

THE EAST CHINA SEA DISPUTE: CONTEXT, CLAIMS, ISSUES, AND POSSIBLE SOLUTIONS

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The East China Sea is one of the last unexplored high-potential resource areas located near large markets. But the development of oil and gas in much of the area has been prevented for decades by conflicting claims to boundaries and islets in the area by China, Taiwan, and Japan. Competition between China and Japan for gas resources in the East China Sea is intensifying and hampering improved relations. However, conflict is not inevitable. A compromise—joint development—is motivated by the realization that a positive China-Japan relationship is simply too important to be destroyed by these disputes. Although both agree in principle on joint development, the two sides have different interpretations of what joint development means or implies, and what area should be jointly developed. The article spells out three basic agreements in principle that are necessary before details of any solution can be negotiated. The alternative to a solution is continued mutual suspicion, unstable relations, unmanaged and undeveloped resources, and an increasing frequency and intensity of incidents, fueling nationalist sentiments and resultant political conflict.

Key words: territorial disputes, China-Japan relations, East Asian security

Introduction

Disputes over small islands and ocean space are usually ancillary at most to more fundamental geopolitical dialectics. However, in certain situations of big-power rivalry and competition for scarce petroleum resources, such issues may become the tail that wags the dog of international relations. The intensifying competition between China and Japan for gas resources in the East China Sea could become just such a situation.

The East China Sea is thought to contain up to 100 billion barrels of oil equivalent. It is one of the last unexplored high-potential resource areas located near large markets. The development of oil and gas in much of the area has been prevented for decades by conflicting and overlapping claims to boundaries in the area by China, Taiwan, and Japan. Indeed, the Japanese government has until now refused to let companies explore and develop the resources in the area because it feared that these acts would adversely affect its relations and negotiations with China on boundaries.

But China has been drilling ever closer to the “median” line between undisputed territory of both countries that has been unilaterally declared as the boundary by Japan, and is now producing gas from the Chunxiao field situated just on its side of that line. Tokyo has officially protested the drilling because it fears China will siphon off gas from its side of the “boundary” and is now considering allowing Teikoku Oil Company to drill on Japan’s side of it. Just the possibility of such drilling by Teikoku has been fiercely protested by Beijing, which claims most of the East China Sea continental shelf.

Conflict is not inevitable. China’s June 2004 proposal to jointly develop the hydrocarbon resources of the East China Sea is an opportunity to cap rising tension, and at long last harvest the resources in the disputed area. This article describes and analyses the context of the dispute and relevant recent developments as well as the conflicting claims and related issues, and then proposes a range of possible conflict-avoidance measures and ultimate solutions.

The Strategic Setting

The East China Sea is a strategic area for China, Japan, and the United States.¹ In the north it guards the entrance to the Tsushima Strait which leads to the Sea of Japan. On its south sits Taiwan, a main bone of contention between China and the United States. Moreover, China sees Japan as part of a U.S. attempt to contain China and is particularly incensed with Japan's pledged logistical and intelligence support of the United States in the event of a clash with China over Taiwan. It also is concerned with Japan's growing nationalism and assertiveness and fears it may culminate in a revival of Japanese militarism.² China's naval buildup, including the purchase of state-of-the-art weapons from Russia, such as super-quiet *Kilo* subs, is designed to exert military control over Taiwan, if necessary. China hopes to extend its sea defense perimeter into the Western Pacific. But to do that it must be able to move its submarines and other naval vessels through the Ryukyu island chain. Not only does this Japanese-patrolled territory extend almost to Taiwan; vessels and aircraft from the major American base at Okinawa guard against such maneuvers. Thus China is trying to carefully map the seafloor and is testing the reaction times and capabilities of Japanese and U.S. forces in the area. In response, Japan is establishing an advanced facility on Miyakojima to collect electronic intelligence on foreign aircraft flying over the East China Sea.³ As an indication of the danger in these waters, in November 2006 Admiral William J. Fallon, commander of U.S. Pacific forces, stated that a Chinese submarine had surprised a U.S. aircraft carrier battle group and risked setting off a military confrontation by closely shadowing it in the East China Sea near Okinawa.⁴ Military communication between China and the United States and China and

1. Christian Caryl, "Japan and China's Growing Assertiveness in the East China Sea Could Start a Military Skirmish," *Newsweek*, September 18, 2006.

2. Norimitsu Onishi and Howard French, "Japan's Rivalry with China Is Stirring a Crowded Sea," *New York Times*, September 11, 2005.

3. "Info Gathering Boost Eyed for East China Sea," *Yomiuri Shimbun*, October 24, 2006.

4. Bill Gertz, "Admiral Says Sub Risked a Shootout," *Washington Times*, November 15, 2006.

Japan is poor to nonexistent regarding intent and deployment of naval and air military assets.

The possibility of a Japan-China clash in the East China Sea cannot be totally discounted. Such a clash would clearly have implications for the United States as an ally of Japan. In one scenario,⁵ China stations its submarines and other naval vessels in the East China Sea to protect its drilling activities there. Japan responds by sending P-3 patrol planes, *Aegis* war ships, and F-15 fighters. Miscommunication exacerbates tension and a nighttime clash erupts between Chinese submarines and Japanese destroyers. Reinforcements are dispatched and Japan requests assistance from the United States. The United States would likely delay intervention to allow time for diplomacy to work. But if the situation spiraled out of control the United States would likely defeat the Chinese naval force, precipitating a wider and longer-term conflict.

Risks of Conflict in the Current Situation

The East China Sea issue last came to a boil in late 1996 when a Japanese group erected a lighthouse on one of the Diaoyu/Senkaku islets claimed by both countries. Anti-Japanese demonstrations broke out in Hong Kong and Taiwan, and activists from Hong Kong and Taiwan eluded Japanese coast guard vessels to plant the flags of China and Taiwan on one of the islets. Japan and China struggled to keep the issue from escalating. But incidents continued.

Frequent Chinese "incursions" by both research and naval vessels became a serious domestic political issue in Japan and hurt relations between Tokyo and Beijing. In February 2001, the two sides agreed on a mutual prior notification system. The agreement cleverly navigated around the issue of conflicting claims and boundaries by stating that each must inform the other before entering waters near the other country if it is an area in which that country "takes interest." In April 2002, after giving proper notification, China resumed its surveys for poten-

5. "U.S. Options in Taiwan War Scenarios," *Dong-A Ilbo* (Seoul), September 1, 2006.

tial oil and gas in the disputed area. However, Japan protested anew when it discovered that China had marked out concessions in three areas that are on Japan's side of what it claims should be the boundary. The current phase of the controversy has its origins in August 2003, when China agreed with four Chinese and Western oil firms on the development of gas fields in the area and subsequently started constructing facilities to implement the agreements.

In July 2004, a Chinese naval vessel "played chicken" with a Japanese research ship in the area.⁶ In September 2005 the dispute turned dangerous when five Chinese naval vessels including a guided missile destroyer were observed near the Chunxiao gas field.⁷ One of the warships pointed its gun at a Japanese P3-C surveillance aircraft.⁸ A day before bilateral talks on the area were to resume, China confirmed that it had established a "reserve vessel squadron" in the East China Sea.⁹ It was announced that the squadron was capable of "fighting during wars" and was equipped to "eliminate obstacles at sea."¹⁰ To Japan's Self-Defense Forces (SDF) this was a clear warning. Indeed, combined with the November 2004 detection of a Chinese nuclear submarine in Japanese territorial waters in the Ryukyus and increased electronic surveillance by Chinese aircraft¹¹ as well as the detection of some twenty-five Chinese exploration ships in Japanese waters in the previous six months, this assertive act represented a potential threat. Thus, in its "Security and Guarding Plan," the Japan Ground SDF for the first time identified China as a threat and sug-

6. Caryl, "Japan and China's Growing Assertiveness."

7. *Japan Times*, September 10, 2005, at www.japantimes.co.jp/cgi-bin/makeprfy.p15?nn20050910a1htm; *Taipei Times*, September 14, 2005, at www.taipetimes.com/News/front/archives/2005/09/14/2003271561/print.

8. Jonathan Manthorpe, "Japan Intercepted Chinese Reconnaissance Planes 107 Times in the First Three Months of 2006 as Opposed to 13 Times in All of 2005," *Vancouver Sun*, April 24, 2006.

9. "China Sends Warships to East China Sea," *Agence-France Presse*, September 29, 2005, at www.defensenews.com/story.php?F=1143235&C=asiapac&p=true.

10. Mark J. Valencia, "The Scramble for Offshore Oil," *The Taiwan Review*, January 2006, pp. 22-27.

11. Onishi and French, "Japan's Rivalry with China."

gested several threat scenarios including a brigade-size invasion of the Senkakus.¹² In April 2005, relations between the two deteriorated further when anti-Japanese demonstrations broke out in several Chinese cities. The Japanese embassy in Beijing was stoned and Japan demanded a formal apology and compensation.¹³

The risk of a clash between China and Japan in the East China Sea increased when Japan authorized Teikoku Oil Company to drill adjacent to the Chunxiao field but on its side of the unilaterally proclaimed median line. At the fourth round of talks on September 30, 2005, Japan officially proposed joint development of four gas fields: Tianwaitian, Chunxiao, Duanqiao, and Longjing.¹⁴ But China rejected this response to its June 2004 proposal and continued to lay pipelines connecting the gas fields.¹⁵ Beijing was concerned that if it accepted Japan's proposal it would be tacitly lending validity to Japan's exclusive economic zone (EEZ) boundary claim. Thus it explained that "China doesn't accept this middle line and will not accept this line in the future." In other words, China insisted that the Chunxiao field is situated in its EEZ and that Japan has no right to it. The two also disagreed markedly on the amount of reserves in the region. Japan has estimated that the area holds 200 billion cubic meters (7 trillion cubic feet) of gas while China National Offshore Oil Corporation (CNOOC) says the Xihu Trough area contains about 20 million cubic meters of gas or four orders of magnitude less.¹⁶

Japan also asked China to release data on the field, which Japan believes extends under its unilaterally proclaimed median line, and to stop development of resources there while the talks continue. In this context, Japan argued that Article 74:3 of the

12. Hun-Joo Cho, "Japan Regards China as a Military Threat for the First Time," *Dong-A Ilbo* (Seoul), September 27, 2005, at <http://english.donga.com/srv/service.php3?bicode=060000&biid=2005092708608>.

13. David Pilling and Mure Dickie, "Tokyo in Move to Share Oil Exploration," *Financial Times*, April 15, 2005.

14. "China Rejects Joint Gas Development with Japan," *Accoona*, March 9, 2006, at www.chinadaily.com.cn/english/doc/2006-03/09/content_53616.htm.

15. *Yomuri Shimbun*, March 12, 2006.

16. "Work on at Disputed Field: CNOOC," *Gulf Times*, April 7, 2006, at www.gulf-times.com/site/topics/article.asp?cu-no=2&item_no=80564.

1982 United Nations Convention on the Law of the Sea (UNCLOS) provides that the parties to a boundary dispute should not take any action that would “jeopardize or hamper the reaching of a final agreement.” China rejected these requests. However, the two parties did agree to settle the dispute through dialogue and that any joint development would be temporary and not affect the site of the future EEZ boundary.¹⁷

New Complications

In October 2005, much to the dismay of China’s leaders, Japanese Prime Minister Koizumi Junichiro visited the Yasukuni Shrine and in December Japan’s Foreign Minister Aso Taro declared that China’s military buildup posed a threat to Japan’s security.¹⁸ Moreover, Japan suspended its loans to China. Consequently, China refused to hold high-level meetings with Japan and the East China Sea talks languished.¹⁹

Meanwhile, Taiwan raised its profile in the area by vowing to send patrol vessels to protect its sovereignty over oil and gas reserves. This statement was designed to show that Taiwan has not given up its rights to the area.²⁰ Taiwan also has longstanding and ongoing fishery disputes with Japan in the area around the Senkakus / Diaoyutai. Japan often detains or fines Taiwanese fishing boats operating there. Taiwan and Japan have held fifteen rounds of talks since 1996 but no agreement has been reached on the extent of their overlapping zones and thus on an

17. Zhu Moqing, “China Makes New Proposal on Gas Deposits,” *Shanghai Daily.com*, March 8, 2006, at www.shanghaidaily.com/art-print/247063.htm.

18. Kanaka Takahara, “China Posing a Threat: Aso,” *Japan Times*, December 23, 2005, at www.japantimes.co.jp/cgi-bin/makeprfy.p15?nn20051223a1.htm.

19. “Japan Sees No Signs from China About Holding Gas Talks Soon,” *Japan Economic Newswire*, December 27, 2006.

20. Eric Watkins, “Japan Seeks More Talks in Dispute with China,” *Oil and Gas Journal Online*, October 4, 2005, at http://ogj.pennnet.com/articles/article-display.cfm?Section=ONART&C=ExpID&ARTICLE_ID=238193&p=7. In the 1970s Taiwan also leased concessions in the area to major oil companies and Taiwan’s China Petroleum Corporation apparently still holds blocks there.

area to come under common management.²¹ Taiwan has designated the median line as a temporary demarcation line and protects its fishing boats south of that line. In June 2005, as tensions between Japan and China rose, Japan forcibly expelled Taiwanese fishermen from the area.

Further complicating matters, a dispute between China and South Korea over the ownership and legal status of a submerged rock in the western East China Sea irritates their maritime relations.²² The dispute surfaced in 2000 because South Korea began constructing an observation station on the rock that it calls Ieo Do. South Korea claims the feature sits on its continental shelf and is within its EEZ but does not intend to claim an EEZ or continental shelf based on it. However, China also claims the reef and asserts that the two countries' EEZ claims overlap because of it. This dispute surfaced again in mid-September 2006 and China undertook aerial surveillance of South Korea's facilities on the feature.

The China-Japan talks resumed in March 2006. At this round of talks, China proposed a new joint development arrangement that would focus on two areas: one in the north, including an area on China's side of the Japanese-claimed median line boundary;²³ and one in the south around the disputed islets. Although Japanese Foreign Minister Aso said on May 16 that joint development of fields in the northern area was possible, Japan eventually rejected this proposal and demanded that China cease exploration and development of the field.²⁴

21. "Taiwan Urges Japan to Renew Fishery Talks," *Chinapost.com.tw*, July 1, 2006, at www.chinapost.com.tw/p_detail.asp?id=85158&GRP=B&onNews=.

22. "China Chafes at Korean Observatory on Reef Island," *Chosun Ilbo* (Seoul), September 14, 2006; Lee Jin-woo, *Korea Times* (Seoul), September 14, 2006; Foreign Ministry spokesman Qin Gang's press conference on September 14, 2006, at www.fmpr.gov.cn/eng/xwfw/s2510/t272110.htm.

23. "China Offers Gas Field Proposal," *Asahi Shimbun*, March 7, 2006.

24. "Kyodo Economic News Summary," at www/tmcnet.com/USUsubmit/2006/03/07/1439091.htm; Hiroko Nakata, "Japan Rejects China's Senkaku Gas Offer," *Japan Times*, March 9, 2006, at <http://search.japan-times.co.jp/cgi-bin/nn20060309a2.html>; "4TH LD: Japan Rejects China's New Offer on Joint Gas Development," *TMCnet*, March 8, 2006,

Meanwhile, Prime Minister Koizumi's Liberal Democratic Party announced plans to submit to the Diet a bill designed to protect Japanese citizens involved in gas exploration in the East China Sea.²⁵ In April 2006 it was revealed that China had conducted several recent aerial surveys beyond Japan's claimed median line and that Japan had lodged diplomatic protests regarding them.²⁶ China notified Japan in advance of the surveys, and Japan had requested more information. But China proceeded without responding. The 1982 UNCLOS provides that nations can reject such exploration in their EEZs. Also in April, news reports claimed China had been producing up to 300,000 cubic meters of gas a day from the Chunxiao field since January 28, 2006.²⁷ This was "a slap in the face" to Japan and increased pressure on the government to allow Teikoku Oil Company to proceed with drilling in this area. Indeed, Japan claimed that the two had agreed to suspend development in the area until a negotiated settlement was reached. On April 18, 2006 Sinopec's Shanghai Offshore Oil Bureau announced that it was indeed already officially producing gas from the Chunxiao field.²⁸

In mid-April 2006 China issued a ban on ships entering an area around the Pinghu field near Japan's unilaterally claimed boundaries in the East China Sea while it laid pipelines and cables.²⁹ Japan protested the ban, saying that it violated Japan's sovereignty and the 1982 UNCLOS. China subsequently clari-

at www.tmcnet.com/scripts/prints/print-page.aspx?

25. *TMCnet On the Web*, March 7, 2006, at www.tmcnet.com/usubmit/2006/03/07/1436578.htm; Koizumi declined to submit the bill to avoid straining relations with China, *Yomiuri Shimbun*, June 1, 2006, www.yomiuri.co.jp/dy/national/20060601TDY04004.htm.

26. *Japan Times*, April 2, 2006, at <http://search.japantimes.co.jp/print/nn20060402a2.html>.

27. "Japan Looking into China Gas Reports," *UPI Energy*, at www.upi.com/Energy/view.php?StoryID=20060406-032221-3974r.

28. *Interfax-China*, April 18, 2006.

29. *Reuters*, April 16, 2006, at <http://in.today.reuters.com/misc>; "China Bans Vessels Near Gas Field: Report," *Japan Times*, April 17, 2006, at <http://search.japantimes.co.jp/print/nn20060417al.html>; "Japan Voices Concern in New Energy Dispute with China," *Media Corp*, April 17, 2006, at www.todayonline.com/articles/113152print.asp; "China Shipping Ban May Breach U.N. Treaty: Abe," *Japan Times*, April 17, 2006, at <http://search.japantimes.co.jp/print/nn20060418a3.html>.

fied that the “safety zones” were only 500 meters around installations as provided by the 1982 UNCLOS and that the safety zones did not extend beyond the median line.³⁰

On May 18, 2006 the two sides met again in Tokyo, but they only pointed out problems with each other’s proposals and failed to reach agreement.³¹ In June it was announced that the resumption of talks would be postponed to July but that at least they would resume.³² However, it was also announced that Japan would for the first time send a regional SDF troop (from Kagoshima) to the United States in January 2006 for joint exercises involving retaking a small island.³³

A Few Positive Signs

On a more positive front, Japanese loans were resumed and Chinese Foreign Minister Li Zhaoxing and Foreign Minister Aso met in June 2006 on the sidelines of the Doha economic summit.³⁴ The two agreed to resume bilateral security dialogue. Separately, China also agreed to consider a Japanese proposal to set up a system to avoid conflict in the East China Sea.³⁵ However, in early July Japan sighted a Chinese maritime survey ship about 24 nautical miles south of the Senkakus.³⁶ It had not given advance notice and refused to leave despite Japan coast guard warnings to do so. This was the first unauthorized survey in Japanese-claimed waters in two years.

30. “Foreign Ministry Spokesperson Qin Gang’s Remarks,” April 27, 2006, at www.fmprc.gov.cn/eng/xwfw/s2510/t249171.htm.

31. Yumi Wijers-Hasegawa, “Japan, China Remain Deadlocked over How to Resolve Gas Row,” *Japan Times*, May 19, 2006, at <http://search.japantimes.co.jp/cgi-bin/nb20060519a2.html>.

32. “Japan-China Gas Talks Delayed—Kyodo,” *Reuters*, June 24, 2006; Donna Borak, UPI.com, June 29, 2006, at <http://license.icopyright.net/user/viewFreeUse.act?fuid=NjA2NNTC=>.

33. *Kyodo*, June 19, 2006.

34. Frank Ching, “Rewriting the Line on Japan,” *Japan Times*, June 30, 2006, at <http://search.japantimes.co.jp/print/e020060630fc.html>.

35. “China to Consider Mid-ocean Security System with Japan,” *TMCnet*, April 27, 2006.

36. *Japan Times*, July 3, 2006, at <http://search.japantimes.co.jp/print/nn20060703a1.html>.

The talks resumed on July 8, 2006.³⁷ At that round the two sides agreed to form technical and legal expert groups to discuss the issues.³⁸ They also agreed in principle to set up a maritime hotline to deal with unpredictable situations in the area.³⁹ On September 26 it was announced that the two had agreed to accelerate the talks, which were now focused on joint development proposals.⁴⁰ On October 21, it was reported the talks would resume in November 2006.⁴¹

As if there was not enough tension, in mid-August a group of Taiwan activists attempted to make a landing on the Senkakus/Diaoyutais.⁴² The protest was prompted by Koizumi's visit to the Yasukuni Shrine as well as the arrests of Taiwanese fishermen by Japanese coast guard patrols around the disputed islands. The Taiwan fishing boat carrying the protesters was warned away by Japanese coast guard ships about 33 kilometers off Uotsuri.⁴³

Not to be outdone, in late October a group of Hong Kong protesters tried to reach the disputed islets. The boat came within 13 kilometers of the islets but was warned and then forced back by water cannon from Japanese coast guard vessels.⁴⁴ The group, the Action Committee for Defending the Diaoyu Islands, was marking the tenth anniversary of the death of Hong Kong activist David Chan, who drowned in 1996 in an attempt to reach the islets. It was also a protest against new Prime Minister Shinzo Abe's failure to promise not to visit Yasukuni.⁴⁵ The

37. "China, Japan to Hold 6th East China Sea Talks," *China Daily*, July 7, 2006, at www.chinadaily.com.cn/china/2006-07/04/content_633160.htm.

38. Kiichi Yamamura and Shigeru Sato, "Japan Protests China Gas Drill in Disputed Field, Shiozaki Says," *Bloomberg.com*, November 8, 2006.

39. "China, Japan End Sixth Round of East China Sea Talks," *Xinhua*, July 9, 2006.

40. "Japan, China Agree to Accelerate Talks on East China Sea: Nikai," *Platts* (Tokyo), September 26, 2006.

41. "Report: Japan, China Talks on Undersea Gas Exploration Could Resume as Early as November," *Associated Press*, October 21, 2006.

42. "DPA, Taiwanese Activist Retreat after Sea Protest against Japan," *Monsters and Critics.com*, August 17, 2006.

43. Reiji Yoshida, "JCG Foils Senkaku Landing Try," *Japan Times*, August 22, 2006.

44. Reiji Yoshida, "H. K. Activists' Boat Turned Back from Senkakus," *Japan Times*, October 28, 2006.

45. *Yomiuri Shimbun*, October 28, 2006.

activists announced they would sue Japan in a Beijing court for blocking their ship.⁴⁶

On August 7, CNOOC announced on its website that full-scale production from the Chunxiao gas field had begun.⁴⁷ Japan threatened to take retaliatory measures, presumably beginning exploration near the median line.⁴⁸ The information was deleted from CNOOC's website and Japan then announced that China had not yet begun full-fledged production from the field. Then on August 28, Japan strongly protested China's plans to develop a new gas field in the East China Sea, Bajiaoting, in what Japan claims is within its EEZ.⁴⁹ China then accused Japan of "making new trouble" and insisted that the field was on its continental shelf.⁵⁰ On November 8 Japan protested China's production from the Pinghu field.⁵¹

Claims, Issues and Positions

China's Claims

The PRC makes the following principal claims:

1. straight baselines connecting base-points on the mainland coast and the outermost coastal islands;⁵²
2. a territorial sea extending 12 nautical miles from these baselines and from offshore islands, including specifically

46. *Associated Press* (Hong Kong), October 30, 2006.

47. "Japan Confirms China Has Not Begun Production at Chunxiao Gas Field," *Kyodo*, August 7, 2006.

48. "Disputed Gasfield Goes into Operation, Japan Threatens Retaliation," *Interfax*, August 7, 2006.

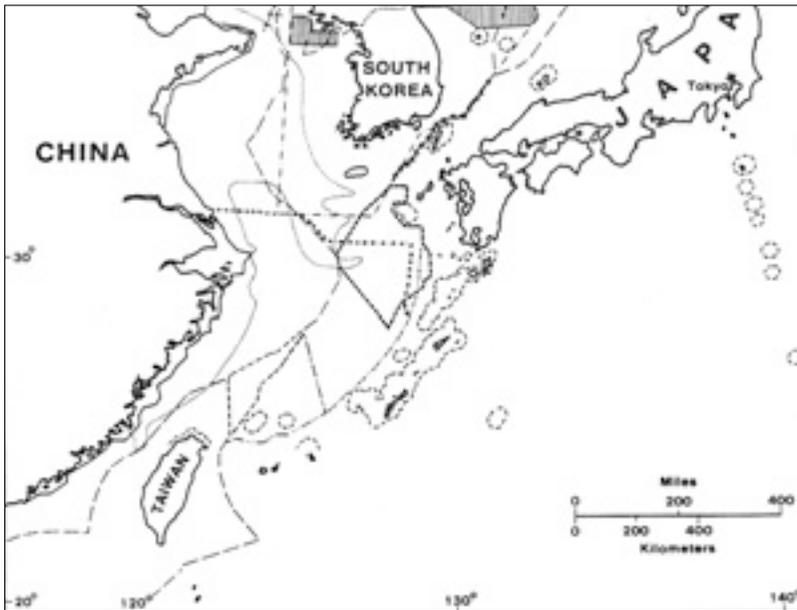
49. Komfie Manalo, "Japan Protests China's Development of New Gas Field in Disputed Sea," *All Headline News*, August 29, 2006.

50. *Xinhua*, September 2, 2006.

51. Yamamura and Sato, "Japan Protests China Gas Drill."

52. Liyu Wang and Peter H. Pearce, "The New Legal Regime for China's Territorial Sea," *Ocean Development and International Law*, vol. 25, No. 4 (1994), pp. 431-42; Park Choon-Ho, "The Yellow Sea-East China Sea Oil Disputes Revisited: New Opportunity for Joint Development," in Kim Dalchoon et al. eds., *Exploring Maritime Co-operation in Northeast Asia: Possibilities and Prospects* (Seoul: Institute of East and West Studies, Yonsei University, 1993), pp. 3-14.

Figure 1. Maritime Claims



- the Diaoyu Islands (Diaoyutai),⁵³
3. a contiguous zone extending 12 nautical miles from the territorial sea;⁵⁴
 4. a continental shelf extending throughout the natural prolongation of its land territory to the outer edge of the continental margin, i.e., presumably to the Okinawa Trough,⁵⁵ although no precise limits of the claim have been published; and
 5. sovereignty over the Diaoyu Islands, but not a continental shelf or EEZ extending from the features.

53. Ibid.

54. Ibid.

55. J. R. V. Prescott, "Maritime Jurisdiction in East Asian Seas," *East-West Environment and Policy Institute*, Occasional Paper No. 4 (1987); J.R.V. Prescott, "Maritime Jurisdiction," in Joseph Morgan and Mark J. Valencia, eds., *Atlas for Marine Policy in East Asian Seas* (Berkeley, Calif.: University of California Press, 1992), pp. 25-35; Zhiguo Gao, "China and the LOS Convention," *Marine Policy* (1991), pp. 199-210.

All of China's claims apply to Taiwan since China claims Taiwan as part of China. China ratified the UNCLOS on June 7, 1996. And on June 26, 1998 it declared a 200-nautical mile Exclusive Economic Zone and a continental shelf. However, China has behaved for some time before that as if an EEZ and continental shelf were in effect in the East China Sea.⁵⁶

Taiwan's Claims

Taiwan's claims are:

1. a 12-nautical mile territorial sea;⁵⁷
2. a continental shelf extending throughout the natural prolongation of its land territory to the edge of the continental margin;⁵⁸
3. a 200-nautical mile Exclusive Economic Zone;⁵⁹ and
4. sovereignty over the Diaoyu Islands, but not a continental shelf or EEZ extending from the features.

Taiwan did not sign the 1982 UNCLOS because it had no diplomatic relations with Jamaica, the host of the conference, and because its credentials would not be accepted by the United Nations Credentials Committee. Thus Taiwan has not ratified the convention. Nevertheless it has said that it will comply with its terms.

56. In September 1997 China and Japan forged a bilateral fisheries agreement for the East China Sea which includes joint management of part of it. The Japanese government stated: "We will continue demarcation talks for waters where we need to demarcate exclusive economic zones and introduce provisional measures until the lines are drawn." See "Japan Announces Fisheries Accord with China," *Agence-France Presse*, September 3, 1997; *China Daily*, February 12, 1997. An August 1975 fisheries agreement between China and Japan regulates fisheries up to 182 nautical miles from China's coast and bars Japanese vessels from a zone extending 38 nautical miles from its coast. See Prescott, *Atlas*.

57. September 1979; see Prescott, "Maritime Jurisdiction in East Asian Seas."

58. Ji Guoxing, "The Diaoyudao (Senkaku) Disputes and Prospects for Settlement," *The Korean Journal of Defense Analysis*, vol. 6, No. 2 (Winter, 1994), pp. 285-311.

59. Prescott, "Maritime Jurisdiction in East Asian Seas."

*Republic of Korea (South Korea) Claims*⁶⁰

The ROK claims the following:

1. a system of straight baselines;
2. a 12-nautical mile territorial sea (3 nautical miles in the Korea Strait), including the entire Cheju Strait;
3. a continental shelf extending throughout the natural prolongation of its land territory to the edge of the continental margin, apparently as far south as 28° 36' N latitude in the vicinity of the Okinawa Trough, over 250 miles from the nearest Korean territory⁶¹; and
4. a 200-nautical mile EEZ.

South Korea ratified the 1982 Convention on the Law of the Sea on January 29, 1996. In January 1952, by a decree called the Presidential Proclamation of Sovereignty over the Adjacent Sea, South Korea placed under its jurisdiction all living and mineral resources within a line ranging from 20 to 200 nautical miles from the Korean coast.⁶² The "sovereignty" thus claimed was delimited by this line, which came to be called "the Peace Line" in South Korea (supposedly to maintain peace with Japan) and "the Rhee Line" (after the name of the proclaimer) in Japan. Originally, the Peace Line was intended to prevent Japanese fishermen from returning to the fishing grounds around Korea once they were freed from the restrictions of the MacArthur Line (proclaimed by the Allied commander, General Douglas MacArthur, in 1945, forbidding Japanese fishing craft to operate beyond the line).

Although the Peace Line was superseded by the Japan-South Korea fisheries agreement of 1985, and Japanese fishermen have since been allowed to operate in South Korean waters outside of South Korea's 12-nautical mile fishing zone, it has not been formally withdrawn. Until recently, conflict was avoided

60. September 20, 1978; see Prescott, "Maritime Jurisdiction in the East Asian Seas."

61. Park Choon-Ho, *East Asia and the Law of the Sea* (Seoul: Seoul National University, 1985), 2nd ed., p. 11.

62. Park Choon-Ho, "South Korea and the Law of the Sea," *Korean International Law* (1981), pp. 37-53.

by maneuvers by both parties to avoid a situation in which *ex post facto* recognition (by Japan) or derecognition (by South Korea) of the Peace Line could be implied. The Peace Line is included in this analysis because, first, in connection with the controversy over Tokdo/Takeshima, Seoul has considered reintroducing this line,⁶³ and second, because the Rhee Line extends well into the East China Sea.

Japan's Claims

Japan makes the following claims:

1. a system of straight baselines;⁶⁴
2. a 12-nautical mile territorial sea extending from these straight baselines (but only 3 nautical miles in the Korea Strait and other straits);
3. an unspecified continental shelf;⁶⁵
4. a 200-nautical mile EEZ from the straight baselines, although the claim to the west and north of the Diaoyu/Senkaku features has purposely been left vague (one option considered by Japan was to exempt waters bordering South Korea and China from its EEZ claim)⁶⁶; and
5. sovereignty over the Senkaku features.⁶⁷

Japan ratified the UNCLOS on June 20, 1996.

Issues

Straight Baseline

The straight baseline, from which other maritime jurisdictional zones are measured, is an issue in that:

- Taiwan has not specified its baselines;

63. Takahiko Ueda, "South Korea, China Hold to Their Own Sovereignty Claims," *Japan Times*, February 15, 1996.

64. Prescott, *Atlas*, p. 28.

65. *Ibid.*

66. Ueda, "South Korea, China Hold to Their Own Sovereignty Claims."

67. *Ibid.* and *Japan Times*, February 21, 1996.

- Some baselines do not appear to conform with the 1982 UNCLOS, particularly those claimed by China;⁶⁸ and
- One of the numerous Chinese offshore features, a high tide elevation some 70 nautical miles off Shanghai called Dongdao (Barren Island), is ignored by South Korea as a base point of China. Given full effect, this “feature” could affect the placement of an equidistant line in China’s favor.⁶⁹

Territorial Seas

China’s law that foreign military vessels must obtain permission from the PRC government to enter its territorial waters is not in conformity with the 1982 UNCLOS.

*Japan/South Korea Joint Development Zone Agreement*⁷⁰

The contrast between the geomorphology of the continental margins west and east of the Korean peninsula is reflected in the different agreements that Japan and South Korea have reached in these two areas. The narrow and continuous continental margin through the Korea Strait and around the southern rim of the Sea of Japan posed no serious difficulties when a decision was made to draw a boundary to divide the margin. In contrast, the two countries were not able to agree on a boundary in the eastern East China Sea. In this region there was considerable overlap between the oil exploration zones defined for leasing by the two countries.

This overlap was caused by the promulgation of two different principles in claiming the continental margin. Japan asserts

68. Prescott, “Maritime Jurisdiction,” p. 27. For example, on the East China Sea coast, “China has claimed about 1,175 nautical miles² (4,023 km²) of territorial sea that should remain high seas, and about 600 nautical miles² (2,055 km²) of territorial waters that should be high seas.” This may exaggerate the extent of China’s claimed EEZ and push eastwards any median line between it and Japan and South Korea. Robert Smith, “Straight Baseline Claim: China,” *Limits in the Seas*, U.S. Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, No. 117, July 9, 1996.

69. Park, *East Asia and the Law of the Sea*, p. 5.

70. This is from Prescott, “Maritime Jurisdiction in the East Asian Seas.”

that since it owns the group of islands called Danjo Gunto, it is able to make claims to the continental shelf from them as stipulated in Article 121 of the 1982 UNCLOS. Japan interprets this article (dealing with delimitation of continental shelf areas) in a way that allows it to claim the median line between South Korea and Danjo Gunto. South Korea does not dispute Japan's ownership of Danjo Gunto but argues that these are Japanese islands situated on South Korea's continental shelf. Specifically, South Korea takes the view that Torishima, which is separated by a deep trench on the seabed from the main Japanese islands, should not be entitled to a continental shelf. In short, South Korea bases its claim on the principle of natural prolongation.

On January 30, 1974, Japan and South Korea decided that rather than continue the dispute either through negotiations or arbitration, they would agree to joint jurisdiction. The limits of the overlapping zones appear to have played a major part in determining the extent of the Joint Development Zone (JDZ). Even the original concession limits are replicated in the boundaries that subdivide the joint zone. The northwest side of the zone corresponds almost exactly to the line of equidistance between Japan and South Korea if the Danjo Gunto are given full effect. The southwestern boundary of the zone corresponds to an equidistant line between China and Danjo Gunto. The area in the vicinity of Torishima is excluded from the JDZ. This agreement came into force on June 22, 1978 and will remain in force for fifty years, after which time either side can give a three-year notice to terminate it.

Continental Shelf

The continental shelf in the East China Sea is large (300,000 km²) and wide, extending 450 kilometers from Shanghai to the 120-meter bathymetric contour. Most of the East China Sea has water depths of less than 200 meters. The shelf slopes gently from the Chinese and Korean coasts until it drops abruptly into the Okinawa Trough, where depths reach nearly 2,300 meters.

China/Japan: China claims the whole shelf to the Okinawa Trough, including an unspecified portion, if not all, of the Japan/South Korea JDZ. Japan claims the same shelf to a median line between its undisputed territory and that of China.

China/Korea: China claims at least a portion of the shelf in the South Korea/Japan JDZ. The full extent of China's shelf claim in this area is unknown. Taiwan's claim is a guide but in this area, it does not follow exactly the axis of the Okinawa Trough as specified by China. China and South Korea apparently have overlapping shelf claims in the western East China Sea because China is using Dongdao to full effect. In CNOOC's invitation of June 30, 1992 for oil exploration bids in the previously closed East China Sea, two areas were blocked out, the Northern Acreage and the Southern Acreage. At two points, the Northern Acreage encroaches into what has been claimed by South Korea, with the overlaps totaling some 24 km² (over 9 square miles).⁷¹

Taiwan/South Korea: Because China claims Taiwan, China and Taiwan's continental shelf claims are one and the same and thus Taiwan's shelf claims have the same overlap with both Japan and South Korea.

South Korea/Japan: The two have overlapping continental shelf claims to the JDZ that will eventually need to be resolved.

Exclusive Economic Zone (EEZ)

- Even if the Diaoyu/Senkaku features are ignored (see below), Japan's declared EEZ overlaps that which China is entitled to claim because China's and Taiwan's coast are within 400 nautical miles of the nearest undisputed Japanese island. However, the extent of overlap is unknown because China and Japan have not published maps or specified with coordinates the limits of their EEZ claims in the East China Sea (other than to state a claim to 200 nautical miles from baselines).
- Taiwan/Japan: Taiwan and Japan have overlapping EEZ claims in the southern East China Sea, south of, and regardless of, the Diaoyu/Senkaku features.
- Japan/South Korea: The two have overlapping EEZ claims in the eastern portion of their JDZ.
- China/South Korea: China and South Korea may have small areas of overlap of their EEZ claims in the northern East China Sea. South Korea has apparently used an equidistant

71. Park, *East Asia and the Law of the Sea*.

line with China to define the western edge of its claim, but China may disagree on where the line should be placed depending on its claimed baseline points. Indeed, South Korea objected to the Japan/China joint fisheries management area because it may overlap its claimed EEZ.⁷²

Sovereignty Over the Diaoyu/Senkaku Features

The sovereignty issue includes the question whether or not the claimants are entitled to a full continental shelf and EEZ. If Japan owns the features and the features can generate a full continental shelf and EEZ, then Japan can claim both up to an equidistant line with Taiwan and China. If China owns the features and the features can generate a full continental shelf and EEZ, then China could claim a continental shelf up to the Okinawa Trough and an EEZ to an equidistant line with the nearest undisputed Japanese island. If the features cannot generate a full continental shelf and EEZ, then China and Japan would have overlapping continental shelf and EEZ claims extending from their nearest undisputed territory. The continental shelf and EEZ claims are not the same because the EEZ claim can be only up to 200 nautical miles from baselines while a continental shelf claim can extend as far as 350 nautical miles from baselines, depending on the morphology/geology of the continental margin.

Positions

The 1982 UNCLOS came into effect on November 16, 1994 after being ratified by sixty countries.⁷³ Its provisions serve as a base for the positions taken by the ratifying governments.

72. Kim Kyung-ho, "Korea to Hold Talks with the PRC, Japan on EEZ," *Korea Herald* (Seoul), September 9, 1997; "Japan Announces Fisheries Accord with China," Agence France-Presse, September 3, 1997.

73. Steven Greenhouse, "US, After Negotiating Changes, Is Set to Sign Pact on Sea Mining," *New York Times*, March 10, 1994.

Continental Shelf

The 1958 Geneva Convention on the Continental Shelf defined the edge of the continental shelf as the 200-nautical mile bathymetric contour. Article 76:1 of the 1982 UNCLOS stipulates that the continental shelf of a coastal state comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to (1) the outer edge of the continental margin, or (2) a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured, where the outer edge of the continental margin does not extend up to that distance. Where the outer edge of the continental margin extends beyond 200 nautical miles, the 1982 UNCLOS stipulates two ways to delimit the shelf. One is that it extends to 350 nautical miles from the baselines from which the breadth of the territorial sea is measured; the other is that it extends to 100 nautical miles from the 2,500 meter isobath (Article 76:5).

The East China Sea claimants cite different principles of international law to support their claims. China uses the principle of natural prolongation of the land territory. "The East China Sea continental shelf is the natural extension of the Chinese continental territory. The People's Republic of China has inviolable sovereignty over the East China Sea continental shelf."⁷⁴ Taiwan also uses the natural prolongation principle. South Korea uses the equidistant line principle in the Yellow Sea, and the natural prolongation principle in the East China Sea. Japan on the contrary, argues that the continental shelf should extend only to 200 nautical miles but uses the Senkakus/Diaoyutais as a base point (see below).⁷⁵

China argues further that the Okinawa Trough delineates the edge of the continental margin and that the axis of the Trough thus serves as the boundary between the continental shelves of the two countries. Japan, on the other hand, argues that the Trough is just an incidental depression in a continuous continental margin between the two countries and that the continental

74. Statement by the Chinese Ministry of Foreign Affairs, June 13, 1977, *Beijing Review*, June 17, 1997, p. 17.

75. Ji, "The Diaoyudao (Senkaku) Disputes."

shelf boundary should be the line equidistant between the undisputed territory of the two countries.

China also argues that the delimitation should be effected by agreement, and that agreement through consultation takes precedence over the equidistant line principle: "The median or equidistance line is a method of delimitation, and shall only be applied under the condition of equitable principles. The principle of equity is a recognized principle of international law, which has not only been confirmed by numerous international documents but has also been affirmed by important international cases on the delimitation of maritime boundaries."⁷⁶ South Korea also insists that "the presence of the [Okinawa] Trough constitutes special circumstances under which the median line principle cannot be applied."⁷⁷ Japan obviously prefers the equidistant line principle in determining the shelf boundary.

Exclusive Economic Zone

In its EEZ, a country exercises sovereign rights over the living and non-living resources of the waters superjacent to the seabed and of the seabed and its subsoil, and jurisdiction with regard to marine scientific research and the protection and preservation of the marine environment. The delineation of EEZ boundaries was not an issue until February 1996 when Japan and South Korea almost simultaneously declared 200-nautical mile EEZs. Japan, South Korea, and Taiwan all express their claim to a 200-nautical mile EEZ in conformity with the 1982 UNCLOS, i.e., the outer limit of the EEZ extends up to 200 nautical miles from the baselines from which the breadth of the territorial sea is measured. South Korea says that in the areas where its EEZ overlaps with the EEZ of neighboring states, the boundary will be delimited by agreement in conformity with the relevant rules of international law.⁷⁸

76. Ma Ying-jeo, *New Law of the Sea vis-à-vis the Diaoyudao Islands and the Delimitation of the East China Sea*, cited by Fu Kuen-chen, *International Law and China: A Collection of Essays* (Taiwan, 1991), p. 223.

77. Park, *East Asia and the Law of the Sea*.

78. Foreign Minister Gong's Statement on EEZ of ROK, *Korea Times*, February 21, 1996.

The different positions stem from the different baselines and from the dispute over the ownership of features from which the EEZ is measured. Japan's position is that since it owns the group of islands called Danjo Gunto, it is able to make claims to an EEZ extending from the islands to the equidistant line between South Korea and Danjo Gunto.⁷⁹ South Korea does not dispute Japan's ownership of Danjo Gunto, but its position is that these are Japanese islands situated on South Korea's continental shelf and thus should be discounted in drawing an EEZ boundary. The same problem applies to the Diaoyu/Senkaku features which Japan has used as a base for its EEZ claim, although it has declined to specify its extent vis-à-vis China.⁸⁰

*Joint Development Zone*⁸¹

Originally, it was Japan and Taiwan that conceived the idea of developing East China Sea oil under joint sponsorship. In July 1970, the Japan Taiwan Cooperation Committee proposed a three-party approach (including South Korea). By November 1970, a preliminary arrangement had been made to form an ocean development corporation consisting of private enterprises from the three parties. The basic idea was to proceed with seabed oil development, leaving the boundary issues for further negotiation.

The joint approach at first appeared to signify a breakthrough regarding an apparently endless controversy, but the sponsors failed to realize that the difficulties involved could be insurmountable and that their attempt would stimulate China to voice its objection. In December 1970, China emerged from its quiescence on the seabed oil issue, and the idea for a joint approach faded. Nevertheless, the fascination with the joint development idea persisted. Consequently, a second attempt was made by Japan and South Korea alone in August 1972 to develop part of South Korea's delineated Seabed Zones IV, V, and VII jointly—areas where their claims completely overlapped. Their efforts culminated in the signing of an agreement in January 1974.

On February 4, 1974, China protested loudly:

79. Prescott, "Maritime Jurisdiction in East Asian Seas."

80. Ueda, "South Korea, China Hold to Their Own Sovereignty Claims."

81. Park, *East Asia and the Law of the Sea*.

The Chinese Government holds that, according to the principle that the continental shelf is the natural extension of the continent, it stands to reason that the question of how to divide the continental shelf in the East China Sea should be decided by China and the other countries concerned through consultations. But now the Japanese Government and the South Korean authorities have marked off a so-called . . . "joint development zone" . . . behind China's back. This is an infringement on China's sovereignty.⁸²

Compared to China's previous statements regarding the same issue, the tone was milder. It also indicated a willingness to multilaterally delimit continental-shelf boundaries. Since both Japan and South Korea held that the joint development zone lies beyond Chinese jurisdiction, they were not discouraged by the Chinese protest and did not abandon the idea. In fact, South Korea ratified the agreement in December 1974, expecting Japan to follow suit.

However, Japan delayed its ratification for three and a half years until June 1977. An additional year passed before the exchange of the instruments of ratification. The primary reason for the delay was Japan's concerns about its political and economic relations with China, which was persistently protesting against the agreement. Secondarily, with the regime of a 200-nautical mile EEZ becoming a certainty, Japan was increasingly concerned that the joint development zone might be partly or entirely situated on its own side of a potential equidistant line with South Korea.

The Senkaku/Diaoyutai Sovereignty Dispute

The background to the dispute begins with the fact that Japan possesses the Senkaku Islands, which are also claimed by China.⁸³ The Senkaku Islands are called Diaoyutai by the Chinese. The total area that might be claimed from the islands is about 20,500 square nautical miles. The Diaoyutai/Senkaku Islands consist of five uninhabited islets and three barren rocks, located approximately 120 nautical miles southwest of Okinawa.

82. *Hsinhua Weekly*, February 11, 1974, p. 27.

83. This is from Prescott, "Maritime Jurisdiction in East Asian Seas," and Ji, "The Diaoyudao (Senkaku) Disputes."

They are situated at the edge of the East China Sea continental shelf fronting the Okinawa Trough to the south. The depth of the surrounding waters is about 100-150 meters, with the exception of a deep cleft in the continental shelf just south and east of the islands that separates them from the Ryukyu Islands. The total land area is about 7 kilometers².

China describes the features as follows. Diaoyudao itself is the largest islet with an area of 4.3 kilometers², lying to the southwest of the group, measuring about 3.2 kilometers in length, slightly less than 1.5 kilometers in width and 369 meters above sea level at its highest point. The other islets are Huangweidao (118 meters above sea level, 0.463 kilometers²), Dananxiaodao, Dabeixiaodao, and Feilaidao.

Japan describes the features thus. Sekibi Sho is a small islet rising to a height of 275 feet. This treeless isle, formed of lava, is surrounded by a flat terrace from which steep cliffs rise. Kobi Sho is the summit of an extinct volcano standing 384 feet high. The steep slopes of the island, which make landings very difficult, are covered with palm trees and undergrowth, but there is no fresh water on Kobi Sho. The largest island, Uotsuri Shima, lies in the extreme southwest of group. It has two peaks with an intervening saddle; the peaks are almost the same height, 1,157 feet above sea level. There are no anchorages around the island, although there is a boat slip on the west coast that can be used in calm weather. Apart from a small rock called Tobi Se, which has an elevation of 9 feet, the other four islets (Kitako Shima, Minamiko Shima, Okinokita Iwa, and Okinomami Iwa) are rocky and barren. Except for Sekibi Sho, which is 48 nautical miles distant, these features form a fairly compact group.

Both China and Japan would probably agree with the following facts (though their interpretation of these facts would differ). Chinese sailors used these islands as navigational aids in reaching the Ryukyu Islands from the fourteenth century A.D. The first Japanese to "discover" the islands was Tatsushiro Koga in 1884. The Japanese cabinet incorporated the Senkaku Islands as part of Japan on January 14, 1895. Under the terms of the Shimonoseki Peace Treaty of April 17, 1895, which ended a war in which Japan defeated China, China ceded the island of Formosa to Japan together with all islands appertaining to Formosa. In 1945, the Ryukyu and Senkaku islands were occupied by U.S.

forces, and this occupation ended on May 15, 1972, when both groups of islands were returned to Japan under the terms of the Okinawa Reversion Treaty of June 17, 1971.

China maintains that the discovery of the islands by Chinese sailors and their use of the islands as navigational aids constitute a valid claim. The islands were regularly sighted by investiture missions to the Ryukyu Islands. Japan argues that the passing diplomats showed no signs of landing on the Senkaku Islands or developing plans for their use. But China responds that during those years the islands were fit for nothing but use as navigational aids, and they were in effect nature's lighthouses and beacons.

Japan insists that the incorporation of the Senkaku Islands in January 1895 was unrelated to the successful progress of its war against China. China's interpretation is that Japan displayed reluctance to claim the Senkaku Islands in 1895 because they were close to the coast of Chinese Formosa and because of Chinese press reports about Japanese activities in the Senkaku Islands. Thus, China claims Japan's decision to annex the Senkaku Islands was directly related to the defeat of China in November 1894 and the conviction that China was then in no position to object. The Japanese authorities argue that the reference in the Shimonoseki Peace Treaty to the island of Formosa, together with all the islands appertaining to Formosa, excluded the Senkaku Islands, which had been dealt with by the prior Cabinet decision. China argues that the Senkaku Islands appertained to Formosa at the time the Treaty was concluded and came into force.

The importance that Japan attaches to American occupation of the Ryukyu and Senkaku islands and their return in 1972 is contested by China. China argues that the exigencies of war made it convenient for the United States to administer the Ryukyu Islands, while China was assigned Taiwan and the Pescadores as a site for receiving Japan's surrender. Further, China refutes Japan's suggestion that Article 3 of the San Francisco Peace Treaty of September 8, 1951 includes the Senkaku Islands as part of Nansei Shoto south of 29° N. China argues that if Article 3 intended to include the Senkaku Islands with the Ryukyu Islands, that was a mistake. In any case, the mistake was overridden by Article 2, in which Japan renounces all right, title, and claim to Formosa and the Pescadores. As in the treaty of 1895, China interprets the

name Formosa to include the Senkaku Islands.

Both sides have collected much additional information that the other side does not accept as relevant. For example, Japan has stressed the major effort to develop an industry on the islands by Tatsushiro Koga from 1896 to the start of World War I. He started fish-canning operations and the collecting of bird feathers and guano. The industries failed because of the high costs of transport and predation of the bird population by cats. After Koga died in 1918, his son conducted some economic activities on the islands until the onset of the war in the Pacific. After World War II, Koga's son received rent from the United States for use of four of the islands, to which he had acquired private title in 1924.

China for its part has pointed to the inclusion of the Diaoyu Islands in the country's coastal defense system in the mid-sixteenth century, when pirates were raiding China's coast. Reference is also made to the islands as a source of a rare medicinal herb (*Statice arbuscula*). Pills manufactured from this ingredient so impressed the Empress Dowager that in 1893 she awarded three of the islands to the supplier.

China, Taiwan, and Japan argue that they have inviolable sovereignty over the features and that sovereignty is not discussible or negotiable. The disagreement over the evidence of ownership can be summarized as follows. China argues that the Diaoyu Islands were part of its territory until April 17, 1895, when they were ceded to Japan after losing a war. The Chinese contend that the islands should have been returned under the terms of Article 2 of the San Francisco Treaty of 1951. Therefore, according to China, whatever happened after April 1895 cannot detract from China's longstanding claim.

Japan bases its case on the contention that the islands belonged to no country until January 1895, when they were incorporated into Japanese territory by a cabinet decision. It argues further that since that time, Japan has maintained continuous and effective control of the islands, and therefore what happened before January 1895 cannot diminish Japan's sovereignty.

Can the features generate an EEZ and continental shelf? Equally if not more important is the question of whether the features can be used to claim a continental shelf and an EEZ. Article 121:3 of the 1982 UNCLOS stipulates that "Rocks which can-

not sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf." Both China and Japan agree that all eight islets can have 12-nautical mile territorial seas and 12-nautical mile contiguous zones, but whether they are also entitled to have an EEZ and continental shelf remains an issue.

China holds that the Diaoyu Islands are small, uninhabited, and cannot sustain economic life of their own, and that they are therefore not entitled to generate a continental shelf or an EEZ. Taiwan also holds that "The Diaoyudao Islands themselves are not entitled to have a continental shelf or EEZ, and thus have no significant legal effects on the boundary delimitation in the East China Sea."⁸⁴ Japan holds that the features are islands and are therefore entitled to have continental shelves and EEZs. It thus uses them as base points for its continental shelf and EEZ claims in the East China Sea.

The United States is involved in the dispute because Japan argues that the United States handed back Okinawa, including the Senkakus, to full Japanese sovereignty under the 1972 Okinawa Reversion Treaty.⁸⁵ There is no doubt that the United States considered it was administering the Senkakus as part of Japan in the postwar period. For instance, in a proclamation in 1953, the United States specifically identified the Senkakus as falling under its control. The islands were also included in a number of orders or ordinances of the American military. In 1967, the Okinawan legislature authorized the payment of compensation to the families of victims of an attack from two unidentified vessels in the territorial waters of the Senkakus. In 1968, American authorities and the Okinawan government started patrolling the islands to prevent illegal entry.

In October 1996, China warned the United States not to intervene in the dispute.⁸⁶ "This is an issue between China and Japan and no third party may intervene in this matter," Foreign Ministry spokesman Shen Guofang told a briefing. Shen had been asked to comment on a U.S. congressional report that

84. Ma, *New Law of the Sea*.

85. Barry Wain, "Who Really Owns the Diaoyus," *Asia Wall Street Journal*, October 4, 1996.

86. *Reuters*, October 15, 1996.

urged Washington to defend the islands based on a security pact signed by Washington and Tokyo in April 1996. "The U.S.-Japan security pact is a bilateral defense arrangement and cannot exceed this scope," Shen said. "If it exceeds this bilateral scope or is targeted at the interests of a third party, it will certainly cause uneasiness and vigilance among neighboring Asian countries, including China, and bring complicated factors into regional security." Indeed, China claims the features because they are "appertaining to Taiwan,"⁸⁷ thus injecting the Taiwan issue into the fray. Shen said that China had declared at the time that the transfer of the features to Japan was illegal.⁸⁸ For its part, the United States said at the time that any outstanding territorial issue should be settled among the countries concerned.

In November 1996, Acting Deputy Assistant Secretary of Defense Kurt Campbell said that the features fall under the terms of the 1960 U.S.-Japan Security Treaty.⁸⁹ But Campbell also said that the treaty obligation over the disputed islands did not mean the United States recognized Japan's claims to them. "The 1972 U.S.-Japan agreement on the return of Okinawa to Japan clarifies that the Senkaku islands fall under Japanese administration. This was clearly specified by the United States for security purposes," Campbell said. He made it clear that the United States was not taking sides on the islands dispute. He said he was only clarifying the extent of the 1960 U.S.-Japan Security Treaty, drawing a line between territory effectively administered by Japan and territory that was legally Japan's. This statement was interpreted to mean that the United States was conducting a balancing act between China and Japan. Nevertheless, Campbell concluded the interview by stating, "The security situation is clear. America made a solemn promise in the U.S.-Japan Security Treaty to defend Japan's territory and areas under its administration in time of emergency. We will keep this promise." He also voiced strong

87. "It is utterly illegal for the US and Japanese governments to include China's Diaoyu Dao and other islands in the so-called area of reversion at the Okinawa reversion agreement. Their act cannot in the least alter the sovereignty of the People's Republic of China over her territory of Diaoyu Dao and other islands." "Statement of PRC's Ministry of Foreign Affairs, December 30, 1971," *Beijing Review*, January 7, 1972, p. 12.

88. *Reuters*, October 15, 1996.

89. *Reuters*, November 28, 1996.

U.S. hopes for a peaceful settlement of the dispute. Subsequent revelations that this security agreement includes Japanese assistance to the United States in the Taiwan Strait, the Korean Peninsula, and the Spratly Islands do not sit well with China.⁹⁰ However, the U.S. Ambassador to Japan at that time, Walter Mondale, stated that American forces would not be compelled by the treaty to intervene in a dispute over the Senkakus/Diaoyutai.⁹¹

Taiwan also claims sovereignty over the features for most of the same reasons as China. But in contrast to China, Taiwan's leadership has seemed less interested in the sovereignty question and more concerned with negotiating a solution either to the sovereignty dispute or at least for the protection of Taiwanese fishermen's rights there.⁹²

There may be private claimants to the features as well. An imperial decree in 1893, issued by the Empress Dowager, assigned several of the islands to one of her top officials, Sheng Xuanhuai.⁹³

90. *Asiaweek*, May 5, 1998. Indeed, China's Defense Minister Chi Haotian pointedly warned Japan's Defense Agency Chief Fumio Kyuma not to include Taiwan within the scope of the expanded defense agreement with the United States. Chi stated: "China will not accept any action designed to include the Taiwan Straits either directly or indirectly in the sphere of Japan-U.S. Defense Cooperation Guidelines." He added that "attempting to include the Taiwan Strait in the sphere of the guidelines would both violate and interfere in China's sovereignty, and would be totally unacceptable to the Chinese government, people and armed forces." *Reuters*, May 3, 1998. On May 27, China demanded that Japan exclude Taiwan and its strait from the zone covered by the revised U.S.-Japan defense guidelines. *Agence France-Presse*, May 27, 1998.

91. Nicholas Kristof, "Tensions Mount as Japan and China Squabble over Tiny Islands," *New York Times*, September 16, 1996.

92. *Reuters*, July 4, 1997.

93. Frank Ching, "Diaoyu Dispute: Complex Issues," *Far Eastern Economic Review*, October 3, 1996, p. 32. The Imperial Edict issued "on the 10th month of the 19th year of Emperor Kuang Hsu, 1893" reads as follows: "The medical pills submitted by Sheng Hsuan Huai . . . have proved to be very effective. The herbs used in making the pills are said to have been collected from the small island of Tiao Yu Tai (Diaoyu Dao), beyond the sea of Taiwan. Being made of ingredients from the sea, the prescription is more effective than that available in the Chinese mainland. It has come to my knowledge that the said official's family has for generations maintained pharmacies offering free treatment and herbs to destitute patients. This is most commendable. The three small islands of Tiao Yu

This was two years before Japan incorporated the islands into Okinawa prefecture. Sheng's granddaughter now apparently lives in the United States and is in possession of this document, which was reportedly entered into the records of the Senate Foreign Relations Committee at hearings held in 1971. This raises the possibility that the rightful owner of these islands may be an American citizen. Also, the descendants of Tatsuhiro Koga apparently still claim ownership of the features.⁹⁴

Analysis and Ways Forward

Summary and Solutions

China needs oil from the East China Sea to fuel its rapid economic growth, particularly in Shanghai and its vicinity. But so does Japan—to reduce its dependence on oil from the unstable Middle East. The conflicting claims over small islets and maritime space are fueled not only by the perceived petroleum potential but also by resurgent nationalism in both countries. Indeed, the fundamental barrier to achieving a resolution of these disputes is not oil but unresolved historical grievances and the politics of national identity.

Fortunately, there are factors at work that could ameliorate this dispute. The realization that a positive China-Japan relationship is simply too important to be thwarted by these disputes may be the catalyst necessary for wise leaders to forge at least a temporary solution. And despite chilly diplomatic relations, Japanese-Chinese trade and investment increase every year. Moreover there is growing recognition that the East China Sea is seriously polluted and that cooperation will be necessary to ameliorate the problem and preserve the fishery.⁹⁵ Finally, there

Tai, Huang Wei Yu, Chih Yu are hereby ordered to be awarded to Sheng Hsuan Huai as his property for the purpose of collecting medical herbs. May the great universal benevolence of the imperial Dowager Empress and of the Emperor be deeply appreciated." Ji, "The Diaoyudao (Senkaku) Disputes."

94. *Ibid.*

95. *The Herald Sun*, August 18, 2006; *People's Daily Online*, October 16, 2006.

is growing pressure in both China and Japan to proceed with development of oil and gas in the area and therefore increased motivation to reach a compromise.

Part of the problem is that the two sides have different interpretations of what joint development means or implies and what area should be jointly developed. Japan believes it means that China must cease its current exploration and development in Japanese-claimed areas and that China will share the gas on China's side of the median line claimed by Japan. But China thinks joint development means that Japan will not interfere with Chinese exploitation of fields on its side of the line and the area for joint development is that between the median line claim and China's claimed continental shelf boundary, including the area around the disputed islets.⁹⁶

Focusing on the specifics of the dispute, three basic agreements in principle are necessary before details of any solution can be negotiated. First is agreement that the disputed territory (Senkakus/Diaoyutai) cannot be used as a basis for EEZ or continental shelf claims. Assuming Japan claims an EEZ and continental shelf from the Senkakus, this may be a concession by Japan that could be compensated by the details of a joint development scheme (see below). If the two parties cannot agree on this point then the sovereignty issue will impede the boundary negotiations indefinitely. If they can agree, then the sovereignty issue can be separated from the boundary issue.

The second agreement necessary to negotiate a solution is on a unified boundary for both the EEZ and continental shelf. This would be a major concession on China's part, which could be compensated by the location of the boundary or the details of the joint development scheme. Having two boundaries would be politically messy and impractical as well as a constant source of irritation and provocation as bilateral relations wax and wane. However, if the two parties insist on two separate boundaries, then it should be agreed that they be negotiated separately without linkage because the principles, criteria, and degree of difficulty are different.

The third agreement necessary is that regardless of where

96. Wenran Jiang, "East Asia's Troubled Waters—Part I," *Yale Global*, April 25, 2006, at <http://yaleglobal.yale.edu/display.article?id=7302>.

the boundary is located, joint development of fish, minerals, and hydrocarbon resources will be undertaken. This has essentially already been agreed in principle and in practice for fisheries. It would assure both parties that they would retain a share of the resources, both known and unknown. It would also help to solidify the relationship because of the common goal of developing the resources.

If these three basic agreements can be reached, then myriad possibilities open up. Variables that can be negotiated include the location of the boundary, the area of joint development, and the split of the resources and responsibilities—and the latter may vary with location. If the details of the joint development agreement and the boundary location are considered as a package there will be more to balance and trade off.

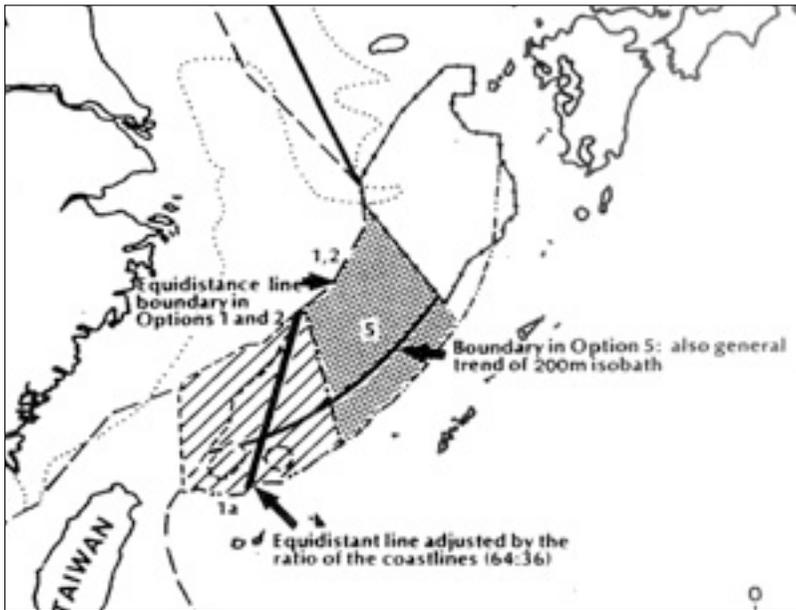
Specific Cooperative Options

These are at least five specific options for a Chinese-Japanese agreement. In most of these options, the area would be divided into different portions based on the degree of difficulty or complexity in resolving the boundary. The joint development concept could then be applied to the more jurisdictionally complex portions of the area. In all options, the first step would be to agree to a 12-nautical mile territorial sea enclave around the Senkaku/Diaoyu islands and to leave that area either as a “no-go” zone or for joint use and future settlement. These options also assume that China’s claim to the Japan/South Korea JDZ will be quietly dropped as part of this settlement and that the tiny overlap between China and South Korea due to China’s use of the Dandong feature as a basepoint will also be separated and quietly resolved.

Option 1 is an agreed continental shelf and EEZ boundary for the whole area. The region could be divided at approximately 27°N latitude⁹⁷ into North and South Zones. The equidistance principle could be applied in the North Zone. Although the existence of the Japan-ROK JDZ might complicate matters, the

97. This was the reference line in the Japan/China fisheries agreement, south of which the issues were too “complicated and conflicting.” *Agence France-Presse*, September 3, 1997.

Figure 2. Options for Joint Development



boundary could initially run along the JDZ's southwestern edge which is an approximate equidistance line between China and South Korea. In the South Zone, the boundary could be the equidistance line, ignoring the Diaoyu/Senkaku features (A); or perhaps that line adjusted by the length of the coastline ratio of 64:36 (the mainland and Taiwan) versus Japan (the Ryukyus) (B). Alternatively, the adjusted equidistant line ignoring the features could be the boundary in both the North and South zone (C). These lines could then be connected to the axis of the Okinawa Trough to define the southern portion of the boundary.

Option 2 is a boundary in the North Zone and a JDZ in the South Zone. The region could be divided into North and South Zones, as above, with the equidistance line designated as the boundary in the North Zone. The boundary could then extend along the equidistance line or an adjusted equidistance line southwest from the Japan/ROK JDZ to approximately 125° E28 15'N. The difference between this option and Option 1 is that joint development could be undertaken in the area bounded by

the equidistance line with the Japanese Senkakus as base points, the equidistance line with the Chinese Diaoyutais as the base points and the axis of the Okinawa Trough.

Option 3 is a JDZ in the North Zone. The boundary in the South Zone could be an equidistance line modified by coastline proportionality, and a China/Japan JDZ could be established for the North Zone.

Option 4 is a JDZ for the entire area in dispute. China and Japan could agree to joint development of the entire disputed area bounded by Japan's claim and China's claim (A), or that bounded by the equidistance line between the Chinese mainland and the nearest undisputed Japanese territory ignoring the Senkakus/Daoyutais, the axis of the Okinawa Trough, and the southwestern edge of the Japan/Korea JDZ (B).

Option 5 is a boundary and joint development. Any of the joint development options could be employed without or with a boundary. In the latter case, the formula for establishing each party's share in the joint ventures on either side of the boundary line could be negotiated. For example, for Option 1, if the unified boundary is the "median line" ignoring the Diaoyu/Senkaku islets, the resources in the area between the EEZ boundary originally claimed by Japan from the Senkakus and the median line could be allocated to China. Those situated between the median line and a line halfway to the Okinawa Trough would be shared equally and those between the line halfway to the Trough and the Trough itself could be split 25/75 in favor of Japan. Alternatively, if the boundary is located two-thirds of the way to the Trough—because of China's greater length of coastline on the East China Sea—the joint development split would be: Japan's original EEZ claim from the Senkakus to the median line—75/25 for China; median line to the boundary—50/50 split; and all resources to the east of the boundary allocated to Japan.

Analysis

A rough ranking of likelihood of any of these options being taken up by the claimants is, from most likely to least likely: Option 2, Option 1, Option 5, Option 3, and Option 4. The reason is that it is easier to agree on a boundary in the North Zone where the application of the equidistance principle is justified by

the presence of the broadly equal coastlines of China, Japan, and South Korea.

However, China would be careful not to prejudice its continental shelf claim vis-à-vis South Korea in the Yellow Sea, which is based on the same natural prolongation principle. Agreement on a boundary in the South Zone is complicated by the sovereignty dispute over the features and whether they can generate a shelf and an EEZ. The fact that three of the claimants have ratified the 1982 UNCLOS provides some hope that they can eventually agree that these features are rocks, not islands, and then separate the sovereignty dispute from the shelf and EEZ boundary questions.

The major issue is between China (including Taiwan) and Japan. As a first step toward a solution, Japan and China could tacitly agree on an equidistance line, ignoring the Diaoyu/Senkaku islands as a “working” boundary. Taiwan and any remaining concession holders could perhaps be persuaded by inducements from Washington, Tokyo, and Beijing to abandon any remaining offshore concessions on Japan’s side of the equidistance line. Under this “working” agreement, Taipei would not repeat its claims to the seabed beyond the equidistance line based on its claim to jurisdiction over the mainland. Beijing and Taipei might then cooperate in the development of the resources on the Chinese side of the equidistance line.

The United States (and Japan) could help make this scenario a reality by making clear that its recognition of the PRC as the sole legitimate government of China carries with it recognition of the PRC as the sole representative of Chinese claims to the continental shelf and EEZ. This would encourage Japan to do likewise, and could incidentally help improve Sino-Japanese relations. At the very least, the U.S. government and companies should tacitly encourage China and Japan to explore an agreement.

Ensuing Sino-Japanese negotiations could focus on a comprehensive agreement. The countries could enter into negotiations for continental shelf and EEZ boundary making in good faith, and during that time conduct joint exploration to determine the size of any hydrocarbon resources in an agreed area—perhaps the area of original overlapping claims. This has been the *modus operandi* in the South China Sea involving China, the Philippines, and Vietnam. When the time is right, a full-scale

joint development program could be launched in part or all of the area.

In the meantime, given that swift resolution to these disputes is unlikely, the most pressing immediate task is to find effective mechanisms to manage them and forestall any escalation of incidents that cannot be prevented. First, the key problem lies not so much with governments but with nationalist political constituencies in each state and the pressures that they can bring to bear. In the short and medium term, it is therefore critically important that the governments involved in these disputes take seriously the fact that governments of other claimant states are also constrained by domestic political considerations. There has been a marked failure to do so in the past.

Second, while democratic governments may feel unable or be unwilling to prevent citizens embarking on legal, but provocative, actions like the 1996 erection of a lighthouse on the Senkakus by Japanese nationalists, they must refrain from conferring official status on such actions. Moreover, if they disapprove of them, they should have the courage to say so publicly. If this is perceived to be too politically difficult, they should at least ensure that their disapproval is communicated to the government of the rival claimant state.

Third, greater emphasis needs to be placed on the role of preventive diplomacy. This has been taken up by the ASEAN Regional Forum (ARF) and the Council for Security Cooperation in the Asia-Pacific, but so far with little practical impact on policy. None of the claimant states has indicated any interest in taking the disputes to formal legal adjudication, but it might still be possible via the offices of the chairperson of the ARF for an "eminent persons group" to be created. Such a group should preferably undertake its preventive diplomacy task during a spell of relative calm. The task would not be to seek resolution, but rather to consider ways of managing the dispute nonviolently and preventing, or at least controlling, escalation should there be more flare-ups. In January 2007, it was announced that Japan is expected to approve an act legalizing its maritime rights in an attempt to contain or minimize China's activities near its claimed waters.⁹⁸

98. Li Qian, "Japan to Pass Maritime Law Concerning China," *Chinadaily*.

Fourth, urgently needed is bilateral agreement on guidelines for the regime of military vessels in foreign EEZs as a form of conflict avoidance. Such guidelines have been proposed by the EEZ Group 21 convened under the auspices of the Ocean Policy Research Foundation.⁹⁹ This might in turn lead to a “Declaration on the Conduct of Parties in the East China Sea” similar to but more robust than that reached by the multiple claimants to the South China Sea, of which China is the most prominent.¹⁰⁰

Fifth, if the creation of an eminent persons group is considered premature, Track II meetings involving scholars, “think tank” analysts, and officials acting in their private capacity could be set up to investigate a range of confidence-building measures designed to foster conflict management and to prevent conflict escalation, rather than to seek a long-term solution. The Canadian-sponsored, Indonesian-hosted Track II effort, the South China Sea Working Group, which involves China and Taiwan and which deliberately avoids engaging in discussions on sovereignty issues, provides a possible precedent. Here, the focus was on building confidence among claimant states by encouraging maritime cooperation between them in noncontroversial areas such as marine scientific research and environmental protection, including biodiversity, fisheries assessment and management, and mineral resource assessment. The focus was on what is achievable at the time. Although these were formally Track II meetings, officials from the claimant states take part under the polite fiction that they are acting in their “private capacity.” This Track II cooperation eventually provided the basis for formal official cooperation.

Prognosis

Obviously, the tone and tenor of China-Japan and China-Taiwan relations will affect the possibility of a solution. If these

com.cn, January 9, 2007.

99. Ocean Policy Research Foundation, “Guidelines for Navigation and Overflight in the Exclusive Economic Zone: A Commentary,” Ocean Policy Research Foundation, Tokyo, 2006.

100. Mark J. Valencia, “South China Sea Agreement: Close but No Cigar,” *Taiwan Review*, January 2003, pp. 34-37.

relations deteriorate, the issue may well become a flash point. The following analysis assumes these relations remain stable.

There are both specific positive and negative factors at work. Positive factors include the claimants' ratification of the 1982 UNCLOS; China-South Korea rapprochement and discussion of joint development in the Yellow Sea; China-Taiwan discussions on, and their (apparently inactive) agreement on, jointly developing any hydrocarbons in their portion of the East China Sea; China's relative restraint in not exploiting the Diaoyu issue and its control of its nationalists in that regard, and Japan's reciprocal attempts to control its nationalists; agreement in principle to joint development; precedents and experiences with joint arrangements—China with the Philippines and Vietnam in the South China Sea and Japan with South Korea in the northern East China Sea; and a previous compromise between China and Japan regarding fisheries in the disputed area.

But these positives have to be weighed against negative factors such as Japan's agreement with the United States to help in the defense of Taiwan against China; China's increasing incursions in Japan's sea and air space; Japan's declared perception of China as a threat; South Korea's and Japan's declarations of EEZs which encompass areas claimed by China; Japan's use of the Senkakus as a base point for its EEZ claim; China's specific reaffirmation of its sovereignty over Diaoyutai in its 1992 Territorial Sea Law; the domestic public reactions to the exploits of nationalists on both sides; and the apparent unwillingness of one or both to resolve the issue.

Despite the multiplicity of claimants, the East China Sea controversy is basically a Sino-Japanese conflict. The Republic of Korea and Japan have successfully delimited their seabed boundary in the Korean Strait and established a JDZ covering the entire area where their claims and concessions used to overlap. Absent marked deterioration of relations between Seoul and Tokyo, their seabed dispute will be shelved indefinitely. Although their EEZs overlap in the same area, this should not present major problems for continued hydrocarbon exploration.

The Sino-Japanese conflict has two fundamental dimensions: the sovereignty dispute over the Diaoyu (Senkaku) islands and the delimitation of a boundary for the vast EEZ and continental shelf of the East China Sea. Many commentators have considered

the issues inseparable. They view settlement of the first as a necessary condition for the second. However, this view is outdated. Recent legal developments, international adjudications, state practice, and the ratification of the Law of the 1982 UNCLOS by the claimants point to the possibility of separating the two issues. Islands of similar location, economic utility, and legal status to those of the Diaoyutai/Senkakus have invariably been ignored in seabed boundary delimitations between opposite states. This suggests that regardless of their ultimate owner, the features will only have a maximum 12-nautical mile territorial sea around them. They will not be permitted to generate their own continental shelf or EEZ beyond that limit. The implication of this conclusion for the Sino-Japanese maritime conflict is that the territorial and jurisdictional issues are separable and that the latter may be dealt with before the former is finally resolved. Agreement on the irrelevance of the Diaoyutai/Senkaku territorial dispute to, and detaching it from, the Sino-Japanese jurisdictional controversy would therefore be a major milestone on the path toward a solution. Indeed if such agreement were reached it would indicate that a boundary ignoring these features can be negotiated.

Domestic nationalist politics is a prime factor in these disputes. But nationalist politics seem to run in cycles of intensity. When the cycles in the respective nations reach their next common positive peaks, wise and courageous leaders should seize the opportunity to hammer out a preventative *modus operandi* to manage these conflicts. The alternative is continued mutual suspicion, unstable relations, unmanaged and undeveloped resources, and an increasing frequency and intensity of incidents, fueling nationalist sentiments and resultant political conflict.

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