



Untangling Maritime Disputes in Asia

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Speakers:

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PETER DUTTON: Well, welcome everyone. I'll ask you one more time to silence cellphones so we can devote all of our attention to the speakers today. We have a really terrific group of scholars with us today, and I'm very excited to hear some of their perspectives. We've had a chance to chat over coffee for a couple of minutes, and I think we're really going to be treated to some excellent ideas and presentations.

Our first speaker today will be Edward I-hsin Chen –

[00:00:32]

EDWARD I-HSIN CHEN: No, Han-yi –

MR. DUTTON: No, you're third, I beg your pardon – it will be Han-yi Shaw –

MR. CHEN: No worries, it's all good.

MR. DUTTON: Han-yi Shaw. Han-yi is a research fellow at the Research Center for International Legal Studies at National Chengchi University. He's an expert on Taiwanese territorial claims in the East China Sea, which makes him – which must have drawn the attention of President Ma, who is also quite an expert and has – who has, I understand, drafted you to assist us, so –

HAN-YI SHAW: Yes. (Chuckles.) He is an expert himself.

MR. DUTTON: That's right. And the second speaker will be my good friend Yann-huei Song, who is from –

YANN-HUEI SONG: Academia Sinica.

MR. DUTTON: Academia Sinica. He is a research fellow at the Institute of European and American Studies there, and also a joint research fellow at the Center for Asia Pacific Area Studies. His area of expertise, as is mine, is maritime law and policy studies, maritime strategy in the South China Sea issues.

Third will be Edward I-hsin Chen, who is professor in the Graduate Institute of Americas at Tamkang University, who also served as a proportional legislator for the Republic of China between 1996 and 1999, where he was chairman of the foreign affairs and defense committees.

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And finally, our fourth speaker – batting cleanup, as he says – will be James Schoff, who is here at Carnegie. He focuses on U.S.-Japan relations and regional engagement, and he previously served as senior adviser for East Asia policy at the U.S. Office of the Secretary of Defense.

So without further ado, I think we'll turn over to my neighbor on the right. Thank you.

MR. SHAW: All right, awesome. Thank you. So is this the – all right. Hi, my name is Han yi-Shaw. It's a pleasure to be here, and thank you for taking the time to be here. I know this is a

topic that's on the top of many people's minds. We all – we all know that world peace is hard, but we have to try our best. And we think that there is a way out. However, I think that as with all conflict resolution, it starts with a mutual understanding of the – of the positions. So I'm going to talk a little bit about the historical context, which is what – in my mind, a prerequisite to understand how to actually apply international law.

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Personally, obviously, I do believe that Taiwan/PRC has a stronger case. However, the challenge here is that how do you articulate it in the context of international law, which is an area that, for the Chinese, it's not an – as familiar of a area. So without that framework, it's hard to actually make a case to appeal to oftentimes the international community. And therefore it appears to be somewhat like a bully, and sometimes it pains me to see that. So hopefully what we in the academia can do is to provide a framework as well as provide some of the historical context that a lot of the government officials may not know about, and hopefully will advance this in such a way to also realize – let the Chinese and the Japanese both realize that the claims on both sides have weaknesses and strengths. So neither has the full, in my opinion, 100-percent justified case. So let's sit down. Let's think about how do we actually find a mutually agreeable solution, and take it from there.

All right. Quick context. So there's a little bit of Chinese in here, and I'll just do instant translation. But just to give a little bit of, sort of, a context – these are the islands. There's actually three main islands. There's the Diaoyu, Huangwei and Chiwei. And you'll notice they're situated on the continental shelf, and you can actually see that from the coloring of the – of the – of the seabed. And the point that – there's some – there's a – there's an interesting point to that, regarding to – East Asia Sea delimitation, but I'll get to that later. This is, of course, is what the main island looks like, and this is the aerial view.

So the reason why I put this is to – because I've given this talk in Taiwan. And in my opinion, to appeal to the international community we have to be self-critical. If you have so much evidence, use so much evidence. Do not go beyond what you don't have. I oftentimes lament over the fact that the Chinese on either side of the strait tend to use the Chinese menu approach – let's give them 99 reasons why, like, you know, the Diaoyus are ours. And then you have – and not all of them are organized very logically, whatnot. And it's frustrating to see that.

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In addition, I also very much condemn any violent actions in relation to this kind of protest toward Japan in the form of, like, you know, burning Japanese shops and stuff like that. I really feel that we have to approach this from a civilized manner and approach it from a way that conforms to international law.

There was a very famous philosopher in the Ming Dynasty. His name was Wang Yangming. He talked about – (in Chinese). What he means is, it's easier to do – easier to know, but harder to do. We all know we want to get that A in class, but it's harder to get that A.

Sun Yat-sen said something different. He said, no, it's harder to know, but easier to do. If you don't know to argue in – your case in the context of international law you never will. And

therefore, you're going to look to the international community as, like, you're kind of out there to lunch. So I talk to my colleagues in Taiwan that we have to understand that this is rooted in – the solution is rooted in international law. Talk about Chinese history in the context of international law where it's appropriate, right? Because international law was introduced in the 19th century, where there was two normative world orders: The Chinese world order, which was Sinocentric, but then there was one based on equal sovereignties that came in in the 19th century. And Japan utilized the conflict of those two – it redefined as territory using Western international law, but it – but China did not.

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But does that mean that China at the time did not regard any piece of territory as not its? Absolutely not. It's just that it did not understand the vernacular and the framework that they needed to speak to, which of course history, as we see it – China lost battle after battle, both militarily and diplomatically, because they did not know how to speak the worldwide accepted language. So what I talk about is international law, history and intertemporal law. And of course we have to be honest, fair and accurate.

So one of the things – I'm going to start with a piece of evidence, just to show objectivity, that the Chinese say that the islands belonged to China since antiquity. I challenge that. They talk about, in 1555, the Diaoyu belonged to Xiaodong – Xiaodong was an ancient name for Taiwan – and therefore they say, well – (in Chinese) – means “iron proof,” right? And they're like, well, in that case the Diaoyutais must have been Chinese territory since antiquity. Well, it turns out Taiwan was not even part of China at the time. Well, how could – how could A equals B, but B equals – doesn't equal C, then A equals C? Illogical, right? So – but I'm not the first person to propose this. There are other legal scholars in Taiwan who have actually made this case. So I actually think that this is irrelevant, this piece of evidence is irrelevant. Ming Dynasty, historical evidence – there's a section that has numerous listings of these. I think that they're irrelevant. If you look at the Ming Dynasty territorial boundaries, it does not even include Taiwan, let alone the Diaoyu.

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However, in order to really understand why Chinese believe the islands are theirs, we have to refer to the Qing Dynasty. The Qing Dynasty is from 1644 to 1912, and this is where they started to actually look at Taiwan as well its peripheral areas as Chinese territory, and well documented in public records.

This is one example. Diaoyutai is listed in the blue text – well, Gamalanting is the prefecture it was listed under, and you can see Diaoyutai is listed under there. And these – and it turns out, when Chiang Kai-shek fled to Taiwan in 1949, as you all know, he brought a lot – a bunch of national treasures from Peking to Taipei, in the National Palace Museum. Turns out there's relevant information that he brought over as well, such as these. All of these highlighted text are records of the Diaoyutai. And unfortunately, I think only 10 percent of the – of the museum's exhibition is actually on permanent display, so I had to actually get special permission to, like – these are collecting dust! You preserve them for a reason. Show them.

Another thing is that – (in Chinese) – “to know the opposing view,” is very important. So what I tend to do is I talk about the Japanese argument. In 1945 to 1971, the Japanese make a very

– a compelling case: Well, if the – if the islands were yours, and if – yours – you’re a victor state. We were a defeated state. In 1949 – (194)5, why did you take back Taiwan? We let Korea go independent. Why didn’t you take back the islands? There’s a reason. And unfortunately, neither sides on the Taiwan Strait have actually adequately addressed this, but that’s also because a lot of people have not looked into the history. So this is what I will try to hopefully show.

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But in – again, but what I want to say is that the Japanese claim was actually invalid from the get-go. And why do I say that? It’s again through the lens of international law. Japan understood this. Today, what the Japanese argument is that – this is the – notice how the text says “zaisan, zaisan.” “Zaisan” means “repeatedly.” So in other words, they’re saying they repeatedly – (inaudible) – the islands from 1885 to 1895. And I’ll show you that was contrary to what really happened. In the English version – this is the official translation – I think they said “thoroughly.” We’ll see if they really did.

So there’s a long – they also have a laundry list, too. And this is – you know, each year what did they do, so on and so forth: This is – this happens to be the person from whom the government bought the islands, and this was the contract to show that – and what I’m demonstrate to the Chinese is that, look, the Japanese have as long – also a long history of sort of counterclaims. So let’s kind of, like, debate this upon and the merits and not just be so accusatory. Let’s actually have a rational discussion.

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And after some 10 years of researching, as I’ve flown to (Kōbunshokan ?), you know, Gaiko Shiokan (ph), all these major archives in Japan, and I was able to unearth more than 40 documents and to understand what exactly happened from 1885 to 1895. And therefore I published something in The Wall Street Journal as well as The New York Times, to really let the world as well as, more importantly, the Chinese also know, like, how should you actually look at this? Stop being so accusatory and stop saying things like, well, after all, you know, China’s a big country and the East Asian – east – southern – east countries are small countries. You’re not going to win any friends that way, and nobody’s actually more inclined to believe in your argument. So stop that, right?

So the – so to ignore – so I feel that we need to stop talking on the Ming Dynasty stuff. But Qing Dynasty stuff, right? For those who can read Chinese, it says – (in Chinese). (In Chinese) – “Middle Kingdom.” (In Chinese) – “foreign land.” (In Chinese) – is the boundary between China and foreign lands. But what is this – (in Chinese)? Well, and this is a poem that was written by the ambassador from Peiking to Ryukyu in the 18th century – or 19th century. And as he passed by every single island he talked about what – his understanding of them. And upon finishing – passing all of the Diaoyu Islands, he then – he then said, there is a – (in Chinese). And he said – (in Chinese). He says, in the natural world there is no boundary, but we have drawn a black line.

And today, if you go to the Okinawa – (inaudible) – which is the Okinawa National Museum, you will see a painting that actually has a border drawn by this, by a Chinese painter. This obviously is not a natural phenomenon. (Laughter.) But what this – (laughs) – I have not yet seen it, but what this suggests is as the time, absolutely, the Chinese have understood – well, of course it’s a huge empire, so they actually have to have a way to delaminate what is ours and what is theirs.

So now let's get into the history in case. These are the official documents of – in the Japanese archives from the Meiji period. And these – this is actually the actual Cabinet Decision in January 14, 1895, that – through which Japan incorporated the islands. But notice something: The red text has – it's the – (in Japanese). It's like the – (in Japanese). It actually means “secret.” And what that means is this was never publicized.

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So in other words – so after I wrote my articles, the Japanese Ministry of Foreign Affairs, on October 25th actually published a rebuttal, which I'll talk about as well. But in any case, the point here is that this is something that was never publicly released. And we – and the Western World as well as the Chinese did not – did not realize that this Cabinet decision actually happened until 1953, when the Japanese government declassified its foreign documents.

So I'll be really quick. And I have very few minutes left. So in other words, what I want to also say is, like, this sheet of paper is basically saying that, you know, the Chinese newspapers are reporting that we would like to actually – we, as in Japan, would like to occupy the islands, we got to be careful, so on and so forth. So if –

MR. DUTTON: (Off mic) – time – (inaudible).

MR. SHAW: All right. So if the Japanese media – or, sorry, if the Japanese foreign minister is aware of Chinese press talking about Japan's intentions to occupy Chinese islands, is that not indication that there is Qing ownership or at least suggested Qing ownership, which is actually why Japan delayed its occupation for 10 years? And these are all, like, documents that suggest, you know – you know, the highlighted text here says, “incomplete.”

And then this document is the one that's most relevant. It talks about, in 10 years, the Naimu-shō, the Home Ministry wrote to the Okinawa governor and asked them, so hey, do you got any new information on these islands? The head of the prefecture said, no, nothing – we have nothing since the past 10 years.

So I'll just skip through this real quick. So my point about the Chinese – what I – my point about talking about this is to make sure that we can bring the Japanese and the Chinese to the negotiation table, because today Japan says there's no dispute that exists. There happens – (chuckles) – you know, I think we all know there is a dispute. And it's a pretty big one, one that could actually become a very dangerous flash point. We got to be careful, and we have to resolve that.

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So – sorry. So my point is that, in response to a lot of what I've spoken about, Japan then – the Ministry of Foreign Affairs wrote back and said: “In incorporating the islands in 1885, did Japan make a thorough survey?” And therefore they listed a couple of examples. My point is that they should look at their own archives, because every – if you look at the archives, all the documents demonstrate they did not.

They further, also – I’ll just skip over this; you get the point. But one interesting point is they talked about – the Japanese – so in response to what we’ve talked – what I said, well, you didn’t announce it. And then they said – so question 10 from the Japanese MOFA: “The Japanese government never made public the Cabinet Decision in 1895, keeping it secret, didn’t it?” And they say: “It is true that the Cabinet Decision of 1890 was not made public, but is understood that so were Cabinet decisions in general at that time.” And it concludes, “In – under international law, there is no obligation to notify other countries.”

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Well, let’s take a look at this. In 1891, when they – when they incorporated – everyone’s heard of Iwo Jima, right? It was actually announced through Imperial Edict 190. The middle one – or the Diaoyutai, the Senkaku Islands – there was no public announcement. But in 1898, there was. So Japan treated these islands very differently.

So there’s a critical question that I’d like to maybe address during the Q-and-A. Why is it that China did not actually request for the islands to be returned in 1945? Turns out, from 1895 to 1945, during those 50 years, Japan had actually created new names. The word – (in Japanese) – many of you may not know; this word was coined in 1896. “Senkaku” in 1900. There’s a term called – (in Japanese) – which is – which turns out to be the former name of – (in Japanese). And the reason why it’s called – (in Japanese) – is because the Japanese renamed it to – (in Japanese). (Speaks in Japanese) – is the transliteration of – (in Japanese) – but different characters.

So in 1945, a lot of place names have changed. And because the ROC was not founded until 1912 and Taiwan was ceded in 1895, it did not realize that during the 50 years something has changed. Therefore, that led to a series of mistakes by the Allied powers, including China, to miss the fact that some islands were actually Chinese but not returned. Therefore, when the islands – absolutely, when the oils were discovered, historians were telling the government, look, this Senkaku name is misleading; it’s actually the Diaoyu. And all of a sudden, when looking at the archives, the truth came out.

And so that concludes sort of my overview of the context. Hopefully we’ll be able to then apply some legal sort of analysis on this. Thank you very much. (Applause.)

MR. DUTTON: Excellent. Well, thank you very much. That really was excellent. And there’s a lot of richness there that we can delve into in the question-and-answer.

So Yann-huei Song, we’ll turn to you.

[00:18:24]

MR. SONG: I could not find my file. That’s mine. (Off mic.) Well, thank you very much, Peter. It’s my honor to have the chance to talk about East China Sea Peace Initiative. Mr. Han-yi – Shaw Han-yi just mentioned that the sovereignty issue regarding to Diaoyutai Island Group, and I’m going to just talk about maritime dispute in the Asia-Pacific region.

Now, for country in the Asia-Pacific region, the cause for concern is the development trends of the maritime activities conducted by the countries – I’m going to come to that, thank you –

MR. : This work?

[00:19:09]

MR. SONG: No, I'm – he's pushing that. I'm going to country myself. (Cross talk.) Yes. But anyway, so the country in the region, the Sea of Japan, East China Sea, South China Sea, and even you want to say that in the –

MR. : (Off mic)?

MR. SONG: No, it's another one. (Off mic) – go back. Yeah. (Pause.)

So a lot of thing going on. And this is the main trend of development in the country in the area, the region, have to pay attention to that. And then we see that this is a number of flash point in the region. And of course we know – we know that the dispute between Japan and the Russian Federation, the dispute between Korea and Japan over Takeshima, and certainly we have the issue right here, the Diaoyutai Island Group – I called it the DIG – and Scarborough Shoal in the South China Sea, Paracel Islands, Scarborough Shoal, the Spratly Islands in the South China Sea. And recently we see that the Chinese 18th party congress report – according to – (inaudible) – China State Oceanic Administration say that is very important to safeguard the country's maritime rights and interests and try to establish China as a maritime power.

So we – recently we see that a number of action taken by China – for example, the – (inaudible) – mapped and the (two popular tourist ?) – (inaudible) – sites are included in the PRC new passport. And also, we see that the China issue the (Senkaku ?) mapped in the South China Sea because they establish the new administration authority to govern the Paracel Islands – (inaudible) – and Spratly Islands – that's all in the South China Sea. And so – excuse me. So we see that again, a Chinese action taken in the South China Sea – because according to the Chinese, the sea islands protection law – so China published maps, pictures and geographical location of all land feature of the DIG, the Diaoyutai Island Group.

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And this is the map of the South China – East China Sea we are going to talk about right now, so number eight, land features, and the largest one, Diaoyu Dao – the size of that one – 4.32 square kilometers. And some people arguing that why you want to pay such more attention to those rocks, islands, whatever in that area? And in addition to the disputes over land, islands, Senkaku Islands, Diaoyutai Islands, we also have the overlapping claims regarding maritime baseline claims. You can see that is from Taiwan's baseline, and you can see Japan's – the baseline claims. Also, we see that recently, in September, the PRC government announced the 17 baseline – base points, and then they draw a straight baseline to have that kind of a baseline and – within that internal water and territorial waters and so on.

So it's a very complicated situation, maritime delimitation, maritime conflict, on top of the sovereignty issue in the East China Sea. So the tension increased, especially in June 2008. We have the conflict between Taiwan and Japan. And then Japanese government apologized and made

compensation because they collided Taiwanese fishing vessel. And the one you know – that is September 2010 – we see that Chinese fishing captain – fishing vessel's captain was detained – arrested, and then escalation of tension between China and Japan. And that started the process.

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And so we see The New York Times – the reporter Nicholas Kristof – he said that tensions have erupted over some barren rocks in the Pacific – that's East China Sea – that you may never have heard of. But you – stay tuned. This boundary disputes that could get ugly and someday have far-reaching consequences for China, Japan, Taiwan and certainly the United States.

And then the recent one – we know that in April and then in September, escalation – purchased island and nationalization of the island. So we have the activities going on in that – Japan landed at – (Hong Kong ?) people landed. Taiwanese people tried – Chinese activists tried to land in that area. And then action taken by the United States – you know that in October a U.S. aircraft battle group – two battle groups were sent to East China Sea and South China Sea. And we see that response from China to send that warship to past Okinawa and so on. There's a lot of thing going on, and recently the military exercise between the United States and Japan in response to that. We see that a couple days ago, November 28th, the Chinese navy flotilla also moving to that direction.

And this is the one is going to escalate, I think, the dispute between China and Japan because the – (inaudible) – the Senate amendment to the National Defense Authorization Act of 2013. And of course, the senator, Webb, proposed amendment. And that has come to the question about Article V of the U.S.-Japan security pact. Is that to be applied if attack against Japan regarding the territories under Japanese administration?

So we have this where China responds strongly, and Chinese Foreign Ministry spokesman Hong Lei say that where the Chinese side expressed serious concern and a firm opposition to the U.S. Senate amendment, to this one. And then Hong Lei say that a U.S.-Japan treaty is a product of the Cold War era, that it should not go beyond bilateral scope nor undermine interested third party. And we also – it's going to see the election – outcome the election of December 16, the Japanese general election. And then at this moment, the 11 parties – the candidates – they try to use the language, and then they tried to say that, for example – (inaudible) – he said that he's going to send the retired warship – I want to say warship, but it's Self-Defense Forces – the ship to the disputed waters around the Diaoyutai Senkaku Islands. He also said that he's going to send (seven ?) to that area.

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So this is escalation, and the retired ambassador from China – he said that it's very – going to be very, very serious. It's unexpected thing happen. What's the unexpected thing? That's armed conflict between China and Japan, and the United States would be dragged into. And the new ambassador to China – he said that the relationship between China and Japan is more important than relationship with husband and wife, when worst implication of that. And then – (inaudible) – President Ma (introduced ?) the five-points initiative, because in that situation, Taiwan would have to deal with Japan, deal with the United States and China. It's a very, very complicated situation.

And for Taiwan, how can we raise our voice? How can we let people know that we are a party to that important thing? So these are the thing, the five-point peace initiatives coming, which was proposed by President Ma in August this year. And for this one, why – (inaudible)? Because the domestic political pressure, importance of Taiwan-Japan, Taiwan-U.S. and cross-strait relations, also try to avoid full escalation of tension in the area. And then of course, we would like to see peace, stability in the region and of course try to increase Taiwan's participation in the regional security and cooperative dialogue process and so on.

So this is the pamphlet. You're welcome to grab a pamphlet – talking about the president five-points peace initiative, which in particular tried to encourage dialogue, negotiation, tried to not use the force, and then respect international law and seek – in the future maybe adopt a code of conduct.

So this is the two stages. The first one is the peaceful dialogue and mutually reciprocal negotiation. And second stage is shared resources and cooperative development –

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MR. DUTTON (?): (Off mic.)

MR. SONG: I'll finish. Yes, and then there's some – another issue, the fishing industry, mining industry, marine scientific research, marine environmental protection, and then maritime security (and ?) nontraditional security issue, and finally (maybe ?) the East China Sea code of conduct. The principle announced by President Ma both in East China Sea and South China Sea is safeguarding sovereignty, putting aside a dispute, peace and reciprocity and joint development. And this is the one – now, the question is this is a serious diplomatic effort, but some people say that it's an academic exercise.

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And they – some people criticize that this initiative is going nowhere because Taiwan is not a power, and then – but is it true? Because recently we've spent around 400,000 U.S. dollars to buy the four dailies in the Los Angeles Times, New York Times, Wall Street Journal and the Washington Post, and tried to explain that – the ROC national sovereignty over the DIG and urged the resolution of regional disputes in accordance with the – (inaudible). And President Ma himself – he gave lectures in front of the – at the Mofa (ph) to those governmental official diplomats about importance of this issue. So it's not academic exercise.

And also, recently we see a number regional international response, positive responses, even support to that initiative in terms of Japan and China and U.S., Europe, Australia, Russian – (inaudible). But a question is the – in the future, a possible way for implementation – this one maybe can consider informal workshop on managing potential conflict in the East China Sea. And this one is going to copy the experience in South China Sea over the 22 years they have the informal workshop on managing potential conflict in the South China Sea. Maybe we can have eminent group of the East China Sea issue, talking about oil, fishers, resource sharing, environmental protection – one minute – we'll finish.

And so then a lot of the bilateral talk between Taiwan – so these are the thing – and then obstacle – certainly obstacle. China a factor because since the One China principle, internal politics within Taiwan, the (lack ?) of domestic consensus – and China-Japan talk, if that happened, sideline Taiwan's interests and no follow-up dialogue between Taiwan-Japan, Taiwan-mainland China and other countries. And then they'll follow up strong support from U.S. government.

So this is the last slide. My question: Does the implementation of the initiative serve U.S. national interests in the South China Sea? If yes, what role can the United States play? Should U.S. government express its support to East China Sea peace initiative? If no, why so? And what about U.S. Congress? And then – this is the end of my presentation. I thank you very much for your attention.

Thank you. (Applause.)

[00:30:17]

MR. DUTTON: Excellent job. Well, some very provocative questions we'll have to return to in the question-and-answer. Thank you.

So our third speaker, also from Taiwan, is Professor I-hsin Chen.

(Off-mic exchange.)

EDWARD CHEN: Sorry to keep you waiting – (inaudible). Thank you very much. And distinguished guests, ladies and gentlemen – yeah, my – (inaudible) – is U.S.-China-Taiwan leadership change, its impact on DIG, Diaoyutai Island Group, and beyond.

OK, in this year we have three leadership change, in Taiwan, ROC, and United States and China. This leadership change might have important implication and impact on the issue of DIG. And of course, there will be more impact on cross-strait relations and U.S.-China relations, Taiwan-U.S. relations and so on.

OK, this is U.S. leadership change and its impact on Obama – President Obama's pivoting strategy or rebalancing Asian strategy. OK, many – one may wonder why the United States can support such an ambitious plan while its economy is in relative decline and its defense budget is shrinking. I will say this time, unlike the Vietnam War era, when the United States was dispatching more than half a million soldiers in Vietnam, this time the United States will better use of the resources of its allies and partners. So in other words, the United States will not rely on its resources alone – (inaudible). It will use other nations' resources. So that's why it can sustain its Asian – pivoting Asian strategy.

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And more, the United States – other than military dimension, the United States also promote its pivoting Asian strategy or rebalancing Asian strategy in other dimensions, including democratic – diplomatic and political and economic dimension.

OK, in China – on China's side, I will say Xi Jinping will be a more powerful leader than his predecessor, Hu Jintao. OK, three – I think three examples could account for his stronger or powerful leadership. I think in the next decade he will try to – try to – try to deal with Sino-U.S. relations, make some (political ?) – (inaudible) – across the strait and take a more assertive policy toward DIG.

OK, as the CPC secretary-general – chairman of CPC Central Military Commission and the PRC president – OK, he will assume the position next March. Where – when Xi – sufficient authority and power to demonstrate his – (inaudible) – at home and abroad. One week after assuming chair of CMC, he appointed an air force commander, and within 30 hours when a corruptive scandal was exposed in the (net ?), he fired a local corrupt official.

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And I think – and in recent days China just announced that China will take a (quarantine ?) policy in South China Sea. And if he were to sustain a policy of dispatching vessels and expelling Japanese vessels in the waters of DIG. In the past though, Japanese vessels are always expelled Chinese vessels or Taiwan's vessels. But this time, China is expelling Japanese vessels. So it used to be a guest. Now it becomes a master.

And just like Dr. Song said, China is implementing a policy of e-passport with controversial photos. And China, if – OK, if President Obama is not re-elected, China may ignore U.S. pivoting Asian policy, but since Obama is re-elected, China has to take rebalancing Asia strategy into serious consideration thereby thinking of unthinkable in Asia in the future. And it seems unlikely that China will seriously take a provocative policy toward America, as it has not yet had. We're prepared – it's military prepared – we're prepared in the military dimension. As a result, Beijing will choose a long, confrontational approach when facing formidable – a formidable U.S. presence in Asia.

OK, in other diplomatic, political and economical dimensions, however, Chairman Xi will – (inaudible) – make good use of challenged diplomacy, soft power, including Confucius Institute, and regional, comprehensive and economic partnership, RCEP, to – in competing with the United States. OK, in his policy toward Taiwan, Chairman Xi will increasingly exert pressures on the Ma administration for political dialogues across the strait, including the issues such as two sides one – two sides one country, respectful political status across strait, military mutual trust agreement and the peace accord and so on.

[00:37:13]

Actually, China – this time China might have cast its suspicion about Washington's strategic intention behind the U.S. support for Japan on the disputes over DIG. In the past, the China – the United States always casts its doubt on China's strategic intention when China has increased its defense budget. This time China cast doubt on U.S. strategic intentions. Before Japan decided to return to the nationalization of Diaoyu Islands to the previous status, or at least confess the existence of controversy over these islands, it seems that China will continue to intensify its economic, political and quasi-military measures against Japan.

And on the ROC side, the re-election of President Ma earlier this year and the subsequent leadership change at the national security level will have immense impact on the cross-strait

relations, DIG and the Taiwan-U.S. relations. OK. I will give you a personal experience on China's political pressure on Taiwan. In the KMT, CPC, Chinese Communist – Chinese party of – Communist Party of China forum held in Harbin, a metropolitan city in northern-eastern China on July 28th, Jai Qinglin, the chairman of the Chinese political consultation committee advocated both sides of Taiwan Strait should belong to one China – or, in the form of slogan: Two sides, one country.

[00:39:07]

In the morning session where both sides of political leaders express their ideas so I don't have a chance to lodge my protest. In the afternoon session, however, I argued that Taipei could not accept such a notion because the outside world would believe that Taiwan and China are building a new nation. OK. On the disputes over the DIG, as Dr. Song mentioned, Ma has a five point proposal. I would say such a proposal is equivalent to what Joseph Nye said in his book, "Born to Lead" – cooperative power. Taiwan is just – is simply creating a scenario in which all parties concerned will automatically follow ROC's political preferences because doing so will also be in their national interests.

OK. OK, other than President Ma's SP (ph), I will say Taiwan or ROC's position over Diaoyu can be expressed by an English word: firm. Firm is so – suggested that opposition on the DIG will be very firm. We can wait another 1,000 autumns. And – OK, if here suggests flexibility because we do not effectively control any islands of the DIG, so we have to take a – (inaudible) – approach.

And third – (inaudible) – international environment, we have to – we have to adjust our stance according to the changing international environment. For example, in the past, we never engaged our large-scale conflict with Japan. OK, this time we have – we have had a water cannon war with Japan. OK. Our suggested resolve, we will – we will – we have patience, but we have the determination to solve the problem in the long run. And we'll suggest a military strengthening process, including our vessels of our sea shore patrolling – (inaudible) – something like that.

The lesson from water cannon warfare with Japan is that we have to strengthen the power of our water cannon. And OK, now Taiwan – ROC will not depend on Japan's – China's economy and market alone without embracing U.S. security commitment because doing so, Taiwan would commit political suicide. And U.S. – however, U.S. security commitment and strategic reassurance cannot help ROC much to stand up economically. So in the absence of close trade, economic cooperation, Taiwan's economy will be marginalized in the Eastern Asian economic integration.

[00:42:46]

So in order to prevent Taiwan from heavily depending on China's economy, we – Taiwan – hope that the United States could extend its assistance to us by upgrading Taiwan current outsider status of the Trans-Pacific Partnership agreement into an insider. In the future, as long as the KMT is the ruling party, I think the ROC will continue to stick to its saying no policy – no independence, no unification and no use of friend – no use of force – and it's strategic approach of making peace with China, making friends with Japan and taking a pro-U.S. approach.

Transcript Not Checked Against Delivery

Conclusion: Only with the U.S. security commitment at hand can Taiwan have sufficient capital to tackle with China while enjoying economic bonuses – bonus and the peace bonus. Thank you very much. I will stop here now. (Applause.)

[00:43:50]

MR. DUTTON: Thank you very much, sir. And next – our final speaker will be James Schoff.

JAMES SCHOFF: Thank you very much, Peter. And welcome, everyone, to Carnegie Endowment. I hope none of the speakers rushed their presentations on my account because you've really done a great job of laying out a lot of very thoughtful content. And there's a lot of material there to consider. And I've learned a lot in the process, so appreciate that.

I've been asked today to offer a few thoughts and comments on the topic to some extent from a Japanese perspective or a Japanese-U.S. perspective. And as I listen, especially to Professor Shaw's description and discussion, I'm reminded why the United States loves to stay neutral in these kinds of things – (laughter) – and why, you know, these kinds of disputes just give us terrible headaches.

And people often ask me and ask the United States, you know, how can be you neutral or why do you stay out of these discussions because – when you have such strong interests in the outcome and in – and could be adversely effected if they're not handled well? And you know, I really think it does derive from the fact that these disputes predate our arrival, even, in the region. And it's so difficult for us to know, you know, how to enter that discussion.

But the United States is connected in particular – I mean, even today I'm a little self-conscious about what do I call these islands? I studied in Japan for about – and have been involved with Japan for over 20 years and so Senkaku rolls off my tongue. But do I call them DIG or put a hyphen between them?

[00:45:48]

But the issue of administration control is clear to the United States because the islands were included in the area and – that the United States had jurisdiction over after World War II up until 1972. In fact, one of the islands there the United States used for target practice not too long after World War II. So it clearly knew what it was doing in that shape and form and that it transferred that administrative control over to Japan in 1972. So it clearly is tied up in this and follows that policy.

But also, the United States does not want to see the situation deteriorate. So there are efforts I think we can – we can try to make to support peaceful resolution on these islands. And I think President Ma's proposal is an excellent place to start. The rhetoric is quite hot in Japan on the fringes. So I don't want us to get distracted by the most heated of arguments or the loudest voice in the room.

I mean, there are some in Japan who would say that Beijing's push in the Senkakus and the East China Sea is really a first step in trying to reclaim control over the Diaoyu Island chain. And

basically, they want Okinawa prefecture and they won't stop until they get it. That's clearly a tiny minority within Japan that believe that. And the former governor of Tokyo, Mr. Ishihara, who's running for office now in the election, has talked about it in the context of if we don't stand up to China, we'll just end up like Tibet. And that's clearly hyperbole and rhetoric that most of the Japanese do not believe in.

Most of the Japanese want to see this issue handled calmly. And as a matter of fact, the Japanese perspective on this is that – in particular the Democratic Party of Japan and Prime Minister Noda – is that the approach for nationalization was an effort to deescalate the situation. Governor – then-Governor Ishihara believed he was responding to a long period of kind of ramped-up Chinese maritime intervention in the region and some of the incidents that have been discussed here, and that he felt it was important to take a stronger stand in terms of expressing Japanese sovereignty over the Islands.

[00:48:43]

So when the current owner of the islands expressed an interest in selling them, he began to raise money to buy them. And the central government thought that that would be a terrible development, so they beat him to it and bought the islands out from under him. So their argument is that, well, these islands were always on the national registry of – in terms of our land ownership, paying taxes and such for us and so the nationalization of them did not change the status.

Clearly, China and Taiwan have a different view, and that's fine. But I guess it's important to understand, from the Japanese perspective, that this was not intentional escalation in that regard and they were dealing with a situation I think Governor Ishihara really created.

This issue of – and some of Professor Song's explanations about escalation too – I guess I would – the United States would say that the dispatch of U.S. warships in the East China Sea, certainly nowhere near the disputed islands, had nothing to do with necessarily trying to make a statement specific to those islands. And the U.S.-Japan exercises in that regard are also something that happen every other year in that – in the areas that they took place. So this perception of who's escalating what and who's responding or reacting to what is very much in the eye of the beholder.

[00:50:20]

Japan would also not forget that in the wake of the anti-Japan riots and demonstrations that took place in China after the nationalization, Japanese businesses suffered about \$130 million of direct damage – Japanese insurance companies are now not insuring Japanese companies for vandalism anymore – and billions in trade losses. And Japanese investment in the third quarter of this year in China was down by 75 percent.

So whatever government takes shape after the election in Japan in December, if you're faced with a weak economy and a pretty high debt load, which Japan faces right now, the cheapest way to stimulate our – your economy is to patch things up with China and start selling more. It's the – it's the lowest-cost economic stimulus program you could possibly come up with.

There is – along those lines, the current government – I don't know if people saw Foreign Minister Gamba's most recent statement on the – on the islands, but he has essentially – Japan has

delicately walked this line of whether they recognize it as a dispute or not. I tell my Japanese friends, and many Americans have told the Japanese, that look, there's – you don't lose anything by acknowledging that there's a dispute. It only takes one party to create a dispute. (Laughter.) If somebody disagrees with your opinion, you've got a dispute, and then there's nothing wrong with that.

And Gemba's article acknowledged that there is tension over the issue, and he used the word "tension." And he also said that basically Japan would have no problem if China wanted to take this to the International Court of Justice, which was a slight change, which was another policy walk-back, a little bit. And they took advantage of the fact that China has not acknowledged the compulsory jurisdiction of the BICJ in that regard so that it's convenient. Until China actually takes that step, then the ball is in their court, so I guess they feel safe that they can make that statement and benefit from that.

[00:52:45]

But all of that is a little bit different than where they were, you know, perhaps a year ago and is certainly probably a slightly different policy approach than an LEP government led by a Prime Minister Abe, in particular if they end up in a coalition with the Restoration Party in Japan, which is led by former Governor Ishihara.

So that's – there's a bit of a wild card in there. I'm actually somewhat optimistic that after the election in Japan early next year, you'd have fertile ground for beginning this dialogue about how do we take this down a notch, because water cannons are not going to solve this, and heaven knows bullets and bombs are not going to solve this situation.

I am – I don't – I'm a little perplexed by Beijing's approach, because I thought by now they would begin to pull back from the – from the regular incursions in the – in the waters around the islands, because I thought that they made their point; they wanted to demonstrate resolve in the context of both their domestic opinion but also internationally. And I can't believe they actually expect that they're going to change Japan's position or force Japan into changing its position based on sending ships in and out of that water. So all you're doing is essentially creating more opportunities for some kind of unintended conflict that makes it even harder to ever get back to a situation that you want to respond to. So it's not clear to me what they're hoping to gain out of that.

[00:54:26]

I mean, I think their most recent Senate amendment is an interesting policy question or policy issue to look at, because there were plenty who – especially in China – who criticized the Senate for getting involved and saying, you know, the U.S. is neutral, but then they're so adamant about the fact that they're willing to work with Japan to defend these islands in the case they come under attack. Why would the Senate go that extra mile and make it – make it so public?

I actually think the Senate did that to reassure Japan. They did that to de-escalate the situation. In other words, the worst thing right now from a U.S. perspective is that you have a Japanese government that comes into power and really worries that the U.S. is no longer going to recognize Japanese administrative control. If the Chinese keep sending in ships with the idea of clouding the issue of who has administrative control, if Tokyo gets nervous that hey, people might

actually believe China, that they have administrative control, we have to do something; we have to build a lighthouse or we have to send people down there. That's going to make the situation even worse. That's really changing the status of the situation.

[00:55:36]

So I thought actually it was clever that – the Obama administration didn't have to do it. They've already made their position clear. But having the Senate make that clear statement, I think, on paper, for the record, should be reassuring to Japanese authorities that look, the issue of administrative control is not going to be questioned, and therefore the issue of the application of the U.S.-Japan treaty is not going to be questioned, and the U.S. will continue to stay neutral on the issue of sovereignty and encourage dialogue. So it reinforced the current policy, but I – but hopefully reassured Japan to some – to some extent.

A couple of other little points that occurred to me – I think the recent restart of Taiwan-Japan talks – fisheries talks is very positive, and hopefully they can make some progress, because as I understand it, the areas around those islands account for almost 7 percent of Taiwan's total catch. And the fishermen who fish in those areas, that's their livelihood, and it's pretty important – there's no reason why we can't get back to that position as long as some – I think as long as China is willing to kind of stop sending these ships into that zone and take the argument into a dialogue.

I mean, the Japanese coast guard is stretched pretty thin. They have only about 121 ships total for the whole country. They've had to draw between 20 and 25 extra ships from other parts of Japan to supplement the district that services those islands. People are going to get more tired; resources are going to get more stretched; pressure is going to be put on Tokyo to increase the budgets, increase the allocation of shipping and ships, et cetera, hence that suggestion by Candidate Abe to take decommissioned self-defense force ships and put them in the mix. That's not going to help either.

[00:57:39]

Wow, I actually filled up my whole time here. (Laughter.) The issue of escalation I think is interesting. Again, I talked about the perceptions of escalation. I think there is a perception in the United States that in the 2010 experience with the ramming of the coast guard ship and the arrest of the Chinese fishermen, there was horizontal escalation by Beijing, which was to have an issue then pop up in the context of rare earth exports and also slowing down of imports. And they spread the escalation horizontally. What we're seeing now is a little bit more vertical escalation in terms of directly challenging the islands in, you know, paramilitary types of vessels and threatening to do more in the context of different legal jurisdictions and the ability to interdict ships that cross into Chinese waters, et cetera. So we're worried a little bit about vertical escalation there.

And then the other issue is missed opportunities for diplomacy. Because of these disputes and the need to appeal to public audiences for elections and such, we've had three or four different meetings where the leaders of Japan, Korea, China have all been in the same meeting at APEC and at others, and they don't talk to each other because they can't be seen with each other. East Asia's somewhat of the same.

So how – again, how are we going to get over this if we’ve created an environment where it is politically dangerous to approach and reach out to the other? So that’s where I’m really hopeful on the process of de-escalation. The U.S. certainly supports that, and I think there’s some good ideas to put out here on the table in that regard.

[00:59:32]

MR. DUTTON: Thank you. Thank you very much. Join me in – (applause).

And so we now have an opportunity – we have a banquet, frankly, laid before us, of issues. And I’m going to, as the moderator, exercise my right to ask the first question and to turn it over to Han-yi Shaw again here to come back to a question that you – or a point that you raised earlier, which I think is a really interesting one, and it doesn’t get addressed enough. And this is the question of – you raised the issue of the difference between Eastern and Western concepts of sovereignty that predated the 19th century and that kind of came into collision with each other during the 19th century and resulted in the challenges that we have today. And I’m wondering what you think the law should do about that and how we might account for those differences in how we think about moving forward effectively today.

MR. SHAW: Yeah, great. That’s a great question. In fact, this is the necessary framework that I think that needs to be presented and discussed. I think international jurisprudence is also evolving in such a way that’s actually starting to acknowledge that there were normative orders that existed prior to the introduction of Western-based international law. So in 1999, there was Eritrea-Yemen arbitration, and in the ruling, it actually said, in making this award on sovereignty, the tribunal has been aware that Western ideas of territorial sovereignty are strange to peoples brought up in the Islamic tradition and familiar with notions of territory – very different from those recognized in contemporary international law.

[01:01:06]

This is a good step in that, ultimately, we’re trying to find justice and, you know, fairness, but, you know, if you look back at the 19th century – the reason why China feels the way it does is because it did actually suffer at the hands of imperialism, oftentimes backed by a legal framework that justified territorial expansion at the expense of China or Korea or its neighboring countries. So the Chinese are very sort of wary of international – which is also why, you know, they’re – you know, I think Japan was very clever to say, like, well, China, you don’t want to take this international law, but it’s also sort of saying that, you know, China, in a sense, has this wariness of international – and there’s reasons for that. But the point here is that – I think if you trace – if you go back to history, what I think that the international community can do is to actually coach China.

I think that Taiwan plays a particular – I think – I’m particularly supportive of that East China peace initiative because ultimately, no matter what I say or what my friends in Japan – you know, I – by the way, I love Japan; I’ve lived there for a long time and I think we should get – be friends. My point is that there is – there is a he said, she said element in here, and – but at the end of the day, how do we get out of it? That’s what we have to focus on. We have to be constructive and creative and find a way to get out of it, but the only way, again, to get to that point is that you acknowledge it – a dispute, but you also understand the roots of it. So what I’m trying to say is that

we need China to understand that it – that what it understands as international law is somewhat inadequate in the world stage today, but you can trace this to about 150 years ago.

[01:02:58]

When – it's interesting; the first Asian language of international law – East Asian language – was translated in China. In 1864, Prince Gong was – he commissioned the translation, but Martin, who was the person who translated the “Elements of International Law” – it was translated by William Martin – he assured Prince Gong. He said that: we, your ministers, have – Martin has pointed out, although we are translating this Western international law into Chinese, you may also be aware that your country – meaning the law of the Qing Dynasty – has also been translated into foreign languages. But just like we don't force the Qing laws to be applied to Western states, you will not be required to conform to ours. This is just for your reference. Prince Gong's like, oh, that's great, so he translated it. (Laughter.)

And then, lo and behold, the same book traveled a couple – hundreds of miles to Japan, and it became an instrument for – as we know in history, it was used to knock on the doors – I'll use that politely – to Korea, China, as well as the neighboring countries. There was a series of events. So when China – so it's interesting. In 1874, if you look at – the only maps produced in the world that has a map of Taiwan that's split in the middle, that says land of the Qing and the land of “Terra nullius” is produced by the Japanese, because they were trying to find areas where – well, China doesn't use – they don't plant flags. Well, China didn't even have a flag at the time; they had no national anthem.

So they were applying the standards. Like, China, you didn't plant a flag. You didn't – you don't – you don't do things in accordance to the norm, so that place must not be yours. So there was 10 negotiations that happened from – in 1874 – this was the – Taiwan – (in Japanese). So this is when Japan actually had an expedition force to Taiwan. China, of course, like, well, how could you do this? And so in the debates, China – Japan kept on using international law, and the ministers in the “Zhōnghuá Rénmín,” which is the Foreign Ministry of China, basically said, you know, we actually are not experts on international law; we can only argue with you based on principles of justice and righteousness.

[01:05:15]

The Japanese further challenged – well, I don't care you. You just do not – you have not demonstrated effective control. So the Chinese officials panicked, and they looked at a peach on – in the negotiation table and said, OK, well, China's so huge – we have so many islands, we have so many territories. Some are deserts, some are whatever. And then look at this peach. Just because I can't tell you how many furs are on this peach, does that mean this peach isn't mine? And he went as far as to say, Minister so-and-so from Japan, I'm pointing at your mustache. If you can't tell me how many whiskers you have, can I say that that mustache is not yours? It was so rudimentary of a conversation that – but the Japanese fully took advantage of this, and it justified its – sort of, its military, sort of, expedition.

So they went back and forth. Ultimately, Great Britain sort of arbitrated, and China paid an indemnity, and – which – through that, it recognized, through some treaty – the Beijing – (inaudible) – to support that – the fact that Taiwan belonged to China. But what's funny is that the British

minister is like, wow, look at China. They actually had to pay Japan for its invasion of its own sovereign country. So my point is that, like, it's heartbreaking for me, after 150 years of our search for modernity, that we are still in a situation where we don't understand exactly how to articulate our case, and this is why Taiwan – I really feel – you know, you can all probably tell that I've been Western educated, and, you know, I'm multilingual, I'm multicultural and I do realize that there's a difference of perception on things.

[01:06:57]

And it's only when you have a – sort of a multiperspective that you start to realize, sort of, oh, there are holes or weaknesses or whatever, and I think that Taiwan has that perspective. So this is why I'm hoping that we can be a beacon for mainland China in proposing a way out, and, you know, I think the peace initiative is great in that it really starts to get out of the he said, she says kind of thing, and I think that with the evolution in international jurisprudence – I actually would recommend China to take this to the International Court of Justice. We actually do have a case depending on how you argue it, and at the end of the day, the International Court of Justice has also acknowledged – for these kind of disputes, you're not going to be – it's not going to be a zero-sum sort of result. It's going to pretty much be something along the lines – maybe joint cooperation or whatnot, or like, some islands were given to Yemen in the case that I just talked about, but the fishing rights were granted to both, right?

So international law is evolving, but China, because it's not being an active player in here, it does not know how to play a role in evolving it in a way that reflects some of the traditional world order that was recognized in East Asia for thousands of years, that was also respected by Japan. So anyway, the international community has a role, China, of course, has a role, Taiwan has a role, and hopefully we can solve this without water cannons or bullets or bombs, whatever. (Laughter.) But it's – peace is tough, but I come here, I think that America – you know, I think that – the point about the resolution – I totally understand where it comes from. I'm hoping that these efforts will all collectively cause all the disputants to calm down and really sit down. And the reason why I talk about sort of the Chinese case, is to really get the Japanese to acknowledge that, you know, every country believes they're self-righteous, and I do believe the Japanese government feels that the Chinese case is very weak, when in fact, it may be contrary to that. And likewise, the Chinese feel the Japanese has no case either, which is also not exactly true. So let's sit down and find a solution.

[01:09:01]

MR. SCHOFF: Excellent. Thank you very much. And so, for questions, please identify yourself and please tell us who the question – whom the question is for. So, thank you for your patience.

Q: Hi. Sydney Freedberg from AOL Defense.

MR. SCHOFF: There's a –

Q: Oh, thank you. Sydney Freedberg from AOL Defense. As a novice in this field – you know, and I appreciate the whirlwind tour of the both historical and the diplomatic situation, but let me aside the history and the law for a moment. Why in Taiwan, in mainland China, in Japan, in Korea today in the here and now, does it excite so much passion, and to what extent does that then

box in the options of political leaders whom – I think as one of you said – cannot be seen with their counterparts because of the potential backlash at home?

I mean, certainly we've seen – you know, in Europe, a hundred years ago where rising powers with chips on their shoulders about past territorial disputes got boxed in by popular sentiment and backed into a war none of them wanted. I presume we're not anywhere near there now, but I'm curious – what's the present-day political dynamic that's dragging the passion and then limiting the options?

MR. SCHOFF: OK, thanks. And your question is for whom?

Q: I would think – thought certainly Dr. Shaw, but I'd like all of you to comment.

MR. SCHOFF: Thank you.

MR. SHAW: Sure. That's an excellent question. Why is it that – well, so yes, a lot of it is deep-rooted in the history, and I would have to say that, you know – like, it was interesting – as I was preparing my slides – for example, the term Iwo Jima will actually invoke more of a stronger reaction amongst my American friends. If you can appreciate maybe, somewhat, of that, then you'll start to realize, oh, if you have a memory and it was unpleasant, but magnify that a hundred times – this is why the Chinese have this difficulty – and I – you know, I put the onus on the Chinese, including those from Taiwan or mainland China. There's a – there's a – there's a knee-jerk reaction whenever there is this territorial issue, because they – like, the Japanese will accuse the Chinese of saying, this is all about economic resources.

[01:11:26]

To be honest, for most Chinese, it's not. It really is about seeking historical justice, and I think that – but unfortunately, they don't know how to really make the case. So – and because it just gets – it's this vicious cycle, so it just gets worse and worse. The Chinese still believe that Japan has not really offered a sincere apology, and with – and it's funny that the folks who are really pushing the issue in Japan are the most right-wing, but because China itself is not a democracy, it blanketly assumes that there is this large faction of people in Japan who believe that. And so, for example, I think that China – that PRC has misread Japan's action. Obviously, Noda – Prime Minister Noda purchased – nationalized the islands for only one reason: to make sure that Ishihara Shintaro does not actually install something over there.

[01:12:19]

But because China itself is not a democracy, it does not understand the dynamics between a – or a dual-party or multiparty system. It's much like how they treat Taiwan in that, like, sometimes they don't realize that – well, KMT, why can't you tell the DPP to just shut up? Well, we can't! Right – so you can do that in China, but we can't do that. So there's this internal politics element that China does not appreciate, and therefore – but it means well too. It's just like, well, we don't really understand. Those islands are ours – oh, and we were seen as weak. I guess the only way to show the world stage that we care about this is to be really firm. So why is it that they keep on sending these ships over is because, in a very rudimentary level, that's the most basic, sort of instinctual reaction one would have.

So on one hand, I sympathize with that; I don't approve of it, but I understand where it comes from. I have – I personally, you know, come from a family where we've suffered at the – you know, while we've suffered at the, you know, Japanese colonial rule and so on and so forth – today – you know, that's the – 60 years ago – why should the new generation of the Japanese people be responsible for that? That's what – that's a common thing that the Japanese people say. I agree with that, but it's – unfortunately, there's a small portion of right-wing Japanese politicians that are stirring this up and unfortunately, the PRC is falling into this trap where, the more you respond with this intense rhetoric, plus 120 cities where these riots with \$120 million in damages, what you're doing is, you're pushing the peaceful Japanese public toward the ultranationalists in Japan. That's a very dangerous situation.

[01:14:04]

So ultimately it does, like many of these disputes that are very hard – that are a hard nut to crack, it does involve a lot of the historical aspect, which is why I am – I am only encouraged by the fact that international law will – because Japan is very – taking a very technical approach to things. It's just like, San Francisco peace treaty did not refer to this, therefore, everything is settle – but that's a legal interpretation, which of course we have to respect, but did it, at the time, produce an equitable result? Not – Taiwan and China were not – did not sign the treaty, and in fact, in draft seven, it actually included a clause: all territories that were owned by – that were not part of China on January 1st, 1894, should be taken – Japan should be stripped away of it, but that clause got removed in the final version, of course, because of the Cold War. And of course, ROC, PRC were not a part of it. So now there's the spirit of the San Francisco peace treaty, did not get fully executed. And that is why China feels that they were wronged. And the more they feel wronged, the more hawkish response you're going to get from them.

So we have to – I'm hoping that America, the United States, can be a little bit more patient with China. We need to coach it, just like Taiwan is trying to coach China on sort of, like, you know, this – you know, the market economy, and so on and so forth. Politically, I think that I'm particularly pleased with this presidential election this year, where when a lot of Chinese people on Weibo could see how Taiwan could have two candidates or three candidates actually have a public debate. That's inspiring, right? I hope that we can do more of that.

MR. DUTTON: So thank you very much. And Dr. Chen, would you like to comment as well?

[01:15:44]

MR. CHEN: OK, I will say old disputes over these rocks, or – or islands have erupted for the past one or two years, largely because of a chain of interactions between the United States, China, Japan, Taiwan and many southeastern countries. When United States claimed – U.S. Secretary of State Hillary Clinton announced that U.S. is back in year 2009, China was getting nervous about that. So in the end of year 2009, China claimed its co-interests in Taiwan, Tibet and Xinjiang. And the next year, China claimed – further claimed its co-interests would include South China Sea or East China Sea in either explicit or implicit way. And the United States claimed that it would be balancing Asia in the year of 2010. It's focusing on doubling its exports to Asian

countries, but later on, it turned out to be a military strategy, according to Pentagon officials. And I think China is now getting more nervous about that.

[01:17:10]

So I think all the countries here, including the Philippines and Vietnam, are taking offensive approach toward these islands. And because taking offenses always helps them to increase their national interests, so everybody is taking offensive approach, instead of defensive approach. Defensive approach seems too soft for at home and abroad.

So I think all this – all the – all the players in this region should calm down. And the United States in particular should play a – should play a role of peacekeeper. Before – but before that, United States should play the role of peace-guarantor, and then a supervisor, so that no war would take place – would take place in this region. And then later on, he – United States would better play a role of facilitator by inviting all the parties concerned to sit down for talks. Otherwise, I don't think that the current intensification of tensions in this region could do good to all the parties concerned.

Thank you.

MR. DUTTON: Yann-Huei, did you have a comment?

MR. SONG: Yeah – very briefly to respond to Mr. – the gentleman from AOL Defense that questioned. There is a combination of factors which give rise to that maritime dispute in East Asia. The first one, party politics, the massive political pressure, nationalism, election going on, campaign, and international train of development regarding continental shelf, (exclusive ?) economic zone, and given the fact that 1982 Law of the Sea Convention, that some people say that's a trigger of the tensions disputes in the region – mainly because the land dominates the ocean – you have to have the ownership over to that island first – (inaudible) – future, and then you are going to claim maritime zone 200 miles east, and so on.

And the last factor would be the U.S. involvement, the – the role played by the United States, because those countries in the region would pay attention to responses (support ?) of the United States.

Thank you.

MR. DUTTON: Jim?

[01:19:28]

MR. SCHOFF: And – just very briefly, if I use the Korea-Japan example and the dispute over the Dokdo Takeshima Island, for example – one part of it is small politics. It's responding to accusations so when President Lee Myung-Bak in Korea is accused of being too eager to do a military information sharing agreement with Japan, and they're getting ready for an election, and he's a little worried, then he takes a trip and goes and visits Dokdo. And then that puts the ball in the other court, on Japan, and they go back and forth on that.

And then the other part – as Professor Shaw alluded to – it’s the big history issue. And I was struck by – because part of the, I think, Taiwan-China’s argument is that the Cairo Declaration, for example, talks about islands should be – territory taken by violence or greed by Japan should be returned. So that’s supposed to kind of cover everything that’s not specifically named. And that’s where you begin to get guys like Ishihara and others who would say, wait a minute. You know, that’s putting World War II and Japan’s adventure in Asia – as they would, you know, describe it – in a – in a – in a light that then puts a certain verdict on it that they would then disagree with. So there’s big kind of higher historical interpretation struggles, and then just really small politics.

[01:20:54]

MR. : Do you think we could get the slide up there that shows the physical slide on the islands?

MR. DUTTON: Sure, you want to – maybe Alexi (sp) can help us with that. I think that’s in Yann Huel’s – isn’t it?

MR. SONG: I could move – (inaudible).

MR. DUTTON: Oh, OK – all right, if we could put that up, thank you.

But here’s what I’m going to do. I’m going to take three questions, and then we’ll let the panel address them. So I’m going to start here, sir. I think we’ll – why don’t you just speak loudly?

Q: I can speak loudly. (Laughter.) I’m Tom Reckford with the Malaysia-America Society.

One of the basic questions is, why now? Why did the disputes arise and become such big news very recently? I’ve heard China scholars says that this is one of the first eras in which the Chinese government had to pay attention to domestic public opinion, and that this played into the 18th Party Congress. Would any of the speakers agree with that notion?

MR. DUTTON: OK, that’s our first question. I saw a hand here, sir.

Q: Yeah, the notion of the United – United States promoting peaceful – Ken – Ken Marichord (ph) – (inaudible) – the notion of the United States being a promoter of a peaceful resolution of the conflict reminds a bit of our decades-old role as honest broker in the Arab-Israeli conflict, where while we promoted peace, we were arming Israel to the teeth, the Webb amendment would seem to indicate we’re coming down pretty strongly on Japan’s side with regard to the Senkaku Islands.

As far as the other disputed islands – the Paracels, the Spratlys, the Scarborough Shoals – have we taken a position on any of those? And on any of those, do we come down on China’s side?

[01:22:48]

MR. DUTTON: All right, and I’ll take one more – in the red sweatshirt?

Q: Yeah, I just had a question about a compromise, in that it seems that both sides have – are rewarded for escalating and not backing down. So it seems to – and Japan won't even admit that there's a dispute – so if neither decides going to compromise, any side wants to win, then how is there going to be any progress made? And what would any resolution for this situation have on a setting – as for setting a precedent for the South China Sea disputes or Japan's – the Japan-Korea islands dispute, or any other maritime disputes?

MR. DUTTON: OK, thank you, and Jim, if you want to start, we'll – the three questions: Why now, can the U.S. actually be an honest broker, and then third, rewards for escalation, maybe the real problem.

[01:23:52]

MR. SCHOFF: Yeah, I mean – in terms of why now, others may adjust it – address it as well – certainly, the elections, I think, and the political transitions had a clear relationship to all of this. But it goes beyond that, because it's also connected, I think, with the pressure that exists on fishing stocks in the region, and what it's pushing – you know, the economic issues that are going on in all these countries. It's pushing fishermen into different areas, the – China's maritime expansion overall, both in a military and nonmilitary sense. So there's a couple of different – there's, you know, bigger geopolitical things going on, and then – and then it coincides with incidence.

The U.S. policy on these sovereignty disputes in East Asia – the U.S. will claim complete neutrality. We'll say we do not take a side in who's – who – what island or rock belongs to whom. That said, it does have a number of different kind of treaty obligations with allies in the region. That's the Japan case; the treaty clearly says that territory under the administrative control of Japan is covered by the treaty, so that is why we're so adamant about that side of the equation. I'm not aware of any case where the U.S. takes China's side on a sovereignty issue, but we have – we have taken issue with various people's baselines, and ways of interpreting maritime space and exclusive economic zones, and this and that. And that, we've been – we've criticized South Korea and China and Japan on that, because that's kind of a matter of international law. But on sovereignty, we feel that we're staying out of it. I know it's not always perceived that way.

And then the rewards for escalation – I mean, that's an interesting point. I think part of the issue is that because there are so many different disputes going on, and there's so many more wealthier countries that have an ability to actually kind of begin to exercise some kind of control or challenge control in this regard – the – whoever begins – whoever decides the first one, that's the – that becomes the precedent, almost. And so there's so much pressure on not giving in on the first one.

[01:26:21]

And China's really trying to make an effort, I think, to negotiate all of these individually where it has much more bargaining power one versus one, and the – especially the states in ASEAN are all trying to kind of lump it together and develop a code of conduct, and let's settle this all under one big set of principles. So there – it's going to be hard. I think a collective approach, or some kind of getting different groups together, where you can kind of win and lose at the same time, as opposed to in a one-on-one discussion, you're – you either win or you lose. And it's much harder that way. So that's why President Ma's initiative has some appeal in my book.

MR. CHEN (?): Why now – I think one of the important factors is U.S. policy to return to Asia – U.S. pivot to Asia, U.S. rebalancing policy, things that at the beginning of the Obama administration in 2009 – and then we see that kind of a concern, and so on. And having said that, another factor is the Chinese policy. We have to trace back, not now, but maybe 2010, September. At that time, the Japanese action and they detained the Chinese fishing vessel's captain, and that time, China won. In fact, that gave China a good opportunity to step in and to change international – try to break the international perception of Japanese effective control over the water islands in the Diaoyutai. And that's another one.

[01:28:07]

And recently, we also see that kind of a window of opportunity, because in April, both East China Sea and South China Sea – you know, April 16, Ishihara came to this country to announce to purchase this island, and then in September, we see that nationalization of the island. And then in Scarborough Shoal, the Philippines sent the warship to detain the Chinese fishing vessels. Again, that provided a good opportunity for that. And in Chinese policy, you have to know that the (12th ?) five-year plan, the 18th Party Congress report, as I showed in my slide, is going to develop China as the maritime power, and we know that China – the Chinese power are rising and that kind of thing.

Secondly, it's going to defend sovereignty to the – the maritime – increase maritime rights and interests. So that kind of thing will help. And then U.S. position regarding the – (inaudible) – island – as an honest broker – I will have a little bit of reservation, mainly because that competition between the United States and China, and China is concerned about the U.S. intervention. So why not? The (second ?) maybe Canadian government, Australian government – in fact, Australian government offered that they want to play the honest broker in the South China Sea. And the Canadian government see that, and (Indian ?) international development agency was – is trying to come back to help manage potential conflict in the South China Sea. In fact, from 1990 to 2000, the SIDA (ph) provided the funding, money to help organize the workshops, informal workshops of managing potential conflict in the South China Sea, which right now, 22 years, still going on.

[01:29:52]

And that's the kind of resolution we are talking about, last question, resolution. And in my personal opinion that maybe we can start with check (ph) two, put check (ph) one and half. In East China Sea, for example, maybe United States can play role to encourage the three party, China, Taiwan and Japan, to work on check (ph) two, one and half: fisheries, conversation and management mechanism. Or maybe can have the triparty – (inaudible) – study group. And that will try to put mood to collaboration direction instead of military confrontation that can escalation the tension. So that's a possible way.

That's more why President Ma's East China Sea peace initiatives, in my personal opinion, is valuable, because it provide a mechanism to ask all parties concerned to exercise – (inaudible) – restraint and then move toward and negotiation to jointly develop resources in a – in the East China Sea. Previous speaker said that Kurt Campbell, he mentioned that in the September 20, the testimony, I think in the Senate Subcommittee on East Asia and Asia-Pacific, he said most important thing is collaboration. And you have to ask the party's concern to walk toward joint development, oil and gas resource in the East China Sea, in the South China Sea. And by doing that,

the party's concern can build up mutual trust and then move toward collaboration, and that's the thing we have to do that to resolve the dispute instead of going to that kind of confrontation. Thank you.

MR. DUTTON (?): Han-yi?

[01:31:28]

MR. SHAW: Yeah. Why now? So that's a great question. I think that – actually, I think it was not when, but – (inaudible) – it's a not if but when issue. So it was bound to happen.

I think that in 2010 – so there has been a number of major flare-ups, in 1996, 2005, 2010 and now. And in 2010 I think that really planted the seed for a major eruption. I think that when the Japanese detained the Chinese captain, of course, it was conforming to domestic law. To the Chinese, it was appalling. However, when the – as we all know, so there was a – well, actually, most Chinese don't know this, but the – the Chinese media kind of claims that the Chinese – the Japanese ship rammed the Chinese ship. Well, the truth was revealed when a coast guard – a Japanese coast guard sort of legally released this video of that he took when he was on the ship that got rammed by the Chinese fishing ship in an Internet coffee shop or – in Kobe. And of course, no – the Minshuto, the Japanese Democratic Party, wanted to actually appease China. But when this video leaked, of course the Japanese public was appalled by this: Well wait, hold on. This Chinese rammed our law enforcement ship, and you let them go? What are you, you know, kowtowing to Beijing? So I actually feel – and then of course, there is a lot of discussion in the media. So The Economist had a very good title: China's uncharismatic offense.

So – but of course the Minshuto, the Japanese Democratic Party, wanted to actually keep peace with China, but because it did it in such a way that was not satisfactory toward Japanese internal politics – and of course, China wasn't any happier either, which, again, I think they didn't quite appreciate this gesture – what happened was then – you know, you have small politics where Ishihara was waiting to exploit this. He knew that in order – he won – I think that we all know – he just recently resigned from being the mayor of Tokyo to run – to form a new party – he had already planned this. This was, to me, was a publicly stunt to get enough political capital to make a play here. But it was just bound to happen.

And so what I was hoping to see was that China would not necessarily alienate all parties in Japan. Instead, it would acknowledge what Noda – Prime Minister Noda did was trying to actually avoid a political disaster. Unfortunately, Noda misread China, China misread Noda, and as Professor Kira (ph), you're able to say, oftentimes international relations is dictated not by what countries really are like, but the perception. So both sides misread. So this why world peace is hard. I keep on saying this. But the sadness is that this was bound to happen.

[01:34:29]

So – however, but now this – because this is on the world stage now, let's take that as the – as an opportunity to start really, through forums like this – you know, when the Japanese foreign minister wrote an op-ed to The New York Times, I oftentimes wonder, well, why can't PRC do that, too? Right? It's just – hopefully, it sort of brings us to the surface, and we really talk about it in more meaningful terms that's really more based on merit.

So anyway, hopefully, the next – so I’m actually a little bit less optimistic about the next development in Japan where, if on December 16th, Abe wins – and he has always been sort of – sort of hawkish – I’m worried that, you know, China, being hawkish as it is, Abe being, you know, what he claims like he will do, I think that the room for compromise is going to be less. So I’m worried, so – which is why I’m hoping that we can get ahead of it and say, there’s a peace initiative, and we need America’s support, and to say, like, you know what, you know, it’s really hard to really judge who’s right, but, you know, you guys, like, as somebody said, China and Japan, you know, you can’t just pack up and move to another place; you’re going to be neighbors for not only the past thousands of years, for the thousands of years to come. Do you really want to be in this state forever, or do you want to actually sort of live peacefully?

[01:35:56]

And in fact, the Diaoyutai Islands’ traditional role was – in – during the Ming and Qing dynasty, it served as the bridge between the Ryukyu Kingdom and China. It was – there is a term in Chinese called – it’s called hayi shanwei lu (ph). It means there are no roads in the ocean; the only way to get to your destination is to follow the islands and then get to your final destination. So the Diaoyutai Islands served as a symbolic post for Sino and Ryukyu relations.

Sadly, today it has become the source of tension. So we should revert this back to the traditional role of what the islands played. But of course, a lot of – is this on the top of mind for a lot of politicians in any of the (disagreeing ?) countries? Not at all. So – which is why I hope that through this kind of dialogue, we can bring that to people’s attention and see what we can achieve.

MR. DUTTON (?): Thank you.

MR. SHAW: Yeah.

MR. DUTTON (?): Dr. (Chen ?) ?

[01:36:50]

MR. CHEN: OK. OK. The first question refers to whether China has to take care of its citizens, domestic citizens. I would say China is not a democracy. There is no public opinion poll survey in China. But China does have a large – a huge number of the so-called cybercitizen or netizens. So you – if a Chinese official has a – is involved in a – in a corruptive scandal or sex scandal or (marriage ?) extra affairs scandal, as long as – so long as he does not let the netizen know what he’s doing, then he could still survive. But once the netizen know what you are doing, then this official will definitely be dead once his scandals are – he’s exposed to the Internet.

And the second you reference to why no one speaks on – speaks on behalf of China. OK, I think the United States, we only take side with Japan because Japan is – it’s only most important ally in this region, in Asia-Pacific region. And in the absence of Japan, U.S. pivoting Asia strategy or rebalancing Asia strategy may be – may be in trouble, if not in jeopardy. So I will say the United States, we always take sides with Japan.

And the third question referenced to whether there is a need of – for the parties concerned to make concessions or compromise each other. I will say in the face of currently rising sentiments, none of these countries will make concession, but I think a (peace ?) – I think a (mass ?) peace initiative is something that other – all the party – all the other parties can show respect because peace is – and I don't think any of the parties involved will like to make war each other, wage war each other, but they just try to find a way to save their face. It's – you know, once you say – you claim that these islands are yours, it is very difficult for – (inaudible) – the national leaders to swallow that then, swallow it, their words. So face-saving is a very important factor. So I think we should wait for – (inaudible) – until this controversy can become a more – become less difficult for them to swallow their words. OK.

MR. DUTTON: Thank you very much. All right. So we'll take three more questions. We'll start right here, then second will be the gentleman with the yellow tie, and third will be the gentlemen there with the red tie. So we'll work our way back. And we'll start on this side again.

MR. : OK.

MR. DUTTON: (Chuckles.)

[01:40:07]

Q: Hugh Grindstaff (ph). I spent two years in Taiwan, I spent seven years on Okinawa, and I never heard once about Senkaku. But I was in – I was military and not – and I was there before reversion, after reversion. But once reason that could be driving Japan's reaction to this is the Kuril Islands, where the – Russia, when Medvedev went there last year, it put pressure on the Japanese government to make sure that their claims to what they might think is theirs sort of intensifying because the protests that came out of Japan were kind of big and loud. So they're facing it from the north end and from the south end. And this is kind of interesting to see these islands pop up; it really is.

MR. DUTTON: OK. So that's – so the relationship to the Kurils. We'll take – how about we take a few more questions? We'll take five altogether. So the gentleman with the yellow tie.

Q: Yes. My name's Carl Lundgren with Jonah Speaks. And I'm glad Mr. Shaw mentioned the International Court of Justice or the World Court. And I was wondering if China or Japan or Philippines or all these other disputing nations here could be persuaded to say, you know, have diplomacy all you want, but at the end of the day, if there is no agreement, will we be taking our cases to the World Court as the best way, perhaps face-saving – I don't know if it's face-saving or not in Asian culture, but to take your case before the judges of the World Court, and with that, provide ultimately a solution to these problems?

[01:41:53]

MR. DUTTON: And the gentleman in the red tie?

Q: Mike Musadek (ph) with PBS online NewsHour. Mr. Shaw has partly addressed this, maybe Mr. Schoff, take it up too, and I know you can't predict the future, but is there any hope or expectation that Abe could be flexible? Somebody was in a conference the other day saying, well,

after all, Abe was the guy that Hu Jintao wanted to deal with 10 years ago, but maybe that was then, and now is now. And I keep thinking of the fact that should Abe win, he has really major domestic issues to deal with. He's the first politician I've heard of in 50 years advocating inflation.

And then the second point, there are probably three of you in this room who know Danny Schneider (ph), and his father was the one who negotiated the reversion treaty on behalf of the United States. And I was just wondering if this – if any of you know from the historical record – and we could all call Dan (sp) and ask him – was there any idea that you were opening a can of worms on these islands when you negotiated reversion? And I think particularly, it's intriguing that that treaty was going along at the same time that Kissinger and Nixon were working on the – on the opening to China, which maybe only proves the maxim that yeah, you can walk and chew gum at the same time, but sometimes it sticks to the bottom of your shoe.

[01:43:28]

MR. DUTTON: (Chuckles.) All right. I'm going to take Ray Milefsky in the back, the gentleman in the white shirt, and we'll take one more in addition – this gentleman here.

Q: Hi. Ray Milefsky with the Office of Geographer in the State Department. My question is – relates to the Japanese argument that this was terra nullius: This land didn't exist on – didn't belong to anyone. And so Japan claimed it, and so consequently they did not have to accept – to have to have an agreement with any other country in the area.

My second statement is – pertains to the – that issue of the – of the hearings, the Senate Foreign Relations Committee meetings. You should let – you should read them, they're quite interesting, because it was Chinese-Americans who brought up the idea of Diaoyu, and they – oh, OK. (Chuckles.) What does this mean? And it was basically from those Senate relations meetings that the United States said, well, I don't – you know, this isn't our game here, I mean, but – so we did not take a position on sovereignty. We did, however, and we still do today, take a position on recognition of Japanese administration of those islands.

[01:44:48]

MR. DUTTON: And this gentleman in the front.

Q: This is somewhat overlapping with the previous questions, but – again, for either Mr. (Schoff/Shaw ?) or even Professor Dutton, you know. Some observers in Japan seem very intrigued by the American government's current position over the – on the sovereignty of the Senkaku Islands, which is not to take any position. It's claiming neutrality, for the following reasons, you know, one being that the United States took the position of the Senkaku Islands as part of Ryukyu or Okinawa, and they kept it until 1972, and clearly returned it – you might say it's only administrative control was returned, but it's – the island as a whole was returned to Japan.

And secondly, the recently declassified U.S. government documents reveal that the successive administrations in the past, beginning with Eisenhower, Kennedy, Johnson and the first part of Nixon administration, that high-ranking officials all acknowledged what was termed as the residual sovereignty of Senkaku Islands belonging to Japan.

And thirdly, just that's a little bit of uneasy sort of discrepancy, seemingly, between the U.S. government position that you were pledging to come to defense of Senkaku Islands if the islands come under the – under attack, I mean, defending Japan and taking –and then saying that you don't really know who or what country these islands should eventually return – be returned to.

[01:46:27]

So if you – is there any possibility that there's a change in the current position there? I mean, we understand this generally – general position of taking neutrality, I mean, taking no position on the sovereignty issues.

MR. DUTTON: And you're Mr. Komori. Is that right?

Q: Mr. Yoshi Komori of Sankei Shimbun of Japan, yeah.

MR. DUTTON: Yeah. All right. All right. Thank you very much.

So we have five issues on the table, really. We have the Kurils. We have the International Court of Justice, Abe and his potential flexibility on this issue, a couple of different issues concerning the reversion treaty. And we have terra nullius – so some red meat for everybody. (Chuckles.)

MR. SCHOFF: Yeah. Yeah. Well, I'll address just a couple, but on the northern territories issue, I mean – I mean, there's no doubt that it's frustrating for Japan to be dealing with these situations around its periphery, so completely – Russia, Korea and China. I've urged my friends in Japan to try to separate them and not lump them all together.

A lot of times the media in Japan will lump them together and say, the territorial dispute issues. And all that does is make everybody else mad at you collectively, and it draws Korea and China together in opposition to you.

So I think, in my mind, they're very separate. You have control of one. You don't have control of the other two. One country – I mean, China, you have real issues in terms of maritime expansion, in terms of you don't know where this is going to go. Russia's not looking to expand into Hokkaido. South Korea's not looking to expand into other parts of Japan. But China – there's real questions about what its ultimate strategy is. So I think they should focus on that, and that's the one that they have control over.

[01:48:07]

Abe could be flexible going forward. I mean, I think some of this depends on the coalition that he ends up with and/or if he has – if the LDP and Komeito have a clear majority.

I think it's harder to compromise on this issue if the Restoration Party isn't part of their coalition. It's easier if the DPJ is.

But the – in my mind, what makes me optimistic – Abe is a pragmatic person. I mean, this is an election. He did do it before, after – helped repair relationships with China and Korea. And it is – one of the easiest ways to help stimulate the Japanese economy is just – is patch things up with China. It doesn't mean you need to compromise or change your position. I mean, that requires China to compromise to some extent as well.

[01:49:10]

But when you have new governments all in these areas, I think there's a default, which is, let's try to start over, let's try to repair things. So I'm hopeful they might be able to get to that point.

On this last question, I mean, I certainly hear a lot of complaints from my friends in the Foreign Ministry –

MR. : (Inaudible.)

MR. SCHOFF: – about the U.S. position and they – thank you for sticking with us in terms of defending the islands, but could you be a little more supportive on the issue of sovereignty? And I understand that frustration.

I'm not aware that the United States made a conscious effort at the time of reversion to say, OK, we've thought about this and this belongs to Japan. I think – I think that got washed over at the time. And – but it – but the United States clearly had administrative control at that time. I mean, they used some of them for target practice and they clearly transferred that to Japan.

So I think we're looking at it from a kind of a little bit of a legal argument, and you know, you administer this; we totally recognize that. But when Commodore Perry first visited the region, you know, they were the Ryukyu Kingdom, and then, you know, later on – I mean, it's really hard for the United States to get in and make a decision. In theory, they could have thrown it open to kind of an international discussion at the U.N. at the time, back in '72 and said, OK, we need to solve all these issues before we give it back, but I'm sure Dan Snyder (sp), you know, had other priorities at the time and they focused on – and they had to figure out what they were going to do with their nuclear weapons, right?

[01:50:55]

So I understand that position, but I'm hopeful that the current U.S. position is enough of a reassurance that we're not going to try to change the status quo, but we are going to stick with our ally, Japan.

MR. SONG: Well, allow me to try to respond to the question regarding ICJ. You know that a Tokyo governor – a former Tokyo governor and the new party, including Osaka mayor, both of them proposed on 21st November, last month, that the dispute should be referred to International Court of Justice. And then that's the proposal, and I don't know it's that – if I'm not wrong that Noda administration say that is no dispute, it's not going to be sent to the ICJ for settlement disputes. So we see that changing within Japan, Japanese government.

But then my personal opinion that it might be useful for China to consider – to accept ICJ compulsory dispute settlement jurisdiction – at this moment, Japan’s – accept that jurisdiction with (reservation ?). China has not yet sent the – accept that jurisdiction.

[01:52:06]

In addition to that, China opt out of 298 article. That’s the compulsory judicial settlements under UNCLOS. So in the future, I think my personal opinion – the Chinese government is considering the possibility of – that’s one option, to refer the dispute to the International Court of Justice, but not yet. So before doing that, it would be nice – important for China, Japan even Taiwan to establish a study group on two main issue – one, legal issues, judicial settlement disputes. The other one would be historical evidence. And that’s – they have the finding, reports, and that will be useful. And final point is while ICJ is – Taiwan will be put into very difficult situation because Taiwan is not a member of the United Nations, Taiwan is not the member of the ICJ. If we are going to put into that situation, we are going to see the rise of one-China principle and the third party intervention question.

Thank you.

MR. DUTTON: Thank you. Excellent.

MR. SHAW: Yeah. So I’ll comment a little bit on the terra nullius issue. I think that, as I was trying to demonstrate, hopefully through historical documents, that yes, Qing Dynasty did actually consider islands as – may (not ?) be the government or the press considered it to be Chinese territory, but of course this then of course leads to the – but does it – did it conform to international law at the time?

So I think that if you look back – and I’ll just briefly talk about this – in 1871, as we just mentioned, Ryukyu Kingdom was an independent nation, but it was – it had tributary relations with China. So in 1871 Japan sort of absorbed Okinawa or Ryukyu and renamed Okinawa, at the protest of both Okinawa and – or Ryukyu and China. But in 1874 it sort of – it invaded Taiwan under the notion that the areas it invaded were terra nullius, which actually was not supported by U.S., Britain and China. And in 1876 it actually used gunboat policy to, quote-unquote, “open the door” for Korea; in 1879 officially annexed Okinawa. In 1885 it tried to challenge Qing’s sort of sovereignty – sort of – what is it? – the tributary relation with Korea.

[01:54:25]

(I’ll say that ?) what I’m just trying to say is that each step of the way it was trying to redefine an existing world order through international law, but what was interesting is that – so in the Shimonoseki Treaty, which was signed on April 17th, 1894 – the first clause was not about ceding Taiwan. It was about China is recognizing the independent nature of Korea empire. But what it was doing was trying to say, like, you know, Qing Dynasty; you know, there’s – your notion of this tributary thing – it does not exist in international law. So we’re going to have you abandon that. China – and they did it through a war. Taiwan was a sort of secondary concern.

But of course what was interesting in 1905 – what Japan did was it actually reinvented the tributary system under international law, where in 1905 it took away Korea's sort of diplomatic capability, and of course in 1910 it officially annexed it.

[01:55:21]

So what was interesting was that it on one hand understood there was a normative order, but it was trying to by it itself – because it's bilingual, they knew how to manipulate the system.

So my point is that I would just make – I would like to just call attention to these usages of international law to be skeptical of when they are saying such and such is terra nullius, because even at that time, when – in 1874, when the Japanese from Nagasaki were trying to send the expedition force to Taiwan, it – Japan at the time was not a major naval force at the time, so it needed to actually lease ships from Britain and the United States. The United States and the British government actually ordered no nationals from this – from our countries must – can participate. There was a person who – Le Gendre – he was the U.S. ambassador in Amoy – who said, hey, you know, under international law, because China didn't plant a flag, you cannot just say it's land without owner. But of course then the U.S. State – or equivalent to State Department at the time had him resign.

So my point is that like – this historical context, unless you're a nerdy person like me, you won't really know about it. But I will just say like – I still feel that a lot of what Japan talks about – when they refer to terra nullius, it does not stand up to the test of historical tests.

And then just a very quick comment on the negation of the reversion treaty, as well as what happened during the Nixon and Kissinger discussions – yes, those have been declassified. Ten days before the reversion treaty, Kissinger, because Nixon – you know, he used to record all his conversations – there is an actual conversation where Kissinger said, I have never heard of these goddamn islands, and Nixon said, like, I never heard of those goddamn islands either. Had the – had the – had the Taiwanese government brought this up months ago, we would have been able to work out a deal, but this is – we're too far in the process.

So this is why, as you mentioned, it was the – it was Chinese academics who were bringing all this to light. You know, at the time, Taiwan's government were career diplomats. They didn't really understand this. So it was the scholars who were writing – these are all declassified now. They've been writing at the government, look, you have this archival treasure here that you don't even acknowledge. So you should bring it up.

[01:57:42]

So finally ROC did, but it was just too late.

MR. DUTTON: So I can picture – that sounds like Nixon and Kissinger talking.
(Laughter.) Yeah.

So, Professor Chen, you have the last word. Thank you.

MR. CHEN: OK. Thank you. First, the answer. OK. I would say two years ago, immediately after a conflict between Japan and China on the DIG , I paid a visit to Brookings Institute (sic) and Richard Bush asked me, this time, is it China's mistake or Japan's mistake? I – my answer surprised him. I said it's an American mistake. (Laughter.)

[01:58:21]

And actually Japan, as a defeated country in World War II, could not claim anything, yeah, anything other than its own territory. So I think – and Japan, as a winner – a winner in World War II, can only have – this island are only trusted by the United Nations or as – it's a trusted territory. So United States did not have the right to transfer the – (I mean, a treaty of ?) right to Japan. So I don't think that both countries have the right.

So these islands are of course – it still depends on future solution. Abe might be flexible, and it is said that Japan and Chinese officials are discussing a new deal, something like that. I don't know whether it will – they will reach a consensus.

And after that, maybe United States and China may reach another consensus. So no one – no one can – no – it is something we don't know now. So we are still waiting for the possible solution in the future.

But anyway, no matter whether such a solution is reached, I don't think that it can satisfy all the parties concerned.

Thank you.

MR. DUTTON: Well, we have really gotten some very good discussion going here today. And I have to say, for own part, one of the most interesting takeaways from today is this question of how do we deal with the pre-existing order; as we – as we try to resolve some of these issues both politically and legally today, how do we contextualize what was with what is, I think.

[02:00:15]

And one of the questions that I'm left with is, was there even a concept of terra nullius in the East Asian order at that time, or did the Tien Sha (ph) concept –

MR. : Right.

MR. DUTTON: – mean that there really wasn't such a thing, and how did that – you know, if there was terra nullius, what was the limits of it? If not, then how do we think of it today?

So I'm not asking you to answer that. (Laughter.) This is –

MR. SHAW: No –

MR. DUTTON: – it's just food for thought.

MR. SHAW: That was the crux of the issue. That's great. That's a great –

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[02:00:40]

MR. DUTTON: It's –

MR. SCHOFF: It's probably a British problem, right? It's their fault. (Laughter.)

MR. : Sure.

MR. DUTTON: So it's food for thought.

Anyway, join me in thanking this terrific panel. (Applause.)

(END)