combat operations in Korea but remained a key element of the overall U.S. military posture during the conflict. The focus on maintaining a credible nuclear deterrent meant the 20th Air Force was kept on high alert during much of the 1950s. As such, throughout the 1950s, the 20th Air Force was involved in rigorous training exercises to maintain readiness for nuclear and conventional conflicts. Training missions were conducted to simulate the bombing runs that would be required in case of an actual nuclear war. This training ensured that both crews and aircraft were maintained at a high state of readiness.

9 Rinji Hokubu Nansei Shotō Seichō, ed., "Tokubetsu Kokuji Daiichigō (Ryūkyūgun Sakusen Yōkō Dainigō) (Special Proclamation No. 1 [Ryukyu Military Operations Order No. 2])," *Rinji Hokubu Nansei Shotō Seichō Kōhō*, No. 35 (May 5, 1948).

10 Senkaku Shotō Bunken Shiryō Hensankai, ed., *Senkaku Kenkyū Senkaku Shotō Kaiiki no Gyogyō ni Kansuru Chōsa Hōkoku*, p. 215.

11 "Senkaku Rettō Kōbi Sho wa, Eikyū Kiken Chiiki (Senkaku Islands' Kōbi Sho, Permanent Danger Zone)," *Nansei Shimpō*, November 3, 1948. The *Nansei Shimpō* was a small newspaper that began operations on September 6, 1945, and continued until December 28, 1951.

12 "Senkaku Rettō ni Chikayoru Na Beikokugun ga Keikoku (Do Not Go Near the Senkaku Islands, U.S. Air Force Warns)," *Miyako Minyū Shimbun*, January 14, 1949. The *Miyako Minyū Shimbun* operated from July 10, 1946 to February 24, 1950.

Tori Island closer to Kume Jima (and is still used today).[13] In order to clarify the areas, eventually the Air Force released on October 19, 1951, through the Okinawa Islands Government Economic Division (*Okinawa Guntō Keizaibu*) dates and specific latitudes and longitudes for when and where training would take place.[14] Afterwards, as well, prior to using the ranges, the U.S. military would inform the Government of the Ryukyu Islands (GRI) that it was declaring the areas off-limits, and the GRI, in turn, warned fishermen not to go near those waters through the Yaeyama Regional Office (*Yaeyama Chihōchō*).[15]

Kōbi Sho was used by the U.S. Air Force until 1955 for air-to-ground target practice, and then primarily by the U.S. Navy afterwards.[16] On November 9, 1955, Brigadier General Vonna F. Burger, the Civil Administrator of the Ryukyu Islands, along with Colonel Walter H. Murray, his deputy, convened a meeting to discuss the use of Kōbi Sho and other islands with about a dozen officials from the Navy and Air Force and relative departments of the U.S. Civil Administration of the Ryukyu Islands.

The reason for the meeting seems to have been due to requests from the Government of the Ryukyu Islands and other local officials and organizations based on the desires of local fishermen to ask the military to reduce the size of the no-entry area as the area around Kōbi Sho was particularly good for fishing.[17]

With regard to the use of Kōbi Sho as a bombing range, U.S. officials tentatively agreed that the military would continue to use it as an air-to-ground target and that restrictions as to ordnance, hours of use, and prior notice would continue, including special instructions. Importantly, however, they agreed that shore bombardment of the island would be discontinued after the present commitments had been completed. As a result, the officials decided to reduce the "danger area circle surrounding Kōbi Sho...to a minimum of preferably one hundred yards beyond the land area, subject to approval by the Com[mander] 7th Fleet."[18]

At the time, the danger area was still approximately five miles surrounding Kōbi Sho, which hindered fishing. As a result of this change, the livelihoods of fishermen were greatly improved. However, beginning in mid-April 1956, the Navy also began using Sekibi Sho, or Taishō Island,

---

[13] To further confuse things, there is a second "Kuba Jima" belonging to Zamami Village in the Kerama Islands, closer to the main island of Okinawa. It, too, is uninhabited, and about almost twice the size as Kuba Island in the Senkakus.

[14] Senkaku Shotō Bunken Shiryō Hensankai, ed., *Senkaku Kenkyū Senkaku Shotō Kaiiki no Gyogyō ni Kansuru Chōsa Hōkoku*, pp. 217-218. Also see Ozaki Shigeyoshi, "Senkaku Shotō no Kizoku ni Tsuite, Chū," *Refarensu* (Reference), No. 261 (October 1972), p. 96, citing *Ryūkyū Shiryō, 1945-1955, Vol. 8* (Naha: Ryūkyū Seifu Bunkyokyoku, 1958), p. 59.

[15] An example of the announcement and copies of the leases can be found in *Kikan Okinawa*, No. 56, pp. 141-154, cited in Ozaki, "Senkaku Shotō no Kizoku ni Tsuite, Chū," p. 58. According to Fung Hu-hsiang, "Evidence beyond Dispute: Tiaoyutai (Diaoyutai) is Chinese Territory!" (www.skycitygallery.com/japan/evidence.html), the U.S. military applied each time to the ROC government for authorization to use the islands for bombing practice, "confirming again that Tiaoyutai is ROC territory." Fung, a controversial figure who died in 2021, was a former legislator in Taiwan and professor of philosophy at National Central University in Taipei. This explanation is highly unlikely, however.

[16] The Senkaku Islands Study Group, ed., "The Senkaku Islands and the Japan's Territorial Titles to Them," *Kikan Okinawa*, No. 63, p. 27. For more on this study group, established in April 1970, see Eldridge, *The Origins of U.S. Policy in the East China Sea Islands Dispute*, pp. 141-142.

[17] "'Arasareru Kōbijima Gyoba' Bakugeki Enshū Kuiki Henkō Uttaeru (Demanding a Change in the Bombing Practice Zone that is "Tearing Up the Kōbi Island Fishing Area)," *Miyako Mainichi Shimbun*, November 10, 1955. The *Miyako Mainichi Shimbun* had been established two month earlier in September that year and is still published today.

[18] "Memorandum for the Record of Conference on Use of Kobi Sho, Raleigh Rock, and Okinawa Daito Shima as Navy and Air Force Ranges, November 9, 1955," USCAR Files.

which would affect fishermen there.[19] The danger area of Sekibi Sho, farther away, remained at five nautical miles as it does, nominally, today.

It is unclear why the U.S. military chose to begin using Sekibi Sho as an additional range at this point in the mid-1950s. It may have been to offset the limited usage area at Kōbi Sho. Or perhaps it had to with tensions in the Taiwan Strait, or even as a result of the violence at sea seen in the March 1955 *Daisan Seitoku Maru* Incident, events that may have been inter-related in and of themselves.[20]

While the U.S. military's decision regarding adjusting the danger area around Kōbi Sho certainly did help Okinawan fishermen in the area, the problem did not go away in light of the expansion of use to include Sekibi Sho. It also impacted those outside of the prefecture as well.

During the 1950s, for example, the issue of the ranges was also taken up in prefectures in Kyushu that had boats going into the area, such as Nagasaki and Kagoshima Prefectures. In March 1954, a prefectural people's rally was held in Nagasaki against the training, and in September 1959, a similar rally was held in Kagoshima, both with large fishing communities.

The issue of U.S. military training in the fishing areas was subsequently taken up in the Diet, or National Parliament, in the agriculture and fisheries committee (*Nōrin Suisan Iinkai*) of the House of Representatives, or *Shūgiin*, in October 1959 and in the counterpart committee of the House of Councilors, or *Sangiin*, in November.[21] In the case of the House of Representatives (Lower House), the question had been raised by Akaji Tomozō, a Socialist Party (*Shakaitō*) representative from Kagoshima Prefecture. At the time, the revision of the U.S.-Japan security treaty was also being discussed between the two governments and in the Diet, where the Socialists were critical of the treaty, attention was particularly high.[22]

In addition to these political problems and requests to refrain from using the ranges, it is clear from U.S. documents that there were also a lot of problems with coordinating their use. Not only did Okinawan fishermen have to be warned from entering the area, fishermen and ships from mainland Japan and other countries also had to be informed. U.S. officials in Okinawa did not

---

[19] During this time, the Yaeyama Regional Office discovered the administrative responsibility for Sekibi Sho was unclear and requested an internal investigation. In some regulations and descriptions, the island appeared to fall under the jurisdiction of the Miyako Islands Regional Office (*Miyakotō Chihōchō*), but officials later found prewar Okinawa Prefecture records that found Taishō Island had been recorded as a part of Ishigaki City in 1921 (or the 10th Year of Taishō). See "'Sekibi Island' no Ishigakishi no Shokan, Taishō 10 Nen ni Taishō Island to Shite Tōroku ('Sekibi Island' Falls Under Ishigaki City, Registered in 10th Year of Taishō as Taishō Island)," *Ryūkyū Shimpō*, March 16, 1956. A month later, the U.S. Navy announced it was using the island for target practice. Senkaku Shotō Bunken Shiryō Hensankai, ed., *Senkaku Kenkyū Senkaku Shotō Kaiiki no Gyogyō ni Kansuru Chōsa Hōkoku*, pp. 231-232.

[20] For more on that incident, see Robert D. Eldridge, "The First Senkakus Clash: The 1955 *Daisan Seitoku Maru* Incident, American, Okinawan, and Republic of China Responses, and Japanese Diplomacy," *Japan Review*, Vol. 7, No. 1 (September 2024), (https://www.jiia-jic.jp/en/japanreview/pdf/05JapanReview_Vol7_No1_Robert%20D%20Eldridge.pdf).

[21] See Senkaku Shotō Bunken Shiryō Hensankai, ed., *Senkaku Kenkyū Senkaku Shotō no Shizen Kaihatsu Riyō no Rekishi to Jōhō ni Kansuru Chōsa Hōkoku—Okinawaken ni Okeru Chiiki Shinkō Shima Okoshi no Ichijō to Shite* (Senkaku Research Report on the History of Natural Use and Development of the Senkaku Islands and Related Data—Advice on Regional Promotion and Island Development in Okinawa), (Naha: Senkaku Shotō Bunken Shiryō Hensankai, 2011), p. 145.

[22] For more on the Socialist Party's criticism of the security treaty revision, particularly in the context of Okinawa, see Robert D. Eldridge, "The Revision of the U.S.-Japan Security Treaty and Okinawa: Factional and Domestic Political Constraints on Japanese Diplomacy in the 1950s," in Makoto Iokibe, Caroline Rose, Junko Tomaru, and John Weste, eds., *Japanese Diplomacy in the 1950s: From Isolation to Integration* (London: Routledge, 2008), pp. 164-180. Also see the classic history of the treaty revision, George R. Packard, III, *Protest in Tokyo: The Security Treaty Crisis of 1960* (Princeton: Princeton University Press, 1966).

have a way to contact foreign countries to instruct their vessels and fishermen to avoid the area and thus sometimes word did not reach them. Fortunately, none was mistakenly bombed, but it is likely that certain runs had to be aborted due to fishermen being in the area thus causing an impact on training.

On a slightly related note, in the late 1960s, after Taiwanese fishermen had illegally landed in the Senkakus, the Government of the Ryukyu Islands put up "no trespassing" signs at the suggestion of USCAR. (Denying access to areas is an important aspect to show ownership of land or property, and an important concept in real estate.) These signs were finally installed in July 1970, including on Kuba Island and Taishō Island.[23]

The Installment of the No-trespassing Sign

It was necessary for the officials to get special permission to go to the two training areas. This was granted at the end of June (1970). The relevant section of the letter sent to Chief Executive Yara Chōbyō on behalf of the Civil Administrator read:

> The U.S. Navy, controlling agency for the ranges involved, has concurred with your request. Entry into the ranges for the installation of warning signs has been approved. Ranges 175 (Kōbi Sho) and 182 (Sekibi Sho) will be closed from 6 July through 15 July 1970 to allow your government sufficient time to accomplish the project. Upon completion of the project, it is requested that this organization be notified by telephone (71175) in order that the U.S. Navy can be so informed. Please caution those concerned to refrain from disturbing any ordnance on these islands in order to prevent possible injury or loss of life.[24]

Interestingly, while on Kuba Island, GRI officials discovered 14 Taiwanese illegally on the

---

[23] For a detailed discussion of how this came about see Eldridge, *The Origins of U.S. Policy in the East China Sea Islands Dispute*, pp. 82-86.

[24] "Letter from H. L. Conner to Chief Executive, Government of the Ryukyu Islands, on Request for Entry Permit into a Firing Range of the U.S. Armed Forces (Taishō-Jima) of the Senkaku Rettō and Suspension of Firing Practice (received July 1, 1970)," USCAR Files.

island.[25] They were told to leave, having been shown the "no trespassing" sign being installed.

3. Leasing the Islands and a Short History of the Islands

The history of the Senkaku Islands is explored in depth in the author's 2014 award-winning book, *The Origins of U.S. Policy in the East China Sea Islands Dispute*, but to briefly introduce Kuba Island and Taishō Island here, the former was explored and eventually leased from the Japanese government by Koga Tatsushirō, a businessman originally from Fukuoka Prefecture since the late 1800s. His son, Zenji, subsequently purchased them from the Japanese government in the early 1930s, years after his father passed away and when the original lease was up. Kuba Island today remains privately owned by a family friend (Kurihara Kazuko) of the Koga's but is leased by the Japanese government.[26] Nearby Taishō Island was and has always been owned by the Japanese government, although as this article explains, was used by the U.S. military beginning in the 1950s for target practice when the United States had "the right to exercise all and any powers of administration, legislation and jurisdiction over the territory and inhabitants of these islands, including their territorial waters" as per Article 3 of the San Francisco Peace Treaty.[27]

After moving to Okinawa at the age of 23 in 1879, Koga established a store in Naha, and by 1882, the shop had done so well that Koga established a second store on Ishigaki Island.[28] There, he learned from fishermen and others about the uninhabited Senkaku Islands and the fact the islands were a nesting area for birds. In 1884, Koga sent an exploratory party to the islands and learned that indeed the islands were a bird habitat and were rich in marine resources. The following year, he sent some workers to the islands to gather bird feathers and ocean products, and realizing that both supply and demand were promising, decided to make it a regular part of his business.

Koga would send workers there annually and a decade later in 1894, he applied to the appointed governor of Okinawa Prefecture, Nishimura Sutezō, for permission to allow him to develop Kuba Island. He seems to have made the same request to the Japanese government, such as the Ministry of Home Affairs and Ministry of Agriculture and Commerce about that same

---

25 Eldridge, *The Origins of U.S. Policy in the East China Sea Islands Dispute*, p. 85.

26 Kurihara Kunikoshi received the title to Uotsuri Island from Koga Hanako, the wife of Koga Zenji, in 1978. Kurihara had received the islands of Kita Kojima and Minami Kojima from Zenji, the son of the original developer, Koga Tatsushiro, in 1972. He and Hanako did not have children, and looked at Kunikoshi as almost like a son. Zenji died in March 1978 just before tensions rose over the Senkakus in April of that year. Hanako asked Kurihara to take Uotsuri off her hands when tensions rose. Kurihara Kazuko received Kuba Island in 1985 from Hanako, three years prior to the latter's passing in January 1988. (It is unclear why there was a delay between selling the two islands.) It appears that the Kurihara family paid a total of 38,000,000 yen for the four islands (see "'Senkaku 3 Tō o Kokuyūka' Nihon Seifu ga Seisaku Henkō ('3 Senkaku Islands to be Nationalized' Japanese Government Changes Policy)," *Tōa Nippō*, July 9, 2012.) Also see Kurihara Hiroyuki, *Senkaku Shotō Urimasu* (Senkaku Islands for Sale), (Tokyo: Kōsaidō Shuppan, 2012), pp. 44-48. The current owner is Kurihara Kazuko, who is the younger sister of Kunikoshi and Hiroyuki (a middle brother passed away in 2003). Kunikoshi adopted Kazuko in 2009.

27 For the making of Article 3 and its interpretation, see Robert D. Eldridge, *The Origins of the Bilateral Okinawa Problem: Okinawa in Postwar U.S.- Japan Relations, 1945-1952* (New York: Routledge, 2001), particularly Chapter 7.

28 Makino Kiyoshi, "Senkaku Rettō Shōshi (A Short History of the Senkaku Islands)," in *Kikan Okinawa*, No. 56, p. 65. For more about the Koga family, see Koga Zenji, "Senkaku Shotō no Aruji wa Watashi (I am the Owner of the Senkaku Islands)," *Nihon Keizai Shimbun*, August 26, 1971, and the interview with his wife, Hanako, in Arasaki Moriteru, ed., *Okinawa Gendaishi e no Shōgen* (Testimony about Modern Okinawan History), Vol. 2, (Naha: Okinawa Taimususha, 1982), pp. 129-132.

time. However, his request was denied since the ownership of the islands was unclear.[29]

Koga himself visited the Senkaku Islands the following year, traveling to Kuba Island. He would describe the visit in the following way: "there were many trees growing, and an infinite number of birds on the island. So numerous in fact, that you could catch one in your hand. The nearby waters were also rich in fish and other marine items. It is a very promising place to develop."[30]

After this trip, Koga went directly to Tokyo and met with Minister of Home Affairs Nomura Yasushi on June 10, 1895, to describe the investigation he had conducted and request to be allowed to lease the islands. Importantly, the Japanese government had already approved earlier that year the inclusion of Uotsuri Island and Kuba Island as a part of Okinawa Prefecture (and thus a part of Japan), and therefore the situation was quite different from the previous year when Koga had last applied for permission to lease the islands. Legally speaking, according to international law scholar Okuhara Toshio, there was now no problem for the Meiji government to accept the request. However, because the islands in question had not been officially designated "national land," or *kokuyūchi*, the minister decided to put off accepting Koga's request.

Koga Tatsushiro

Koga Zenji

Koga Hanako

The history of the incorporation of the islands into Okinawa Prefecture, as well as the studies conducted, is covered in extensive detail in the author's aforementioned book (particularly pages 31-36). Koga's request to develop the islands was eventually approved in August 1896. He was allowed to use four of the islands—Uotsuri Island, Kuba Island, Minami Island, and Kita Island—for thirty years free of charge. (Taishō Island remained under the ownership of the central government, namely the Ministry of Finance, and continues so today.) Afterwards, when the thirty-year gratuitous lease expired, the four islands were leased from the central government on an annual basis for 136.61 yen beginning in September 1925.[31]

On March 31, 1932, at the solicitation of Koga's son, Zenji, who had assumed ownership of the family business after his father passed away in mid-August 1918, the government sold the four islands to him at the price of 1,824 yen for Uotsuri Island, 247 yen for Kuba Island, 47 yen for Minami Island, and 31.50 yen for Kita Island.[32] The transfer of property rights was conducted later

---

[29] Okuhara Toshio, "Senkaku Rettō to Ryōyūken Mondai (The Senkaku Islands and the Territorial Problem)," *Sandei Okinawa*, No. 45 (June 2, 1973).

[30] Ozaki Shigeyoshi, "Senkaku Shotō no Kizoku ni Tsuite, Jō (Territorial Sovereignty of the Senkaku Islands, Part 1)," *Refarensu* (Reference), No. 259 (July 1972), pp. 43-44.

[31] Unryu Suganuma, *Sovereign Rights and Territorial Space in Sino-Japanese Relations: Irredentism and the Diaoyu/Senkaku Islands* (Honolulu: University of Hawaii Press, 2000), pp. 98-99.

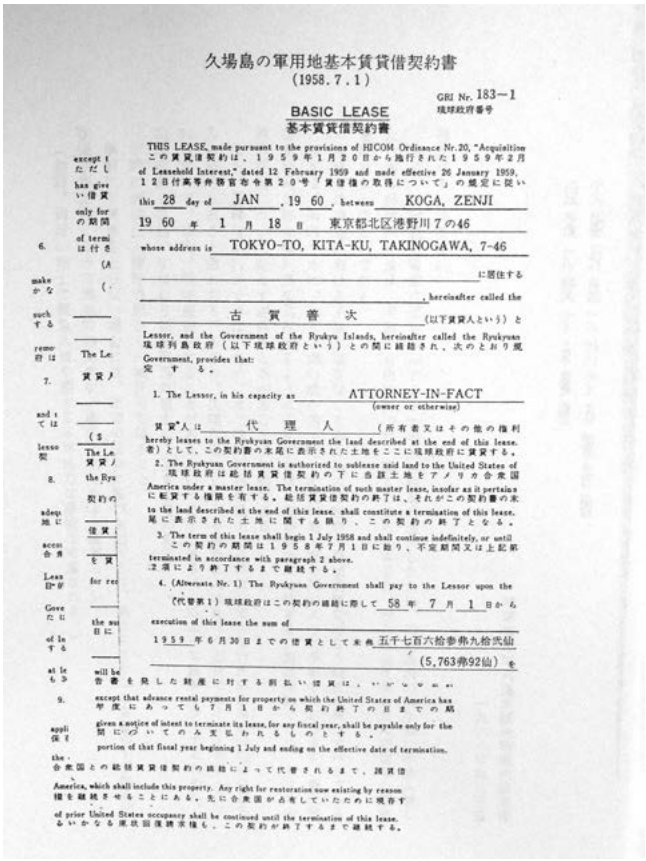
[32] Eldridge, *The Origins of U.S. Policy in the East China Sea Islands Dispute*, p. 36.

that year—May 27 for Uotsuri Island and Kuba Island, and July 28 for Minami Island and Kita Island.

Because four of the five islands were now privately owned, they became subject to property taxes. On December 15, 1932, the insular rental valuation was fixed at 9.30 yen, and the land property tax was calculated on this basis for the next few years.[33] On June 1, 1936, the rental valuation was adjusted, and the tax for Koga's islands was lowered to 6.20 yen.[34] He would use the islands until 1940, when the workers were evacuated on the eve of the start of the Pacific War.

During the Battle of Okinawa, the United States came to control and occupy parts of Okinawa and its nearby islands. In September 1945, surrender ceremonies were held on the islands that had organized Japanese forces on them. At this point, all the Nansei Islands officially came under U.S. military control. The Senkaku Islands were unmanned, but were administratively under Ishigaki, and thus the aforementioned Yaeyama Civil Affairs Team was placed in charge of them.

Koga Zenji was no longer living in Okinawa at this point. He and his wife had left Okinawa in 1944 and lived in Nagano Prefecture and Tokyo. He would not return to Okinawa until 1961.[35] It is unclear in the chaotic, immediate postwar years when Zenji first learned that one of his islands was being used for target practice. In any case, according to him, the U.S. military began paying rent on Kōbi Sho in 1950 two years after usage began.[36]



久場島の軍用地基本賃貸借契約書
(1958.7.1)

GRI Nr. 183－1
琉球政府番号

BASIC LEASE
基本賃貸借契約書

THIS LEASE, made pursuant to the provisions of HICOM Ordinance Nr.20, "Acquisition of Leasehold Interest," dated 12 February 1959 and made effective 26 January 1959,
この賃貸借契約は，１９５９年１月２６日から施行された１９５９年２月１２日付高等弁務官令第２０号「賃借権の取得について」の規定に従い

this 28 day of JAN , 19 60 , between KOGA, ZENJI

19 60 年 1 月 18 日 東京都北区港野川７の46

whose address is TOKYO-TO, KITA-KU, TAKINOGAWA, 7-46
に居住する
, hereinafter called the Lessor, and the Government of the Ryukyu Islands, hereinafter called the Ryukyuan Government, provides that:
古 賀 善 次 (以下賃貸人という) と琉球列島政府（以下琉球政府という）との間に締結され，次のとおり規定する。

1. The Lessor, in his capacity as ATTORNEY-IN-FACT (owner or otherwise)
賃貸人は 代 理 人 (所有者又はその他の権利者) として，この契約書の末尾に表示された土地をここに琉球政府に賃貸する。

2. The Ryukyuan Government is authorized to sublease said land to the United States of America under a master lease. The termination of such master lease, insofar as it pertains to the land described at the end of this lease, shall constitute a termination of this lease.
琉球政府は総括賃貸借契約の下に当該土地をアメリカ合衆国に転貸する権限を有する。総括賃貸借契約の終了は，それがこの契約書の末尾に表示された土地に関する限り，この契約の終了となる。

3. The term of this lease shall begin 1 July 1958 and shall continue indefinitely, or until terminated in accordance with paragraph 2 above.
この契約の期間は１９５８年７月１日に始り，不定期間又は上記第２項により終了するまで継続する。

4. (Alternate Nr. 1) The Ryukyuan Government shall pay to the Lessor upon the execution of this lease the sum of
(代替第１) 琉球政府はこの契約の締結に際して 58 年 7 月 1 日から１９５９年６月30日までの借賃として米典五千七百六拾参弗九拾弐仙 ($5,763弗92仙) を

9. except that advance rental payments for property on which the United States of America has given a notice of intent to terminate its lease, for any fiscal year, shall be payable only for the portion of that fiscal year beginning 1 July and ending on the effective date of termination.
合衆国との総括賃貸借契約の終結によって代替されるまで，賃貸借権を継続することにある。先に合衆国が占有していたために現存するいかなる原状回復請求権も，この契約が終了するまで継続する。

Lease for Kuba Island

33 Ibid.

34 Ibid.

35 Ibid., p. 40.

36 Koga Zenji, "Mō San, Satō San Senkaku Rettō wa Watashino 'Shoyūchi' Desu (Mr. Mao, Mr. Satō: I Own the Senkaku Islands)," *Gendai*, Vol. 6, No. 6 (June 1972), p. 145.

In July 1958, for reasons unclear, the United States Civil Administration of the Ryukyu Islands (USCAR) had the Government of the Ryukyu Islands act as its proxy in signing a lease with Koga, perhaps due to his physical unavailability.[37] According to the terms of the contract (Basic Lease, GRI, No. 183–1), USCAR paid Koga an annual rent of 5,763.92 U.S. dollars, which was raised to 10,567 dollars in 1963.[38] Koga began paying 400 dollars in taxes the following year to Ishigaki City, and for year 1971, he paid 450 dollars.[39] Koga, who was born in 1893, eventually died in 1978 at the age of eighty-four. But Kōbi Sho as well as three other islands remained privately owned until recently when several of them (Uotsuri Island, Minami Island, and Kita Island) were purchased by the Japanese government in September 2012 for ¥2.05 billion ($26 million) as alluded to earlier, changing the title of the islands back to nationally owned land.[40] Kuba Island remains privately owned by Kurihara Kazuko but is leased to the Japanese government. As explained earlier, Sekibi Sho had always been state-owned.

4. Continued Use of the Ranges after Okinawa's Reversion in 1972

Reversion of Okinawa Ceremony, Tokyo, May 15, 1972

As part of the revised bilateral security treaty, signed in January 1960 and going into effect in June that year, as well as the related Status of Forces Agreement (which also went into effect at

37 Ozaki, "Senkaku Shotō," pp. 58-59.

38 The Senkaku Islands Study Group, "The Senkaku Islands and the Japan's Territorial Titles," p. 27. Also see "Kuba Jima no Gunyōchi Kihon Chintai Keiyakusho (Basic Lease for Military Land on Kuba Jima)," in *Kikan Okinawa*, No. 56, pp. 142-149. See Toshio Okuhara, "The Territorial Sovereignty over the Senkaku Islands and Problems on the Surrounding Continental Shelf," *The Japanese Annual of International Law*, No. 15 (1971), p. 101.

39 Koga, "Mō San, Satō San," p. 145.

40 See Robert D. Eldridge, "Behind the Japanese Government's Purchase of the Senkaku Islands," *The Japan Times*, September 15, 2022 (https://www.japantimes.co.jp/opinion/2022/09/15/commentary/japan-commentary/senkaku-islands/). This article includes interviews with former Prime Minister Noda Yoshihiko and other key players, such as Ishihara Shintaro and Nagashima Akihisa, in events at the time.

that time), the Japanese government continued to allow the United States Navy to use the ranges following Okinawa's reversion in May 1972. Kōbi Sho Range was identified as W-175 (Facility No. 6084) and Sekibi Sho Range as W-182 (Facility No. 6085).[41] Both continued to be managed and primarily used by the U.S. Navy.

According to declassified documents that are similar to the pre-1972 period but were updated with new range designations and maps, Kōbi Sho is described in the following way.

> Location: The Kōbi Sho Range is an uninhabited island about 215 nautical miles west of Okinawa (see figure).
> Access: The island is used solely as an air-to-ground range and due to its remote location is relatively inaccessible. Access is by helicopter or surface vessel.
> Real Estate: Kōbi Sho is approximately 87 hectares (215 acres of land). The range includes the water surface area contiguous to Kōbi Sho out to a distance of 100 M.
> Surrounding Land Use: The nearest inhabited islands are Miyako Jima, Ishigaki Shima and Iriomote Jima which are approximately 75 nautical miles to the south.
> Terrain: The island is circular in shape with a diameter of about 1,100 meters. The island consists of a rocky outcropping rising to the highest elevation of about 118 m.
> Training: The USFJ [U.S. Forces Japan] is authorized to use Kōbi Sho for air-to-ground bombing and gunnery utilizing all conventional aircraft ordnance.[42]

The same declassified document includes a description and map and figure for Sekibi Sho as well, stating:

> Location: Sekibi Sho is a special use air and surface space over open ocean located 160 nautical miles west of Okinawa (see Figure).
> Access: The island is relatively inaccessible to most activities due to its remote location. The primary users are ships transiting through the Okinawa OPAREA [Operations Area]. Access to this range is by helicopter or surface vessel.
> Real Estate: Sekibi Sho contains approximately 4 hectares (10 acres) of land. The controlled area is circular and extends out from the island to a distance of 5 nautical miles with the center being at 25° 54'00"N, 124° 34'00"E. The airspace has the same surface boundary up to an altitude of 1,200 M (3,940 FT).
> Surrounding Land Use: The nearest inhabited islands are Miyako Jima, Ishigaki Shima and Iriomote Jima which are approximately 75 nautical miles to the south.
> Terrain: The island is rectangular in shape with dimensions of approximately 350 meters by 120 meters. The island is a rocky outcropping rising to an elevation of about 81 meters.
> Training: The USFJ is authorized to use Sekibi Sho for ship-to-shore and air-to-ground bombing and gunnery, utilizing all conventional naval and aircraft ordnance.

The importance of the training ranges was clear at the time of Okinawa's reversion and hence their continuance. They provided a remote and relatively safe location to conduct live-fire exercises against the backdrop of the war in Vietnam and the need to be prepared for other contingencies.

---

[41] It is unclear why the Chinese reading of the islands' names, rather than the Japanese—Kuba Island and Taishō Island, were employed in the documents exchanged at the time of Joint Committee meeting on May 15, 1972, when the use of the continued ranges was agreed to and signed for.

[42] Department of the Navy, "Military Training Facilities in Okinawa (MILTRAIN-OKI), Okinawa, Japan, September 1985," pp. 34-36. A note describes the entire island of 215 acres as the "impact area."

The U.S. military continued to use these ranges after the end of the Vietnam War in the mid-1970s, although the frequency seems to have decreased somewhat. During this time, relations between the United States and the People's Republic of China were improving after President Richard M. Nixon's visit in February 1972, and military tensions in the region eased slightly (and throughout the world during the several years of détente with the former Soviet Union), leading to less frequent use compared to the height of the Cold War. These factors may have created the backdrop against which U.S. officials felt that they could suspend use of the ranges later.

5. The Decision by the United States to Suspend Use of the Ranges

While usage may have decreased, it had not ended.[43] For example, the U.S. Navy used the ranges in December 1977 and was planning to do so again in 1978 when the U.S. State Department directed the U.S. military in Japan to not use them that spring. The State Department turned down the U.S. Navy's request the following year as well.

The direct reason for the State Department's moratorium was related to the tensions that had risen between the PRC and Japan in April 1978 (and that have continued since then) and the U.S. government's desire not to get involved in questions of sovereignty over the islands. An indirect reason for the moratorium had to do with U.S. interest in working with the PRC toward mutual recognition, as talks were about to begin again between the two governments, which may have led the U.S. government to compromise in the hopes of moving discussions along.[44]

On April 12, 1978, some 80 Chinese fishing vessels appeared in the vicinity of the Senkakus. Many of them were armed, some with machine guns.[45] Eventually, that number grew to more than 200, and they would remain for the next couple of weeks.[46] This mass-intrusion occurred right after calls by members of the ruling Liberal Democratic Party who to resolve the Senkakus issue between Japan and the People's Republic of China at the time of the bilateral treaty of peace and friendship which was being negotiated at the time.[47]

The reason for this mass-intrusion remains unclear, but there were several interpretations at the time including that it was a counter-assertion of sovereignty or an effort to derail the

---

[43] While the specific dates of the usage are unknown, the number of days the islands were to be used as ranges were as follows. Kuba Island, 1972 (0 days), 1973 (11 days), 1974 (1 day), 1975 (2 days), 1976 (0 days), 1977 (16 days), 1978 (116 days), and Taisho Island, 1972 (2 days), 1973 (13 days), 1974 (52 days), 1975 (55 days), 1976 (17 days),1977 (41 days), 1978 (67 days). The author is indebted to Kuniyoshi Makomo for sharing this information.

[44] If this explanation is true, it would be similar to the decision made by the Nixon Administration in June 1971 at the time of the final negotiations over the Okinawa Reversion Agreement when the U.S. government decided to take a neutral stance on the issue of sovereignty over the Senkaku Islands despite longstanding policy to the contrary out of concern for the PRC with which Kissinger was secretly negotiating at that precise moment to arrange for Nixon to visit the PRC. (See Eldridge, "U.S. Senkakus Policy and its Contradictions," and Eldridge, *The Origins of U.S. Policy in the East China Sea Islands Dispute*, Chapter 5.) National Security Advisor Zbigniew Brzezinski seems to have fallen into a similar trap in his hurried efforts to negotiate official recognition with the PRC. See Richard H. Solomon, *Chinese Negotiating Behavior: Pursuing Interests through 'Old Friends'* (Washington, D.C.: U.S. Institute of Peace, 1999). Also see Zbigniew Brzezinski, *Power and Principle: Memoirs of the National Security Adviser, 1977-1981* (New York: Farrar Straus & Giroux, 1983).

[45] Daniel Tretiak, "The Sino-Japanese Treaty of 1978: The Senkaku Incident Prelude," *Asian Survey*, Vol. 18, No. 12 (December 1978), p. 1235.

[46] Nakama Hitoshi, *Kiki Semaru Senkaku Shotō no Genjō* (The Dangerous Situation Today Facing the Senkaku Islands), (Tokyo: Adobansu Kikaku, 2002), p. 137.

[47] Tretiak believes the efforts of the Diet members, who were opposed to a peace treaty with the PRC, may have been "a last-ditch attempt to thwart the treaty." See Tretiak, "The Sino-Japanese Treaty of 1978," p. 1241.

negotiations, both of which will be explored in a future article. Other explanations, such as one incorrectly told by PRC Foreign Minister Huang Hua to U.S. National Security Advisor Zbigniew Brzezinski who visited Beijing the following month, that "As for Chinese fishing boats in the neighborhood of the Senkaku Islands, they have been doing so for many years. It is not just this year that they have begun to do so."[48]

The U.S. government, in any case, monitored the situation very closely, gathering information from Tokyo, Beijing, Taipei, Hong Kong, and elsewhere over the coming days, weeks, and months.

While the official position of the PRC was that the fleet had simply followed the fish and was unaware it had gotten close to Japanese waters, an explanation reportedly put forward by the Japanese side was that the Chinese in fact wanted to put pressure on the U.S. government by sending its fleet close to Kuba Island and Taishō Island.

On April 14, two days after the appearance of the Chinese boats, the U.S. Embassy in Tokyo informed the State Department that the Ohira Masayoshi, Secretary-General of the LDP, apparently "believed one reason for [the] presence of Chinese-fishing boats in the Japanese-claimed territorial waters off Senkakus was that [the Government of Japan] had allowed some of those islands to be used by [the] US military for bombing and shelling practice."[49] Ohira, according to a Japanese newsman who told a U.S. Embassy officer about the LDP official's comment, told reporters on background that the information had come from confidential documents provided by MOFA in late March as a backgrounder for use in explaining GOJ policy regarding the Senkakus.

A Washington Post correspondent in the interim had picked up on the story and asked for U.S. Embassy confirmation, but the latter refused to comment. The embassy thus wrote the State Department to inform them of developments and recommend that spokesmen from the Embassy or State Department "be authorized to comment along line that longstanding U.S. Forces utilization of range [sic] in question has grown out of fact that Japan's exercise of facto sovereignty over islands and that the United States had not taken formal position as to sovereignty."[50]

Based on the recommendations of the Embassy, the State Department decided to prepare a statement on its position on the Senkaku Islands and shared it with the Japanese side. On April 17, Political Counselor Arima Tatsuo from the Japanese embassy in Washington, D.C., called on Nicholas R. Platt, the Japan Country Director at the State Department, to discuss the "press guidance." Platt and Arima were classmates at St. Paul's School and Harvard College and had known each other a quarter century by this point.[51] Their longtime friendship seems to have allowed them to speak frankly.

Arima explained the background details of the Senkakus issue, including the Japanese acquiescence in 1971 to the U.S. position, but emphasized that the Japanese side had not been adequately consulted at the time and was "troubled by some of [the] wording of [the] basic

---

48 Memorandum of Conversation, "Summary of Dr. Brzezinski's Meeting with Foreign Minister Huang Hua, Beijing, May 21, 1978," *Foreign Relations of the United States, 1977-1980, Vol. XIII, China*, p. 422.

49 "Telegram 06519 from [Ambassador] Mansfield to State Department, April 14, 1978," Record Group 59.

50 Ibid.

51 Author's interview with Nicholas R. Platt, November 4, 2024, New York City, New York. Also see Nicholas Platt, *China Boys: How U.S. Relations with the PRC Began and Grew, a Personal Memoir* (Washington, D.C.: ADST-DACOR, 2010), and "Interview with Nicholas Platt, March 7, 2005," The Association for Diplomatic Studies and Training, Foreign Affairs Oral History Project (https://adst.org/OH%20TOCs/Platt-Nick.pdf). Also see Arima Tatsuo (edited by Takenaka Harukata), *Taiōbei Gaikō no Tsuioku, 1962-1997* (Recollections on Diplomacy with Europe and the United States), (Tokyo: Fujiwara Shoten, 2015).

position and expressed [the] view that reiteration of [the U.S. government's] position as now set forth particularly at time of [Prime Minister] Fukuda [Takeo]'s visit might cause GOJ embarrassment."[52]

Arima requested that the U.S. government delete the word "current" from the first sentence of the press guidance, repeating a similar request made by Tamba Minoru, who previously served in the Japanese embassies in Beijing and Washington, D.C., and had recently been assigned to head the Japan-U.S. security treaty division in Tokyo.[53]

Platt responded that the U.S. side would attempt to adjust the press guidance regarding American bombing ranges in the Senkakus to meet the present situation, including consideration of deletion of the word "current," but that changing the basic U.S. government position on the Senkakus—which "had been formulated with full regard for long-term U.S. needs and that it continued to meet those needs now as it had in 1971"—would be a "major exercise involving policy review at [the] highest level."[54] Platt added his personal view that the "objective situation" had not changed since 1971 and thus he "could not be sanguine about the outcome of any such review."[55]

The author finds this view odd in light of all of the changes that had occurred since June 1971, when the Okinawa reversion agreement was signed.[56] Namely, the U.S. and PRC has accomplished rapprochement, efforts to explore and exploit resources in the surrounding areas were continuing apace, tensions had arisen in the South China Sea, and the PRC had sent a large nominally fishing fleet near the Senkakus.

Arima also seems to have felt Platt's explanation was problematic. He admitted that MOFA was aware at the time of the reversion negotiations that the U.S. government "did not wish to become involved in any Senkakus dispute and therefore [MOFA] did not raise any objection to [U.S. government] position [in 1971]" but argued that the Japanese side "would view with alarm an unresponsive U.S. attitude in the face of some clearly aggressive act by the PRC in the Senkakus."[57]

Arima added his personal opinion that "such a development could call into question the U.S.-Japan mutual security treaty," to which Platt responded (again without the proper context) that "since the security treaty [was] not questioned in 1971 when [the U.S.] position [was] originally formulated and published, there seemed no reason why treaty should be questioned now."[58]

Platt said that the U.S. government fully understood delicacy of the Senkakus issue for Japan and therefore wished to avoid to the extent possible public reiteration of the U.S. basic position at this time. He further told Arima that if the latter sought a review of U.S. policy, the Japanese government would have to present its position in detail and develop supporting arguments for consideration. Arima said he would check with his government for instructions.

It is unclear if Arima did so and what discussions took place with the U.S. government, but Deputy Secretary of State Warren Christopher in the meantime informed the U.S. Embassy in Tokyo that it could revise the press guidance so that it read: "The longstanding U.S. forces' utilization of two bombing ranges in the Senkaku Islands has grown out of the period of U.S.

52 "Telegram 101664 from Platt to U.S. Embassy Tokyo, April 21, 1978," Record Group 59.

53 Ibid. For more on his work at the embassies and within MOFA, see Tamba Minoru, *Waga Gaikō Jinsei* (My Life in Diplomacy), (Tokyo: Chūō Kōron Shinsha, 2011).

54 "Telegram 101664."

55 Ibid.

56 For details, see Eldridge, *The Origins of U.S. Policy in the East China Sea Islands Dispute*, particularly chapters 4, 5, and Conclusion.

57 "Telegram 101664."

58 Ibid.

administration of these islands and from the fact of Japan's exercise of authority over them. The U.S. uses these facilities in accordance with the Mutual Security Treaty and its related arrangements."[59] Christopher also instructed the Embassy to "emphasize to MOFA, however, that the basic [U.S. government] position remains unchanged," and that the rest of the guidance remained in effect.[60]

Despite these assurances, the State Department directed the military to stop using the ranges. It is unclear when this decision was actually made and in what way the directive was delivered—orally or in writing, and what its contents were. This is because the actual directive has not been located. (And if it was oral, was there a written record of the conversation or telephone call preserved?) In any case, there are numerous references to the "moratorium" in later declassified documents.

It is also clear in some of those declassified documents that the U.S. military desired to use the ranges again once they were permitted. For example, according to a February 1986 Department of the Nay document, under the "Comments" section for both the Kōbi Sho and Sekibi Sho ranges respectively, the following sentence was added, "This range should be used when the SECSTATE moratorium is lifted."[61] While this view was stated in the middle of 1980s when the Cold War was at its peak, one could argue that in the current new Cold War situation today with competition by an aggressive and expansionist PRC, the need to use the training ranges is more than ever.

6. Conclusion

As this article has explored, the decision of the United States to suspend use of the training ranges on Kuba Island (Kōbi Sho) and Taishō Island (Sekibi Sho) was highly problematic for the following reasons. First, it was inconsistent with (the admittedly problematic) U.S. policy on the Senkakus. Namely, the United States recognizes Japanese administration over the Senkaku Islands, and the United States is permitted by the SOFA to use the two ranges on the Senkaku Islands. However, it somehow chose not to use the ranges for fear of being entangled in a Sino-Japanese dispute over the islands. Second, the U.S. decision to suspend use of the ranges sends an unfortunate message to an ally, Japan, that the United States does not support its position and thus will not be there to defend the islands (or might even perhaps be willing to divide the islands between Japan and the People's Republic of China, as Former President Ulysses S. Grant had proposed for the Ryukyu Islands in the 19th Century and another administration, that of President Nixon, was advised to do during the final weeks of the Okinawa reversion talks[62]). Third, it creates a dangerous precedent of allowing the PRC to dictate which facilities under the U.S.-Japan Status of Forces Agreement in Japan the United States will use. Fourth, it places the United States in violation of the SOFA by not returning the ranges as required when no longer needed. Fifth, the uncertain status of the two ranges necessitates the Japanese government to continue to maintain the facilities for the United States and to pay the owner, Kurihara Kazuko, for the lease of Kuba Island with taxpayer money. Sixth, the suspension of use of the ranges prevents the U.S. military from getting the necessary training nearby and denies the U.S. and Japanese militaries from being able to work and train together were the ranges made joint use.

In light of these problems, this writer believes the United States should lift the moratorium on use of the two ranges and allow the U.S. military to use them again. In addition, the U.S. and Japanese governments should explore in the Joint Committee allowing aircraft from the Japan Self-Defense Forces to also them together with the use military. This is something the 1997 or

[59] Ibid.

[60] Ibid.

[61] "Final Report for Military Training Facilities in Okinawa," pp. 36, 38.

[62] See Eldridge, *The Origins of U.S. Policy in the East China Sea Islands Dispute*, specifically pp. 223-225.

especially the 2015 Guidelines for U.S.-Japan Defense Cooperation could have easily addressed.[63]

It should be noted, however, that this writer is unaware of any Japanese official ever having asked the U.S. government to return the ranges. One reason for this lack of certainty is that Japan remains particularly slow in declassifying documents on sensitive matters (and has an unnecessarily expansive definition of "sensitive," whose effect is to limit declassifications). If it is true that the Japanese government has never requested their return, then it is likely because the Government of Japan may wish to keep the United States engaged in the Senkakus issue by maintaining the provision of the two ranges to the United States military for its use. Perhaps we can call this situation, "lease ambiguity," for lack of a better phrase. It serves the interests of both Japan and the United States.

Indeed, one former U.S. official involved in the decision to suspend military use of the ranges explained to the author that "sometimes it is not in your interest to make a decision. It may be better to let the issue continue."[64] With regard to the two bombing ranges in the Senkakus, however, it is now time to reuse them as needed to both enforce U.S. rights, to improve U.S. and Japanese capabilities, and send an unambiguous message to the region and world.

[63] The 2015 Guidelines state, for example, "The two governments will enhance cooperation in joint/shared use of facilities and areas." See "The Guidelines for Japan-U.S. Defense Cooperation, April 27, 2015," https://www.mofa.go.jp/files/000078188.pdf, p. 13.

[64] Author's interview with Ambassador Nicholas Platt, New York City, November 4, 2024.

Published by the Japan Institute of International Affairs
3rd Floor, Toranomon Daibiru-East Building, 3-8-1 Kasumigaseki Chiyoda-ku,
Tokyo Japan 100-0013

Tel: +81-3-3503-7261 (International)
Fax: +81-3-3503-7292 (International)

More information about the Institute's activities and publications available at: https://www.jiia.or.jp/en/

THE JAPAN
INSTITUTE OF
INTERNATIONAL
AFFAIRS