CHAPTER 4
NON-MILITARY OPTIONS

While Chapter 3 focused on options based on military might, Chapter 4 examines options that are not derived from the military power of a country. These options are divided into two main categories: non-binding options, including bilateral negotiations and various third-party options such as mediation, and binding options, arbitration and adjudication. The structure of the chapter purposefully mirrors that of the previous chapter to provide the best foundation for comparing and contrasting the various options available to China in Chapter 5.

From an offensive realist perspective military power is crucially important. However, one should be cautious to avoid the trap of *Maslow’s hammer*, in other words the argument that for a man with the hammer everything looks like a nail. It is a common misconception to equate offensive realism’s focus on military power and expansion with mindless aggression and warmongering. Mearsheimer argues that successful states need to be keenly aware of the balance of power and only resort to the use of force if it is the rational course of action.\(^1\) Similarly, Gray argues that, while military power is a useful tool capable of solving problems no other tool can, it is not a tool to solve all problems, rather just part of a larger toolset.\(^2\) From a rational choice perspective, non-military options represent an important alternative to the options discussed in Chapter 3, especially as direct use of force would impose high costs on Beijing.

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\(^1\) Mearsheimer, *The Tragedy of Great Power Politics*, Passim.
\(^2\) Gray, *Fighting Talk: 40 Maxims on War, Peace and Strategy*, 32-36.
First, when discussing a particular category (binding or non-binding), the examination begins with an overview of the option’s context and other relevant information as seen in Chapter 3, such as the legal claims presented by China and Japan when discussing arbitration and adjudication. The goal is to provide sufficient context for each option, especially on how they would fit into the Senkaku/Diaoyu Islands dispute. Second, the particular option in question is subjected to feasibility testing. The goal is to identify the key criteria that would determine feasibility and to analyse whether it can be conceivably carried out based on these criteria. Once again, feasibility does not automatically establishes rationality, merely the feasibility set from which a rational choice has to be made. Third, options surviving feasibility testing will be subjected to cost/benefit and risk analysis. The former focuses on determining the costs and benefits of successful execution while the latter focuses on analysing the option’s likelihood of success (potential for failure/risks) and the costs of failure.

4.1 Potential Course of Action 3: Non-Binding Peaceful Resolution

Options within this category represent looser diplomatic arrangements, dependent on finding mutually acceptable compromises, rather than relying on the strict legalistic framework that characterizes the binding options discussed later on. To put it simply these options rely on negotiations, either bilaterally or with the assistance of third parties, rather than an external third party making an assumedly objective decision on the situation. Traditionally two key categories are distinguished: bilateral negotiations and third-party peaceful resolution options, such as mediation or conciliation. For the purposes of this research, the two are not considered to be distinct courses of action. Rather non-binding third party options are considered to be extensions of bilateral negotiations, as the central governing principles are the same: to be successful parties have to agree on a resolution usually based on a compromise. The key importance of
third party options, for this research, is that they can potentially facilitate the proceedings in the case of a deadlock.

Next to direct use of force, bilateral negotiations comprise some of the most fundamental options in international dispute settlement. Bilateral negotiations are free to cover a wide range of topics, e.g. from economic issues to sovereignty disputes, and offer a lot of flexibility for the participants. Bilateral negotiations are a preferred method of the PRC to settle disputes, including outstanding territorial issues: Since 1949 Beijing has settled seventeen out of twenty-three territorial disputes through bilateral negotiations.³

Within the particular context of the Senkaku/Diaoyu Islands, China has a number of options to pursue bilateral negotiations: Obviously, Beijing could pursue to settle the entire sovereignty dispute through bilateral negotiations with Tokyo. At the same time, less ambitious options are also available. China could pursue negotiations with Japan over the sharing of economic resources within the disputed waters in the form of joint development ventures⁴. Similarly, the PRC could pursue negotiations concerning establishing a regional code of conduct governing the behaviour of parties within disputed waters.⁵ While these options would not resolve the greater issues at hand, they can still be useful. Achieving lower level agreements on economic or immediate crisis management issues could act as confidence building measures, offering a way to reduce tensions without having to resolve the greater issues at hand. Successful agreements on smaller issues would provide important groundwork for cooperation, potentially offering a way out from the downward spiral of competition.

⁴ Joint development as a potential course of action has been stated by Bhubhindar Singh in an interview (email) on 03/02/2016, Li Mingjiang in an interview (email) on 11/02/2016 and Michael Barr in an interview (email) on 17/11/2014.
⁵ A code of conduct as a way forward for Sino-Japanese crisis management is raised by Tetsuo Kotani in an interview (email) on 15/03/2016 and Li Mingjiang in an interview (email) on 11/02/2016.
One key difficulty in bilateral negotiations is that even if parties have been willing to sit down to negotiate, they may lack the will or the ability to reach a mutually acceptable compromise, as neither party is neutral, leading to a deadlock and the breakdown of the proceedings. In this case, the parties can decide to involve a third party whom both parties respect to facilitate the process. One example of this has been the 1978-1984 Papal mediation between Chile and Argentina. As the head of the Church, the Pope enjoyed great respect in both predominantly Catholic nations. The Holy See played an important role in getting the parties back to the negotiating table and averting war, once bilateral talks have failed to produce results and were broken off. Similar cases are the 1966 Soviet mediation between India and Pakistan, and the 1980-1981 Algerian mediation between Iran and the United States (U.S.).

The third party’s involvement varies by the type of process chosen. Mediation is a fairly common example of third party options, in which case the negotiations are conducted based on the proposals offered by the mediator, allowing an active role to the third party to influence perceptions and behaviours concerning the dispute. Conciliation is a less common and more structured form of third party involvement, where, similarly to a judicial process, the third party ascertains the facts by hearing the competing arguments, and then it submits a formal suggestion for the resolution of the dispute (the key difference from legal proceedings is that the suggestion is not binding). In the case of acting as a commission of inquiry, the third party seeks to either establish the facts of the dispute or settle contentious ones. Finally, if acting as a good office, then the third party’s key role is to try to get the disputing parties to the negotiating table in the first place.

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7 Krista E Wiegand and Emilia Justyna Powell, "Past Experience, Quest for the Best Forum, and Peaceful Attempts to Resolve Territorial Disputes," *Journal of Conflict Resolution* (2010), Passim. See also, Brownlie, "The Wang Tieya Lecture in Public International Law: the Peaceful Settlement of
Within the specific context of the Senkaku/Diaoyu Islands dispute such measures could be fairly useful. A mutually accepted commission of inquiry could examine the historical arguments of both parties, establishing whether there is any merit behind China’s historical claims of sovereignty, or whether Japan incorporated the islands in good faith in 1895. This would provide a foundation to move away from the current impasse of China and Japan simply hurling opposing readings of history at each other. A neutral state acting as a good office could be important to get China and Japan back to negotiating in order to halt continued escalation in tension. Mediation and conciliation would be more ambitious, aiming to resolve the situation through providing an objective external opinion.

4.1.1 Feasibility

In determining the feasibility of non-binding peaceful resolution options this research focuses on whether it is conceivable for both parties to partake in these methods (i.e. if China would propose such a step, would Japan entertain such a notion). Whether such proceedings are likely to succeed or not will be discussed under risks. The feasibility criterion for bilateral negotiations is simply the willingness of the two parties to engage in such proceedings. In contrast, the primary feasibility criterion for non-binding third-party options is whether there is a suitable third party both China and Japan could accept or a third party that could get China and Japan to the table even if they do not wish to negotiate. Feasibility of these options is also discussed in the context of whether they seek to settle the actual sovereignty issue, or whether they seek less ambitious confidence building measures as an outcome.

On the sovereignty level, it is obvious that the feasibility criterion for bilateral negotiations is not met. Japan displays no willingness to discuss the sovereignty of the disputed islands, going as far as refusing to recognize that a dispute even exists. During
a 2012 press conference, the Ministry of Foreign Affairs stated that “we believe that there exists no dispute of territorial sovereignty to be resolved concerning the Senkaku Islands”8. This stance was further reiterated by Foreign Minister Fumio Kishida in 2013:9

There exists no issue of territorial sovereignty to be resolved concerning the Senkaku Islands. It is absolutely not true that there has been any kind of agreement up until now about “shelving.” There is no issue of territorial sovereignty to be shelved in the first place. That is the position of Japan.

The Ministry of Foreign Affairs’ website dedicated to the Senkaku/Diaoyu Islands repeats the same stance word by word: “There exists no issue of territorial sovereignty to be resolved concerning the Senkaku Islands.”10 Furthermore, the official Japanese pamphlet on the subject states that it is “nonsense” to argue that there is any issue to discuss between China and Japan regarding the sovereignty of the Senkaku/Diaoyu Islands.11

Japan’s stance leaves little to interpretation.12 In Tokyo’s view, there is nothing to discuss, which can be hardly interpreted as anything other than the rejection of any negotiations concerning the sovereignty of the Senkaku/Diaoyu Islands. Contemporary Japan foreign policy is based on the firm belief that any discussion of sovereignty issues would be highly inappropriate as China has no legitimate claim to the islands. This is

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12 The Embassy of Japan (both in Kuala Lumpur and Budapest) has been contacted, but it declined any further clarifications. When this research’s reading of the stance was provided in writing for any correction, the embassy issued no request for correction.
reflected by recent diplomatic confrontations between Beijing and Tokyo on whether Japan has agreed to ‘shelve’ the dispute in the past, which would amount to Japan recognizing, at least, the existence of a dispute (as there is nothing to shelve unless there is a dispute). Originally two key events were highlighted by Beijing: The 1972 meeting between Japanese Prime Minister Tanaka and Chinese Premier Zhou Enlai, and the 1978 meeting between Japanese Foreign Minister Sonoda and Deng Xiaoping. During the 1972 meeting, Tanaka supposedly raised the issue of the Senkaku/Diaoyu Islands, upon which Zhou requested not to discuss the issue, so as not to hinder the normalization of relations. During 1978, the issue was once again raised in the context of the fishing boat incident. Both Sonoda and Deng seemed eager not to discuss the matter, with the former stating that “let us call it quits on this matter. If I keep talking about it, I would put both you and myself in trouble”, while the latter stated that “but we should not touch it now. We should put off (tackling the issue) and discuss it without haste in coming years. We should not accept the argument that we cannot conclude a treaty if we fail to agree on such an issue in 10 years”. China interprets both events as proof that Tokyo, at least implicitly, agreed to shelve the dispute, in favour of normalizing relations with China. According to the Chinese Foreign Ministry “this is an historical fact”, thus “the Chinese side demands that the Japanese side squarely face history, respect the facts and listen to the voice of people within Japan, including former Chief Cabinet Secretary Hiromu Nonaka”. Recently a further event was added to the list when records of a 1982 meeting between Japanese PM Kantaro Suzuki and British PM Margaret Thatcher emerged. During the meeting, Suzuki indicated that they agreed

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with Beijing to shelve the dispute for the time being. One could reasonably argue that in these instances Japan did not so much agreed to shelve the dispute itself, but to shelve Japan’s concerns over China not recognizing sovereign Japanese territory. While this seems semantic, there is a meaningful difference: In the former case, Tokyo recognizes the potential legitimacy of China’s claims but agrees that resolution should be sought later on. In the latter case, Tokyo does not recognizes the potential legitimacy of China’s claims but does not formally raises a complaint as not to hinder ongoing negotiations on other issues. In the end, Tokyo decided to rather refute any allegations that it agreed to anything.

Japan's position as stated above has been consistent and it is not true that there was an agreement with the Chinese side about "shelving" or "maintaining the status quo" regarding the Senkaku Islands. This is clearly shown in the published record of the Japan-China Summit Meeting held on the occasion of the normalization of bilateral diplomatic relations.

It is not hard to see that under the contemporary political conditions it would be utterly impossible for Japan to accept any proposals concerning bilateral negations on the sovereignty of the Senkaku/Diaoyu Islands.

If the sovereignty of the Senkaku/Diaoyu Islands cannot be discussed, non-binding approaches could still be used to settle economic issues related to the dispute, such as the development of resources and delimitation of maritime zones. On the one

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16 Ministry of Foreign Affairs of Japan, "Senkaku Islands"

17 Ngeow Chow Bing in an interview with this research (15/10/2015 at University Malaya, Kuala Lumpur) states that the Abe administration continues to pursue a hard-line stance on the issue, aiming to reduce the incentive for any compromise. Ryoko Nakano (interview via Skype) on 14/10/2015 states that it would be difficult to return to the 2008 state of affairs when negotiations were somewhat possible (see 2008 Principled Consensus). As such, the political environment is not favourable for Japan to accept bilateral negotiations as an option. Similarly, Ian Chong [interview (Skype) on 01/02/2016] states that negotiations would not be possible as Japan has no incentive to concede, nor for China to back down from its claims.
hand, this would be valuable because it could resolve an issue that provides the most
day-to-day tension, such as the presence of Chinese fishing vessels in disputed waters.
On the other hand, it could serve as a component of a ‘broken windows’ approach to
crisis management: by eliminating smaller issues, one could hope that through these
confidence building measures eventually relationships can improve to the point where
the bigger issues can be tackled as well.

The two models for economic cooperation through bilateral negotiations would be
the 2013 fisheries agreement between Japan and Taiwan concerning the waters
surrounding the Senkaku/Diaoyu Islands, and the 2008 principled consensus reached
between China and Japan over the development of a natural gas field in disputed waters.

It took sixteen years, and sixteen rounds of talks but Japan and Taiwan has finally
reached consensus on the sharing of fishery resources around the Senkaku/Diaoyu
Islands in 2013. As part of the agreement, Japan, the party controlling the disputed
waters, have made significant concessions for Taiwan. Covering a total area of 74 000
km², the deal has the following key provisions:¹⁸

- The agreement significantly extends the area in which Taiwanese fishermen can
  legally conduct their business. Besides opening the waters around the
  Senkaku/Diaoyu Islands, Japan also opened a 1 400 nm² area beyond Taiwan’s
  Temporary Enforcement Line.
- As part of the agreement, for the majority of this area, Taiwanese vessels are
  only subject to Taiwanese legislation and Taiwan is responsible for enforcing
  regulations on its own vessels.

¹⁸ "The Taiwan-Japan Fisheries Agreement — Embodying the Ideals and Spirit of the East China Sea
In the remaining area fishing vessels are subject to both Japanese and Taiwanese regulations, but only Taiwanese enforcement.

Japan and Taiwan agreed to set up a joint commission to oversee the implementation of the zone and to explore further options for cooperation between the two countries.

**Map 4.1: 2013 Japanese-Taiwanese Fishing Agreement**

As the map above highlights, the new zone covers the area where conflicts between Taiwanese and Japanese vessels have been the most frequent. Reaching the agreement was possible because Japan agreed to the Taiwanese request to remove any language from the treaty that would discuss the sovereignty of the islands. This allows
Taiwan to agree to the treaty without prejudicing its claims to disputed islands. As the official statement of Taipei states:  

The ROC government will continue to stand steadfastly by its claims and safeguard sovereignty over the Diaoyutai Islands. It has consistently taken a firm stance on defending sovereignty and protecting fishery rights, and will absolutely not compromise the former for the latter.

Following the 2005 Chunxiao gas field incident, China and Japan attempted to negotiate the joint development of disputed waters to reduce tensions. These efforts culminated in the 2008 principled consensus that states that:

The two sides will, through joint exploration, select by mutual agreement areas for joint development in the above-mentioned block under the principle of mutual benefit. Specific matters will be decided by the two sides through consultations.

The joint development was supposed to be based on two agreements: First, China would allow the participation of Japanese firms in the development of the Chunxiao field based on Chinese domestic legislation. Second, China and Japan would jointly develop other fields on the northern part of the East China Sea. The map below illustrates the area proposed for joint development based on the coordinates specified in the principled consensus, covering an area of 2 700 km². The area is 350 km from Zhoushan and 326 km from Amami.

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19 Ibid.
As the above examples show, both China and Japan has shown a willingness to enter into negotiations concerning the economic resources in disputed waters. Thus, this option remains feasible, albeit whether such negotiations would be likely to yield any results will be discussed under risk assessment.

Besides economic cooperation, the disputing parties could negotiate on crisis management. Agreeing upon a common code of conduct could help manage the day-to-day encounters of Chinese and Japanese ships in disputed waters and reduce tension. Besides de-escalation, such an agreement could contribute to the above mentioned ‘broken windows’ approach by providing an avenue for confidence building. The model for this avenue would be the negotiations on a code of conduct on the South China Sea, which suffers disputes similar to that of the East China Sea.

The South China Sea is subject to a multilateral dispute between China and the ASEAN states over remote islands and has seen similar escalation to that seen on the East China Sea. To counter further escalation, the parties in 2002 agreed upon the Declaration on Code of Conduct, a non-binding preliminary agreement to the creation of an actual binding Code of Conduct. The key points of the agreement are:\textsuperscript{22}

- #4: the parties refrain from the use of force
- #5: the parties exercise self-restraint and do no pursue any actions that could further exasperate the dispute
- #7: the parties pursue regular consultations on the creation of a code of conduct and on how to improve peaceful coexistence

An agreement between China and Japan could give a much-needed framework for their interactions at sea, and would be an important step towards de-escalation. This view is supported by Tetsuo Kotani from the Japan Institute of International Affairs (JIIA), who argued that a code of conduct would be a crucial crisis management measure on the East China Sea.\textsuperscript{23} In 2015, China and Japan have agreed to continue to discuss potential crisis management options.\textsuperscript{24} It remains to be seen whether the actual negotiations take place or yield any tangible results, or reach a deadlock.

With the difficulties faced in the case of bilateral negotiations, such as Japan’s refusal to recognize the dispute, one should consider whether the involvement of a third party could exert a positive influence on the proceedings. Unfortunately, the situation is not encouraging.

\textsuperscript{23} Tetsuo Kotani interview (15/03/2015).
One key issue for the feasibility of third-party options is finding a suitable third party. Within the current political climate, it would seem unlikely that China and Japan could agree upon a mutually acceptable neutral actor. When it comes to states there is no obvious candidate that could be considered neutral by both parties and would have the competence to assist in the proceedings at the same time. The United States would be an obvious candidate: Washington has significant regional influence, and it also has a vested interest in preventing an armed confrontation in the region. The U.S. has also already played this role during the Parsley Island crisis between Spain and Morocco.\(^\text{25}\) However, Washington’s ties to Tokyo would bring its neutrality into question. Furthermore, any attempt by the U.S. to get further involved would be seen as superpower meddling, trying to dictate regional affairs. From a Chinese perspective, knowing the current nationalist political climate, it would be unlikely that Beijing would or could accept any U.S.-brokered compromise, as the necessity of settling for less than total victory would be seen as giving in to the United States domestically. In the case of non-state actors, the situation is similarly dire. There is no obvious candidate that commands sufficient respect and authority to be able to move deadlocked negotiations further. In the previously mentioned case, the Pope could act in such a manner due to the respect commanded by the Church in the countries in question. The same unifying figure is not present in Sino-Japanese relations. The Secretary-General of the United Nations or the conciliation body under UNCLOS would be reasonable candidates. However, the PRC has deliberately exempted itself from under UNCLOS dispute settlement mechanisms when ratifying the treaty.\(^\text{26}\) And there is no clear evidence that the UNSC enjoys sufficient authority to be able to convince China or Japan to negotiate.

Overall, the involvement of third parties has largely been a taboo in Chinese foreign policy. This is evidenced by China’s conduct on the South China Sea where Beijing insists on a strict bilateral approach. If even multilateral negotiations are not acceptable to China, it is unlikely that the involvement of unrelated third parties would be looked upon any more favourably.27

4.1.2 Benefits and Costs

Based on the feasibility testing above one can see that non-binding peaceful resolution options offer limited benefits, especially relative to the various military options discussed in Chapter 3. The key problem is that bilateral negotiations are not feasible in the case of sovereignty, while non-binding third-party options are not feasible at all, constraining this approach to lower diplomatic levels. Pursuing joint development would allow China to gain access to resources contained in disputed waters, thus supporting its economic development, but bilateral negotiations would not allow Beijing to pursue most of its strategic and political interests, which would be dependent on establishing some form of control over the islands.

That said, these options are not without merit. While they are not suitable to pursue most of China’s interests directly, they could indirectly benefit China. Adopting a more constructivist view, these lower level activities can be valuable to stop the current downward spiral of Sino-Japanese relations. While cooperation or negotiation on major issues, such as sovereignty, are not possible, cooperation on less controversial economic or crisis management issues can act as confidence building measures. The crucial constructivist argument is that security relationships are created through identity and reciprocal behaviour. Altering these processes reconstitutes the relationship, allowing different outcomes. This can be observed in the case of U.S.-Soviet relations

27 Interviews conducted with Kotani (15/03/2015) and Tomoharu Washio (email) on 17/03/2015 expressed a negative outlook on the feasibility of non-binding third-party options.
during the Cold War.\textsuperscript{28} Low level cooperation provides an initial avenue to begin the transformation of security relationships. It is also important to remember that small steps of cooperation provide the foundation for further cooperation, leading to the general improvement of the relationship. The question then is how improving the Sino-Japanese relationship would benefit China. Economically it could somewhat counter the current reduction in tourism.\textsuperscript{29} Security-wise better relations could reduce threat perceptions on both sides, easing the realist security dilemma, and improving China’s sense of security. Politically, better relations would take away munition from nationalist politicians in Japan, which they use to legitimize the expansion of Japan’s security role in the region, and to provide legitimacy for the new security legislations. Overall, better relations would put less pressure on Japan to shift its security stance, which move has been seen as significantly threatening in China.

Furthermore, demonstrating a commitment to dialogue and pursuing negotiated solutions to disputes would improve China’s status as a mature and responsible member of the international community. China is often viewed as emotional, insecure, assertive and even unreasonable.\textsuperscript{30} Visibly cooperating with a supposed antagonist, such as Japan, would send a clear message that China is secure in its own rise and that it is not aiming to push against the established norms of the international system. This would undermine many of the existing ‘China threat’ theories, and could earn both respect and goodwill for China in the long run.


\textsuperscript{29} October 2012 (immediately after the escalation in tension between China and Japan) saw a 33.1 percent reduction in incoming Chinese tourist to Japan and 27.2 percent reduction in the number of outgoing Japanese tourists to China (year on year). Since then Chinese incoming numbers have been recovering, but Japanese outgoing numbers continue to decline. Based on "Tourism Statistics (Backnumber)." \textit{Japan Tourism Marketing Co.} \texttt{<http://www.tourism.jp/en/statistics/backnumber/>}, (accessed on 6 April 2016).

One of the key pragmatic benefits of this approach would be low costs, especially relative to military options. There are no material costs, such as missiles or replenishing losses. Even if negotiations fail there are also no obvious economic or strategic costs, and even the potential international political costs would be mild as negotiations have a limited expectation of success. It is also possible to pursue these options without impacting China’s overall claim to the Senkaku/Diaoyu Islands. Both the 2013 fisheries agreement and 2008 principled consensus incorporates language to ensure that the signing parties’ claims to the disputed islands are preserved. The non-binding nature of the proceedings also means that, while a compromise is required, China is not forced to be party to anything it finds objectionable. Unlike in the case of binding resolution options, in the case of non-binding options China retains the ability to shape the results to its convenience.

The only significant drawback of this option is that of domestic political costs. By pursuing a non-binding peaceful resolution, Beijing would open itself up to criticism at home that it is abandoning its claim to the islands and that it is going soft on Japan, the key antagonist of the Chinese nationalist political narrative promoted by Beijing itself. A political culture that emphasizes standing up to foreign powers and revokes past humiliations to fuel a nationalist legitimacy would certainly interpret a negotiated resolution requiring a compromise, meaning that China would need to come away with less than 100 percent of its demands, as a sign of weakness. And Beijing has never been eager to appear weak at home, or to suffer criticism easily. The nationalist political climate Beijing built post-Tiananmen forces it to act tough within the international system and occasionally limits its ability to engage in more practical endeavours.

Alle & Huth argues that negotiated outcomes that are unpopular at home unlikely to implemented in the short term, or sustainable in the long term. Todd L. Allee and Paul K. Huth, "Legitimizing Dispute Settlement: International Legal Rulings as Domestic Political Cover," The American Political Science Review 100, no. 2 (2006) 222.
4.1.3 Risk

Non-binding third-party options offer a seemingly attractive option. After passing feasibility testing, the remaining key question is the likelihood of them being successfully concluded within the specific context of the Senkaku/Diaoyu Islands dispute. One would consider the conclusion of the 2013 Japan-Taiwan fisheries agreement and the 2008 principled consensus to be encouraging signs. Unfortunately, a closer examination reveals that such optimism would be misplaced.

The 2008 principled consensus was never put into practice, and by 2010, the project effectively failed as negotiations broke down between China and Japan over technical details. There were multiple reasons for the failure: Japan and China disagreed over investments into the Chunxiao field. The key point of contention has been that China has continued to operate the field, despite no Japanese investment having been made. Tokyo interpreted the agreement as that it requires China to suspend operations until Japanese investment can be made. China interpreted the treaty as an option to Japan for investment, but that it should not affect the normal operation of the field. There was also disagreement over which fields to develop within the agreed upon area. After a while the debate over the issue devolved into different interpretations of joint development and its effects on sovereignty rights, leading the Japanese Minister of Foreign Affairs Koichiro Gemba to state that “so, if China has asserted that this is a sea area to which China has jurisdiction, this is not something that we can accept”. In the meantime, Sino-Japanese relations continued to decline over other issues. As mutual hostility rose, so did the parties’ willingness to negotiate dissipate. Leading to a situation where during the 2011 foreign ministerial meeting “Minister Yang stated that

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it was important to create an environment and atmosphere necessary for the two countries to resume the negotiations”. The key reasons for the failure of the 2008 principled consensus have been the difficulty of disentangling the economic issues from the overall sovereignty dispute and mutual hostility removing a conducive environment for a compromise. To be successful, both parties would have been needed to be willing to compromise. Hostile interstate relations reduced both China’s and Japan’s willingness to offer concessions to the other. This was further compounded by that both parties were worried how such an agreement would affect their relative claims – Japan fearing that it would be perceived as recognition of the Chinese claims, while China fearing that Japan would consider it as an acceptance of Japanese sovereignty over the disputed islands – leading to mutual suspicion and a hang-up on the meaning of specific terms.

Similarly, the success of the 2013 fisheries agreement’s success is unlikely to be repeated, as it was largely a product of unique circumstances. Japan does not recognize Taiwan at the government level, and the agreement was concluded between NGOs managing country-to-country contacts, rather than government agencies. While the agreement was welcomed by both Tokyo and Taipei, the Japanese foreign ministry emphasized that it was reached between non-governmental entities:

This Japan-Taiwan private sector fisheries arrangement was signed April 10, and negotiations had been held between private bodies of Japan and Taiwan. [...] Although we have not changed our policy in any way regarding the treatment of Taiwan vis-à-vis China, the Japanese Government welcomed


34 The failure of this initiative is further significant as past experiences affect the likelihood of states pursuing similar action in the future, see Krista E Wiegand and Emilia Justyna Powell, "Past Experience, Quest for the Best Forum, and Peaceful Attempts to Resolve Territorial Disputes,” *Journal of Conflict Resolution* (2010).

the signing as the non-governmental working relations between Taiwan and Japan bearing fruit.

As the agreement was reached between NGOs, there was a lower likelihood that it would impact the respective governments’ claims. The circumstances also allowed professional organizations to be in the driving seat\textsuperscript{36}, such as those managing fishery, focusing on technical details rather than complicated political sensitivities. Even with these advantages, it took sixteen rounds to conclude the agreement.\textsuperscript{37} At this point, the extensive territorial claims maintained by Taiwan, including all of mainland China, is a mere formality anyway, a result of Taipei claiming to be the legal government of China. No one realistically expects that Taiwan could challenge Japanese sovereignty over the islands, even if it wished to do so. Taiwanese participation in the dispute also diminished significantly over the years, leading to the point that Taiwan barely participated in the current phase of the dispute.

The conclusion of the agreement has also been helped by changing geopolitical realities. The rise of China as a military power has become a thorny strategic question for both Tokyo and Taipei. For the former it is an unwelcome disruption of the status quo, as well as a threat to continued Japanese regional leadership. To the latter it is an existential threat. China has been successful to disrupt arms sales to Taiwan, absolutely crucial for the continued security of the island, and continue to pose a direct military threat. Not surprisingly, common concerns over China pushed Japan and Taiwan closer in recent years, both considering the other as a vital partner in countering Chinese

\textsuperscript{36} Ibid.
expansionism. By offering concessions to Taiwan, Japan is seeking to improve relations and to solidify the common front against China.

Overall, it is likely that bilateral negotiations concerning the economic aspects of the Senkaku/Diaoyu Islands would have the same fate as the 2008 principled consensus. Sino-Japanese relations are even worse than in 2010, following the 2012 escalation over Japan’s nationalization of the islands. China has suspended most high-level governmental contacts, and both countries’ rhetoric continues to be antagonistic. The environment is simply not conducive for successful negotiations, as even if the parties would be willing to talk, they would not have the necessary will to compromise. The difficulties would be further compounded by the difficulty of disentangling the economic issues from the overall sovereignty dispute. Both governments would consider an agreement to have a negative impact on their claims, regardless of the language adopted. Thus, it is very likely that even if negotiations would commence, they would lead to a deadlock and eventual failure.

The possibility of success is similarly low for adopting a code of conduct on the East China Sea. While the 2002 Declaration on Code of Conduct offered an early promise on the South China Sea, similarly to the 2008 principled consensus it was not followed up by any meaningful action. And the failure of the initiative largely lies with China, who remains opposed to the creation of an actually binding code of conduct. The 2012 ASEAN Ministerial Meeting was derailed by the issue of adopting a binding code of conduct. Vietnam and the Philippines, the ASEAN member states suffering the brunt of China’s assertiveness on the South China Sea and thus most eager to settle on a common code of conduct or at the very least a common response, were insistent on raising the issue. At the same time, other ASEAN member states with no direct interest in the dispute, such as Cambodia, were reluctant to do so, as they maintain significant
economic ties with China and feared a possible Chinese economic retaliation if the issue was allowed to progress. Thus, they refused to support the proposal or even to allow it to be raised. Statements from the Chinese Foreign Ministry clearly show that China is not interested in a timely resolution of the issue. The reason for this is simple: It would undermine China’s freedom to pursue coercive policies that yielded success in recent years. The Philippines has been especially eager to create a binding code of conduct as Chinese coercion has been highly effective, Beijing wresting control over both the Mischief Reef and Scarborough Shoal. China refuses to allow the issue to progress because it would end its ability to use the threat of force and other assertive tactics, including the creation of artificial islands, which is clearly against Chinese interests.

Similarly, it is not in China’s interests to agree to any code of conduct that would be acceptable for Japan. Increasing the presence of Chinese vessels in disputed waters is deemed crucial for undermining effective Japanese control over the islands. And a binding code of conduct would remove China’s ability to pursue coercion against Japan, a tactic that has become the hallmark of Chinese foreign policy concerning maritime disputes. It essentially would require China to willingly handicap itself, which would not be rational behaviour. And as discussed above, Beijing has strong interests in escalating the conflict, seeking a tipping point after which Japan is unwilling to match Chinese efforts and resigns to appeasement to avoid a confrontation. Thus purposeful de-escalation would run contrary to contemporary Chinese efforts. Just as negotiations concerning the economic issues are not likely to succeed, neither are negotiations over a potential code of conduct.

39 See the assertive incidents on the South China Sea (e.g. Mischief Reef, Scarborough Shoal) as well as action against foreign warships (USNS Impeccable and USNS Kitty Hawk incidents).
As the costs of negotiations have been low to begin with, the costs of failure would also be low. Bilateral negotiations fail often, or at the very least frequently encounter a deadlock and enter dormancy with extended periods of no progress, thus there is no strong international expectation for them to succeed. There are unlikely to be any negative consequences beyond mild international disapproval for the failure or breaking off of talks, especially if the negotiations concern economic issues. Domestically, neither the Chinese nor the Japanese citizenry has the expectation of successful negotiations. On the contrary, both would disapprove of a compromise. Thus, there would be little to no domestic political cost for failing to succeed during the negotiations. The biggest cost would be the time and effort wasted by the parties on the affair.

The involvement of a third party in a non-binding format could be most useful to reduce the chance of failure if the political will already exists to negotiate. The conciliation procedures under UNCLOS could be used to facilitate negotiations over economic issues. Similarly, China and Japan could involve another state or entity they both agree upon to keep negotiations on track, and to push along the procedures when it comes close to derailment. While this could improve the chance of success, it is unlikely to be pursued within the context of the Senkaku/Diaoyu Islands dispute. China has a strongly established preference for bilateral negotiations.41 Beijing has been clear on the South China Sea that it will not entertain any multilateral efforts, restricting its engagement to a country-by-country basis. Historically China has not engaged in any third-party dispute settlements and shows no willingness to involve a third party in the future. The reason behind this is simple: the bilateral format allows China to take advantage of its economic and military clout to the fullest. Overall, Kissinger argues

that Chinese negotiators are not particularly concerned with deadlocks or drawn out negotiations, which would be a sufficient motivation to involve a third-party to facilitate the process:

[Chinese negotiators] accredit no particular significance to the process of negotiations as such; nor do they consider the opening of a particular negotiation a transformative event. [...] They have no emotional difficulty with deadlocks; they consider them the inevitable mechanism of diplomacy. [...] And they patiently take the long view against impatient interlocutors.

This approach can be observed in most of China’s diplomatic dealings: China is not in a hurry to reach a conclusion, and will not accept a deal that is unfavourable for Beijing, regardless of the deadlocks encountered, or the times negotiations are suspended for. This is not a conducive attitude for non-binding third-party options, which serve to keep negotiations on track and specifically to resolve deadlocks. Thus, China’s opposition does not provide space for the involvement of a third party, removing the potential benefits it could have for the chance of success for non-binding proceedings

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4.2 Potential Course of Action 4: Binding Third-Party Resolution

Options

Options in this category represent a more formalized approach to dispute resolution. Their primary purpose is to provide a framework for resolving disputes that have proven to be resistant to resolution through bilateral negotiations. If the domestic equivalent of bilateral negotiations was sitting down and discussing an issue, these options would be similar to taking someone to court over a dispute, where a third party hears the case and makes a decision that is binding for both parties. There are two main options when it comes to binding third-party resolutions: adjudication and arbitration. While the two procedures are often regarded as very similar or even interchangeable, there is a fundamental difference between the two. In the case of adjudication, the third party involved is an international court, and thus, the proceedings are expected to be based dominantly on legal arguments. In contrast, arbitration involves a wider range of possible third parties, rather than being limited to international courts, and their decision has a wider leeway to take into account factors beyond purely legal arguments. That said, at their core the mechanisms of both procedures are identical: A decision on the dispute is delivered by a third-party entity accepted by both disputing parties, who also agree prior to the proceedings to accept the ruling of said entity as legally binding.

For adjudication, the International Court of Justice (ICJ) would be the most obvious choice as the dispute primarily concerns sovereignty. For example, Malaysia and Singapore sought adjudication for the Pulau Batu Puteh/Pedra Branca dispute through the ICJ. There is also International Tribunal for the Law of the Sea, the adjudication body of UNCLOS in Hamburg, however, it primarily deals with maritime issues and EEZ delimitation, and has no history of determining the sovereignty of

43 Ian Ja Chong (interview via Skype on 1 February 2016) argues that third party arbitration would be the ideal resolution to the dispute. Similarly, Tohomahru Washio (interview via email on 18 March 2015) states that arbitration would be one possible avenue for resolution.
territory. It could be used to render a ruling on the EEZ delimitation between China and Japan and on whether the Senkaku/Diaoyu Islands are entitled to an EEZ in the first place, but would have no competence in settling the larger dispute at hand. For arbitration, the most obvious choice would be the Permanent Court of Arbitration. The Philippines has already submitted a challenge against China there.\textsuperscript{44} But UNCLOS for example also recognizes the creation of \textit{ad hoc} arbitration tribunals at the discretion of the disputing parties.\textsuperscript{45} Historically, neither China nor Japan has participated in binding third-party dispute settlement through any of these institutions. From a historical perspective, neither China nor Japan has experience in dealing with arbitration or adjudication on territorial matters. Japan has not been involved in any case concerning its territorial disputes, while China rejected to participate in a challenge from the Philippines, as detailed below.

In 2013, the Philippines has submitted a claim against China to the Permanent Court of Arbitration, in accordance with Annex VII of UNCLOS, seeking arbitration concerning jurisdiction over the West Philippine Sea. The Philippines seeks to challenge China on a number of points: First, Manila seeks a ruling determining China’s nine-dash line claim to be contrary to UNCLOS and invalid. Second, it seeks the determination of Philippine control over various features, and thus an immediate end to Chinese control over them. Third, to determine whether various features occupied by China qualify as islands, and thus are whether they entitled to maritime zones. Fourth, establishing the Philippines’ right to exploit resources in the area, and recognizing that China has illegally interfered with these activities.\textsuperscript{46}

\textsuperscript{46} "Notification and Statement of Claim on West Philippine Sea (13-0211)." by Department of Foreign Affairs and External Trade of the Philippines, 2013.
Beijing has rejected the Philippines seeking arbitration stating that “it will neither accept nor participate in the arbitration thus initiated by the Philippines”47. In rejecting the arbitration process, Beijing highlights that it has made an agreement with the Philippines concerning the resolution of disputes through negotiation, thus “the Philippines is debarred from unilaterally initiating compulsory arbitration”48. Furthermore, in 2006, China has filed a declaration excluding itself from under the compulsory dispute settlement procedures under UNCLOS. The declaration states that under Article 298, “the Government of the People's Republic of China does not accept any of the procedures provided for in Section 2 of Part XV of the Convention with respect to all the categories of disputes referred to in paragraph 1 (a) (b) and (c) of Article 298 of the Convention”49.

Despite the objections of China, the tribunal so far proceeded to listen to the case of the Philippines in 2015. However, no Chinese delegate was present, in line with its position that it does not recognize the jurisdiction of the tribunal. However, even if the tribunal renders a verdict, it is unlikely that China would recognize an unfavourable outcome. Thus, even if the Philippines gains a symbolic ruling, its possible enforcement remains questionable.50

In both the case of adjudication and arbitration, the basis of the third party’s decision is the opposing claims submitted by the disputing parties. Thus, it would be prudent at this point to review the claims presented by China and Japan over the

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48 Ibid.


Senkaku/Diaoyu Islands. This section only focuses on the actual claims presented by China and Japan. The relative merit/strength of the claims will be discussed later on under the feasibility and utility sections.

4.2.1 China’s Claim

Beijing official position on the subject of the Senkaku/Diaoyu Islands is that:51

Diaoyu Dao and its affiliated islands are an inseparable part of the Chinese territory. Diaoyu Dao is China's inherent territory in all historical, geographical and legal terms, and China enjoys indisputable sovereignty over Diaoyu Dao.

Beijing’s stance on the matter is clear: China holds indisputable sovereignty over the disputed islands and thus Japan’s occupation of the islands is “illegal and invalid”.52

China’s argument for sovereignty is based on three main points:

First, China claims the right of discovery over the islands. Beijing claims that the islands were first discovered and named by Chinese sailors, as well as were first exploited by Imperial China. According to Beijing, the first written mention of the islands can be found in the 1403 Voyage with a Tail Wind, a travel account of a Chinese imperial envoy. Connected to this source is China’s argument that the islands are on the route Chinese imperial envoys would take to the Ryukyu Islands as part of their tributary missions. The records of these tributary missions between 1372 and 1866 contain numerous references to the Senkaku/Diaoyu Islands as navigational markers, referring to them by their Chinese names. Various imperial records also state that the

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52 Ibid.
southern border of Ryukyu territory was considered to be the Gumi Mountains by China.

Second, China claims that it has long exercised sovereignty over and exploited the islands. On the one hand, Beijing argues that “the waters surrounding Diaoyu Dao are traditionally Chinese fishing grounds”. On the other hand, the argument is also made that the islands were incorporated into various Chinese administrative structures, thus showing exercise of sovereignty. Beijing argues that historical sources show, such as *An Illustrated Compendium on Maritime Security* (1561) and *The Complete Map of Unified Maritime Territory for Coastal Defence* (1605), that the islands were incorporated into the Ming Dynasty’s coastal defence system, fittingly aiming to counter Japanese piracy. Furthermore, the Qing Dynasty not only supposedly continued the incorporation of the islands into the coastal defence system, but placed the disputed islands under the jurisdiction of the local government of Taiwan, as evidenced by *A Tour of Duty in the Taiwan Strait* and *Volume 86 of Recompiled General Annals of Fujian*. Beijing further supports this argument by highlighting domestic and foreign maps indicating the islands as Chinese territory. Without listing all the various domestic maps highlighted, China highlights the 1785 Japanese book *Illustrated Outline of Three Countries*, which “coloured [the disputed islands] the same as the mainland of China, indicating that Diaoyu Dao was part of China's territory”. China also highlights four foreign maps between 1809 and 1859 as indicating Chinese sovereignty over the islands, including a map by the British Navy.

Third, China argues that current Japanese control over the islands is the result of imperialist aggression, and thus not only it is invalid, but it is in violation of international treaties. According to Beijing, Japan aimed to “grab” the islands, despite

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53 Ibid.
54 Ibid.
knowledge of Chinese sovereignty over them. The official Chinese position is that the islands were transferred to Japan under the Treaty of Shimonoseki upon the conclusion of the 1st Sino-Japanese War. As China lost the conflict, it had to transfer the Island of Taiwan, and all islands appertaining to it to Japan. Beijing argues that the treaty covers the Senkaku/Diaoyu Islands, and thus Japanese imperialist aggression is the root of current Japanese control over the islands.

Japan then forced China to sign the unequal Treaty of Shimonoseki and cede to Japan the island of Formosa (Taiwan) together with Diaoyu Dao and all other islands appertaining or belonging to the said island of Formosa.55

Building on this, China continues with arguing that technically Japan agreed to return the islands to China following its defeat during the Pacific War. Beijing argues that according to the Potsdam Proclamation of 1945 the islands were to be returned to China, as they are part of Taiwan. However, the 1951 San Francisco Treaty placed the islands under U.S. control, later leading to Washington returning them to Japan. The PRC does not recognize the San Francisco treaty as legitimate.

55 Ibid.
4.2.2 Japan’s Claim

Not surprisingly Japan offers a contradictory account on the events. The official position of Japan is that:

There is no doubt that the Senkaku Islands are clearly an inherent part of the territory of Japan, in light of historical facts and based upon international law. Indeed, the Senkaku Islands are under the valid control of Japan. There exists no issue of territorial sovereignty to be resolved concerning the Senkaku Islands.

Based on the official stance, Japan is equally resolved to maintain its claim to indisputable sovereignty as China, going as far as to dismiss even the existence of a credible challenge to it. Similarly to China, Japan bases its claims on historical evidence.

First, Tokyo argues that it incorporated the islands into Japan in accordance with international law and independently from the Treaty of Shimonoseki. According to Tokyo, from 1885 it carried out a number of surveys concerning the islands, which China labels as covert activities to seize the islands. Based on their results the islands were determined to be *terra nullius*, in other words under the control of no other sovereign state. Upon the determination of the islands’ status as *terra nullius* Okinawa Prefecture incorporated the islands in 1895 through a cabinet decision. Concerning the timing of the events, Japan argues that the decision was made in January, prior to the signing of the Treaty of Shimonoseki.

Second, Japan argues that, after the incorporation of the islands, it proceeded with the exploitation of the territory. Japanese entrepreneurs established various economic

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56 Ministry of Foreign Affairs of Japan, "Senkaku Islands - Japanese Territory".
57 Linus Hagström, *Japan's China Policy: A Relational Power Analysis* (London: Routledge, 2006). Japan argues that China’s claim does not meet the standard of sovereignty, thus Japan could “rediscover” them as *terra nullius*. 
activities on the islands, and a number of Japanese settlers moved to the Senkaku/Diaoyu Islands, subject to Japanese administrative control. The exploitation of the islands was not challenged by China. As of documentary evidence, Japan highlights a 1920 diplomatic letter in which the ROC government referred to the islands as “Senkaku Islands, Yaeyama District, Okinawa Prefecture, Empire of Japan”\(^\text{58}\). Furthermore, Tokyo also notes a number of Chinese sources, such as a 1953 *People’s Daily* article and a 1958 *World Atlas Collection*, as further documentary evidence of China recognizing Japanese control over the islands\(^\text{59}\).

Third, Japan rejects the idea that the Senkaku/Diaoyu Islands were part of the Potsdam Proclamation and rather argues that they were transferred to the U.S. under the San Francisco treaty as part of the Nansei Islands, rather than being part of Taiwan as China argues. In opposition to the Chinese claims, Japan argues that the PRC did not raise any objections to Japanese control over the Senkaku/Diaoyu Islands until 1970 when oil was discovered around the islands. Tokyo accuses both China and Taiwan that after 1970 they “changed their laws and administrative areas, the countries also altered textbooks, maps, and geographical texts to create their own claim to the sovereignty of the Senkaku Islands”\(^\text{60}\).


\(^{59}\) Ibid., 12.

4.2.3 Feasibility

One of the key impediments to the feasibility of the above option is Japan’s policy of not recognizing China’s claims, and refusing to entertain any negotiation concerning them. One possible route to overcome this would be to initiate binding legal procedures against Japan either through arbitration or adjudication. The feasibility of utilizing these procedures is primarily dependent on whether China has a sufficiently strong case to submit to an international court or tribunal. This section will focus on establishing the relative strength of the claims to determine whether China could possibly win a case against China. Whether China is likely to win a case will be discussed under risks below.

The key problem with Japan’s claim is the shadow of not acting in good faith over it. Japan conducted surveys for 10 years prior to the incorporation of the islands, which China interprets as a sign that Japan has recognized Chinese sovereignty over the islands, thus waiting for an opportunity to incorporate them. And while Japan argues that the islands were incorporated prior to the Treaty of Shimonoseki, they were incorporated at a time when China has already suffered a decisive defeat in the First Sino-Japanese war, and thus it was unlikely that it could oppose Japanese control over the islands. According to the State Council:  

"Relevant documents evidently show that the Japanese government intended to occupy Diaoyu Dao, but refrained from acting impetuously as it was fully aware of China’s sovereignty over the islands."

The possibility of Japan incorporating the islands in bad faith is similarly highlighted by academic articles, primarily by Chinese authors. Lee and Fang argue for

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61 The State Council Information Office of the PRC, "Diaoyu Dao, an Inherent Territory of China."
the existence of documentary evidence supposedly highlighting Japan’s prior knowledge of Chinese sovereignty over the islands.\textsuperscript{62}

Su also highlights the possibility that Japan has not acted in good faith when incorporating the islands.\textsuperscript{63} However, he focuses on the manner in which Japan incorporated the islands. The standard practice of establishing sovereignty over the islands requires a sufficiently open display of sovereignty, usually involving the planting of markers or public declarations to display sovereignty. In contrast, Japan has opted for a Cabinet decision. From a legal perspective the declaration of sovereignty has to possess sufficient public notability to offer the opportunity for potential disputant parties to respond.\textsuperscript{64}

The [ICJ] ruling [concerning the Temple Case involving Thailand] indicates that the state against which the acquiescence and estoppel is claimed must have a reasonable chance to react to such a claim. This argument would militate against Japan’s position.

Similarly to the official Chinese position, Su also highlights the existence of documentary sources that call into further question in the manner which Japan incorporated the islands. There is generally a shadow over Japan that it “was attempting to be inconspicuous”\textsuperscript{65}, and there is no conceivable reason for this if Tokyo was confident that the islands were indeed \textit{terra nullius}.

Overall, the unusual circumstances surrounding the incorporation of the islands, as well as the fact that they were incorporated during the 1\textsuperscript{st} Sino-Japanese War, albeit

\textsuperscript{62} Ivy Lee and Fang Ming, "Deconstructing Japan’s Claim of Sovereignty over the Diaoyu/Senkaku Islands," \textit{The Asia-Pacific Journal} 10, no. 53 (2012), Passim.
\textsuperscript{63} Su, "The Territorial Dispute over the Tiaoyu/Senkaku Islands: An Update," 53.
\textsuperscript{64} Ibid., 53.
\textsuperscript{65} Ibid., 54.
Japan claims independently from it, raises concerns over whether Japan incorporated the islands in good faith, and give some credence to Chinese claims of sovereignty.

At the same time, China’s claim also suffers from a number of problems. These are related primarily to whether China established sovereignty over the islands in the first place, whether the islands were actually ceded through the Treaty of Shimonoseki, thus, whether they are part of Taiwan or not, and why China has not raised formal objections to Japanese control prior to 1970.

First, mere discovery is not sufficient to establish sovereignty over a territory. While China highlights documentary sources, whether they are sufficient to establish sovereignty remains questionable. The official Japanese position on them is that “none of the “ancient documents” China refers to can be considered grounds for sovereignty of the Senkaku Islands”\(^{66}\). Concerns about the value of Chinese documentary sources are shared by academic sources. Su states that “the Chinese evidence is old and its strength as a link to a sovereign claim is weak and indirect”\(^{67}\). Documentary sources such as the tributary mission journals show only knowledge of the islands, not actual sovereignty over them. On this point, Ozaki argues that while the records mention the islands, they do not clearly indicate ownership over them, and it would be just as likely that the Ryukyu Kingdom could have claimed sovereignty over them, as Imperial China\(^{68}\), would the contemporary concept of sovereignty existed back then. Claims over their incorporation into the Chinese maritime defence systems encounter similar problems. The official Japanese position highlights that the mere representation of the islands on the *An Illustrated Compendium on Maritime Security* means little as it also shows

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\(^{67}\) Su, “The Territorial Dispute over the Tiaoyu/Senkaku Islands,” 53.

Taiwanese islands that were not under Chinese control at the time.\textsuperscript{69} Overall, the documentary evidence presented by China is less than ideal.

Second, China also claims that the islands were ceded to Japan under the Treaty of Shimonoseki. However, the actual treaty makes no specific mention to the disputed islands. China explains this with arguing that they are included into the category ‘all islands appertaining to’ Taiwan. Erdem Denk provides an exhaustive discussion on the issue, specifically on what constitutes the ‘islands appertaining to’ Taiwan. Denk argues that from a legal perspective it would be hard to justify that the islands would be part of Taiwan, and even harder to argue that the islands were included into the ‘islands appertaining to’ Taiwan, as they do not form part of natural defences relevant for the treaty and islands at far shorter distance from Taiwan were specifically named.\textsuperscript{70} Furthermore, as Japan has incorporated the islands prior, regardless whether this is connected to its impending victory during the 1\textsuperscript{st} Sino-Japanese War, Tokyo would have had no reason to include the islands within the treaty, as they were already Japanese territory from its perspective.

Third, China has not mounted any significant challenge to Japanese control over the islands until the 1970s. China not only failed to openly protest the initial incorporation of the islands, but it did not offer any protest on the matter or made any attempt to establish control over the islands prior to the 1970s.\textsuperscript{71} This is problematic as the lack of response alludes to Chinese acceptance of Japanese control over the islands, thus undermining China’s recent claim to them. Su argues that the unusual manner in which the islands were incorporated could have limited China’s ability to protest their

\textsuperscript{71} Linus Hagström, \textit{Japan’s China Policy: A Relational Power Analysis}: it is unusual that a normally vocal PRC (on territorial issues) did not raise the issue for 20 years.
incorporation. However, this logically clashes with the idea that China ceded the islands under the Treaty of Shimonoseki. One could make a reasonable argument that China did not protest their incorporation and early Japanese control over them exactly because it considered them ceded under the Treaty of Shimonoseki, and due to the prevailing balance of power in Asia. However, this does not explain the lack of protest from the mid-1940s to the 1970s. China’s lack of interest in the islands during this period could be excused by the ongoing Cold War, China’s general isolation and preoccupation with Taiwan. However, the lack of notable objection to Japanese control over the islands is certainly a weakness in the Chinese claim.

Overall, both the claims presented by Japan and China suffer from weaknesses. Japan cannot dispel the suspect circumstances under which it incorporated the islands. If one would assume that Japan incorporated the islands completely in good faith, then many of its actions make little sense. At the same time, China’s claim fails to establish a strong case for actual sovereignty, beyond mere knowledge and possible discovery of the islands, which is insufficient for sovereignty. The remote and inhospitable nature of the Senkaku/Diaoyu Islands is a key problem, as because of this relatively low display of sovereignty is mandated, and so is the cultural context, in which Western legal concepts of sovereignty might be alien to Asian powers, which might explain their reactions.

The relative strength of the claims is further affected by the fact that discovery is not the only way to establish legal sovereignty over territory. Sovereignty can also be established through prescription which is based on “a long-continued and undisturbed possession” in the case of “both a possession of which the origin is unclear or disputed,

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72 Su, "The Territorial Dispute over the Tiaoyu/Senkaku Islands: An Update," 54.
73 Linus Hagström, *Japan's China Policy: A Relational Power Analysis*: another potential explanation for the lack of response is China’s unfamiliarity with international law and ideological objections to it.
74 Ibid.
and an adverse possession, which is in origin demonstrably unlawful.”75 This means that even if Japan would have acquired the Senkaku/Diaoyu Islands through demonstrably illegal ways, its occupation over time could become legal. This principle in the case of the Senkaku/Diaoyu Islands is obviously rejected by China:76

No matter what unilateral steps Japan takes over Diaoyu Dao, it will not change the fact that Diaoyu Dao belongs to China.”

They [“backroom deals” between Japan and the U.S.] have not and cannot change the fact that Diaoyu Dao belong to China.

However, the fact remains that, while China cannot demonstrate strong historical sovereignty over the islands according to the contemporary principles of international law, Japan has exercised effective control over the islands, including their development and Japanese inhabitation, effectively displayed jurisdiction over them, including the removal of foreign markers, and specifically mentioned them in its dealings with the United States. Japan can present a strong case that, even if the origin of its control is unclear, it has not only exercised control over the islands to a satisfactory degree but exercised control over them to a much larger degree than China can claim to do so. This would present a strong argument for the maintenance of the current status quo, rather than reverting the islands to China.

The critical question then is how all this affects the feasibility of pursuing binding third-party options. To begin with, it makes adjudication less attractive compared to arbitration, due to the former’s stricter focus on legal principles. This is a minor consideration, and in contemporary terminology arbitration and adjudication is often

75 Ibid., 50.
76 The State Council Information Office of the PRC, "Diaoyu Dao, an Inherent Territory of China."
paired, only referring to different institutions conducting similar proceedings. Alle and Huth argue that:

In a strict sense, international courts are to be guided solely by legal considerations, whereas arbitration panels frequently have a mandate to assess rival claims on the basis of nonlegal criteria. In practice, however, courts often are provided the opportunity to consider nonlegal factors by the mandate to apply the general principle of "equity" in their deliberations. At the same time, the customary norm has evolved that arbitration panels should employ legal considerations, even if their mandate is silent on the issue.

A more substantial consideration is the relative strength of the claims. The strength of China’s claims is less than ideal. Japan shows evidence to refute Chinese claims while Chinese refutation of Japanese claims is often depends on somewhat contorted logic. However, this is not sufficient to outright determine that China would possess no chance of winning if it comes to adjudication or arbitration. Overall the Chinese claim, combined with China’s legal and media warfare efforts, offers a sufficient challenge to Japanese claims. Determining the ownership of the islands based on the opposing claims, discounting prescription, would be a difficult legal question, and the outcome is not immediately obvious. Thus, Japan’s claim is not strong enough, primarily due to the possibility of acting in bad faith, to render a binding third-party settlement favouring China obviously unfeasible.

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4.2.4 Benefits and Costs

The key benefit of arbitration/adjudication is that it would provide a decisive solution to the Senkaku/Diaoyu Islands dispute through non-military means. Going through this method would create a binding resolution which could award sovereignty over the disputed islands to China, depending on the decision of the tribunal. This would mean the establishment of *de jure* sovereignty over the islands, with all associated rights and benefits. Looking back at the interests discussed in Chapter 2, a successful arbitration/adjudication could allow Beijing to pursue all of them.

Establishing *de jure* sovereignty over the islands would place no limits on what China could use the islands for, as the award of sovereignty would not be dependent on any compromise with Japan, as one would expect in the case of bilateral negotiations or non-binding third-party options. Establishing *de jure* sovereignty would also allow China to fully utilize the islands for the strategic purposes discussed in Chapter 2. It would also mean that China would be legally entitled to the resources surrounding the islands, and would make a stronger case for extending its continental shelf beyond the 200 nm line. Successful arbitration/adjudication would also be a major political victory both at home and abroad. Domestically, the CCP could highlight that it successfully defended Chinese rights, garnering popular support. Internationally, China could claim a political victory over Japan, humiliating Tokyo.

Besides the pursuit of these interests, the key benefit of arbitration/adjudication would be that China could claim to be a responsible member of the international community, as it sought to settle its dispute through established non-military means, as opposed to through use of force. This would increase China’s status as a mature power, as well as help reduce regional fears connected to ‘China threat’ theories. Overall, it
would be a vindication of China’s ‘good neighbour’ policy and contribute to the reduction of global anxiety over China’s possible conduct.

Furthermore, arbitration/adjudication would provide a conclusive end to the dispute. Establishing *de facto* sovereignty through military means would lack *de jure* recognition and continue to carry the risk of Japan attempting to reverse the situation through military means. The establishment of *de jure* sovereignty through arbitration/adjudication would leave no further room for dispute, denying any recourse to Japan. It would establish Chinese control over the islands in a manner which would guarantee international recognition for it, as well as prevent further dispute over their sovereignty. In essence, arbitration/adjudication would provide a clean and clear end to the dispute.

At the same time, arbitration/adjudication carries relatively low costs. There are naturally the material costs associated with the process itself, which are usually shared equally by the participants, but these are hardly substantial for relatively wealthy countries such as China.

From a Chinese perspective, the key political cost of the process would be its implications for other ongoing disputes. If China would agree to pursue arbitration/adjudication in this case, Beijing would be hard-pressed to justify its refusal to participate in it in other cases. The Philippines has been eager to bring its own dispute with China on the South China Sea in front of an international tribunal. Refusal to do so after initiating similar procedures against Japan would reflect badly on Beijing. As such, participating in arbitration/adjudication would provide a foundation for other countries to take China in front of international tribunals in case of dispute, which Beijing so far has categorically rejected.
4.2.5 Risk

As mentioned above, one of the key benefits of seeking arbitration or adjudication that it would conclusively settle the dispute. Once an award is rendered, there is no place for appeal and the result is legally binding. However, this finality would also be a key risk for China. Would the court decide in favour of Japan, it would deprive China of any further recourse, and, from the perspective of the international community, it would decisively settle the dispute. Thus, would China lose the arbitration, it would have no legal claim to the Senkaku/Diaoyu Islands. This would also affect any ‘three warfares’ efforts. Without a legal basis, China could not sustain a credible media effort to promote its claims. While the option to take the islands through military force would still be open, it would be perceived as pure aggression, and Beijing would find it very difficult to find a way to legitimize its control over the islands.

Losing arbitration or adjudication would also open up the Communist Party to domestic criticism. On the one hand, Beijing would be criticised for failing to secure sacred Chinese territory. As the CCP’s legitimacy is dependent on its nationalist arguments of protecting Chinese territory and ensuring the country’s continued rise to great power status, this would problematic for the maintenance of CCP rule. On the other hand, Beijing would also face criticism for agreeing to let an external force, an international court or tribunal, determine the outcome of the dispute. Beijing displays a high preference for control. Surrendering control over the Senkaku/Diaoyu Islands dispute to an entity beyond Chinese oversight would be highly uncharacteristic and would open up the Chinese leadership to criticism from both the political elite and the PLA.

78 Interview with Tetsuo Kotani (email) on 03/15/2016.
Besides total victory and total defeat, in the case of arbitration or adjudication, there exists a middle ground. It is likely that China would propose a number of issues in its submission as seen in the case of the Philippines. There is a possibility that China achieves a partial victory, for example the court rules in favour of Japan in sovereignty, but rules in favour of China when it comes to maritime delimitation, determining that the Senkaku/Diaoyu Islands are not entitled to exclusive economic zones. Such a decision would not be particularly better for Beijing. The Chinese leadership would face strong criticism at home in this case as well, as the domestic audience is primarily interested in the supposed restoration of Chinese sovereignty over the islands, rather than maritime delimitation between China and Japan. Furthermore, not achieving control over the islands would severely limit China’s ability to pursue its interests discussed in Chapter 2. As such, a partial victory would only offer marginally better utility, and would be a failure from the overarching perspective of Chinese foreign policy.

Knowing the costs of failure, the remaining question is the likelihood of success or failure in case China decides to pursue arbitration or adjudication. This is primarily dependent on the relative strength of the claims, i.e. whether China has a good case for sovereignty or not. The opposing claims have been discussed in detail above. This research found that, based on the official claims and the existing academic analysis, while there are merits behind China’s claims, Beijing fails to present a particularly compelling case. This is especially problematic as China is the revisionist party, who would seek to disrupt the existing territorial status quo through arbitration or adjudication. While China could make a strong case for the right of discovery, its claim fails to disprove that it had conceded to Japanese control over the islands after 1895 and cannot escape the shadow that Beijing is not acting in good faith resuscitating a settled issue due to the discovery of natural resources.
While China can make an adequate case for discovery, it cannot demonstrate the exercise of effective control over the islands credibly, especially during the period immediately preceding their Japanese incorporation. In the *Nicaragua v. Honduras* case the ICJ gave weight to the regulation of fisheries activities and the construction of public works as a sign of effective control over the islands. China has failed to carry out any such activities around the islands prior to 1895. In the same case the ICJ stated that:79

Furthermore, none of the maps being part of a legal instrument in force nor more specifically part of a boundary treaty concluded between Nicaragua and Honduras, the Court concludes that the cartographic material presented by the Parties cannot of itself support their respective claims to sovereignty over islands to the north of the 15th parallel.

A similar reasoning could apply to the evidence presented by China. Many of the maps presented by Beijing are not official government publications, but private endeavours, thus offering limited weight concerning the sovereignty of the islands.

The *Malaysia v. Singapore* case concerning the island of Pulau Batu Puteh is similarly relevant. In its deliberations, the ICJ determined that Malaysia demonstrated sufficient evidence that the islands were under the Sultanate of Johor in 1844. However, in its final judgement the court argued that:80

The Court concludes, especially by reference to the conduct of Singapore and its predecessors à titre de souverain, taken together with the conduct of Malaysia and its predecessors including their failure to respond to the


conduct of Singapore and its predecessors, that by 1980 sovereignty over Pedra Branca/Pulau Batu Puteh had passed to Singapore.

In its decision, the court determined that, despite original Malaysian sovereignty over the islands, sovereignty was transferred to Singapore through the actions of both states. While at its core the decision was based on 1953 diplomatic communications between Singapore and Malaysia, the court also gave weight to the lack of protest from Malaysia’s side to Singapore’s exercise of sovereignty over the islands. Once again, this is not encouraging for China. Prior to 1970, Beijing failed to raise any concern over Japanese control over the islands, despite Japan moving residents and constructing facilities on them. While some of this could be explained by the weakened political state of China, or its unfamiliarity with international legal standards, it significantly weakens its case as it suggests that China has accepted Japanese control over the islands. Similarly to the Pulau Batu Puteh case, this can effectively render discovery irrelevant.

Based on the relative strength of the claims and the legal precedents discussed above, there seems to be a low chance for a favourable verdict for China through adjudication and arbitration.81 In effect this means that there is a high likelihood that, would China pursue this option, it would not gain a favourable verdict and thus, suffer the costs discussed above. While the option remains feasible, it is a high-risk proposition due to China’s inability to present a compelling case, beyond original discovery, to why established effective Japanese control over the islands should be terminated.

81 The low chance of success for binding third-party options in the case of the Senkaku/Diaoyu Islands is supported by Ryoko Nakano (Skype interview) on 14/10/2015.
4.3 Potential Course of Action 5: Delaying

The final option available to Beijing is to pursue its overarching national interests in indirect ways (from the perspective of the Senkaku/Diaoyu Islands), without pursuing a resolution over the sovereignty of the disputed islands. Delaying would be the continuation of the traditional policy approach that characterized the dispute for most of its existence since the 1970s: maintaining the rhetoric and minimal activity necessary to keep China’s claims alive, i.e. to maintain the claim from a legal perspective, while (potentially implicitly) agreeing to shelve seeking any actual resolution to the sovereignty dispute. Delaying has been a common tactic on both the East and South China Seas as China sought to improve diplomatic and economic relations with its Asian neighbours. Delaying would also be compatible with the fundamental tenets of Chinese strategic culture. Deng laid the foundation of contemporary China, and his saying “keep a low profile and bide our time, while also getting something accomplished” continues to be influential in Beijing, even as Xi Jinping seeks a more ambitious role for China in international affairs.

From a theoretical perspective, delaying would not violate the basic ontological assumptions of offensive realism. Mearsheimer highlights that offensive realism should not be equated with the mindless pursuit of expansion. States have to be aware of the relative balance of power and wait for opportunities to take revisionist actions under the right conditions. If the circumstances are not favourable, then states are expected to rationally choose balancing and focusing on building up their own power internally to shift the balance of power in favourable directions. As such, the delaying focusing on

82 M. Taylor Fravel, "Regime Insecurity and International Cooperation: Explaining China's Compromises in Territorial Disputes," International Security 30, no. 2 (2005), 46-83.: highlights delaying as one of the 3 potential strategies for territorial disputes (besides escalation and cooperation), describing it as a period of inactivity while maintaining one’s claims through public declarations.

consolidating one’s power, as outlined by Deng, is an acceptable course of action under an offensive realist framework as a potential rational choice.

4.3.1 Feasibility

In discussing the feasibility of delaying, one has to consider whether China could potentially pursue its key strategic, economic and political aims through alternate ways, or whether the achievements of these interest is critically urgent in the short run, e.g. due to the existence of a tangible threat. If China can pursue its national level interests through different means, i.e. not through seeking control over the Senkaku/Diaoyu Islands, or if securing these interests is not critical in the short run, then delaying with the aim of further building up China’s power and seeking a resolution later is a feasible strategy. If China faces an immediate threat that needs to be countered, or if the pursuing of critical national level objectives cannot be pursued in alternate ways, then delaying is not feasible.

The first issue to consider is external security. China faces no immediate threat that would meaningfully undermine the PRC’s territorial security. While the vulnerabilities discussed are a concern for strategic planning, no direct tangible threat exists at the moment. While China has unfriendly or cool relations with several major powers, such as the United States or Japan, none of these powers are currently posing a realistic threat to China’s territorial security, i.e. it is very unlikely that either Washington or Tokyo would contemplate military strikes against the Chinese mainland. The most tangible threat to Chinese security is the Air-Sea Battle concept prepared by the U.S., which envisions in-depth strikes against A2/AD defences. This would mean strikes against the Chinese mainland in case of a conflict. However, the ASB concept is a tentative operational plan that describes the future direction of U.S. military power. While it is important for China to prepare its defences to ensure that it maintains its own operational and policy freedom, the ASB concept does not pose a short-term tangible
threat that needs to be immediately countered. Under the contemporary conditions, China remains fairly secure, although increasing security from potential maritime threats is crucial if China continues to rise as a great power, which entails the potential adoption of policies that are in conflict with the U.S.’ or Japanese interests.

At the same time, it is also possible for China to improve its security through alternate means, though to a lesser degree. The Soviet Union has faced similar difficulties: establishing maritime defences with limited naval forces. Their solution was based on the New/Soviet School: creating a zone of destruction in littoral waters through small attack crafts, submarines, shore-based aviation and artillery. This has been the precursor of modern A2/AD tactics.

China could continue to fortify A2/AD defences without gaining control over the Senkaku/Diaoyu Islands. China already possesses a formidable fleet of Type-022 small attack crafts. While these ships are not suitable for combat outside coastal waters, equipped with C-80X missiles and deployed in large numbers (China has over eighty of them) they could cause significant damage to any approaching force, relying on their speed and small size. If one includes older Type-037 corvettes and other small patrol crafts, the PLA has over 200 coastal combatants. Combined with shore-based aviation and ASCMs, the PLA can create a zone of destruction that would make any attempts to land a hostile force an expensive proposition. The reliance on these assets is based on Chinese strategic culture’s traditional preference for guerrilla or asymmetrical tactics.

These assets offer an alternative to seeking control over the Senkaku/Diaoyu Islands at the moment. The key importance of the Senkaku/Diaoyu Islands is that they would offer China a forward operating position to expand control over the East China Sea further away from the vulnerable but valuable coast. In the short-term China could

focus on fortifying the existing coastal defences (including small attack crafts) to improve its own security, while delaying expansion (which would be necessary to control the area for direct naval defence – see Chapter 2) to a time when the balance of power or the political environment is more favourable.

Furthermore, China could attempt to extend its maritime buffer zone without seeking forward operating bases by investing into creating a large fleet, and importantly into underway logistical capabilities, such as oilers and resupply ships. These combined would allow Chinese ships to operate in the area in larger numbers and for longer times, establishing better control without seeking control over land features. The U.S. has proposed plans to reduce its reliance on foreign bases through establishing logistical bases at sea.86

The key difficulty with this is that such solutions would be less optimal than establishing a forward operating base that could serve as both observation point and logistical centre. Such a proposition would be expensive to both create and maintain. At sea supply depots would be vulnerable and more subject to the weather. And such at-sea operations would need to operate in close proximity to potentially hostile forces, further increasing their vulnerability. With higher investment required China would get a less effective solution.

Second, gaining access to the natural resource reserves, oil and natural gas, is not an immediate necessity for China. Natural gas is only used in limited quantity in China87 and Beijing has access to substantial sources on the Chinese side of the median line on the East China Sea, i.e. in undisputed waters. Natural gas is also available on the

global markets for reasonable prices. Similarly, China has built extensive relations abroad to source oil, and with the current collapse of the oil prices due to oversupply it can be sourced at reasonable prices. The only questionable resource is fish, however, China could secure fishing rights through bilateral negotiations without seeking control over the islands, as seen in the case of the 2013 Japanese-Taiwanese fishery agreement.

The key question this raises is the protection of SLOCs. As discussed in Chapter 2 control over the Senkaku/Diaoyu Islands could improve the security of China’s SLOCs through a combination of direct protection on the East China Sea and deterrence beyond (protection from traditional threats in the case of interstate conflict, not the non-traditional security threat of piracy or other criminal activity). At the moment, there is no immediate, tangible threat to China’s SLOCs from another state that would make delaying unfeasible. At this time China could improve the security of its SLOCs through the combination of increased patrolling, increasing the endurance of its ships at sea, and securing access to critical ports in foreign countries.

Once again the key problem with these options is that they are less optimal in the long run. Relying on foreign sources of natural resources opens up China to a number of contingencies, for example political instability in oil producing countries can disrupt the supply of oil. Chinese personnel stationed above, such as construction personnel, is a target for foreign extremists with the threats reaching from terror attacks to kidnappings. The natural resources need to be transported through long SLOCs, far beyond China’s control, that expose them to interdiction or piracy. Prices depend on the global market beyond China’s control. These are all vulnerabilities against which a stable domestic supply would provide some measure of protection.

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Third, while the dispute is gaining nationalist traction every day, it is not strong enough that in the absence of immediate resolution it would be detrimental to the legitimacy of the CCP. Beijing continues to walk the tightrope of using the dispute to fuel nationalism while trying to control it so it does not severely restricts Chinese foreign policy. Currently, the dispute offers value by being ongoing: a resolution would improve nationalist support, but would wane over time in the face of other issues. By keeping the dispute active, the CCP can garner nationalist support while maintaining the option to wage diversionary war when it becomes necessary.

Overall, there is no factor that suggests that immediate action has to be taken over the Senkaku/Diaoyu Islands. The dispute has been effectively subject to delaying since the 1970s with Beijing taking the necessary actions to keep its claim alive, but not seeking an actual resolution. There are alternate options available to pursue key Chinese interests in the meanwhile, albeit these offer less optimal, and often more costly, solutions in the long-run compared to pursuing sovereignty over the disputed islands. Thus, delaying is certainly a feasible policy course for Beijing.

4.3.2 Benefits and Costs

The key benefit of delaying is self-evident: China does not need to seek a potentially costly and risky resolution to the dispute under the current balance of power, but rather it is free to bide its time and build up its strength. As discussed under the previous options, seeking a resolution under the contemporary conditions is a difficult proposition. Military options are highly expensive while diplomatic options are fairly ineffective or offer a low chance of success. But with careful planning and consolidation of power risks can be managed, the political environment can be affected, and the opponent can be manoeuvred into a position of weakness. Delaying would allow China to take the necessary time, without abandoning its claims.
At the same time, delaying would have limited direct costs. On the one hand, China would need to continue to maintain its claim, for example through diplomatic and limited demonstrative action, but this would have limited costs. Most importantly it would continue to contribute to tense relations between China and Japan, which can contribute to reduced tourism and trade. On the other hand, the CCP would face growing domestic pressure to act in order to translate the labour of the Chinese people into actual influence and power, opening up another avenue – inaction on sacred territorial claims – of criticism against the Communist Party.

Indirectly the costs would be the burden placed on China by pursuing alternate courses of actions, which can be significant as these options are less optimal. The investment required for the distant sourcing of raw materials, the protection of long SLOCs and building a fleet that can extend control without supporting bases could be substantial.

4.3.3 Risk

The key risk of delaying is that it would require China to maintain a tense environment with potentially unforeseen consequences. The current operational environment is characterized by a significant increase in Chinese physical presence in disputed waters in an attempt to challenge effective Japanese control over the Senkaku/Diaoyu Islands. However, this increase in patrolling, both in the air and at sea, has also increased the risks of accidental engagements between opposing forces.

In the past decade or so there have been numerous examples of these risks: the 2013 radar-locking incident, the 2010 fishing captain incident, the 2009 USNS Impeccable incident, or the 2001 mid-air collision between a Chinese fighter jet and a

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89 M. Taylor Fravel, "Regime Insecurity and International Cooperation: Explaining China's Compromises in Territorial Disputes," 53.: "Although delaying is usually the least costly strategy for leaders to adopt, maintaining a claim to another’s land still carries a price. By fostering uncertainty about the security of vital interests and mistrust of intentions more broadly, a territorial claim creates poor diplomatic relations with the opposing state."
U.S. surveillance aircraft. Would such an incident occur once again between Chinese and Japanese forces, it would likely result in a political crisis, the extent of which is dependent on the severity of the incident. Operating in such a tense environment also allows a chance to exert a significant negative influence. Miscommunication between command and units in the field, the initiative of a nationalist commander or crew independent of higher approval, accidental firing, or equipment malfunction can all ignite a crisis from which both China and Japan would find it difficult to back away from without suffering significant political costs. It is not unthinkable that such an incident can spark a chain reaction of both Tokyo and Beijing counting on the other backing down first that leads to a military confrontation nobody wanted through continued escalation. That such an incident would lead to a confrontation is not preordained\textsuperscript{90}, but it would be a difficult challenge to manage.

From a strategic perspective, this could mean that China is forced into a military engagement that it needs to fight under less than optimal conditions. Chinese strategic culture prizes careful preparation and planning, but an unexpected encounter would force Beijing to potentially improvise. It could also mean that Beijing might be forced by circumstances to fight under a less than ideal balance of power, which would negatively impact its chances for success. Such an incident could force Beijing into a position where it is reacting to events, rather than controlling them through taking the initiative, a position neither the CCP nor the PLA is comfortable with.

Overall, while delaying is a possible course of action, such a strategy would open up China to the unknowable influence of chance and friction. On the one hand, the influence could be positive. Time could allow attitudes in Japan to change, opening up diplomatic negotiations as a potential course of action. Japan could also weaken

\textsuperscript{90} Ngeow Chow Bing (interview on 15/10/2015 at University Malaya, Kuala Lumpur) stated that in case of a crisis like this both China and Japan would seek opportunities to back down gracefully.
economically or militarily, tilting the balance of power in China’s favour. The U.S. could become once again preoccupied with military action in another theatre, increasing its desire for stability in others, even at the expense of concessions for China. On the other hand, Japan could execute ambitious defence reforms, which could tilt the balance of power in Tokyo’s favour. China could suffer economic or political turbulence that prevents China from pursuing an ambitious foreign policy. The U.S. could successfully execute the pivot and refocus its attention to Asia. Delaying is a gamble on that conditions tomorrow will be better than they are today, but as the future is largely unknowable, there are no guarantees that it is not going to be worse. One thing that is inevitable is that the longer China and Japan maintain the current tense situation over the Senkaku/Diaoyu Islands, the more the likelihood of an accidental engagement becomes a statistical certainty. While territorial disputes can lay dormant for hundreds of years, this requires, at least, a largely neutral security relationship. In a competitive security environment, such as the one observed in Northeast Asia, such issues need to be resolved, or they will continue to act as the match held over the tinderbox.