Donald Keyser, East Asia's Contentious Island Disputes: 
A U.S. Policy Perspective

[0:00:00]

From the Walter H. Shorenstein Asia-Pacific Research Center at Stanford University.

Dan: And we’re really excited to have back with us Don Keyser who was a Pantech Fellow here from 2008 to 2009, and I feel like Don has actually never left. And thanks to the weather back east. He may be here again for quite a while despite his plans to go home, but we’re very happy to have him back with us. And particularly, I think we thought there will be nobody better to explain and look at the history of US policymaking on this issue which is an extremely complex history and one that I think needs a veteran hand to take us through and there’s no one better than Don.

Don served in this Foreign Service for 32 years, retiring as the Principal Deputy Assistant Secretary of State for East Asia and Pacific. I know no one who has the breadth of experience that he has in all of these days. He’s really dealt with Japan, with China, with Taiwan, with Hong Kong and Korea through a variety of positions. He served I think three times in the US Embassy in Beijing, tutors at the American Embassy in Tokyo where I first met him more than 20 years ago.

And he’s dealt with a wide range of policy issues in the Foreign Service dealing with East Asia, and he has a very relevant experience as well in dealing with the former Soviet Union and with Russia including the territorial and issues in the former Soviet Union in the area of the Caucasus which gives you I think an interesting comparison of the way in which territorial issues can become dominant questions in international relations.

Not least, he had a lot of academic training in that area. He has his BA in Political Science and Russia Area Studies from University of Maryland, and he did graduate studies both in Russia and on China Area Studies at George Washington University and also at the National War College. And he’s participated in over the years not only during his time as Pantech Fellow but since then in a lot of our work here.

So we’re very happy to have him back with us so and without further ado, Don Keyser. And I have to say that—I have to make one brief comment
which is that we have to celebrate in a small way here the victory of the San Francisco Giants.

Don: Thank you. Do I get the microphone? Are you going to...?

Dan: Yeah, your mike is there.

Don: My mike is there, okay. Okay, thank you very much, Dan. Thank you Gi-Wook and David and Debbie back there wherever you are and Heather and everybody else for giving me my own personal Frankenstorm evacuation plan. I appreciate the chance to be here and avoid what my wife and dog and cat are going through back home in the D.C. area. I’ll probably be with you, as Dan says, another week or so if this goes on.

Also, I understand that several people are going to be walking out mainly in protest with what I’m about to say, but they’re claiming otherwise. So when Gi-Wook Shin and Karl back there walk out, we’re going to remain friends and actually have dinner together tonight, so we’re going to continue the discussion there.

I should also say by way of prelude that we really have the wrong seating setup here. I think probably we need to have China people there, Korea people there, Japan people, and if there are Taiwan people they should be in another place yet because this is the kind of thing that’s going to cause everybody to come to blows.

Okay, so let me get started, there is a lot of stuff to get through here. As Dan said, APARC Director Gi-Wook Shin gave a presentation last week to a similar gathering. So I put this up slide (showing Dr. Shin and his conclusion) because I wanted to be sure that Gi-Wook isn’t too offended by anything I say. I wanted to put him up here in a favorable light at the very outset, especially because he needs to leave early. Last week Gi-Wook Shin presented a compelling case that “The United States can hardly afford to stand outside these disputes and we need to explore how the U.S. can play a constructive role in facilitating historical reconciliation in the region.”

In early December, Professor Kimie Hara will address another seminar here and trace the origins of Japan’s unresolved territorial issues back to negotiation of the language of the 1951 San Francisco Treaty that ended World War II and gave birth to the United Nations.
APARC invited me to speak on one aspect of this complex subject: the East Asian territorial disputes that have simmered, unresolved, since the end of the Second World War. I was specifically asked to address the U.S. policy perspective on the major disputes and to consider whether a direct U.S. government role in mediating the conflicts might be desirable and feasible. So I will focus narrowly on that question. In the limited time we have today, I will not review in depth the history of each dispute; nor seek to analyze the substantive and legal merits of the contending arguments advanced by the disputants; nor say more than a few words about mediation theory and practice. Those interested will find a rich literature on each of these subjects.

I should confess my biases from the outside particularly for those who are going to be leaving early. My biases are the two that you see there. The first bias is historical memory. It’s a legitimate issue. I think it certainly permeates the thinking, the national image, and the national interest of countries in the region. As I said, Gi-Wook Shin made a very compelling and persuasive case for the relevance of that to the Japan-Korea dispute.

However, I would say that that can be overstated particularly with respect to China. And the point I’ll get into is that while historical memories are very real for China, the fact of the matter is China managed somehow not to evoke the historical memories from the 1950s right up into the 1980s. So there is at least the appearance not of genuine residual enduring historical memories but state-sponsored historical memories, historical memories evoked in order to promote a particular policy of the moment.

The second bias is one that probably flows mostly from my own experience. I am skeptical of the potential for any U.S. mediating role in complex conflicts involving history, sovereignty, nationalism, hard power and substantial economic interests—mediating, I mean, that is not backed by military pressure or other leverage of the sort that Richard Holbrooke enjoyed when he negotiated the Dayton Accords. The United States is not often well-poised to mediate when the parties are of equal power; the United States has strong vested interests in the outcome, and cannot easily bridge the gap between them. The United States' most effective potential role as mediator often occurs where it has great leverage to bring to bear on the situation.
So you look up here at our friend Richard Holbrooke who has been—the late Richard Holbrooke—who has been hailed for his accomplishments in negotiating the Dayton Accords. Well, yes, but this is mediation with muscle. And I ask that you bear that in mind: that’s mediation with B-52s flying overhead, cruise missiles poised from the Mediterranean to hit the bad guys if they don’t go along with what the US wants. So there is a particular role for the United States as a mediator in a situation where it has and is willing to use force. That may not apply to the East Asian territorial conflicts. Indeed, I don’t believe that it does apply.

Dan mentioned that part of my checkered background—as the Chinese would say, my “black background,” was as a special negotiator about 15 years ago for regional conflicts in the former USSR in the Caucasus region. So I was tramping around in places nobody ever heard of—except Dan—like Nagorno-Karabakh, Abkhazia and Transnistria.

That is a very tough kind of issue for the United States to come into as a mediator because the United States does not really have the resources—the hard power—to bring to bear. The United States is not willing to use force in that kind of a situation as we were willing to do in the former Yugoslavia. So there are some kinds of conflicts that really are going to be intractable and defy the best efforts of any mediator.

Let’s talk quickly about what we’re going to be dealing with today, and I’m not going to be dealing with much of this. Time won’t permit it. Seen through the eyes of a U.S. policymaker, there are two distinct types of East Asian territorial dispute. Both engage compelling U.S. national interests, broadly defined. But one group of disputes implicates explicit U.S. security commitments to a potential belligerent, whereas the other group does not entail specific treaty or other security guarantees.

The first of these is Dokdo or Takeshima; Liancourt Rocks as it has been known in English. The Republic of Korea and Japan—both formal treaty allies of the U.S.—contest sovereignty. The ROK has exercised administrative control since the early 1950s.

Secondly, we have the islands called Senkakus by Japan, Diaoyu by China, and Diaoyutai by Taiwan. The three all contest sovereignty. The U.S. exercised control between the conclusion of the Second World War and implementation of the U.S.-Japan Okinawa Reversion Treaty in 1972. Since reversion of Okinawa, Japan has exercised continuous administrative control. I will devote most of my attention today to this dispute. It is the “hot” one—the one found in the media every day. This is
particularly complicated because it’s not only between China and Japan but also brings Taiwan into it. [0:10:10]

The next dispute, Huangyan Dao or Scarborough Reef, is a dispute over sovereignty between China and the Philippines. Huangyan Dao, as you can see, is hardly worthy of the name “island” even though it’s called that in Chinese—“dao.” In truth, it’s a rock in the sea and it’s kind of tough even to stand on it, let alone plant a flag and do all kinds of demonstrations of how important it is to the people involved.

Of course, what is at issue here as in many of the other disputes is not the island per se but what rights come with possession of that island, by which I mean the maritime rights to exploit minerals and fisheries in surrounding waters. We’ll get into this later. But here you see on this particular one, Huangyan Dao or Scarborough Reef, Philippines putting up their flag on this little rock jolting up out of the water and then the Chinese putting up the PRC flag.

Next you have a different kind of dispute entirely. Taiwan is of course sui generis, a wholly different type of dispute than the others. Although the U.S. terminated its mutual defense pact in 1979 upon establishment of diplomatic relations with China, the U.S. is obliged under terms of the 1979 Taiwan Relations Act to assess the military balance vis-à-vis China and to “transfer” such defensive weaponry as Taiwan requires for its self-defense. The U.S. has no legal or other obligation to defend Taiwan in the event of an attack by China, nor has it ever asserted categorically such obligation or intent. But the U.S. policy, often understood as “creative ambiguity,” encompasses the possibility of military action on behalf of Taiwan should China launch or threaten military force to compel the island’s unification with the mainland. This is a subject for another day, but I just want to suggest that Taiwan does implicate in a way U.S. security guarantees even without any binding U.S. commitment . . . should “something happen.” And by something happening, here we have the Chinese PLA with the old time slogan: "Yiding yao jiefang Taiwan," “We will certainly liberate Taiwan.” And over here you have Taiwan’s president, Ma Ying-jeou, with his binoculars from a nearby island taking a look over at the mainland with its 1500 or 1600 missiles aimed at the island. So . . . while the U.S. actually has no formal security commitment, by terms of the 1979 Taiwan Relations Act we have made plain that we will do our utmost to support Taiwan in maintaining its ability to pursue a peaceful resolution of its dispute with China.

Okay, then there are the second group of disputes—in which the U.S. has policy interests but no formal commitments to any of the contending
parties relating to the conflict. We will only glance over these very lightly today. One is the Hoppō Ryōdo, the Northern Territories, or as the Russians call it, the Southern Kuril Islands. Here again, there is a very complex history to it. However, what’s important to know about this is that since the end of the Second World War the Soviets, now the Russians, have had continuous possession of what the Japanese call the Northern Territories.

The Russians have fortified as much as they need to. Russian leaders visit from time to time—as Medvedev in the slide. They have a viable economy based on fisheries and fish processing and canning. So this is still a disputed territory. The Japanese maintain their claim, but there’s nothing really in the offing there.

Then we have the South China Sea Islands, a major dispute which has raged off and on and continues to rage. The Paracels are now under the control of China. The Spratlys are contested by China and also by Taiwan, Vietnam, the Philippines, Malaysia, and Brunei. Within China’s famous “nine-dash line” or “cow’s tongue” are also located the Pratas Islands and the Macclesfield Bank. Here again, all of this is extremely complicated, not least because many of the so-called islands are really just rocks jolting up out of the South China Sea.

The reason this issue becomes so fraught with emotion is because the claimant who manages to establish that claim gets the surrounding economic zone. And we’re talking 200 nautical miles of surrounding waters. So, some 40,000 square miles of ocean can be exploited for fisheries, for oil, for natural gas, and for any minerals that happened to be discovered. But we’re not going to talk about all of that today.

Here we’re going to talk about mainly the issue which is in the news, the Senkaku issue as it’s known in Japan, the Diaoyu issue as it’s known in China or the Diaoyutai as it’s known in Taiwan.

The reason I want to focus on it is because it is the only one of our territorial disputes involving each of the following: (1) a dispute between a U.S. treaty ally and a non-ally; (2) in which the U.S. treaty ally exercises administrative control; (3) where the potential belligerents—China and Japan—are matched roughly evenly in the customary measures of hard power; (4) where one party, China, seems to be pushing aggressively to alter the long-standing status quo to its advantage; and (5) where the possibility of U.S. mediation or other good offices has been actively considered. What I will suggest about Washington’s policy prism on the Senkaku/Diaoyu dispute—assessment of the broad national interest,
applicability of treaty commitments, options for involvement—will also apply for the most part to the other disputes.

Very quickly, I want to give you a little bit of a framework for how we look at this from a policy perspective. The gold standard in postwar treaty commitments were the Rio Treaty for the United States and the Americas, including all of Central and South America, and the NATO Treaty. Both of them basically state that any armed attack on one by any outsider will be construed as an armed attack on all that will bring the U.S. and each of its treaty partners in the conflict in defense of the nation attacked.

Again, I stress both of these came out of the World War II experience. Both of them were formulated in the early Cold War period. And the same is true of the various and sundry treaties—the treaty arrangements that the United States has with its allies in East Asia. Suffice it to say that following the end of the Second World War, the United States negotiated a series of security treaties, defense treaties, and other arrangements with its allies in Northeast Asia and Southeast Asia.

As opposed to the NATO and the Rio Treaty, each of these has very similar language which is slightly less binding. Basically, if something happens, if one of our allies in the East Asian and Pacific region is attacked, we “would act to meet the common dangers in accord with constitutional processes”; that kind of language was used in our treaties with the Philippines, the ROK and Japan. We also concluded other treaties at the time. The language basically was from the same template. The Australia and New Zealand pact had similar language. The Taiwan mutual defense pact also had similar language since we were then allied with Taiwan. Such language was also found in the SEATO Treaty, now defunct, but the Manila Treaty that governs it is still actually in force—it is notionally still there to be implemented should the parties choose to implement it.

What is not addressed in these various treaties though is what happens to any areas outside the mainland boundaries but under administrative control of the various countries with which we are allied in defense commitments. Therein lies the tale.

What is all this about? Aside from formal treaty commitments and side understandings on how action on the commitments shall be triggered, the U.S. looks at each of the territorial disputes—and the territorial disputes in the aggregate—through a national interest prism.
The principal U.S. policy interests include:

Promoting International Law, Rules, Norms and Peaceful Resolution of Conflicts. U.S. policy strongly supports the post-World War II structure of international institutions, regional groupings, multilateral arrangements, and accumulating body of international law that has served to promote peace and stability. Speaking July 2010 in Hanoi at the annual ASEAN foreign ministers’ meeting, Secretary Clinton said that the U.S. has “a national interest in freedom of navigation, open access to Asia’s maritime commons and respect for international law in the South China Sea.” She also expressed support for a “collaborative diplomatic process by all claimants” such that territorial disputes could be resolved “without coercion.” Assistant Secretary of State Campbell told a Senate hearing last month that “we oppose the use of coercion, intimidation, threats, or force by any claimant to advance its claims . . . We believe that claimants should explore every diplomatic and other peaceful means for dispute resolution, including the use of arbitration or other international legal mechanisms.”

Ensuring Freedom of Navigation. This has been a consistent strategic and economic policy objective throughout U.S. history, and one accorded particular weight during the Cold War. This has both an economic and a military dimension. On the economic side, an estimated one-half of the world’s sea-going commercial shipments pass through the South China Sea and East China Sea, including the preponderance of inter-Asian trade and the vast majority of Japan’s annual oil imports. Each year goods valued at $5.3 trillion pass through this area; U.S. trade accounts for over 20% of that total. Should a military conflict erupt or even a tense crisis short of actual hostilities, cargo ships would likely need to be diverted to other routes. That would raise costs—higher insurance, longer transit times—and harm regional economies.

From the military perspective, the U.S. has long insisted on freedom to navigate through any waters outside the 12-mile territorial limits. China has increasingly shown a disposition to challenge the U.S. right under UNCLOS and common international law to conduct military surveillance and intelligence-gathering missions from within its EEZ. We want to have freedom of navigation from the policy standpoint so that we can conduct necessary military activities for our own defense, for the defense of our allies in the region. So the United States as a matter of policy does sail through areas that other nations from time to time contest. We will sail through any area that is beyond the 12-mile territorial limit. China has increasingly begun to question whether the United States has a right to do that kind of military activity in the exclusive economic zone.
Reassuring Allies, Fostering Regional Stability. As Washington sees it, the U.S. is a “resident power” in Asia whose military forward posture and associated security arrangements have ensured regional peace and stability and promoted a rising tide of economic prosperity. America’s web of alliances and other security understandings and arrangements in East Asia and around the globe rest ultimately upon the perceived credibility of its commitments. Partners and potential adversaries alike will test and evaluate American will and capabilities to meet challenges, and will readjust their own policies if they discern even subtle indications of hedging or adjustments. The U.S. so-called “pivot” and “rebalancing” toward Asia was in part a response to perceptions that an America in relative decline, preoccupied with economic dilemmas and foreign wars, might be less willing and able to counter a more assertive China.

Addressing China’s Rise. And then finally, inescapably, part of the prism that the US policymaker necessarily has is that we need to be addressing China’s rise. I mean, China’s rise is indisputable. It’s inescapable. It’s real. Secretary Clinton observed during her China visit eight weeks ago that the U.S. and China “are working (hard) at every level of our government to build habits of cooperation and to open channels of communication ... our two nations are trying to do something that has never been done in history, which is to write a new answer to the question of what happens when an established power and a rising power meet.” With Chinese Foreign Minister Yang Jiechi at her side, Secretary Clinton stated that the U.S. is “convinced that our two countries gain far more when we cooperate with one another than when we descend into an unhealthy competition. So we are committed to managing our differences effectively and expanding our cooperation wherever and whenever possible.”

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So as we look at what we can do, should do in terms of these conflicts, in the back of any policymaker’s head is China—what are China’s capabilities, what will China’s reaction be, what is necessary to do to maintain an equilibrium in the region, to maintain a necessary stability.

We’re going to talk today, as I said, primarily about the Senkaku or the Diaoyu issue as it’s called in China, the Diaoyutai as it’s called in Taiwan. The United States has been directly engaged in this issue from the very outset, which again marks it as a different kind of conflict than the other conflicts.

If you go back to the immediate post-World War II period, the United States stated from the outset that Japan holds “residual sovereignty”
over these islands, the Senkakus or the Diaoyu, but the United States as the winning power in that region was going to occupy those islands together with the occupation of mainland Japan. It was seen as part and parcel of the coming occupation of Japan including Okinawa, the Okinawa Island chain.

Why did we decide that? Without going too much into history, the bottom line is because by 1945 it was already becoming apparent to most Americans who looked at it that Mao Zedong and the communist forces were going to win and our ally, Chiang Kai-shek, was going to lose.

So what the U.S. military and policy planners for the Pacific region, that is for the future of the postwar Pacific region, saw was: “All right, Mao Zedong is going to win. So here is Mao. What is he reading there in Yanan? He’s reading Comrade Stalin’s Collected Works.” And here we have a Russian poster from the same period, hailing the great fraternal solidarity between Comrade Stalin and Comrade Mao Zedong.

By the time Patrick Hurley, our Ambassador in China in the immediate postwar period, got to China, you could see (in this slide) that he and Mao Zedong had a good relationship. Perhaps it would be too strong to say a convivial relationship, but in any event Patrick Hurley certainly was among those who saw the Chinese Communist victory coming. You can see in this slide the visual proof of what the U.S. planners most feared—Premier Zhou Enlai signing a Sino-Soviet Peace and Friendship Pact in Moscow, signaling the advent of the monolithic communist bloc that loomed over Asia as well as Europe and potentially brought the Soviet Union under Stalin to the doorstep of the U.S. alliance and base structure in the Pacific.

So fundamentally, the United States did not want to yield up the Senkaku Islands or other islands in the Ryukyu chain back to China as we might have done if it had looked as though Chiang Kai-shek was going to win. The U.S. fear was that Mao’s victory in China would mean making those islands available immediately to the Soviet Union. That in turn could have given Moscow a chance to establish military listening posts or other presence in a way that might challenge the United States bases in Okinawa and elsewhere in the region.

So what happened? In 1971 to 1972 when the United States was negotiating with Japan the Okinawa Reversion Treaty, the United States fundamentally backed off of its position that it had taken through the 1950s and 1960s in bilateral discussions with Japan. Through most of the
‘50s and ‘60s it consistently affirmed that Japan held residual sovereignty over all of the islands in the Ryukyu chain as well as the Senkakus.

In ‘71 though, as we began negotiating the Okinawa Reversion Treaty, we began to waver and hedge a little bit on this. And so in presenting the treaty to the Senate for ratification, Secretary of State William Rogers stated that the United States was in fact neutral on the legal question involving sovereignty over the Senkakus.

Secretary Rogers said in effect that nothing in the Okinawa Reversion Treaty affects the legal status or the conflicting claims. He essentially told the Senate that we were agnostic, we wash our hands as to whether China or Japan held sovereign claim to the islands. However, Secretary Rogers also underlined that Japan would take over administration from the United States, and that we had given an undertaking to the Japanese that the provisions of the 1960 U.S.-Japan mutual security treaty would apply to the Senkakus as well. We had stated during the 1960 negotiations in a separate protocol to the treaty that any attack on the Senkakus would trigger the relevant provisions of the treaty obliging the U.S. to come to the defense of Japan. So Secretary Rogers’ new position was one taken under the pressures of the moment. By pressures of the moment, I mean mainly the fact that Kissinger in 1971 had been conducting secret diplomacy with China concerning which we had not briefed our Japanese ally.

It is probably fair to conclude that in the back of our heads—which is to say in the back of Kissinger’s head and President Nixon’s head—was the thought we don’t want to be creating new problems with China. We want rather to be stressing that we are acting in good faith in the delicate secret opening to China. So we therefore hedged our bets a little bit on the question of “sovereignty”—while nonetheless saying that insofar as Japan continued as the de facto administrator to hold sway in the Senkakus and surrounding region, the United States would fulfill its security treatment to Japan should the islands come under attack.

What, then, is actually at issue between China and Japan? (I’ll mostly ignore Taiwan since its claims are similar to those of China. It lacks the ability and desire to press them, and seems mainly interested in protecting access to fishing grounds.) Here I beg the pardon of the China and Taiwan folks here. From now on I’ll just refer to the islands as the Senkakus rather than use each of the names by the disputants. This doesn’t imply that I favor one argument or another. I’m just trying to save time by using the one term.
Concretely, China and Japan have three principal disagreements:

(1) Sovereignty over the Senkaku islands themselves.
(2) The related issue of maritime sovereignty. China asserts its sovereignty over the continental shelf extending to the Okinawa Trough. Japan claims the same shelf to a median line between its undisputed territory and that of China. China has acted on its claims by carrying out exploration and building pipelines in the disputed waters.
(3) A separate maritime dispute over whether Okinotorishima—1,000 miles east of Tokyo—is to be considered an island or a rock that cannot sustain human habitation or economic life. If an island, it is entitled to its own Exclusive Economic Zone . . . which would give Japan claim to a large expanse of ocean in the Western Pacific. China doesn’t claim that. It’s out beyond where their claims go. However, China has challenged Japan’s claim to it saying, "That’s nonsense. It's not an island; it’s a rock." And there is no provision of international law that permits Japan to claim that little piece of rock which would then convey rights to that 200 nautical mile surrounding exclusive economic zone.

So what we’ve seen has been a blizzard of arguments between China, Japan, participated in by Taiwan as well, over history, over scientific oceanographic data, where does the continental shelf go, how do you measure it, what kind of a formation is that rock or island, and varying legal interpretations by legal scholars from all three of the places involved—China, Japan, Taiwan.

That said, let’s talk about what the real considerations are. In sum, there are the ones I have up here in the slide—history, national identity, nationalism, symbolism, perceptions.

History, National identity, Nationalism, Symbolism and Perceptions: For the first time in history, China and Japan have comparable power at the same moment: they are the world’s 2nd and 3rd largest economies; the 1st and 5th leading exporters; and the 2nd and 6th ranking military spenders. Despite thriving commercial relations, China and Japan have never come to grips with the legacy of history: the Sino-Japanese War of 1894-95, the Japanese invasion of Manchuria in 1931, and the Japanese invasion and occupation of China proper in 1937. The Chinese have kept alive the rhetoric of their “century of humiliation” and the narrative of Japanese wartime atrocities never addressed with sincere apologies or adequate reparations. In the context of a rapidly rising, noticeably more assertive China, the power balance today is marked by strong mutual uncertainty and deep distrust. China typically asserts its sovereign claim to the islands in terms of history, “indisputable facts,” and “justice.” Japan counters
with its own detailed historical documentation, insisting that there is “no dispute.”

**Domestic politics:** This is very much an issue for both China and Japan because the dispute is so infused with questions of history, nationalism and national identity. You have significant bodies of opinion in both China and Japan that are essentially trying to provoke incidents to force the government to assert its “legitimate claim” to the islands and waters not just rhetorically but through military force. Leaders of both China and Japan need to be aware of the strong domestic sentiments favoring no compromise, no conciliation on this issue. China has publicly recalled emotional historical memories of Japan’s wartime invasion and occupation, thus investing the dispute with a strong element of national identity and national pride—making compromise virtually impossible in domestic political terms. Japan’s right wing has seized the domestic initiative on the issue, seeking to make compromise unthinkable for any Japanese government. In short, the Senkaku/Diaoyu dispute has become a classic zero-sum game for both China and Japan. Basically, Japan says, “Look, we acquired rights to this group of islands way back in 1895 before there was even a treaty born of war that gave us the right to those islands.”

**Strategic:** The Senkakus sit in proximity to strategic sea lanes; offer—or deny—a long, continuous sea frontier having military implications; and could be used as the site for a radar station, a missile base or even a submarine base. As I mentioned before, what we really have is through possession of this whole island chain [as shown on the slide], Okinawa here and then going on down into the tiny Senkakus, you have the ability to form a naval barrier. Control of what Chinese strategists call the “first island chain” stretching from Japan through Okinawa, the Senkakus, Taiwan and the Philippines, conveys an ability to contain China and to monitor its naval operations in the area. So for the Japanese it’s a very real strategic asset. For the Chinese it’s an asset worth trying to break down a bit.

**Economic:** Asserting undisputed sovereignty over the Senkakus would convey continental shelf and EEZ rights to an estimated 100 billion barrels of oil and to rich fishing grounds. Establishing full control would enable the winner to claim as part of its EEZ the surrounding 40,000 square kilometers and to exploit the natural resources within the area.

**Other Territorial and Maritime Disputes:** China and Japan are both leery of any solution that might set a precedent legally prejudicing their claims to other disputed territories (for Japan, the Northern Territories and
Dokto/Takeshima; for China, its territorial and maritime claims in the South China Sea). Further, China has consistently opposed what it calls “internationalization” of South China Sea disputes whether by referral to an outside body or agreement to multilateral dispute resolution. Furthermore, compromise and conciliation would have immediate implications for other territorial and maritime disputes. Here, you get into a long discourse on why, but the bottom line is that each of the issues—at least under common international law or international law as generally understood—needs to be addressed in the same fashion. So if Japan and China, for example, found some kind of a solution to this issue, in the Senkakus, they would have to bear in mind what the implications of that would be for their claims elsewhere because they would be fearful in some cases that the analogy would be applied to their disadvantage in, for example, the South China Sea or in the case of Japan, Dokdo or the Takeshima islands.

Taiwan: For China, referral of the Senkakus dispute to the ICJ or to another international body would pose the uncomfortable question of Taiwan’s status in the process. China welcomes the reinforcing claim by Taipei, but is not prepared to concede Taiwan’s status as a co-equal sovereign claimant in any resolution effort. This would signify Beijing’s tacit acceptance of “two Chinas.” If you look closely at the argumentation brought forward by Taiwan, it’s quite similar for the most part in its historical argumentation and its legal interpretation of the meaning and effect of the UN Convention on Law of the Sea. The problem with this from China's standpoint is that it’s all well and good to have Taiwan acting together with its fraternal brothers there in advancing this claim, but Taiwan advances its claim as the Republic of China—that is, as a sovereign claimant in its own right.

Regional Cooperation: Failure to resolve the dispute imposes practical limitations on regional cooperation by underlining questions about long-term ambitions and the possibility of armed conflict.

Major Power Relationships: Neither China nor Japan cares to test the U.S. commitment to support Japan, as administering power, in the event of a Chinese military attack on the Senkakus. China fears that the U.S. might well intervene militarily, while Japan fears that it may not. So both China and Japan have reasons to be a little bit leery. The United States has tried I think to make plain that there is the security commitment and to reaffirm that, but we'll see that there’s been a little bit of wishy-washiness in the way that we have handled this. Both recognize that escalation of the dispute would carry profoundly negative consequences
for their economies, for bilateral cooperation, and for future mutually beneficial cooperation among the three.

Okay, let’s pause here to look quickly at something else. I call this slide “Performance Art”—because one or another of the parties to a conflict over sovereignty will often say “Hey, let’s take it to the ICJ. Let’s take it to the International Court of Justice. That’s what we’ll do.” I guess what I would like to say is that it’s a great theory and debating point, but it just runs aground in fact. In the first place the ICJ will not take on any issue where both, or all, parties to a conflict have not agreed to present it.

In other words, one party cannot say, “Let’s take it to the ICJ” and it goes there. All claimants need to agree to this. So what’s usually happening is that the party in the weaker position, or in the position of believing there is a certain moral advantage in so stating, will say, “Let’s take this to the ICJ.” Japan has done this with the Dokdo-Takeshima conflict, while Korea as the stronger party because it’s been the administrating power since the early 1950s has said, “No, thanks. It's ours. There’s no dispute.”

Basically, Japan has taken the same position on the Senkakus. China has not even raised the question of taking the dispute to the ICJ—primarily because of the Taiwan factors I mentioned—although there have been some quasi-official, meaning well-connected think tank people in China who have posited that it may be to China’s advantage to take this to the ICJ. Call me skeptical but I don’t believe that approach is out there.

Again, whether it is Dokdo or the Senkakus, most of this is performance art. To be very petty about it, I also have to wonder how willing the Chinese side would be to take the dispute to the ICJ so long as the distinguished judge you see in the slide there, Hisashi Owada, a Japanese national, is sitting on the Court as a senior jurist.

Similarly, why all the history? Outsiders say, “What’s all this history stuff?” Why are people constantly invoking what happened in the Ming Dynasty, who first sighted this island, or what crops may have been grown there by what individuals on what authority.” In short, why not halt the vicious circle in which we have people making “performance art” landings and flag-raisings followed by counter-actions and then official support from each side for their actions?

In this slide you see the President of the ROK, Lee Myung-bak, landing on Dokdo with a Korean flag. Here you have citizen activists from Hong Kong—both pro-Taiwan activists from Hong Kong as well as pro-PRC
activists—landing on the Senkakus to plant their flags. And then you have the Japanese who exercise administrative control making sure that their flag is there. You have all of this going on, plus you have constant patrolling by vessels of the nations concerned to establish the ongoing legitimacy of their claim. This is necessary. This is necessary to ensure that the claim is deemed valid, without which any claim will surely never get to the point of referral to the ICJ.

What does the ICJ or international case law suggest about this? First, not much because there’s not exactly a rich body of case law on any of these issues for the reason I stated. Most countries are very leery of rolling the dice and going to the ICJ, particularly if they have reason to be skeptical of their own claim. However, if you do go to the International Court of Justice, it’s not just a question of which sailor in the Ming Dynasty saw it or which person back in the 1600s sailing for Japan happened to lay eyes on these islands.

Such case law as exists on contested sovereign claims has accorded weight to initial discovery, occupation, and viability as a habitable entity capable of self-sustaining economic activity, exercise of authority—or “administrative control,” and acquiescence by other states. Strong, ideally incontrovertible, historical evidence therefore plays a central role in legal consideration of competing claims.

However, case law in the few decided cases makes clear that discovery alone is insufficient to establish a sovereign claim. Legal experts maintain that this merely creates “inchoate title”—which must be “perfected” by subsequent continuous and effective occupation. That in turn usually is construed to mean a permanent settlement. And therein lies the dilemma for many of the disputes over East China Sea and South China Sea . . . which involve islets, atolls or “rocks” that are historically inconsequential, too small or too inhospitable for habitation and economic activity, and may even be submerged during periods of the year.

So discovery alone, citing growing crops there, issuing imperial edicts and rescripts and whatever to encharge somebody with doing something on those islands does not suffice under international law. What you need in addition under international law is viability, usually meaning a habitable entity. People have to live there. And moreover, while living there, there has to be some form of self-sustaining economic activity that can be as simple as fisheries, whatever. But in any case, you have to have something.
And then you have to have exercise of authority, what we sum up now as administration. You have to have administrative control. And moreover, there has to be acquiescence by others in that set of circumstances.

Two other points: International law requires that states must actively maintain their claims—all the more so when challenged by other states. Hence the tit-for-tat contests by activists to mount landing parties and plant national flags in the Senkakus; the enforcement of “sovereign” fishing zones by Coast Guard or similar armed vessels; the recent landing on Dokto by South Korean President Lee Myung-bak, followed by Japan’s reiteration of its claim and dispatching of patrol boats to the area; Medvedev’s visit to the North Territories followed by Japan’s reasserted claims; and so on.

International law prevents states from cherry-picking elements of case law and international agreements deemed most favorable—the rule is that a state may not assert legal rights to a territory (or waters) if it objects to the same claim by other states vis-à-vis analogous disputes. China, for example, frequently cites UNCLOS provisions in justification of its claim to the Senkakus and surrounding waters, but rejects citation of the same provisions by the Philippines and Vietnam in support of their claims in the Spratlys.

Until such time as nations believe that they can either win by intimidating the other side into submission or by somehow mustering sufficient pressure or actually taking it to the ICJ and winning, you’re going to have this kind of constant battle of history and battle of demonstrations for effect around the islands.

For the United States policy, what are the issues? What are the principles? These are not complicated. U.S. policy toward all of the East Asian territorial disputes is based on three consistent principles: (1) strict neutrality regarding the sovereignty of contested areas; (2) strong support for peaceful resolution of disputes without resort to coercion or armed force; and (3) a disinclination to become actively embroiled in the disputes or their resolution. The United States has been neutral on sovereignty without fail on every one of the East Asian conflicts. The United States has maintained pretty much an identical legal posture. Wash your hands on sovereign claims. Secretary of State Baker used to say, “We have no dog in that hunt. It’s for the parties involved to work out.” We want that worked out through peaceful means—without coercion and certainly without armed force.
Above all the United States wants to avoid entanglement. The United States also wants to avoid public commentary—note the can of worms in the slide here—because in the end public commentary is probably going to provoke one side or multiple sides to the distraction or disadvantage of the United States.

So the default position of the United States has been, is, and I think will remain so long as possible: “We’re really going to say the minimum about this. We will repeat our position as we deem that to be necessary, but we’re not going to elaborate on it. We’re certainly not going to get into hypotheticals as we indeed rarely do.”

The United States position then on the Senkakus has the merit of legal precision. What could be more precise? Sovereignty: undecided; we take no position. However, we do take a position on administration. Japan has exercised administrative control over the Senkakus. We have given an undertaking to Japan in an agreed minute to the Mutual Security Treaty that if the Senkakus were attacked by Chinese then that would trigger provisions of the US-Japan Mutual Security Treaty and we would come to Japan’s defense.

However, one can easily see without a lot of effort the practical dilemmas in this. If the United States criterion is simply who exercises administrative control, it begs the issue of what happens should that administrative control be called into question. What happens if administrative control begins to be eroded? What happens if Japan’s exercise of administrative control through regular patrols by military or quasi-military forces in the area begins to wane? What happens if it looks as though Japan no longer has either the ability or the will to sustain its administrative control? And there you begin to see the dilemmas and you begin to understand perhaps part of what the Chinese have been seeking to do most recently.

Again, this is all inherent in what I’ve said before, but from the United States policy standpoint many objectives need to be balanced. And here I’m talking currently, not about the past. On the one hand, there are formal commitments to our treaty ally Japan. We’re on the record many times as saying that our commitment will hold. It is very important to reiterate that commitment: both to maintain the confidence of our treaty ally Japan and to sustain US credibility with other treaty partners and partners in the region who will be observing U.S. intentions and actions.

If nations in the East Asian and Pacific region—whether formal treaty partners or other countries with which we have negotiated special access
or other arrangements with a military aspect—begin to doubt that the US means what it says, the US position is going to begin to spiral downward at least in the perception of allies and partners.

And then beyond all these, as I’ve mentioned previously, is the whole question of managing the complex ties with a rising China. As you see in this slide, former Chairman of the Joint Chiefs of Staff, Admiral Mullen, on Fox News, of all places, said, “China is a world power.” And that of course is no less than the truth. China is a world power. The US has to take that into account. Secretary of the State Clinton not so long ago put it this way. She said that the United States and China are trying now to write a new chapter in world history.

We’re trying to deal with the question of what happens when a rising power meets with an entrenched power or the number one power. We’re trying to do that, Secretary Clinton said publicly standing next to Foreign Ministry Yang Jiechi, “We’re trying to do that in a way that ensures that we will not have conflict, that we will have a partnership, and that interest of both are taken duly into account.” But it’s tricky obviously.

So the United States has the task of balancing these policy goals: fulfillment of commitments to allies, reassuring other allies and partners, and managing complex ties with rising China. We’ve gone through a bit of this. None of this really came to a head during the entire period between the end of the Second World War and the mid-1990s. The U.S. had no need to articulate a detailed, definitive policy position for these roughly 35 years. As I say, the United States in Japan already had an agreed minute on residual sovereignty. The United States backed off from that or finessed it, sidestepping the issue when it signed the 1971-1972 Okinawa Reversion Treaty. But we did reaffirm that we would honor our 1960 agreed minute saying that the Mutual Security Treaty provisions would apply to the Senkakus.

All of this came to a head in mid-1996 when citizen activists first mounted their little demonstrations for show, the performance art I was talking about, to land and plant flags on the islands. Basically, this was arranged out of Hong Kong. Hong Kong was just one year away from reverting to Chinese sovereignty, so “patriotic” Hong Kongers wanted to assert their sentiments in support of China.

At the beginning, there was not a very clear position in Washington. I think the fear was that we just had too much going on at the time. Policy makers wondered: “Is this for real?” As the late Rodney King famously
said in California, “Can’t we all just get along?” Well, the fact of the matter is that “they”—China and Japan—in fact could not “just get along.” And so I speak here as the person who was in charge of the State Department China office during the period that the Clinton Administration really sort of waffled and fumbled at the outset.

Ambassador Armacost can undoubtedly correct me if I’m wrong, or elaborate on the background, but Ambassador Mondale, our Ambassador to Japan at that time, said when asked about this, “The United States takes no position on who owns the islands. The Mutual Security Treaty with Japan does not compel the United States to intervene in this at all.” The Senkakus, he continued, really going where angels fear to tread are much like Taiwan where there’s no explicit U.S. security commitment. There are a set of understandings and certainly there’s a U.S. security interest, he said, but there is no formal and explicit guarantee that we would come to the defense of the Senkakus.

Japanese officials quoted by name and the Japanese press begged to differ. They said that, to the contrary, the United States is obliged to defend the Senkakus under terms of its treaty commitments to Japan. The Japanese—as they’re very excellent at doing—managed to pull out chapter and verse explaining precisely how and when the United States was on record. So what we got next was the Chinese media then saying in effect, “U.S., kindly stay out of this. It’s none of your business. This is a matter that is left over from the history of the Second World War. It’s between China and Japan. The U.S. must stay out of the conflict.”

And in reaction to that, the Pentagon’s then Deputy Assistant Secretary of Defense Kurt Campbell, who happens currently to be the Assistant Secretary of State for the same East Asian and Pacific region, flew to Tokyo to reaffirm the United States commitment. He said, “The 1972 U.S. Agreement clarified that the Senkaku Islands fall under Japanese administration. This was clearly specified by the United States for security purposes... America made a solemn promise, et cetera, et cetera. We will keep this promise.” That’s about as explicit as you can get and I think put the United States firmly on record with such language.

Jumping forward to the present, the idea has remained to project a leadership posture that is simultaneously credible on formal security commitments and pragmatic in dealing with real-world complexities. In congressional testimony, public speeches, and press backgrounders, U.S. officials serving both Republican and Democratic administrations have hewed closely to this line: neutrality on sovereignty, affirmation that the defense commitment to Japan embraces the Senkakus, and a strong
preference and encouragement for peaceful dispute resolution. And that line, minus the US-Japan treaty angle, has also been consistently applied to the other East Asian territorial conflicts.

A few recent examples serve to illustrate the U.S. position and its shadings; When Sino-Japanese tensions flared up over the islands (and other issues) in 2010, Defense Secretary Gates told reporters that the U.S. “would fulfill our alliance responsibility” if the conflict escalated. Joint Chiefs Chairman Admiral Mullen said “Obviously we’re very, very strongly in support of our ally in that region, Japan.” Secretary Clinton summed up the U.S. position in October 2010 public remarks delivered in Hanoi: “. . . with respect to the Senkaku Islands, the United States has never taken a position on sovereignty, but we have made it very clear that the islands are part of our mutual treaty obligations, and the obligation to defend Japan . . . We have certainly encouraged both Japan and China to seek peaceful resolution of any disagreements that they have in this area or others. It is in all of our interests for China and Japan to have stable, peaceful relations.”

And then coming right up to the present, let’s look at what this most visible of all State Department officials, the ubiquitous “senior State Department official, said on background in late September 2012 following the most recent and continuing eruption of tensions over the Senkakus following Japan’s “nationalization” of the islands—that is, purchase from private owners. Here the primary message is “cool it” and the U.S. treaty commitment is there, but somewhat downplayed: “We do not take a position on ultimate sovereignty. We do believe that in the current set of circumstances that Japan has effective administrative control, and we have stated in the past that under those circumstances that the defense of Japan would apply in certain circumstances . . . But our desire, to be honest, is to avoid this set of circumstances, to encourage a dialogue, diplomacy, and not speculate about defense-related issues with the Senkakus or, indeed, with other territorial matters that are unresolved . . . I think our intent here is to send a very clear message to all concerned to tread carefully, to avoid provocative actions, and to remember that we have much larger issues to deal with currently . . .”

So that’s perhaps the most recent authoritative statement of the U.S. position.

What’s going on now? What is the range of possible next steps between China and Japan?
One possibility is agreement between the two of them on a bilateral place-holding accommodation. Are the Chinese and Japanese capable of working out bilaterally a modus vivendi? Simple logic would suggest they can, and should. The two sides had agreed twice in the 1970s to shelve the issue for a future, wiser generation to resolve. They subsequently worked out an accord on shared jurisdiction over certain maritime resources—petroleum and gas—in areas straddling the disputed median line. Bilateral trade is mammoth, and crucially important to both economies. And when tensions have erupted and tempers flared over the dispute, the two sides have always found a way forward through quiet discussions. Even now, the respective deputy foreign ministers, Chikao Kawai and Zhang Zhijun, have been meeting for talks in Beijing and Tokyo. Nevertheless, both sides seem dug into their positions. China has continued to condone, if indeed it has not fanned, nationalistic sentiments—perhaps connected with the upcoming 18th Party Congress change in leadership, but perhaps not. Japanese political leaders, who themselves are facing a near-term national election, can ill afford to conciliate China when nationalistic juices are also flowing in Japan. In sum, the talks for now have not borne fruit though there may be a desire on the two sides to try to deal in some way with this issue to put it behind them and to move on to other things. That’s going on even though the rhetoric coming out of both sides—but particularly the Chinese side—has been fairly much on the fire-breathing side.

Another possibility is increased Chinese pressure on Japan. Certainly, we’ve seen ample evidence of that. Some Chinese, believing they now hold the strategic and military upper hand, may therefore wish to test resolve in both Tokyo and Washington. Judging by the sort of arguments found in Chinese official media and quasi-official publications, a significant body of opinion in Beijing may doubt Tokyo’s will, may be skeptical that the U.S. would opt to intervene militarily in such a dispute when it embraces neutrality on the issue of sovereignty, and may calculate that pressing ahead with measures short of outright military force may erode Japan’s assertion of administrative control, correspondingly weaken the U.S. position in support of Japan, and thereby create new fissures within the U.S.-Japan alliance. China’s rapidly increasing fleet of non-PLA but armed “maritime surveillance” and “fisheries enforcement” vessels could be deployed, for example, to afford protection and support for a so-called “1000-boat fishing armada” sailing to assert “China’s sovereign rights” in waters around the Senkakus.

We have seen, for example, as shown on this slide, “China confirms warships patrolling the Diaoyu Islands,” this one off of China State Television CCTV. The Chinese with fanfare have sent military vessels and
their so-called maritime surveillance or fisheries enforcement vessels around the Senkaku Islands for the past couple of months quite regularly. They have been encountered there by Japanese coastguard vessels, Japanese Maritime Safety vessels as well.

The Chinese also made a big show of commissioning their first aircraft carrier, the Liaoning. China’s current president, soon to be ex-President Hu Jintao went on deck of the Liaoning toward the end of September and formerly took over the ship. There has been much speculation—officially inspired I surmise—in the Chinese party media that somehow this new, first Chinese aircraft carrier could be brought to bear on the Chinese side in this conflict. This seems highly unlikely, given that the Liaoning crew will be training for a couple years, but the intent to exert psychological pressure is plain enough.

The third possibility is a referral to the International Court of Justice. The two sides could yet do this despite what I have said. The Japanese are lobbying pretty hard I think for that solution. The Japanese—I know from friends currently serving in Japan including several foreign ambassadors in Japan—are telling everyone, "If the Chinese raise this with us we would be very happy to accede to that request. We can’t say it because our position has been there’s no dispute here. But if the Chinese make the request we would be prepared to go to the ICJ." And indeed when Prime Minister Noda addressed the United Nations General Assembly annual session in September, he said in his formal speech in so many words that Japan looked to international law, the international bodies, to resolve this kind of dispute. By that, he meant I think that Japan would be willing to take it to the ICJ if proposed by China.

Or we could have the thing just staggering along with an inconclusive end. The Chikao Kawai-Zhang Zhijun talks seem to have broken down. In Beijing, Zhang Zhijun this morning gave a press conference saying precisely that. He claimed the Japanese were totally entrenched in their position and “had not got off the exit ramp” at all and were continuing to hold firm to their unprincipled position, et cetera, et cetera. So we could well have an inconclusive ending such that the thing will simmer until something else changes.

And that brings us to the real question of mediation.

Is it possible under these circumstances to consider mediation? In theory, and again we don’t have time to get into the whole theory of international mediation, but here we would probably be talking about a
track-one diplomatic effort, track-one meaning official government involvement as mediators or at least as sponsors of the negotiation. What’s the advantage of that? The parties buy time so that cooler heads can prevail. They get by whatever the domestic situation is that’s pushing them both forward into confrontation and making compromise impossible. In the Chinese case, this would include the coming 18th Party Congress scheduled to open on the 8th of November. In the Japanese case, there will probably be dissolution of the Diet and an election called in the relatively near term. So both sides are conspicuously under some domestic pressure not to compromise at this point. So they might hope to buy time.

Another classical advantage of mediation is simply that the mediator is just that, a mediator, and not jurists at the International Court of Justice whose final decision would be binding on the parties. A mediator does not have the ability to force any kind of solution upon the parties. The parties can accept or reject whatever the mediator proposes. Further, the mediator typically has stature, influence, and leverage that can be advantageous in bringing together parties to a seemingly intractable conflict.

Okay, what does this mean if the mediator has stature, influence, and leverage as the United States hypothetically would? It means that both sides can try to enlist that mediator on its side in the dispute. In fact, quite often that’s the case. The two sides in a dispute will try very hard to cajole or threaten or otherwise prevail upon the mediator to side with them against the other, which is to say try to turn the mediator into an ally.

Having said all that, the downside of track-one mediation is that the process invariably is going to involve what I have called here on the slide “imperfectly meshing goals.” Plainly the two parties or multiple parties in conflict are not going to have meshing goals but sometimes the mediator isn’t going to have meshing goals either. What the United States, for example, may see as the preferred outcome may very well not be what either or both of the parties see as the preferred outcome. This is because a mediator—particularly a nation like the United States which is a superpower—is going to have its own national interests and goals and will be trying to ensure that any outcome that it proposes and guarantees is going to reflect that.

So what theorists in international mediation have conjectured, and what I think any practitioner can tell you is very much the case, is that you’ve got this kind of a minuet, a complex minuet of mutual manipulation, to
be alliterative there, where all parties are trying to manipulate the others.

A quick anecdote out of my personal experience: When I was doing this crazy thing involving conflicts in the Caucasus in the late '90s, everybody understood very clearly that the United States had conflicting pulls on its own position in trying to negotiate between Armenia and Azerbaijan. Oil interests pulled us to Azerbaijan’s position. Ethnic factors and electoral political considerations—the influential Armenian diaspora in the U.S.—pulled us toward Armenia.

So from the standpoint of Armenia and Azerbaijan, okay, the US was acceptable as a mediator because we had conflicting domestic pressures which might actually make us more or less unbiased. In reality, though, what it made us was extremely susceptible to domestic pressures from both sides. That goes on all the time. Mediators are going to be exposed to domestic pressures.

So one memorable meeting I had, I was sitting with Secretary Albright when the President of Azerbaijan came into the room. Heydar Aliyev, who had risen to power with the KGB in Soviet times, had been a general and a Soviet politburo member. He was fairly notorious, and not a soft guy. He came into the State Department all smiles and as we sat down he turned toward me and said, “Secretary Albright, the first thing I want to say is, get rid of your mediator. He is biased towards Armenia. Get rid of him now.” Life goes on. She didn’t. Probably, she should have. Anyway, mutual manipulation does go on in this situation. So you find mediation is a game for masochists, and many mediators are not so masochistic that they actually volunteered to get involved in this capacity.

There are other possible kinds of mediation, for example through international and regional organizations. With respect to the Senkaku dispute, either the United Nations through the undersecretary for political affairs or ASEAN would have at least a logical hypothetical role in mediating the conflict between China and Japan.

Another sometimes attractive approach to mediation is one in which a prestigious non-official facilitator or mediator becomes involved. This could be an eminent person with great stature or conflict resolution specialists such as the Martti Ahtisaari Center in Finland or the Carter Center in Georgia.

The downside of this approach for parties in dispute is that they know full well that such mediators are prestigious but they lack leverage. We saw
that just a few years ago when Nelson Mandela, man of the century or the millennium perhaps, tried to negotiate a conflict in Africa. Everybody sort of basked in the reflected glory of the presence of Nelson Mandela but in the end nothing happened. You really have to have some leverage and to be willing and able to use it.

The United States traditionally has been involved in mediation efforts, so you cannot say that the United States government or the United States policy perspective had been congenitally opposed. Certainly, as this slide indicates, there are very well-known examples: 1) Teddy Roosevelt negotiating at Portsmouth just about a century ago between imperial Japan and still imperial Russia an end to the Russo-Japanese war; 2) Kissinger, following the Yom Kippur War in 1973, conducting his shuttle diplomacy in the Middle East; and 3) President Carter at Camp David, a true mediator from start to finish, taking time off from his presidency to do it—probably the classic example of real leverage vis-a-vis both parties and real commitment on the part of a US mediator.

The opposite occurred during the 1982 Falklands Conflict. Secretary Haig, and to some extent our UN Ambassador Jeane Kirkpatrick, both became involved. Haig dealt mainly with the British, Kirkpatrick mainly with the Argentines, trying to mediate a solution before the Falklands conflict erupted into a shooting war. But it failed. Why? Because Argentina, I think forgivably, did not regard the U.S. as an unbiased mediator. We were after all allied with Britain, which was indeed our closest ally, and from scenes like this on the slide, there were even hugs and kisses between Secretary Haig and PM Thatcher. I think that the military junta in Argentina quickly formed the opinion that whatever the United States said probably was going to reflect British interests and not Argentina’s interest. So that was that and a war followed.

Then you get over here to Richard Holbrooke’s famous negotiation of the Dayton Accords in 1995. This is mediation with muscle. Holbrooke was justly commended for his role in hammering out this agreement. But let’s face it. He was able to negotiate the Accords because he was backed by B-52 bombers, by cruise missiles, and by NATO forces in the region and prepared to move in on the ground. So when Holbrooke chatted with Slobodan Milosevic, as in this slide, it was not terribly hard for Milosevic to see the leverage that the United States had. So this is a particular kind of mediation, mediation with muscle which, let’s face it, could not apply in the Senkakus.
Here is another example: Senator Mitchell as U.S. mediator in the Northern Ireland, Good Friday agreement. This was a classic example of excellent mediation, and yet one in which I think the United States for unique reasons not to be replicated anywhere else had credibility and leverage both with the UK and with the Irish.

In the late Clinton administration, however, there was a discernibly waning enthusiasm for the US undertaking a role as mediator. That disenchantment with mediation became even stronger with the inauguration in 2001 of President Bush. There was, I remember it well as you may, at the State Department a kind of frothing at the mouth in saying, “We’re not going to do this anymore. The United States is not going to get bogged down in all these mediations. We will assert our power unilaterally.” And of course John Bolton, the Undersecretary for Arms Control and International Security Affairs and later the Ambassador to the United Nations, was the living apostle of American exceptionalism and American unilateralism.

For Bolton and many others in the Bush administration, mediation was simply anathema: What you do, you do via hard power as we did in Afghanistan and as we did in Baghdad. And that has been the emphasis for the most part since 9/11.

When Secretary Clinton came in under President Obama there was a partial return to the former approach. You see here Secretary Clinton and her signature legacy document, a mouthful called the “First Quadrennial Diplomacy and Development Review” [QDDR]. Published in 2010, it affirms that “The State Department is committed to preventing and resolving crises and conflicts of many kinds—inter-state wars and aggression, coups, insurgencies, proliferation and countless others. Our diplomats mediate state conflicts and bring pressure to bear against rogue action, resolving conflicts from the former Yugoslavia to Northern Ireland.” So she in effect held up the Holbrooke and Mitchell achievements when her husband was President as examples of what the United States had done and could do. In the QDDR she all but suggested that the United States should get involved.

So at the beginning of the Obama administration, Senator Mitchell was asked as an eminent person to become involved in the Middle East peace process between Israeli and the Palestinians. And in Sudan, Darfur, former Major General Scott Gration was assigned to be the special envoy negotiating between various parties to that dispute. The early Obama administration was somewhat enthusiastic about the possibilities inherent in mediation. But Mitchell’s effort collapsed within a year while
the Sudan thing became extremely complex, with many, many parties taking on the role of mediators—and the parties predictably manipulating one mediator against another. So we fundamentally bowed out in favor of the Organization for African Unity.

This raises the question with respect to the Senkakus: Should the US even seek a role? If so, how would the parties react? We’ve seen already that there’s no evident thinking on the part of the United States, historically or now, that mediation is inherently bad and to be avoided. There’s no predisposition to oppose it. At the same time the United States plainly ardently desires that there be a peaceful resolution between Japan and China. That’s what we have said continually; and that’s what we mean.

The question is whether China and Japan would consider the U.S. government to be an acceptable mediator, and whether the U.S. for its part might believe that such a role could both facilitate an amicable resolution and support the broad U.S. national interest. And if the US government seeks or accepts such a role, what would the expectations be? What formula or what mechanisms would it seek to negotiate? What carrots and sticks could it bring the bear? All of these questions would be in the mind of people trying to judge whether or not to get involved in this.

The United States Institute for Peace, which is congressionally funded but nonpartisan in the United States political context, has sponsored a lot of mediation efforts and has promoted a fair amount of scholarly research on mediation. I think all of us at the State Department have been familiar with a lot of their good deeds and good work.

The U.S. Institute for Peace has written something called “A Toolkit for Mediators,” and within that toolkit there’s a detailed checklist. From that I have extracted for this slide just a few items that would be relevant to U.S. government consideration of whether or not to mediate a dispute such as the one involving the Senkakus. The main items are to assess the conflict, ensure that the mediator has the requisite readiness, and ensure that the conflict itself is ripe to be mediated.

Based on what we have seen earlier, let’s briefly take the key elements underscored on the slide one by one.

*History, Interests and Intractability:* The dispute fits the classic understanding of “intractability”—each side claims sovereignty, supports its claim with abundant historical and legal arguments, invests its national prestige and national identity in the dispute, has a major economic and
strategic stake in the outcome, and faces significant domestic political constraints against any compromise.

Parties’ Power and Leverage: China seeks to alter the status quo in its favor; has steadily built its military capabilities and civilian “enforcement” capabilities; has shown a willingness to punish Japanese commercial operations in China; enjoys a sympathetic hearing among segments of Japanese political, media, academic and especially business community opinion; and judges that both Washington and Tokyo might lack the stomach for a test of wills. Japan, of course, has substantial military capabilities, including coast guard vessels, and enjoys public affirmation by the U.S. of its readiness to implement security treaty provisions if China attacked in or around the Senkakus.

Mediator Bias, Credibility and Leverage: There is much debate in academic literature and among practitioners regarding the import and impact of mediator “bias”—real and perceived. Certainly the U.S. bias can scarcely be denied: it is a formal treaty ally of Japan, formally committed to defend Japan’s administrative control of the Senkakus, and it acknowledges in public documents and official statements that “hedging” against China’s rise is a part of its grand strategy. Still, some experts have assigned greater weight to “credibility” than to “bias” as a factor determining whether a mediator is acceptable to the parties in conflict and likely to be successful. In that respect, the U.S. as mediator would potentially stand on firmer footing. As a superpower, it unquestionably has the resources and other capabilities required— the “credibility”—for the leverage necessary to facilitate concrete discussions and perhaps help shape an outcome. Further, while it would be highly unusual for nations as powerful as China and Japan to agree on mediation by any other nation, one can find cases where nations, knowing that a politically unappealing compromise is the only realistic solution to an intractable conflict, will deliberately seek “mediation” by a powerful or prestigious nation-state in order to provide a palatable fig-leaf for an eventual intended retreat. Iran, for example, evidently acceded in the U.S. hostage crisis to mediation by “brother Muslim” nation Algeria precisely in order to help justify at home an anticipated back-down. So if Japan intended, for example, to compromise on the Senkakus in a way that would predictably raise hackles with its Governor Ishiharas, it might welcome U.S. mediation both as ultimate security guarantor and as an example of force majeure—gaiatsu—that explained its decision. For its part China might notionally assess that U.S. mediation could only weaken U.S.-Japan trust and security links—a highly desirable end in itself—no matter what the actual outcome of the mediation process. And if the U.S. turned out to muscle the Japanese into
compromise, or to serve as fig leaf for a Japanese intent to compromise, so much the better.

**Conflict Ripeness for Mediation**: There is little in overt statements or actions by either China or Japan to suggest that the conflict is ripe for mediation, or could be made so. This is principally a dispute about power and economic benefits, not about matters of unreconciled historical grievances. In the first place, and importantly, there is no rupture of communications. The parties are talking to each other, and indeed have myriad official and unofficial channels for that purpose. In that sense, it is unlike such past endeavors as Kissinger’s shuttle diplomacy, Carter’s statesmanship at Camp David, Holbrooke’s efforts at Dayton, and the many international mediation efforts in Africa. In the second place, neither China nor Japan seems prepared to yield on its core position, while both are unwilling to risk domestic blowback from any compromise seen as sacrificing national image and interests. Moreover, there are intimations in Chinese behavior that Beijing believes the balance has shifted in its favor such that gains, possibly even “victory,” might be possible. Under these circumstances, there is little or no obvious U.S. “pressure” that could be brought to bear in “ripening” the situation for mediation.

Is the absence of historical reconciliation relevant to anything? I love the Mao quotes and the others here on this slide, but we don’t have enough remaining time for this. Mao told the Japanese in the 1950s that nobody expected them to apologize every day; no people could endure doing that. A senior Chinese war crimes prosecutor stated publicly, in appealing for relatively lenient sentences to be handed down in trials of former Japanese Imperial Army officers that “The Chinese people do not believe in revenge.” Basically, the bottom line is that there really is not a historical reconciliation issue to be looked at here from the standpoint of a prospective mediator. The passions aroused by wartime “memories” are real enough, but the Chinese managed quite well during the ’50s and ’60s to put all of these aside. They think geostrategically, geopolitically, and did precisely that in hopes of weaning Japan from the U.S. alliance. The “historical memories” were only resurrected by Chinese leaders and official leaders at the very end of the 1980s, when doing so seemed likely to serve a different set of Chinese national interests vis-à-vis Japan.

So finally, looking at mediating pros and cons, if you sum all this up from the United States policymaker’s perspective, what do you have? The burning question for the policymaker is whether such a role is likely to advance or harm the national interest. In weighing pros and cons of such
involvement, the U.S. government would probably look at the factors I’ve shown on this slide.

On the “pro” side—“favoring a mediating role”—one could list such considerations as:

_Forestalling military conflict:_ Sino-Japanese hostilities would jeopardize broad U.S. interests in the region, necessitating either direct U.S. military intervention against China or a perceived failure to fulfill treaty commitments to Japan that would carry credibility-sapping consequences throughout Asia and the world.

_Safeguarding structure and specifics of postwar arrangements:_ The United States has a strong interest in maintaining the status quo that has served well U.S. interests and promoted economic growth and prosperity in Asia and the Pacific.

_Demonstrating interest and “relevance” through support for high-level mediation:_ supportive of U.S. “pivot”/“rebalancing” to Asia and the U.S. oft-stated position that the U.S. is a “resident power in Asia”; a possible opportunity to engage early and constructively with China’s new top leadership.

_Shaping a compromise solution:_ U.S. mediation would aim to shelve the sovereignty dispute in favor of working out a formal China-Japan agreement on military restraint, confidence-building measures, and specified rights and “rules of the road” in the region including fishing, exploration, and natural resources exploitation.

_Building a relationship of trust with China’s new leadership:_ This is a kind of side note—an additional factor that might be a plus, though not a determining factor. I’m sure our government officials would welcome in principle the chance to engage early and hopefully constructively with the new Xi Jinping/Li Keqiang leadership to emerge from the 18th Party Congress.

On the “con” side—“opposing mediation”—one could point to:

_Bilateral equities with China, Japan_ or both placed in jeopardy—through need to make uncomfortable tactical choices as mediator, and through any perceived departure from “commitments” or “neutrality.”

_Insufficient instruments of feasible leverage_ to press compromise solution on either party—both China and Japan arguably can apply leverage
against the U.S. in equal or greater measure to that which the U.S. can bring to bear. How is the US under these circumstances going to pressure either China or Japan in a way that does not blow back hard on the United States? It’s difficult for me to imagine where the leverage could be found to accomplish that.

Likelihood of protracted, unsatisfactory process that would absorb U.S. energies at a high level. There’s a strong likelihood that there would be a protracted, debilitating mediation exercise. The Nagorno-Karabakh mediation process I was involved with has been going on since 1992 and is now termed a “frozen conflict.” The Senkakus situation is infinitely worse. It has been going on arguably since 1971. There is no reason to imagine that mediation or any other set of circumstances short of war or sudden unilateral capitulation would bring a solution to this.

Adverse consequences for U.S. prestige and image in the wake of inevitable leaks, accusations and recriminations. The leaks would call into question the credibility of US security commitments, which in turn would call into question U.S. good faith with its partners

U.S. domestic skepticism about any mediation and potential for political blowback—any perceived “even-handedness” let alone a “tilt” favoring China’s position would engender heavy criticism in the Congress, think tanks, media and so on.

[1:15:09]

Back in the real world, what are those concerned actually saying and doing about a possible mediation effort?

Secretary Clinton was seemingly out in front of others in testing the waters for a U.S. role as intermediary or even as mediator. In October 2010, when she took a fairly tough position during an ASEAN foreign ministerial meeting Hanoi on China’s reference to South China Sea “core interests” and its other indications of a rising assertiveness, she said in public remarks at the conclusion of the session that “It is in all of our interests for China and Japan to have stable, peaceful relations. And we have recommended to both that the United States is more than willing to host a trilateral, where we would bring Japan and China and their foreign ministers together to discuss a range of issues.” U.S. media subsequently reported that Secretary Clinton put that offer to Chinese State Councilor Dai Bingguo when she met privately with him during an unusual stopover in Hainan Province immediately following her Hanoi talks.
That initiative produced no discernible enthusiasm in either Tokyo or Beijing. Japanese officials commented briefly in public remarks that they would welcome a U.S. role “if a trilateral meeting was well prepared.” Neither Chinese Foreign Minister Yang Jiechi nor State Councilor Dai replied directly on the record, but both they and official media seemed cool to the proposal. China’s state-owned media sharply criticized Clinton for her reaffirmation that the Senkaks were covered by provisions of the US-Japan mutual defense treaty.

Judging by media reporting following Secretary Clinton’s and Secretary Clinton’s visits to Beijing in early and mid-September this year, both expressed strong concern about Senkaku developments and may have floated again the notion of some form of U.S. sponsorship of Sino-Japanese discussions.

Zhou Fangyin, identified as a research fellow at the China Academy of Social Sciences National Institute of International Strategy, penned a commentary entitled “Friendly Advice to Japan and the U.S.” that was published in China Daily on September 27. Zhou wrote bluntly: “The U.S. wants to play the role of a ‘mediator.’ However, a mediator should be impartial, which Washington is not. Nor does it want to help resolve any dispute. Moreover, the U.S.-Japan alliance disqualifies Washington from being even a ‘communicator’ in the Diaoyu Islands dispute.”

Other news reporting suggests that the Senkakus issue figured prominently—and unproductively—in Secretary Panetta’s meeting with Chinese Vice President and soon-to-be President Xi Jinping. According to a “diplomatic source” cited by Taiwan’s Want China Times, Vice President Xi told Secretary Panetta that:

- Japan’s actions could be equated with trying to unsettle the international order after the Second World War, which was established by countries led by the United States.
- The U.S. should therefore work to suppress the extreme rightist elements in Japan.
- The Japanese Government’s purchase of the three main islands of the Diaoyu group was a “farce” and that Japan should refrain from indulging in such behavior. Its purchase had openly raised questions about the legal implications of the Cairo Declaration and the Potsdam Proclamation and had further intensified regional territorial disputes.
- The international community will absolutely not tolerate Japan’s challenge to the post-world wear international order and must cease actions that infringe on China’s sovereignty and territorial integrity.
China hoped the U.S. would help in promoting the overall interests of regional peace and stability . . . (but) would remain cautious, avoid intervening in the dispute and not do anything that might . . . complicate the situation further.

The U.S. government plainly took on board the negative responses it had elicited from Beijing, Tokyo and, with respect to Dokdo/Takeshima, Seoul. An unidentified “senior State Department official,” offering a background briefing on September 28, 2012 to journalists in New York following Secretary Clinton’s meeting with Japanese Foreign Minister Koichiro Gemba and South Korean Foreign Minister Kim Sung-hwan, said that Secretary Clinton “underscored that the U.S. has no intention in any of these disputes, whether we are talking about Japan-Korea, Japan-China, China-ASEAN, to play a mediating role. We have no intention of playing a mediating role.”

Speaking the same day to journalists at the New York Foreign Press Center, State Department Assistant Secretary Secretary Campbell echoed that same line. With respect to the Senkakus, Campbell said: “The United States has no intention and will not play a mediating role, but we have high confidence in the judgment and the recognition on both sides of the importance of this relationship. And we believe . . . strongly that positive dialogue will have good results.” He added: “I think that there’s a general and a very reasonable approach by all the countries in the region, that they welcome the United States setting clear principles for engagement, clear overarching policy framework, but refrains from an active role in any of the disputes or any of the mediation, and rejects a mediation role. We think that’s appropriate . . . We think it’s the responsible view as well. So the United States will not be playing that kind of role going forward.”

And all of this has evidently produced, as a fall-back U.S. measure to stay in touch and “engaged” without professing a mediating role, a visit to Tokyo and Japan early last week by former senior officials Jim Steinberg, Steve Hadley, Rich Armitage and Joe Nye. The group met on Monday in Tokyo with Japanese FM Gemba & PM Noda, and on Tuesday-Wed in Beijing with State Councilor Dai Bingguo and Vice Premier Li Keqiang.

According to the New York Times, “the idea of a visit was pitched to State Department aides” and then “Mrs. Clinton endorsed it, giving it a quasi-official status.” Steinberg, who spoke on the record to the paper, described the trip’s focus as “how we get back to the relative stability in which the islands were in dispute but people were not trying to change facts on the ground.” The story reported the obvious: that Mrs. Clinton had raised the issue “without apparent progress” during September
meetings with Chinese officials in Beijing and with PM Noda at the ASEAN meeting in Vladivostok. Before departure, an unidentified member of the group told the NYT that there was no plan to present a specific proposal to the Chinese and Japanese, but that the members were prepared to discuss different approaches. An unidentified “senior Obama administration official” confirmed that administration officials hope that the “semiofficial nature of the trip” might facilitate discussion. The official added that “A little bit of ‘hands off’ probably creates space for everyone.” The same official went on to express concern that Japan and China “are increasingly navigating each other into a corner” and to observe “It is not clear to us that in the current environment there are solutions . . . In fact, we think what might make the most sense is for both sides to back down and export this into the future and recognize that the hardest issues cannot be solved but can only be managed.”

But reactions to the visit by Hadley et al underscored just how tall a bar would need to be crossed before the U.S. was deemed acceptable by either Japan or China as a mediator.

In Tokyo, Foreign Minister Gemba reportedly told the delegation—with studied coolness, it would seem—that “Tokyo and Washington should communicate more about the efficient functioning of the Japan-U.S. alliance” to ensure that the Asia-Pacific region remained peaceful and stable. Prime Minister Noda briefly met with the group but issue no statement to the press afterwards. In Beijing, Japan specialist Professor Zhou Yongsheng at Foreign Affairs University speculated credibly that “Washington is expressing support for Tokyo and is trying to learn what cards Tokyo is holding in its hand . . . In the meantime, it is requiring Tokyo to not cross Beijing’s line on the Diaoyu islands dispute.”

The reaction in Beijing was immediate, acerbic and pointed. The official news service Xinhua greeted the delegation with a headline declaring “U.S. Delegation Not Entitled to China-Japan Mediation: Foreign Ministry.” The article went on to say, quoting the Foreign Ministry spokesperson, that “the delegation does not have the so-called function of mediation.” Vice Premier Li Keqiang told the group on October 24 that “China remains irreconcilable over its stance” and he “expressed China’s solemn stance . . . stressing that the international community should join hands in preserving the fruits of World War II and the post-war world order.”

Lest the delegation not have heard the underlying message from its senior interlocutors, Chinese Academy of Sciences Japanese affairs researcher Wang Pin told the Chinese state-owned media on October 24
that “China will not accept the mediation of the U.S., which has not shown any sincerity in defusing the Diaoyu islands dispute so far ... While the U.S. is scurrying to prevent military clashes . . . so that its own interest would not be harmed . . . it is also trying its best to encourage Japan to boost its defense to contain China.”