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The East China Sea Disputes: History, Status, and Ways Forward

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The dispute over ownership of islands, maritime boundaries, jurisdiction, perhaps as much as 100 billion barrels of oil equivalent, and other nonliving and living marine resources in the East China Sea continues to bedevil China-Japan relations. Historical and cultural factors, such as the legacy of World War II and burgeoning nationalism, are significant factors in the dispute. Indeed, the dispute seems to have become a contest between national identities. The approach to the issue has been a political dance by the two countries: one step forward, two steps back. In this article I explain the East China Sea dispute, explore its effect on China-Japan relations, and suggest ways forward. KEYWORDS: China-Japan relations, territorial disputes, nationalism.

RELATIONS BETWEEN THE PEOPLE'S REPUBLIC OF CHINA (PRC) AND Japan are perhaps at their lowest ebb since relations were formally reestablished in 1972. The dispute over islets and maritime claims in the East China Sea has triggered much of this recent deterioration. Because of the dispute, China has canceled or refused many exchanges and meetings of high-level officials, including summit meetings. In fact, China has said that a summit meeting cannot take place until or unless Japan acknowledges that a dispute over sovereignty and jurisdiction exists, something Japan has thus far refused to do.

August 2012 was a particularly bad month for Japan—and it all had to do with the legacy of World War II (Spitzer 2012a). It marked the sixty-seventh anniversary of the dropping of nuclear bombs on Hiroshima and Nagasaki, the surrender of Japan, and the end of Japan's brutal occupation of Korea and large parts of China. South Korea's president, Lee Myung-bak, insulted the emperor, China and both Koreas protested the visit of some Japanese cabinet members to the Yasakuni Shrine, and Chinese protestors landed on the Diaoyu/Senkaku features.

Clearly the legacy of World War II is alive and bodes ill for Northeast Asia. The unhealed psychological wounds of the past run deep. As China has stated, Japan's behavior "is a blatant denial of the fruits of victory of the world's anti-fascist war and a severe challenge of post-war international order" (*DiploNews* 2012). China also accused Japan of "having an obsolete colonial mentality" (Associated Press 2012a). Perhaps more important, China sees Japan as continuing its history of arrogance and aggression by being part of a US-led "China containment" strategy. Raw nationalism has reared its ugly head in both countries and is influencing leadership decisions on international and domestic issues. The issues have even become a contest of national identities (Rozman 2013).

Disputes over small islands and ocean space are usually ancillary at most to more fundamental geopolitical dialectics. However, in certain situations of great-power rivalry and competition for scarce petroleum resources, such issues may become the tail that wags the dog of international relations—particularly if fundamentals in the relationship are shaky. The intensifying competition between China and Japan for fisheries and gas resources in the East China Sea has become just such a situation. Recent incidents (between September 2012 and December 2013) are certainly not the first time territorial disputes have disrupted relations between the two; it happened in 1996, 2005, and 2010. But they are by far the worst. Moreover, because the islands are small, unpopulated, and distant, the biggest danger may lie in the belief on either side that a clash could be confined to a naval or air skirmish and not escalate to an attack on respective homelands (Walt 2013). The alleged Chinese locking-on of fire control radar on Japanese Self-Defense Forces (SDF) ships and aircraft is an indication of what may come next, perhaps "a threat of use of force"—a violation of the UN Charter (Associated Press 2013; *Japan Times* 2013c; Margolis 2013). China has declared the East China Sea a "core interest," meaning one it would go to war over, and says that Japan is the party that has upset the status quo (*Asahi Shimbun* 2013a). Tensions are rapidly increasing between Beijing and Tokyo.

Resource Potential

Much is at stake for the two powers in the East China Sea. To begin with, the East China Sea could contain up to 160 billion barrels of oil equivalent, including several trillion cubic feet of gas. This sea is one of the last unexplored high-potential resource areas located near large markets (Guo and Katakey 2012). But the development of oil and gas in much of the area has been prevented for decades by conflicting claims to boundaries and islets by China, Taiwan (Republic of China [ROC]), and Japan. The Okinawa Trough may also contain significant resources of metallic sulfides rich in copper, zinc, nickel, and even gold and silver. The deepwater Xihu/Okinawa Trough is also a potentially rich source of natural gas that could help meet Chinese and Japanese domestic demand (“East China Seas,” Wikipedia: The Free Encyclopedia).

China recently became the second-largest net oil importer in the world and the world’s largest global energy consumer. Natural gas imports have also risen in recent years, and China is now a net importer of natural gas as well. Japan is the third-largest net importer of crude oil behind the United States and China, as well as the world’s largest importer of liquefied natural gas (LNG). For Japan and China, imports are projected to increase. Both are thus keen on extracting hydrocarbon resources from the East China Sea to help meet demand.

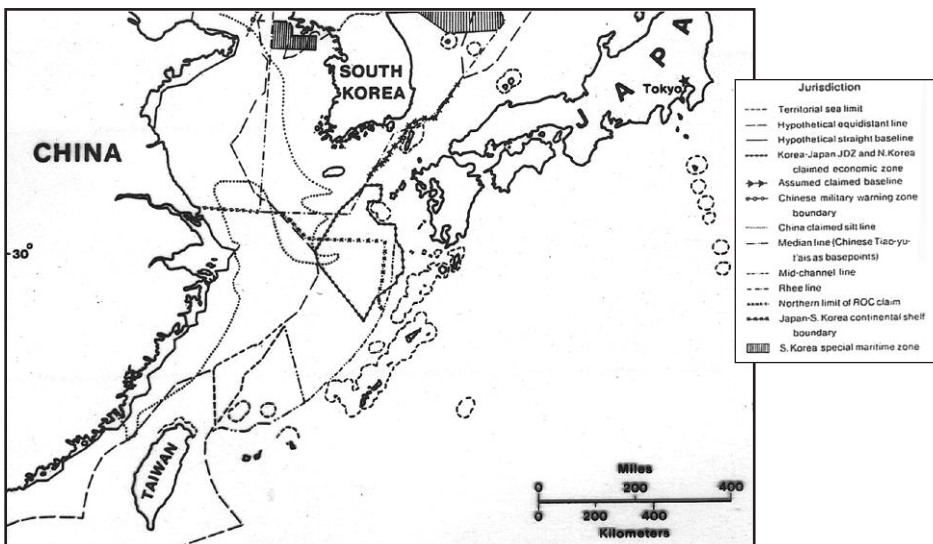
Over the last decade, China has been drilling ever closer to the equidistance line between undisputed territories of both countries. Japan has unilaterally declared the equidistance line as the boundary. China is now producing gas from the Chunxiao field situated just on its side of that line. Tokyo has officially protested the drilling because it fears China will siphon off gas from its side of the boundary and continues to consider allowing Teikoku Oil Company to drill on Japan’s side. Beijing has fiercely protested even the possibility of such drilling by Teikoku. These factors further complicate the geographical and political jigsaw puzzle of overlapping claims in the East China Sea.

Conflicting Claims

The claims to the area are complicated and involve sovereignty claims to territory, as well as claims both to continental shelves and 200-nautical-mile (nm) Exclusive Economic Zones (EEZs) (Figure 1). China and Japan both claim sovereignty over the Diaoyu Islands (the Senkakus in Japanese)—eight uninhabited islets and rocks about 120 nm southwest of Okinawa. Japan controls and administers the features, but both China and Taiwan have formally incorporated them into their administrative systems.

China holds that the Diaoyu are small, uninhabited, and uninhabitable features that cannot sustain an economic life of their own, and thus, according to the 1982 UN Convention on the Law of the Sea (UNCLOS)—which China, Japan, and South Korea have ratified—they are not entitled to generate a continental shelf or a 200-nm EEZ. Taiwan—which is not eligible to ratify the

Figure 1 Conflicting Claims in the East China Sea



Source: Mark J. Valencia, "The East China Sea Disputes: Context, Claims, Issues, and Possible Solutions." *Asian Perspective*, vol. 31, no. 1 (Spring 2007), p. 139.

treaty—also holds that the Diaoyu are not entitled to have a continental shelf or EEZ, and thus should have no significant effects on boundary delimitation in the East China Sea. Japan, however, argues that the features are legal islands; in other words, the islands are inhabitable and can sustain an economic life of their own and are thus entitled to have continental shelves and EEZs. Moreover, Japan uses them as base points for its continental shelf and EEZ claims toward China in the East China Sea.

Even if the conflicting sovereignty claims to the features did not exist, China, Japan, and South Korea have overlapping claims to continental shelves in the East China Sea. The parties cite different principles of international law to support their claims. China uses the principle of natural prolongation of its land territory, arguing that the East China Sea continental shelf is the natural extension of the Chinese continental shelf and thus is under the jurisdiction of China. Taiwan also uses the natural prolongation principle, as does South Korea—at least in the East China Sea. China, Taiwan, and South Korea argue further that the Okinawa Trough delineates the edge of the continental margin, and thus the axis of the trough serves as the boundary between their continental shelves and that of Japan. Japan, on the other hand, argues that the trough is just an incidental depression in a continuous continental margin between the two countries, and thus the continental 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 on the basis of equity takes precedence over the equidistance line principle. South Korea also insists that the presence of the Okinawa Trough constitutes special circumstances under which the equidistance line principle cannot be applied.

All the claimants are also entitled to a 200-nm EEZ. According to UNCLOS, within its EEZ a country has sovereign rights over the living and nonliving resources of the waters, the seabed, and its subsoil. A country also has 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-nm EEZs. Japan, South Korea, and Taiwan all express their claim to a 200-nm EEZ in conformity with the 1982 UNCLOS—that is, the outer limit of the EEZ extends up to 200 nm 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 those of neighboring states, the boundary will be delimited by agreement in conformity with the relevant rules of international law. Since all the countries except Taiwan are party to UNCLOS and the extent of the EEZ is determined by distance, applying the treaty to an agreement on boundaries should not present a problem.

Nevertheless, several problems do exist. The different positions stem from different baselines, from different interpretations of “entitlements,” and from the dispute over the ownership of features from which the EEZ can be extended. Japan’s position is that because it owns the group of islands called Danjo Gunto, it is able to make claims to an EEZ extending from those islands to the equidistance line between South Korea and Danjo Gunto. 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. Japan also uses the Diaoyu/Senkaku features as a base for its EEZ claim, although it has so far not specified its extent vis-à-vis China.

An additional complication is that the boundaries for the EEZ and the continental shelf will not necessarily be the same. The EEZ claim can be only up to 200 nm from baselines, while a continental shelf claim can extend as far as 350 nm from baselines, depending on the morphology and geology of the continental margin.

Dispute over Island Ownership

The PRC and ROC claim that the Diaoyu/Senkaku Islands have been part of Chinese territory since at least 1534. But they acknowledge that Japan gained control of the features in 1895 during the first Sino-Japanese War, through the Treaty of Shi-

monoseki. Among the treaty's demands was that China recognize the autonomy of Korea (which had been part of China's tributary system) and relinquish some other territories to Japan. Those included Taiwan (known then as Formosa) "together with all the islands appertaining or belonging to the said island of Taiwan," the Pescadores Islands (known as Penghu in Chinese), and the Liaodong Peninsula (in southern Manchuria). Upon Japan's defeat in World War II, China and Taiwan assert that the Potsdam Declaration, which Japan accepted as part of the San Francisco Peace Treaty, required that Japan relinquish control of all islands except for "the islands of Honshu, Hokkaido, Kyushu, Shikoku, and such minor islands as shall be determined," and they argue that this means control of the Diaoyu/Senkaku features passed to China.

Japan does not accept that any ownership dispute exists, asserting that the islands are an integral part of Japan (Lee 2012). It repeated this position as recently as September 28, 2012, at the UN General Assembly (Quinn and Eckert 2012). Japan has rejected claims that the islands were under China's control prior to 1895, and that its sovereignty over these islands was affected by the Potsdam Declaration or the San Francisco Peace Treaty.

Despite the complexity of relations between the PRC and ROC, both governments agree that the features are part of Taiwan's Toucheng Township in Yilan County. But Japan does not recognize Taiwan as a sovereign state, regarding the islands as a part of Ishigaki, Okinawa Prefecture.

The Japanese central government formally annexed the islands on January 14, 1895, prior to the end of the first Sino-Japanese War and the Treaty of Shimonoseki that concluded it. Around 1900 a Japanese entrepreneur named Koga Tatsushiro constructed a bonito (fish) processing plant on the islands with as many as 200 workers. The business eventually failed in 1940, and since that time the islands have been uninhabited. The islands came under US government jurisdiction in 1945 with the end of World War II. In 1969 the UN Economic Commission for Asia and the Far East identified potential oil and gas resources in the East China Sea, increasing the value of the islands to all concerned. In 1971 the Okinawa Reversion Treaty passed the US Senate, transferring administration over the features to Japan the

following year. The islands were owned and administered by Japanese citizens on behalf of the Japanese government until 2012, when the Japanese government nationalized them.

Tokyo governor Ishihara Shintaro led a campaign of nationalists to purchase the islands. But the central government stepped in and preempted it by purchasing them itself. Japan's government argues that its moves were not intended to provoke China but rather were an attempt to keep the features out of the hands of nationalists like Ishihara, which it feared would purposely provoke China. But Beijing has accused Japan of "stealing" its "sacred territory" and upsetting the "status quo" (Connor 2012).

Prior to 2005, although the two countries regularly patrolled the disputed area, no pattern of confrontations had developed. But in September 2005 the dispute took a dangerous turn when five Chinese naval vessels including a guided missile destroyer were observed by Japan near the Chunxiao gas field. One of the warships aimed its weapons at a Japanese P3-C surveillance aircraft, which was monitoring the group. Then a day before bilateral talks on sea boundaries were to resume, China confirmed that it had established a "reserve vessel squadron" in the East China Sea that was capable of "fighting during wars" (Valencia 2006).

For Japan, these moves—combined with the November 2004 detection of a Chinese nuclear submarine in Japanese territorial waters, increased electronic surveillance by Chinese aircraft, and the entry of some twenty-five Chinese exploration ships into Japanese-claimed waters in the previous six months—meant that China was becoming a potential threat. Indeed, in its "Security and Guarding Plan," the Japanese SDF for the first time identified China as a threat, even discussing several threat scenarios, including a brigade-size invasion of the Diaoyu/Senkaku Islands by China. Meanwhile, Taiwan raised its profile in the area by vowing to send patrol vessels to protect its sovereignty over oil and gas resources.

From 2006, relations began to warm. The then new prime minister, Abe Shinzo, made an icebreaking visit to Beijing, and Premier Wen Jiabao returned the visit in April 2007. Abe's successor, Fukuda Yasuo, also visited China in December 2007, just three months after taking office. In June 2008 the first port visit of

a Japanese warship to China was announced (Dickie 2008). At that time, Japan and China agreed in principle to joint development of hydrocarbons in the East China Sea. The second quarter of 2009 witnessed several high-level meetings between Japanese and Chinese officials (Cossa and Glosserman 2009). Unfortunately, issues of history resurfaced when then prime minister Aso Taro visited the Yasakuni Shrine, and a movie on the Nanking Massacre was released in China. After that, relations began to spiral downward, particularly after Japan claimed that the Diaoyu/Senkaku Islands were under the protection of the US military alliance.

The Supposed Breakthrough

Joint Development

In April 2007 China's national oil company (CNOOC) announced that it had begun producing gas at the Tianwaitian field despite Japan's objections, and that it was ready to begin production from the Chunxiao field (Lague 2012). Japan protested, spurring renewed negotiations. On June 18, 2008, Japan and China agreed to shelve their boundary dispute and jointly develop the resources in specified areas of the East China Sea.

Under the agreement, Japan and China were to jointly develop China's Longjiang (Asunaro) gas field and jointly explore a 2,700-km² area straddling the median line south of the Asunaro field. Moreover, Japanese companies would also invest in China's Chunxiao (Shirakaba) gas field and continue to discuss what to do with the Kashi (Tianwaitian) and Kusunoki (Duanqiao) gas fields. Beijing also proposed cooperating on development of gas fields near the Diaoyu/Senkaku Islands, but Tokyo rejected the idea outright (Yoshida and Terada 2008). The agreement was described as "provisional"—a transitional step to protect each other's legal position (Alabaster 2008). It was said to be in keeping with UNCLOS, which holds that if no immediate resolution of a boundary dispute is within reach, the disputants should "enter into provisional arrangements of a prac-

tical nature” without prejudice to the position of the countries concerned or the final delimitation.

To make progress, China had apparently made the remarkable concession of agreeing to “joint development” of the Chunxiao gas field, which lies four kilometers on the Chinese side of the Japan-claimed median line boundary (Gupta 2008). In exchange Japan supposedly agreed to include areas east of the median line for joint development (Watts 2008). The two sides also agreed to define the exact zones for joint development through further negotiations and to share the profits in proportion to their respective investments.

What Went Wrong?

The agreement began to unravel almost before the ink was dry. First, the Asunaro (Longjiang) gas field was dropped from the agreement, as were China’s development plans, in deference to South Korea because the strata containing natural gas straddle the China–South Korea median line and extend into the Japan–South Korea joint development zone (Guo Rongxing 2010). Also, in a rare public protest, Chinese Internet users and Hong Kong media sharply criticized the agreement and China’s leadership for betraying the “national interest, humiliating the nation, and forfeiting its sovereignty” (Shan 2008). A demonstration was held outside the Japanese embassy in Beijing. It was monitored by police but allowed to proceed. On June 19 Chinese vice foreign minister Wu Dawei publicly defended the agreement, saying China had not abandoned its sovereignty claim and that Beijing’s position on the boundary—its claim extends to the edge of the shelf, and it does not recognize Japan’s claim of a median line boundary—had not changed (Zhong 2008).

In another “first,” amid growing online anger, President Hu Jintao visited a popular Internet chat room hosted by *People’s Daily* for a twenty-minute dialogue. Subsequently it was explained that China had only agreed to Japanese investment in the Chunxiao (Shirakaba) field in accordance with Chinese laws, and Japan’s investment was treated just like that of private companies, not as part of a state-to-state codevelopment project (Lu

2008). So this was not to be “joint development” in the classic sense after all, and in investing, Japan would be recognizing China’s sovereign rights to Chunxiao (Embassy of the People’s Republic of China in Australia 2008).

On Japan’s part, then foreign minister Komura Masahiko warned that long and tough negotiations were necessary before joint exploration could start (*International Herald Tribune* 2008). Nevertheless, Teikoku Oil—a subsidiary of Japan’s largest oil exploration company, INPEX—and Nippon Oil Corporation began planning exploration in the areas covered by the agreement (Reuters 2008). Both had previously been awarded exploration rights in the general area, but the Japanese government had restrained them from conducting any activity there (Tan 2008).

In December 2008, despite a Japan-China prior notification agreement (Valencia 2007), Chinese survey ships allegedly entered Japanese-claimed 12-nautical-mile territorial waters unannounced, near the Diaoyu/Senkaku Islands (Dalje.com 2008; *Japan Times* 2008; Yuasa 2008). Japan protested, but China dismissed the objection, saying it owned the islets and had jurisdiction over the waters in question.

In January 2009 Japan complained that China had violated the spirit if not the letter of the East China Sea agreement by continuing to develop the Tianwaitian (Kashi) field. Tokyo was concerned that China’s production there would siphon off gas from its side of the line (Agence France-Presse 2009). China admitted that it had begun producing gas from the field but said that it was within its sovereign rights to do so because the field lies west of the Japanese-claimed median line boundary (*Japan Times* 2009a). China’s foreign ministry added that the agreement or “principle consensus” was that the two governments would discuss joint development in “other parts of the East China Sea,” but not including areas such as Tianwaitian within China’s undisputed jurisdiction (Li 2009).

The two sides subsequently agreed to speed up implementation of the June 2008 agreement, but they failed to agree on whether China could or should continue drilling in disputed areas while negotiations were ongoing (*Japan Times* 2009b). In February, China expressed strong concern that Japan had permanently

stationed a coast guard ship in the Diaoyu/Senkaku Islands (*Japan Times* 2009c). This statement was followed in July by an assertion by US senator Jim Webb that the United States recognized Japan's sovereignty over the Diaoyu/Senkaku Islands. China protested vehemently (*Japan Times* 2009d).

In February 2009, tensions ratcheted up again when a Chinese navy destroyer aimed its guns at a Japanese MSDF P3-C surveillance plane near the Chunxiao gas field (Curtin 2005). Both sides sent naval vessels to the area, but cooler heads prevailed. In March, a summit meeting as well as a foreign ministers' meeting between the two countries came and went without progress on the issues of ownership of the islands or interpretation and implementation of the joint development agreement (*Mainichi Daily News* 2009).

Preparing for the Worst

While continuing to discuss the issues, both sides seem to be preparing for the worst. Pressure has been building in Japan to more strictly enforce its maritime jurisdiction. Indeed, Japan is beginning to see China's increasing naval presence and probes in the East China Sea as a security threat. In 2007 Japan had passed legislation permitting Japanese authorities to protect Japanese oil production installations in the East China Sea in order to assuage the concerns of their oil companies and workers if they were to undertake drilling in the disputed waters. Nationalists were now invoking this law. The situation was clearly trending in a negative direction when a new crisis arose.

On September 7, 2010, a Chinese fishing trawler collided with patrol boats of the Japan coast guard near the islands. The trawler was detained, and the captain and crew were held in custody in Japan pending possible charges. A successful prosecution of a Chinese citizen for alleged crimes committed on or near the islands would create a new precedent, substantially changing the status quo of the dispute and improving Japan's legal position. China demanded an immediate release of the Chinese fishermen. When Japan refused, China responded with what was described at the time as diplomatic shock and awe. The intensity of this reac-

tion transformed thinking in Japan regarding China and the dispute over the islands. Basically, it emboldened right-wing nationalists, who have put increasing pressure on the leadership regarding this issue (Yunbi 2012). The incident disrupted official and nonofficial exchanges and activities between the two countries. The crew was released on September 13, 2010, and the captain on September 24.

Tensions escalated again in August 2012 after Japan arrested and deported fourteen people who sailed to Uotsuri Islet aboard a ship from Hong Kong. Seven of them landed on the islet. As if to retaliate, ten Japanese (including five local assembly members) landed on the islet on August 19. Anti-Japan demonstrations broke out in China. On August 28 the car of the Japanese ambassador to China was attacked outside Beijing (*Japan Times* 2012b). Japan recalled and then replaced its ambassador to China (Fackler 2012). Both countries then held several military exercises with implications for the disputes (Associated Press 2012b; *Japan Times* 2012f; Takenaka and Wee 2012). However, they also engaged in working-level discussions of the problem (Reynolds 2012). Nevertheless, the situation began to heat up again in late 2012 when Chinese maritime surveillance aircraft entered Japanese airspace over the Senkakus and Japan scrambled light Japanese F-15 fighter jets to intercept them (McCurry 2012).

The US Role

China holds the United States partly responsible for the situation, of course, because it returned the islands to Japan rather than to China at the end of World War II. Despite general public assurances by senior US State Department officials over the years, it is still not clear what the United States would do in a pinch under the Treaty of Mutual Cooperation and Security between Japan and the United States. Some answer the question with another question: "If Japan does not stand up, then the United States has no reason to stand up." Others push for a clarification of the policy. "Will the U.S. support Japan militarily against any armed aggression over the Senkaku/Diaoyu islands?" (White 2013).

The United States is clearly worried that it may get drawn into the fray. At their Sunnylands summit in 2013, President Barack Obama urged Chinese President Xi Jinping to “deescalate” the dispute and deal with Japan through diplomatic channels (Spetalnick 2013). In response to pressure from Japan, Washington has publicly affirmed that the islands come under the scope of the US-Japan Treaty of Mutual Cooperation and Security. In other words, the United States will assist Japan “if [as the treaty states] territories under its administration come under armed attack” (Harner 2012). The US Senate passed an amendment to the 2013 National Defense Authorization Act that states, “While the United States takes no position on the ultimate sovereignty of the Senkaku Islands, the United States acknowledges the administration of Japan over the Senkaku Islands. The unilateral actions of a third party will not affect United States acknowledgment of the administration of Japan over the Senkaku Islands” (Johnston 2012). China saw this as renewal of a “Cold War mentality” and responded that it strongly opposed this US position (Xinhuanet 2012b).

China increasingly views the US-Japan alliance as part of a larger US strategy to contain China (Perlez and Bradsher 2012). Whether true or not, this interpretation of the alliance clearly serves as a deterrent to China regarding the islands. However, some say the balance of power is shifting and that the US deterrent is decreasing in effectiveness. This shift would increase the risk of Chinese aggressiveness and of ensuing conflict (Gertz 2013). Complicating matters, the East China Sea could be the origin of the world’s first war started by drones (Keck 2013). China’s defense ministry said, “If Japan does what it said and . . . shoots down aircraft, this is ‘an act of war.’” Now Chinese and Japanese coast guard vessels confront each other in the islands’ territorial seas on nearly a daily basis (*Japan Times* 2013d). The tacit coexistence of both countries’ surveillance and enforcement vessels in the territorial waters of the disputed features indirectly indicates the Japanese government’s recognition of a dispute.

The US rebalancing of forces in Asia also clearly reaffirms Japan’s continued dependence on the United States for its security (*Japan Times* 2012d). Indeed, the United States and Japan have revised their bilateral defense cooperation guidelines to deal with

the island issue (Sonoda 2012). Japan's particular contribution is in intelligence, surveillance, and reconnaissance. As the dispute heated up in September 2012 the United States signaled its intent to serve as a regional "stabilizer" by sending two US Navy aircraft carrier battle groups and a Marine Corps air-ground task force cruising through the East China Sea and the South China Sea (Spitzer 2012b). The *George Washington* strike group includes destroyers, cruisers, and a fast attack submarine, as well as up to ninety aircraft. Although they were on their way to undertake exercises in the Andaman Sea, the message to all—including China—was loud and clear.

Both the Japanese and Chinese governments are struggling to exercise self-restraint over the Diaoyu/Senkaku issue. The United States has publicly eschewed a mediating role, probably because China does not consider a military ally of Japan as neutral. This perception was apparent when China rejected the "nonattempt" of a US delegation of former US national security officials to "mediate" in 2012 (Xinhuanet 2012a). Then secretary of state Hillary Clinton publicly opposed any escalation of tensions between the two, and she also warned China against any unilateral action that would undermine Japan's administration of the islands (*Japan Times* 2013b). Her successor, John Kerry, has repeated this position (United Press International 2013). However, China and Japan have secretly discussed the issues (Voice of America 2012). Leadership in all three countries—the United States, China, and Japan—is under considerable pressure from nationalists. This makes the situation all the more dangerous because with the growth of online influence in both China and Japan, strong nationalist sentiment is becoming harder to manage.

The following sequence of events shows the criticality and depth of diplomatic efforts to maintain control of the situation. China undertook exercises practicing the taking of a small island at night (Space War 2012). The United States and Japan in turn announced a drill to "retake" a small island occupied by enemy troops (*Japan Times* 2012e; Yunbi 2012). This drill was abruptly cancelled, but the main war games called "Keen Sword" proceeded as scheduled (Spitzer 2013). It was at about the same time that the delegation of former US national security officials made a visit to Tokyo and Beijing and warned that the issues could spin

out of control (Walcott and Lakshmanan 2012). In short, nothing was resolved, and Chinese surveillance ships began to enter Japanese-claimed territorial waters around the islands, apparently trying to provoke a Japanese response. Current prime minister Abe Shinzo has said that Japan will use force if China tries to land troops on the islands (Lindsay 2013).

An important strategic dimension to this imbroglio clearly exists. If the Chinese were to control the islands, they could use them to reap an intelligence bonanza in terms of surveillance of Japanese and US forces on Okinawa and in the Sakashima Islands, undermining their dominance in the Western Pacific (Dupont 2013).

If this were not enough, the legal situation has become even more complicated. Under UNCLOS, all the claimants have the right to claim an *extended* continental shelf—in other words, a shelf beyond 200 nm, the normal limits of the EEZ (United Nations Convention on the Law of the Sea 1982). China, Japan, and South Korea have all done so in general (Kim 2009; Manicom 2009; Watt 2012). In December 2012 South Korea submitted its detailed official extended-shelf claim in the East China Sea to the UN Continental Shelf Commission (Yonhap News Agency 2012a; 2012b). The new claims will overlap, and the claims of South Korea and China to the entire continental shelf of the East China Sea all the way to the Okinawa Trough will be “reinforced,” especially in northern portions of the East China Sea. Moreover, the territorial dispute over the Diaoyu/Senkaku Islands still confounds any boundary settlement in the southern East China Sea. Not surprisingly, Japan officially opposed South Korea’s and China’s claims, thus preventing the commission from evaluating them (*Japan Times* 2013a). It does not help the general situation for all concerned, including the respective publics, to realize that the required research to support the extended continental shelf claims was undertaken in the disputed waters.

Taiwan’s Role

Taiwan plays a role in this issue as well, although it has been very cautious to date. The ROC has the same fundamental claim to the

features as China, and Taiwan also claims an EEZ and a continental shelf in the East China Sea. In fact, China's claim to the features is based on its claim to sovereignty over Taiwan, and its maritime claims would be greatly enhanced by its clear possession of Taiwan. Taiwan (as well as the PRC) has resorted to taking out full-page ads in the *New York Times* and *Washington Post* broadcasting its claims to the Diaoyu/Senkaku Islands. China has asked Taiwan to make a joint sovereignty claim and offered to extend protection to Taiwan's civilian fishing boats around the Diaoyu Islands. Taiwan has declined thus far.

On July 4, 2012, a Taiwanese fishing boat carrying three activists from the World Chinese Alliance in Defense of the Diaoyu Islands was escorted near the islands by five coast guard administration vessels from Taiwan. In late September, Taiwan and Japanese coast guard ships exchanged water cannon fire. China fully supported Taiwan's actions (Enav 2012). The three activists proclaimed that the islands belonged to China and raised a PRC flag. The fact that the flag was not an ROC flag drew praise from China and criticism from Taiwan. The Japanese coast guard attempted to board the fishing vessel but was driven off by Taiwan's coast guard vessels, which were on the scene. One of Taiwan's vessels, which stayed several hours after the others had left, bumped one of the Japanese vessels.

Taiwan president Ma Ying-jeou has called on all parties to refrain from aggression, to shelve their differences, to maintain dialogue, to observe international law, and to resolve the dispute by peaceful means. He has further suggested that all sides should seek consensus on a code of conduct for the East China Sea and establish a mechanism for jointly exploring and developing resources in the region (*Japan Times* 2012c). His proposal collectively was called the East China Sea Peace Initiative, intended to "bring peace and co-operation to this part of the world" (*Taiwan Today* 2013).

The recent Japan-Taiwan fisheries agreement could be both a stimulus and a complication. The agreement is a good example of shelving a sovereignty debate and establishing a jointly managed fishing area. However, by this agreement Taiwan implicitly recognizes Japan's sovereignty over the islands because Japan main-

tains its 12-nm territorial waters around the islands, which Taiwan fishermen cannot enter. Moreover, Taiwan is supposed to prevent Chinese fishing boats from entering the agreed area (Chan 2013). The agreement also avoids areas covered by the 1997 China-Japan fisheries agreement. So in China's view, Japan has used Taiwan and the agreement to bolster its sovereignty claim to the islands. While clever, Japan's move is transparent and has deeply angered China (Blanchard 2013). Okinawa's fishers are also very unhappy with the deal.

The ADIZ Issue

On November 23, 2013, China sent an air patrol to back up its newly declared Air Defense Identification Zone (ADIZ) over the East China Sea.¹ Japan scrambled fighter jets in response. According to China's announcement of the zone, any military aircraft entering it would need to submit flight plans, maintain radio communication, and reply promptly to identification inquiries from Chinese authorities. China also said that its armed forces "will adopt defensive emergency measures to respond to aircraft that do not co-operate in the identification or refuse to follow the instructions" (BBC 2013). Further complicating the situation, China's zone partially overlaps the zones of Japan, Taiwan, and South Korea, and covers the disputed Diaoyu/Senkaku Islands. The timing and manner of China's latest actions have undoubtedly complicated an already dangerous situation.

Officials and analysts in Japan and the United States viewed these actions as stretching the already taut rope of China-Japan relations. Japan said that China's new zone escalated the danger of accidental "collisions" between the Chinese military and US and Japanese counterparts, and lodged a "serious protest." Secretary of State Kerry issued a statement of concern, urging China "not to implement its threat to take action against aircraft that do not identify themselves or obey orders from Beijing" (*Asahi Shimbun* 2013b). US secretary of defense Chuck Hagel was more blunt. He said the imposition of the zone was a "destabilizing attempt to alter the status quo in the region" (American Forces

Press Service 2013). Hagel reminded Beijing that the disputed islands are covered by the US-Japan security treaty and that, in the event of an attack, the United States is committed to fighting alongside Japan against a “common danger.” Japan indicated that aircraft from its SDF would ignore Beijing’s orders to obtain its permission before entering. Hagel also said it would not change how the United States conducts military operations in the region. Backing up this statement, two B-52 bombers out of Guam flew into China’s new zone without “filing flight plans, radioing ahead, or registering our frequencies,” apparently trying to ensure that the Chinese version of the zone does not add to customary law (Valencia 2013a). China said that it had monitored the aircraft—but did nothing else. This move seemed to contradict the US position that China and Japan should resolve the issue by diplomatic means. But it may have helped mitigate Japan’s urge to immediately increase its deployment of ships and planes to the area.

Obviously, the situation is fraught with brinkmanship and the potential for confrontation—unless cooler heads prevail. From China’s perspective, by declaring the ADIZ, it was simply leveling the playing field. China does have the right by international precedent and practice to declare an air defense identification zone to protect its sovereignty over territory and the maritime areas it claims. Moreover, China said the zone rules would not affect normal commercial air traffic, implying that it applies to military aircraft only. This aspect needs clarification, for major international commercial carriers have already begun to file flight plans. Xinhua, the official Chinese news agency, claimed the zone “could contribute to regional peace and security by curbing the increasing rampancy of Japan’s right-wing forces” (Valencia 2013a). Indeed, in China’s view, an increasingly nationalistic and aggressive Japan has altered the “status quo” by “nationalizing” the disputed islands. In this context, China’s declaration was probably in part a reaction to Japan’s “threat” to shoot down China’s drones flying over the disputed area.

ADIZs are not new and have always been unilateral and controversial. More than twenty countries have declared such zones. According to the Chinese media, Japan’s ADIZ was created by the

United States and transferred to the Japanese for management in 1969. They said Japan has since unilaterally expanded the zone twice, in 1972 and 2010, and Japan's zone is not recognized by China or Russia. The United States has five ADIZs around North America, including a large one off Alaska and the Aleutian Islands that extends several hundred kilometers out to sea. In this zone, foreign civilian and military aircraft are monitored and interrogated. The US zone is jointly administered by civilian air traffic control authorities and the North American Aerospace Defense Command. The United States requires any aircraft entering the zone to radio its planned course and destination. Any aircraft in this zone without authorization may be treated as a threat, potentially leading to interception by fighter aircraft.

Although Kerry said the United States does not recognize the right of a coastal nation to apply its ADIZ procedures to foreign aircraft not intending to enter national air space, in practice the United States does so itself. For example, the United States routinely scrambles jet fighters to intercept Russian bombers in its zone, regardless of destination. In the latter part of 2013 alone, US jets intercepted Russian Bear bombers in the Alaska zone at least five times. In theory, overlapping zones are not unusual and can be managed cooperatively, as is the case with the United States and Canada. However, in the East China Sea they involve airspace over islands and maritime space disputed by two antagonists, and thus the potential for conflict is high.

Hopefully all sides will exercise restraint and seek to negotiate a resolution, perhaps with some voluntary guidelines for conduct of military aircraft in the areas of overlapping zones. Although Russia does not recognize Japan's ADIZ, Japan and Russia have a regular consultative process "to monitor military interactions and prevent risky behaviors" around the disputed Northern Territories/southern Kuril Islands, so perhaps there is a model here (Valencia 2013a). Presently there are no formally agreed-upon rules regarding ADIZs or conduct within them. Perhaps a UN-sponsored conference could help formulate an international agreement addressing these issues.

Ways Forward

Determining “Joint Development”

Fortunately, some factors at work could help ameliorate the dispute between China and Japan in the East China Sea. 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 had been increasing every year. Finally, pressure is growing in China and Japan to proceed with development of oil and gas in the area, therefore increasing motivation to reach a compromise that would allow them to do so—individually or together.

Although both governments seem to agree in principle on joint development, part of the problem is that they have different interpretations of what “joint development” means or implies, and what area(s) should be jointly developed. Japan believes it means that China must cease its current exploration and development in Japanese-claimed areas and that China should share the gas on China’s side of the Japanese-claimed equidistance line. But China thinks that “joint development” means that Japan will not interfere with Chinese exploitation of fields on its side of the line and that the area for joint development is between the median line claim and China’s claimed continental shelf boundary, including the area around the disputed islets.

Focusing on the specifics of the dispute, three basic agreements in principle are necessary before details of any solution can be negotiated.

First, Japan needs to at least acknowledge that a territorial dispute exists over the features (*ANINews* 2012) and to agree that the disputed territory (the Diaoyu/Senkaku Islands) cannot be used as a basis for EEZ or continental shelf claims (Van Dyke 2013). Assuming that Japan claims an EEZ and continental shelf from the islands, this concession by Japan could be compensated in a joint development scheme (see below). If the two parties can-

not agree on this point, 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 concerns a unified boundary for both the EEZ and the continental shelf. Given China's claim of a continental shelf here, this would be a major concession on China's part, which could be compensated by the location of the boundary or the percentage of allocations in 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.

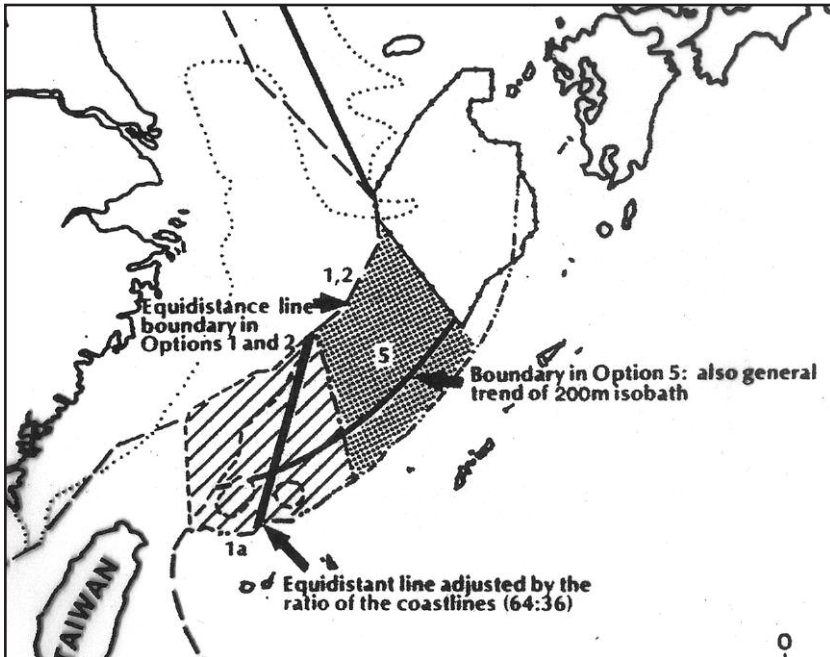
The third agreement necessary is that regardless of where the boundary is located, joint development of fish, minerals, and hydrocarbon resources will be undertaken. This point has essentially already been agreed to in principle—and is in practice for fisheries. It would assure both parties that they would retain a share of the resources, 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, myriad possibilities open up. Variables that can be negotiated include the location of the boundary, the areas of joint development, and the split of the resources and responsibilities (with the latter perhaps varying 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.

In all options, the first step would be to agree to a 12-nm territorial sea enclave around the Diaoyu/Senkaku islets 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 joint development zone (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 base point will also be separated and quietly resolved.

Figure 2 offers an example of how to manipulate the parameters of joint development to satisfy the PRC and Japan. The region could be divided at approximately latitude 27° north 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 boundary could initially run along the JDZ's southwestern edge, which is approximately equidistant between China and South Korea. In the South Zone, the boundary could be the equidistance line, ignoring the Diaoyu/Senkaku features, or perhaps that line adjusted by the length of the coastline ratio of 64:36 (the mainland and Taiwan) versus Japan (the Ryukyus). Alternatively, the adjusted equidistance line ignoring the features could be the boundary in both the North and South Zones. These lines could then be connected to the axis of the Okinawa Trough to define the southern portion of the boundary.

Figure 2 Possible Joint Development Arrangements



If the unified boundary is the equidistance line ignoring the Diaoyu/Senkaku Islands, the resources in the area between the EEZ boundary originally claimed by Japan from the islands and the equidistance line could be allocated to China. Those situated between the equidistance line and a line halfway to the Okinawa Trough could 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.

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 (a common consideration in precedents)—the joint development split could be Japan’s original EEZ claim from the Diaoyu/Senkaku Islands to the median line—75/25 for China, and from the median line to the boundary—a 50/50 split. All resources to the east of the boundary would be allocated to Japan.

Getting from Here to There

In this conflict between China (including Taiwan) and Japan, a first step toward a solution would be for Japan and China to tacitly agree on an equidistance line that ignores the Diaoyu/Senkaku Islands as a “working” boundary. Taiwan and any remaining foreign 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 China mainland. Beijing and Taipei might then cooperate in the development of the resources on Beijing’s side of the equidistance line. Indeed, China’s national oil company, CNOOC, and Taiwan’s national oil company, CPC Corporation, are discussing jointly exploring the northern Taiwan Strait (Fox Business 2012).

The United States could help effectuate this scenario 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 the Chinese continental shelf and EEZ claims. This would encourage Japan to do likewise, and could

incidentally help improve Sino-Japanese relations. At the very least, the US government and US companies should tacitly encourage China and Japan to explore such an agreement.

Ensuing Sino-Japanese negotiations could focus on a comprehensive agreement. The countries could enter into negotiations for the 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-upon area, perhaps the area of original overlapping claims. This was 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 of these disputes is unlikely, the most pressing immediate task is to find effective mechanisms to manage them and prevent any escalation of incidents. The key problem lies not so much with governments as with nationalist political constituencies within 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 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 from embarking on legal but provocative actions like the 1996 erection of a lighthouse on the Senkakus by Japanese nationalists, they can and should refrain from conferring official status on such actions. Moreover, if governments disapprove of such actions, the governments should have the courage to say so publicly. If this stance is perceived to be too politically difficult, governments 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 preventive diplomacy. The Association of Southeast Asian Nations (ASEAN) Regional Forum (ARF) and the Council for Security Cooperation

in the Asia Pacific have taken up this point, but so far with little practical policy impact. Moreover, none of the claimant states has indicated any interest in taking the East China Sea disputes to formal legal adjudication (*Japan Times* 2012a). However, it might still be possible via the offices of the ARF chairperson to create an “eminent persons group.” Such a group should preferably undertake its task of preventive diplomacy 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.

Urgently needed for conflict avoidance is bilateral agreement on guidelines for the regime of military vessels in disputed EEZs. Such an agreement 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 (China most prominently) to the South China Sea. This declaration would provide more predictability regarding the activities of the other maritime vessels and aircraft, reducing suspicions and preventing surprises.

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 (CBMs). CBMs would be designed to foster conflict management and prevent conflict escalation rather than 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 avoided engaging in discussions on sovereignty issues and boundaries—provides a possible precedent. Here, the focus was on building confidence among claimant states by encouraging maritime cooperation between them in non-controversial areas such as marine scientific research; environmental protection, including biodiversity and 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 took part under the polite fiction that they were acting in their “private

capacities.” In the South China Sea, this Track II cooperation eventually provided the basis for formal official cooperation.

Conclusion

A Balance Sheet of Positives and Negatives

Obviously, the tone and tenor of China-Japan and China-Taiwan relations will affect the possibility of a solution. If China-Japan relations deteriorate further, the issue may well become a flash point. The following analysis assumes that these relations remain stable.

Specific positive and negative factors are at work in China’s and Japan’s interactions over the East China Sea and its features. Positive factors include the claimants’ ratification of the 1982 UNCLOS; China–South Korean rapprochement and discussion of joint development in the Yellow Sea; China-Taiwan discussions on jointly developing any hydrocarbons in their portion of the East China Sea; agreement in principle between China and Japan 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 previous compromises between China and Japan regarding fisheries and marine scientific research in the disputed area.

The two countries have developed CBMs, including the Japan-China Maritime Communications Mechanism, the Maritime Search and Rescue Co-operation Agreement, and the High-Level Consultation on Maritime Affairs. But none of these agreements has been signed or implemented (Przstup, Bradford, and Manicom 2013). Some evidence of dispute management efforts also exists, at least at the operational level. Chinese and Japanese coast guard vessels both appear to be operating under tacit rules of engagement. Neither side has attempted to expel the other’s vessels from the territorial sea.

These positives have to be weighed against negative factors. Such factors include Japan’s agreement with the United States to

help in the defense of Taiwan against China, China's increasingly frequent and aggressive presence in Japan's claimed sea and air space, Japan's declared perception of China as a threat, South Korean and Japanese declarations of EEZs that encompass areas claimed by China, Japan's use of the Senkakus as a basepoint for its EEZ claim, China's specific reaffirmation of its sovereignty over the Diaoyu Islands in its 1992 Territorial Sea Law, China's drawing of baselines enclosing the features, the supportive domestic public reactions to the exploits of nationalists on both sides, and the apparent unwillingness of one or both to resolve the issue. Perhaps the biggest negative is that Chinese generally detest Japanese, a shocking statement in and of itself (Glosserman 2012; Greenfield 2012); almost any cooperative proposal and certainly any assertive action by Japan on this issue is seen in China as a source of national humiliation, making it almost impossible for China's leaders to compromise.

Tension can flare up at any moment. In November 2013 Beijing's military accused Tokyo of a "highly dangerous provocation by interfering with Chinese navy live-fire drills (Agence France-Presse 2013). Further complicating the situation is China's new ADIZ, which overlaps with those claimed and utilized by Japan and South Korea.

The Sino-Japanese maritime 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 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 Diaoyu/Senkaku Islands have invariably been ignored in seabed boundary delimitations between opposing states, suggesting that regardless of their ultimate owner, the features should only have a maximum of 12-nm territorial sea around them. Legally, they will not have their own continental shelf or EEZ.

The implication of this conclusion for the Sino-Japanese mar-

itime 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 Diaoyu/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. If such an agreement were reached, it would indicate that a boundary ignoring these features can indeed be negotiated.

Domestic nationalist politics is a prime factor in these disputes. But nationalist politics seems to run in cycles of intensity. When the cycles in the respective nations reach their next common nadirs, 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 political conflict.

A Declaration of Conduct in the East China Sea

Although reverberations continue, Japan and China have gone to the political brink over the East China Sea several times and wisely stepped back. However, if the past has anything to say about the future, serious confrontations at sea will continue, disturbing not only relations between the disputants but also the security regime in Northeast Asia. This instability is not acceptable—not only for the parties directly concerned, but also for their neighbors and extraregional partners as well.

What is most needed now is an agreed Declaration on Conduct in the East China Sea. The foundation and intent for one already exist. In February 2007 the six parties to the talks regarding peace on the Korean peninsula agreed to negotiate a regional security mechanism in an appropriate separate forum. More to the point, all Northeast Asian states except North Korea have ratified UNCLOS. The convention provides a general framework and some specific confidence- and security-building measures. For example, some agreements in the region already implement the convention's stipulation that, pending agreement on EEZ and con-

tinental shelf boundaries, the parties concerned shall enter into “provisional arrangements of a practical nature” for management of resources in areas of overlapping claims. Such provisional arrangements in Northeast Asia include agreements between China and Japan, China and South Korea, and Japan and South Korea to share fish stocks in defined portions of their respective disputed areas. More significant, Japan and South Korea have been undertaking joint development of hydrocarbons for nearly forty years in their area of overlapping continental shelf claims in the northern East China Sea. Even more remarkable, in December 2005 North Korea and China forged a similar arrangement in West Korea Bay, and Japan and China have at least agreed in principle to do the same in the central East China Sea. Moreover, after several serious incidents, Japan and China established a mutual “prior notification” regime for scientific research in their disputed area in the East China Sea.

Given this network of conflict avoidance arrangements, an agreed declaration of expected conduct would be a logical next step. But what should such a code contain? We have witnessed the need for a clause addressing the question of arrest and detention of fishing vessels and crew of fellow claimants. A declaration of conduct should also govern any and all other activities in disputed areas, such as resource exploration and exploitation, marine scientific research, marine and aerial “spy probes,” and other provocative military activities in disputed EEZs.

Right up front must be a clause stating that nothing in the declaration prejudices any party’s sovereign rights or jurisdiction in its claimed territory, territorial sea, continental shelf, or EEZ, or its rights and responsibilities under UNCLOS. It should reaffirm the use of the sea only for peaceful purposes and the resolution of disputes without the threat or use of force in accordance with international law, including UNCLOS. It should also reaffirm the freedom of navigation and overflight consonant with international law. The parties would commit to exercise self-restraint in the conduct of activities that might complicate or escalate disputes, including refraining from occupying presently uninhabited features. They would also agree to negotiate provisional arrangements of a practical nature to manage and share the resources and activities in dis-

puted areas, as well as agree to notify each other of any pending activities, such as military exercises in waters of interest to other parties. Outside parties would be encouraged to adhere to the provisions of the declaration. Looking forward, the parties would agree to consider making the declaration a formal code of conduct.

While all this may appear to be wishful thinking, China agreed to a similar ASEAN declaration forged in 2002 for the South China Sea, which came about only after years of confrontation and actual violent conflict over maritime issues. The geopolitical conditions in the two regions are significantly different. However, a consensus is evolving that it is not too early to begin discussing security architecture in Northeast Asia. That discussion should begin at sea.

Notes

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1. This section on the ADIZ is adapted from Valencia 2013b.

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