

palgrave▶pivot

**RESOURCE
MANAGEMENT
AND CONTESTED
TERRITORIES
IN EAST ASIA**

Ralf Emmers





**Resource Management and Contested Territories
in East Asia**

Other Palgrave Pivot Titles

- Maria-Ionela Neagu: **Decoding Political Discourse: Conceptual Metaphors and Argumentation**
- Niranjan Ramakrishnan: **Reading Gandhi in the Twenty-First Century**
- Joel Gwynne: **Erotic Memoirs and Postfeminism: The Politics of Pleasure**
- Ira Nadel: **Modernism's Second Act: A Cultural Narrative**
- Andy Sumner and Richard Mallett: **The Future of Foreign Aid: Development Cooperation and the New Geography of Global Poverty**
- Tariq Mukhimer: **Hamas Rule in Gaza: Human Rights under Constraint**
- Khen Lampert: **Meritocratic Education and Social Worthlessness**
- G. Douglas Atkins: **Swift's Satires on Modernism: Battlegrounds of Reading and Writing**
- David Schultz: **American Politics in the Age of Ignorance: Why Lawmakers Choose Belief over Research**
- G. Douglas Atkins: **T.S. Eliot Materialized: Literal Meaning and Embodied Truth**
- Martin Barker: **Live To Your Local Cinema: The Remarkable Rise of Livecasting**
- Michael Bennett: **Narrating the Past through Theatre: Four Crucial Texts**
- Arthur Asa Berger: **Media, Myth, and Society**
- Hamid Dabashi: **Being a Muslim in the World**
- David Elliott: **Fukushima: Impacts and Implications**
- Milton J. Esman: **The Emerging American Garrison State**
- Kelly Forrest: **Moments, Attachment and Formations of Selfhood: Dancing with Now**
- Steve Fuller: **Preparing for Life in Humanity 2.0**
- Ioannis N. Grigoriadis: **Instilling Religion in Greek and Turkish Nationalism: A "Sacred Synthesis"**
- Jonathan Hart: **Textual Imitation: Making and Seeing in Literature**
- Akira Iriye: **Global and Transnational History: The Past, Present, and Future**
- Mikael Klintman: **Citizen-Consumers and Evolutionary Theory: Reducing Environmental Harm through Our Social Motivation**
- Helen Jefferson Lenskyj: **Gender Politics and the Olympic Industry**
- Christos Lynteris: **The Spirit of Selflessness in Maoist China: Socialist Medicine and the New Man**
- Ekpen James Omonbude: **Cross-border Oil and Gas Pipelines and the Role of the Transit Country: Economics, Challenges, and Solutions**
- William F. Pinar: **Curriculum Studies in the United States: Present Circumstances, Intellectual Histories**
- Henry Rosemont, Jr.: **A Reader's Companion to the Confucian Analects**
- Kazuhiko Togo (*editor*): **Japan and Reconciliation in Post-war Asia: The Murayama Statement and Its Implications**
- Joel Wainwright: **Geopiracy: Oaxaca, Militant Empiricism, and Geographical Thought**
- Kath Woodward: **Sporting Times**

palgrave▶pivot

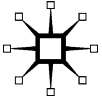
Resource Management and Contested Territories in East Asia



Ralf Emmers

*Associate Professor and Coordinator of the
Multilateralism and Regionalism Programme,
S. Rajaratnam School of International Studies,
Nanyang Technological University, Singapore*

palgrave
macmillan



© Ralf Emmers 2013

Softcover reprint of the hardcover 1st edition 2013 978-1-137-31013-2

All rights reserved. No reproduction, copy or transmission of this publication may be made without written permission.

No portion of this publication may be reproduced, copied or transmitted save with written permission or in accordance with the provisions of the Copyright, Designs and Patents Act 1988, or under the terms of any licence permitting limited copying issued by the Copyright Licensing Agency, Saffron House, 6–10 Kirby Street, London EC1N 8TS.

Any person who does any unauthorized act in relation to this publication may be liable to criminal prosecution and civil claims for damages.

The author has asserted his right to be identified as the author of this work in accordance with the Copyright, Designs and Patents Act 1988.

First published 2013 by
PALGRAVE MACMILLAN

Palgrave Macmillan in the UK is an imprint of Macmillan Publishers Limited, registered in England, company number 785998, of Houndmills, Basingstoke, Hampshire RG21 6XS.

Palgrave Macmillan in the US is a division of St Martin's Press LLC, 175 Fifth Avenue, New York, NY 10010.

Palgrave Macmillan is the global academic imprint of the above companies and has companies and representatives throughout the world.

Palgrave® and Macmillan® are registered trademarks in the United States, the United Kingdom, Europe and other countries.

ISBN: 978-1-137-31014-9 PDF

ISBN: 978-1-349-45654-3

A catalogue record for this book is available from the British Library.

A catalog record for this book is available from the Library of Congress.

www.palgrave.com/pivot

DOI: 10.1057/9781137310149

Contents

Biography	vi
Acknowledgements	vii
List of Abbreviations	viii
1 Introduction	1
2 Natural Resources and International Law	7
3 The Sea of Japan	20
4 The East China Sea	32
5 The South China Sea	51
6 Conclusion	78
Appendix: Maps of the Sea of Japan and the East and South China Seas	88
Index	92

Biography

Dr Ralf Emmers is Associate Professor and Coordinator of the Multilateralism and Regionalism Programme at the S. Rajaratnam School of International Studies (RSIS), Nanyang Technological University (NTU), Singapore. His research interests cover security studies, maritime security, international institutions in the Asia–Pacific, and the security and international politics of Southeast Asia. Emmers is the co-Series Editor of the *Warwick Studies in Globalisation* (Routledge Book Series) and an Editorial Board member of *The Pacific Review*. He is the author of *Geopolitics and Maritime Territorial Disputes in East Asia* (2010), *Non-Traditional Security in the Asia-Pacific: The Dynamics of Securitization* (2004) and *Cooperative Security and the Balance of Power in ASEAN and the ARF* (2003) and the co-author of *The East Asia Summit and the Regional Security Architecture* (2011).

Acknowledgements

I would like to thank Sam Bateman and the anonymous reviewer for carefully reading the monograph and providing me with insightful comments as well as Julius Trajano for his research assistance. I thank I. Made Andi Arsana for his permission to print his maps of the Sea of Japan and East and South China Seas. I wish to acknowledge that parts of Chapters 4 and 5 draw from R. Emmers (2010) *Geopolitics and Maritime Territorial Disputes in East Asia*. These parts are reproduced with the kind permission of the publisher, Routledge.



List of Abbreviations

ARF	ASEAN Regional Forum
ASEAN	Association of Southeast Asian Nations
AMM	ASEAN Ministerial Meeting
CCRF	Code of Conduct for Responsible Fisheries
CNOOC	China National Offshore Oil Company
CLCS	Commission on the Limits of the Continental Shelf
DOC	Declaration on the Conduct of Parties in the South China Sea
EAS	East Asia Summit
EEZs	exclusive economic zones
GDP	gross domestic product
ICJ	International Court of Justice
IHO	International Hydrographic Organization
JCG	Japanese Coast Guard
JDA	joint development agreement
JFC	Joint Fisheries Commission
JMSU	Joint Marine Seismic Undertaking
KNOOC	Korean National Oil Company
LCS	littoral combat ships
LDP	Liberal Democratic Party (Japan)
LNG	liquefied natural gas
METI	Ministry of Economy, Trade, and Industry
MFA	Ministry of Foreign Affairs
MOFA	Japan's Ministry of Foreign Affairs
MT	metric ton
NM	nautical mile
PLA	People's Liberation Army
PLAN	People's Liberation Army Navy

PNOC	Philippine National Oil Company
PRC	People's Republic of China
RFMO	regional fisheries management organization
ROC	Republic of China
ROK	Republic of Korea
SLOCs	sea lines of communication
TAC	Treaty of Amity and Cooperation
Tcf	trillion cubic feet
UNCLOS	United Nations Convention on the Law of the Sea
WCPFC	Western and Central Pacific Fisheries Commission
ZoPFFC	Zone of Peace, Freedom, Friendship and Cooperation

1

Introduction

Abstract: *The introduction asks whether the joint exploration and development of resources can act as a means to reduce tensions in contested territories. It applies this discussion on resource management to the maritime domain in East Asia and raises a series of important questions. Does the joint management of natural resources in the absence of a negotiated maritime delimitation constitute a feasible strategy to de-escalate maritime sovereignty disputes in East Asia? Can cooperative resource exploitation be separated from nationalist considerations and power politics calculations? Alternatively, should exploration schemes be postponed until sovereignty disputes have been resolved?*

Key words: Resource management, joint development, contested territories, natural resources, East Asia.

Emmers, Ralf. *Resource Management and Contested Territories in East Asia*. Basingstoke: Palgrave Macmillan, 2013. DOI: 10.1057/9781137310149

Natural resources and energy needs have traditionally influenced the foreign policy objectives of states. The question of natural resources has shifted from the low politics of domestic production and consumption to the high politics of national security. A secure energy supply is seen as crucial to meeting a population's energy demands, guaranteeing a standard of living for certain countries, and aiding in the development of others. Natural resources, as an economic and strategic issue, have also been a contributing factor in alliance building, expansionist policies, and in the origins of conflict. When considering the finite nature of such resources, the implications for conflict are obvious. Competition over a 'variety of resources and historically legitimated claims to national homelands has inspired war throughout history'.¹ An abundance of resources can contribute to the economic vitality and political leverage of a state over others. Reversely, a scarcity of resources may leave states in a vulnerable position and dependent on securing their energy supplies from others. The increased demand coupled with a decreased availability of resources has the potential to aggravate existing tensions and instigate violent conflict.²

Nevertheless, one should also discuss the significance of living and non-living natural resources as a source of interstate cooperation rather than competition. Key here is the possibility for the joint exploration and development of resources as a means to reduce tensions and perhaps even resolve boundary disputes. A joint development agreement (JDA) is defined in this monograph as 'an agreement by two or more states whereby they pool their sovereign rights for the exploration and exploitation of natural resources and other purposes in a defined maritime area, which provides for the management of activities and the apportionment of production and/or resources'.³ Joint exploration and development schemes are not intended to be boundary agreements. Instead, they are meant to temporarily set aside boundary negotiations so that the joint development of natural resources might proceed on an agreed basis within a specific period of time. The economic benefits of concluding a joint development agreement are clear for both developed and developing economies highly dependent on energy imports from volatile parts of the world. Joint development enables claimant states to diversify their sources of energy and benefit economically from the exploitation of fisheries and hydrocarbon resources despite the existence of overlapping sovereignty claims.

Beyond the immediate economic interests involved, it is assumed that collaborative resource schemes might also act as a de-escalating force

capable, to some extent, of neutralizing ongoing tensions over the overlapping sovereignty claims or perhaps even reducing power competition among the claimant states. The signing of a joint development agreement may thus be regarded as a significant means to build-up confidence as well as to promote common economic interests among disputants. By enabling the parties to benefit economically from a joint development agreement, the de-escalation of resource considerations may thus be expected to at least soften the escalating impact of the geopolitics of sovereignty, for example. Over time, the parties may adopt a formula of shelving the sovereignty question until such time that the joint development of resources can mitigate the geopolitical sources of the conflict. Successful cooperation in the joint exploration and development of natural resources may thus ultimately facilitate a sustained and long-term improvement in interstate relations.

Beyond joint surveys and exploration schemes, reaching an agreement on the joint development of hydrocarbon resources once found in sufficient quantities for commercial use is particularly complex. It is critical for the protagonists involved in the sovereignty dispute to regard the transboundary issues of resource supplies as an impetus to cooperate, and thus collaborate and coordinate their actions, rather than compete. Policy coordination is therefore largely the result of geographic determinants and the scarcity of energy supplies and other natural resources. In this light, rising economic interdependence between East Asian nations has been anticipated as a process to open up venues for greater collaboration in the exploration and development of natural resources.

It should be noted that a series of joint development agreements for hydrocarbon resources have already been successfully negotiated and implemented in East Asia. These include JDAs between Japan and South Korea concluded in 1974, Australia and Indonesia in 1989, Malaysia and Thailand in 1979 and 1990, Malaysia and Vietnam in 1992, China and Vietnam in 2000 in the Gulf of Tonkin (Beibu), Cambodia and Thailand in 2001, Australia and East Timor in 2002, and finally between Brunei and Malaysia in 2009.⁴ When it comes to cooperative fisheries management, one should note the 1997 Sino–Japanese agreement in the East China Sea, the 1998 South Korean–Japanese agreement in the Sea of Japan, the 1998 Sino–South Korean agreement in the Yellow Sea, and finally the Sino–Vietnamese fisheries agreement for the Gulf of Tonkin (Beibu) that took effect in 2004.⁵

The monograph applies this discussion on resource management to the maritime domain in East Asia and raises a series of important questions. Does the joint management of natural resources in the absence of a negotiated maritime delimitation constitute a feasible strategy to de-escalate maritime sovereignty disputes in East Asia? In other words, are joint development schemes a means for the claimant states to access natural resources while not fighting over sovereignty issues? Can cooperative resource exploitation be separated from nationalist considerations and power politics calculations? Alternatively, as the size of the available resources is generally unknown, should joint exploration in disputed waters be expected to raise rather than defuse territorial conflicts, especially if abundant resources are eventually discovered? If this were true, should exploration schemes be postponed until sovereignty disputes have been resolved?

The monograph addresses these questions empirically by examining the overlapping sovereignty claims between Japan and the Republic of Korea (ROK) over the Dokdo/Takeshima Islands in the Sea of Japan or the East Sea as it is called in Korea; between Japan, the People's Republic of China (PRC) and the Republic of China (ROC), otherwise known as Taiwan, over the Senkaku/Diaoyu Islands in the East China Sea; and the Paracel Islands claimed by China, Taiwan and Vietnam, and the Spratly Islands involving China, Brunei, Malaysia, the Philippines, Taiwan and Vietnam in the South China Sea. Without knowing the eventual fate of the islands' sovereignty, border demarcation in these three semi-enclosed seas is left open to dispute. This monograph examines whether collaborative arrangements for the management of natural resources provide a way ahead for defusing maritime boundary disputes in the major seas of East Asia. Rather than speculating on what the claimant states should do, the monograph discusses in detail attempts at establishing joint development agreements in the disputed areas under consideration and assesses their viability at defusing conflict.

Numerous analysts have envisioned the joint exploration and development of natural resources as the most feasible way forward in managing peacefully maritime territorial disputes in East Asia.⁶ Some analysts have argued, however, that joint development might only be possible in disputed areas after an agreement has been concluded on the delimitation of exclusive economic zones (EEZs) and continental shelves. For example, Yu has noted in the context of the East China Sea that joint development could only come about after border determination has been reached,

which would include demarcation of the equidistant median line, EEZs, and the continental shelf.⁷ Yet, theoretically, if the EEZ and continental shelf boundaries were agreed upon, there would be no need for a joint development agreement. Indeed, the sovereign rights of the respective littoral states would then be established by the boundary agreement.

It is precisely because it is unclear how the overlapping territorial claims in the Sea of Japan and East and South China Seas might be resolved that the joint development scenario has remained so appealing and topical. The purpose of a joint development arrangement is precisely to set aside the sovereignty dispute for a specific period of time. The challenge is therefore to dissociate the prospect of resource exploration and exploitation from the overlapping territorial claims through the temporary shelving of the sovereignty dispute. Unsurprisingly, given its potential economic and political benefits, the joint development scenario has been discussed as one of the most plausible approaches, if not the only one, to conflict management and resolution in the Sea of Japan as well as the East and South China Seas. The monograph tests this hypothesis by discussing in detail what has so far been achieved on the ground. It covers both the prospect for joint hydrocarbon development as well as common fisheries management.

Notes

- 1 C. Flint (2005) 'Introduction: Geography of War and Peace' in C. Flint (ed.) *The Geography of War and Peace* (New York: Oxford University Press), p. 6.
- 2 See P. Le Billon (2005) 'The Geography of "Resource Wars"' in C. Flint (ed.) *The Geography of War and Peace* (New York: Oxford University Press), p. 219.
- 3 T. Davenport, I. Townsend-Gault, R. Beckman, C. Schofield, D. Ong, V. Becker-Weinberg, and L. Bernard (June 2011) *Conference Report* (Conference on Joint Development and the South China Sea, Organized by the Centre for International Law), p. 14.
- 4 See Davenport Townsend-Gault, Beckman, Schofield, Ong, Becker-Weinberg, and Bernard (June 2011) *Conference Report*, Annex A.
- 5 See D. Rosenberg (19 August 2005) 'China, Neighbors Progress in Fishery Agreements', *Asia Times Online* (available at <http://www.atimes.com/atimes/China/GH19Ad02.html>).
- 6 See for example J.D. Dai Tan (2006) 'The Diaoyu/Senkaku Dispute: Bridging the Cold Divide', *Santa Clara Journal of International Law*, vol. 1, pp. 167–168; M. J. Valencia (22 September 2006) 'Ways forward East China Sea Dispute',

- PacNet* no. 47A (Honolulu, Hawaii: Pacific Forum CSIS); K. Zou (2006) 'Joint Development in the South China Sea: A New Approach', *The International Journal of Marine and Coastal Law*, vol. 21 (1), pp. 83–109; L.T. Lee and S. Chen (2009) 'China and Joint Development in the South China Sea: An Energy Security Perspective' in S. Bateman and R. Emmers (eds) *Security and International Politics in the South China Sea: Towards a Cooperative Management Regime* (London: Routledge), pp. 155–171.
- 7 P.K.H. Yu (2005) 'Solving and Resolving the East China Sea Dispute: Beijing's Options', *The Korean Journal of Defense Analysis*, vol. 17 (3), pp. 122–126.

2

Natural Resources and International Law

Abstract: *The chapter assesses the resource needs of the East Asian claimant states and discusses how their quest for and acquisition of natural resources has been influenced by international law. The East Asian states have increasingly turned to the sea in the hope of securing access to their living and non-living resources. For example, China is currently the world's largest consumer of marine resources and its economic growth is dependent on maintaining a secure supply of hydrocarbon resources. Significantly, the United Nations Convention on the Law of the Sea (UNCLOS) has allowed coastal states to claim sovereignty rights to living and non-living natural resources in their exclusive economic zones (EEZ) and to the sedentary and non-living resources in their continental shelves.*

Key words: Fisheries, hydrocarbons, international law, UNCLOS, EEZ, continental shelf.

Emmers, Ralf. *Resource Management and Contested Territories in East Asia*. Basingstoke: Palgrave Macmillan, 2013. DOI: 10.1057/9781137310149

Resource needs of the East Asian claimant countries

Fisheries

The East Asian states have increasingly turned to the sea in the hope of securing access to their living and non-living resources and ensuring the safe passage of ships and tankers carrying their energy supplies.¹ Traditional fishing activities have been taking place in the Sea of Japan as well as the East and South China Seas for centuries.² A study of the regional fisheries and aquaculture resources notes that the 'marine fishery resources of the East Asian seas are among the most productive and intensively utilized in the world'.³ The littoral countries are increasingly dependent on fish stocks, as fish consumption provides a large percentage of total protein intake in Asian countries. Fishing therefore remains a key national interest of most East Asian states. The South China Sea is said, for instance, to 'account for as much as one-tenth of the fishing catch landed globally'.⁴

China is currently the world's largest consumer of marine resources and consumes about 694 million metric tons (MT) of ocean resources each year.⁵ As the purchasing power of the Chinese rises, their interest in a more diversified and nutritious diet also increases. Seafood consumption is no exception with per capita consumption for urban residents at 14.85 kg in 2008.⁶ Due to rising domestic consumption, China has to import additional aquatic products making it the sixth largest importer of ocean resources. Japan is the world's second largest consumer of fishery products with an annual consumption of about 582 million MT. The preference of Japanese consumers for predator fish such as tuna and salmon has worsened the impact of their consumption on the marine ecosystem. Japan remains the world's largest importer of fishery resources with its imports valued at US\$ 14.9 billion (thousand million) in 2008, accounting for 14 per cent of the world's total import value.⁷ Taiwan and South Korea share a deep seafood culture and have annual per capita fishery consumption of 45 kg and 40 kg respectively.⁸

The rapid population growth and rising demand for food in Southeast Asia are expected to put additional pressure on natural resources, including aquatic products, available in the region. Indonesia's total annual consumption of fish products has risen by 700,000 MT in the last few years and its average annual consumption is seven million MT. Its per capita consumption is around 30 kg of fishery products each year.⁹ In

the Philippines, fish consumption has steadily grown in both urban and rural areas in recent years, as the volume of fish production continues to increase and fishery products remain an important source of protein for its population. The country's per capita consumption is 53 kg annually. Meanwhile, other major fishery producers in the region such as Vietnam, Thailand and Malaysia have annual per capita consumption of 41.47 kg, 37.97 kg, and 54.40 kg respectively.¹⁰

Fishery production and exports have been on the rise in East Asia to meet the growing demand. China is the largest Asian exporter of fishery products as it contributed about 10 per cent to the global export value in 2008.¹¹ It is also the world's largest fish-producing country, as it was able to harvest approximately 54.6 million MT of fish and invertebrates in 2011.¹² That same year, China's total aquatic trade value stood at US\$ 21.7 billion. Japan remains the primary export destination of Chinese fishery exports, followed by South Korea and the United States. Japan had a total annual production of 5.6 million MT of fishery products in 2009. Yet, the country has witnessed a decline in the growth of its fishery production in recent years due to an ageing fishing fleet and low fishery stocks in the seas around Japan.¹³ The total fishery production of Taiwan and South Korea reached respectively 1.5 million MT and 3 million MT in 2007.¹⁴

The Southeast Asian nations exported approximately 14 per cent of the world's total export volume in 2008, with Thailand and Vietnam being the two largest Southeast Asian exporters of fish and fishery products. The growth of fishery output in Southeast Asia steadily rose from 2000 to 2009. In terms of the volume of fishery production, Indonesia is Southeast Asia's largest producer, having contributed 34 per cent of the region's total output in 2009. The volume of its fish production for that year was at least 10 million MT.¹⁵ The Philippines is the second largest producer in Southeast Asia and one of the largest fish producers in the world.

Excessive and unsustainable fishing practices as well as land-based pollution, coral reef damage, and other factors have exacerbated the depletion of fisheries in the East Asian seas. Over the past 40 years, it is estimated that fishery resources in Southeast Asia have been reduced to 25 per cent, or less, of their former levels.¹⁶ Some researchers have even estimated that the region's fish stocks have declined to between 5 and 30 per cent of their unexploited levels.¹⁷ Declining fish stocks in disputed East Asian waters have led to a further overexploitation of fisheries rather than the joint management of marine resources.¹⁸

It is not only traditional commercial fishing that has worsened the situation but also widespread illegal, unreported and unregulated fishing. Illegal fishing has, for example, been a rampant problem in Philippine territorial waters, which are lightly guarded by the Philippine maritime authorities. Chinese and Vietnamese fishermen have been caught fishing in the country's territorial waters.¹⁹ Similarly, large foreign fishing vessels enter Vietnamese waters illegally to harvest tons of ocean resources every year. Fishermen and coast guards have often clashed violently. For instance, a Chinese captain killed a Korean coast guard in December 2011 during a raid on his fishing vessel while nine Chinese fishermen assaulted Korean authorities in April 2012 after having been spotted fishing illegally in Korean waters.²⁰ Finally, alleged illegal fishing has been a regular cause of diplomatic tension between the claimant states. Fisheries incidents in disputed maritime areas have often provoked a stronger community response and raised greater nationalistic sentiments than incidents involving seismic vessels. This has, for example, been the case in the waters surrounding the disputed Paracel Islands in the South China Sea.

Hydrocarbons

Besides the fisheries question, the East Asian seas have become increasingly critical to the littoral states due to their growing need for hydrocarbon resources. The developing Southeast Asian economies are no match for the Northeast Asian economic powerhouses of Japan, China, and South Korea. Moreover, nuclear energy is currently in use in all the Northeast Asian states, while only beginning to be seriously considered in Southeast Asia. However, Northeast Asian countries, with the exception of China, have traditionally been deficient in energy resources. Japan is widely regarded as the most notorious for its scarcity and resultant dependency on others. In contrast, Brunei, Malaysia, Vietnam, and the Philippines export hydrocarbon resources. Yet with rising reliance on imported oil, the issue of energy security has become central to all regional countries. Economic growth and higher demand coupled with rising oil and gas prices has heightened existing anxiety among nations. Encapsulating such fears, China, formerly among the most self-sufficient of nations, was itself forced to become a net importer of oil in 1993.

China's economic growth is dependent on maintaining a secure energy supply. The political and economic future of the country is directly linked to its ability to meet consumer demand and the industrial requirements

of an expanding modern economy.²¹ Coal remains the chief source of energy to the country. Yet the observable environmental impact of the resource is cause for concern. Efforts to offset the reliance on domestic supplies of coal include rising dependency on oil reserves. China's energy situation has, as a result, become a concern to the international community.²² In 1990, China was able to export US\$ 2.8 billion in oil to Japan. By 1993, the Chinese were themselves oil importers. By 2008, the PRC had to import half of its needs. Chinese oil consumption has surged at 7 to 8 per cent per annum in recent years. The situation is expected to grow even worse in the future as energy needs are projected to double from their 2000 levels by 2020.²³ By 2030, it is estimated that China will import 80 per cent of the oil it consumes.²⁴

Consequently, Chinese territorial claims in East Asia may be attributable to its belief in the existence of available hydrocarbon resources in the East and South China Seas as well as a play for greater power within the region.²⁵ The People's Liberation Army (PLA) has gone as far as to argue that the resources located specifically in the Spratly and Senkaku/Diaoyu areas are critical for China's future economic success.²⁶ Accordingly, it is no accident that China and Taiwan's claimed territory encompasses all of the oil potential in the East and South China Seas.

Japan is infamous for its lack of hydrocarbon resources and strategic minerals. Its dependency on others has often been noted as Japan's major weakness. This dependency had previously led the state to justify its attack on Pearl Harbor and its expansion into the Sumatran oil fields during the Second World War. Japan has been a net importer of energy for nearly a century, with 99 per cent of its oil being imported. The country is primarily reliant on the Middle East. While its economic power may help secure access to resources, Japan needs a continued supply of oil to sustain its economic growth. Japan is viewed to be 'innately more preoccupied with energy security than most nations, even in the most tranquil of times'²⁷ precisely because of its geographic position and its insufficient supply of natural resources. Efforts to supplement imports have aimed at increasing energy efficiency and adopting nuclear power. Yet foreign sources of oil, coal and natural gas are still used to meet the vast majority of the country's energy requirements. Moreover, the accident at the Fukushima nuclear power plant on 11 March 2011 and the consequent closure of most Japanese nuclear reactors have made the country even more dependent on imported sources of energy, especially gas from the Middle East.

Concerns about energy are consequently evident in Japan's focus on maritime security. Ensuring the safe passage of ships carrying such cargo remains a key priority for the government. Disputes with South Korea and China respectively over the Takeshima/Dokdo Islands and the Senkaku/Diaoyu Islands and EEZs in the East China Sea are likewise related to energy concerns, as these areas might be rich in oil and gas.

The growing urgency to identify new sources of energy is reinforced by both the rise of China and the narrowed economic gap between the former and Japan. Interestingly, before China's economic surge, cooperation with Japan on energy matters largely helped strengthen the bilateral relationship. During the 1970s, Chinese crude oil was exported to Japan in exchange for advanced technologies. Chinese oil helped Japan diversify its energy sources, while in return the Chinese economy benefited. Cooperation flourished during this period as the economic development gap between China and Japan was wide. Additionally, the two shared the same strategic and political interests in aligning against the Soviet Union.²⁸ Nonetheless, when China became a net oil importer in the early 1990s, energy cooperation soon deteriorated and turned into competition. This exacerbated the Senkaku/Diaoyu dispute.

Like Japan, the Republic of Korea has limited domestic energy resources and is almost entirely dependent on overseas sources of oil and gas, predominantly imported from the Middle East, for its energy requirements. Nonetheless, the country has observed, over the last 20 years, a decline in oil's share in consumption thanks to faster growth in natural gas consumption and coal to a lesser extent. Moreover, to reduce its dependency on imported oil, South Korea has sought to increase energy efficiency and has developed nuclear power capabilities. It has succeeded in becoming a major nuclear energy country, exporting for example the technology to the United Arab Emirates (UAE).

Taiwan's territorial claims in the East China Sea are driven in part by the prospect of hydrocarbon reserves in the disputed areas. Energy is a major concern for Taipei. Taiwan is largely considered energy poor. Mineral deposits found on the island are not commercially viable. Moreover, in contrast to China, coal production is only able to meet a small proportion of the island's demands. The oil that has been found onshore and offshore also falls far short of previous expectations. Efforts to diversify sources have included the introduction of nuclear power, as well as increasing importation of coal, oil and natural gas from Southeast Asian and Middle Eastern countries.

In regard to hydrocarbon resources, Vietnam is not as deficient as most Northeast Asian states. The country is an exporter of both coal and crude oil, additionally producing adequate supplies of natural gas for its own consumption.²⁹ The oil and gas revenues of Vietnam are said to have accounted for 24 per cent of the country's total gross domestic product (GDP) in 2010, for example.³⁰ Yet economic development has increased demand for electricity, straining government capacity. While plans to develop an operating nuclear power plant by 2020 have also been introduced, the issue of energy security remains an important concern for the country.

Such concerns are arguably manifested in Vietnam's claims in the South China Sea. Territorial disputes have been a source of open conflict for Vietnam with its giant neighbour. The dispute over the Paracels resulted in armed combat in 1974 when Chinese forces took possession of the islands from the Vietnamese. The Spratly issue has also seen violence between Vietnam and the PRC. Since joining the Association of Southeast Asian Nations (ASEAN) in 1995, Hanoi has hoped to transform its territorial disputes with the PRC over the South China Sea into a multilateral dispute involving both Beijing and the ASEAN states.

A priority for the Philippines is attaining domestic stability and continued economic growth. Guaranteeing access to hydrocarbon resources remains a source of concern for Manila. Like other developing countries in Southeast Asia, achieving economic growth is dependent on securing an adequate energy supply. Recent years have seen a rise in oil production, as offshore deposits have been exploited. Natural gas production has also increased as of late. The Philippines additionally imports coal from Indonesia, China and Australia. Thus, the future economic strength and political stability of the Philippines will partly be determined by its government's ability to ensure its own energy security.

China's potential intentions in the Spratlys form an energy security threat to the Philippines. Manila has traditionally relied on the United States to guarantee its security. Yet a significant development in bilateral relations came in the early 1990s when American troops were forced to abandon the military bases they had occupied in the Philippines. The country's Senate rejected a new base treaty with the United States in September 1991, leading to a complete withdrawal from Subic Bay Naval Base and Clark Air Base by November 1992. Nonetheless, by calling for the withdrawal of US forces, the Philippines removed its primary source of deterrence and security. Benefiting from such a power vacuum,

Chinese military forces were able to capitalize by first establishing structures on the Philippine-claimed Mischief Reef in 1995 and expanding them in 1998. Since the Mischief Reef incident, the Philippines has sought to increase its deterrence credibility by once again deepening its military ties with the United States.

Once considered strategically valuable for its tin and rubber industries, Malaysia has additionally become an important exporter of oil and natural gas. It has some of the largest proven reserves of oil and gas among the Southeast Asian states. Malaysia's production of oil alone accounts for a large percentage of the entire Southeast Asian production rate. The country remains Southeast Asia's largest net exporter of oil.³¹ Such an advantage has placed Malaysia in contention with a few of its neighbours, particularly as its wealth of natural resources relies partly on its offshore claims.

Under the continental shelf provisions of the United Nations Convention on the Law of the Sea (UNCLOS), Malaysia lays claim to 12 islands in the Spratly chain. However, its construction and development on the Spratlys has raised criticism from the Philippines and other claimants. For example, Malaysia's seizure in March 1999 of Investigator Shoal claimed by the Philippines strained relations with Manila but was also criticized by Vietnam, Brunei, and China. Likewise, located offshore Sarawak, many of Malaysia's natural gas fields fall directly under the Chinese claims.

The Sultanate of Brunei gained its full sovereignty from the United Kingdom on 1 January 1984. Despite its small population of roughly 370,000 and territory, which is divided in two parts by the Limbang River Valley that became part of Sarawak in 1890, the Sultanate's economy has been exceptionally prosperous due to its large oil and natural gas reserves. The production of oil in Brunei initially started in 1929. While Brunei's EEZ extends to the South of the Spratly Islands and comprises Louisa Reef, the sultanate is the only party involved in the South China Sea disputes to not control features in the area.

International law and the quest for natural resources

The quest for and acquisition of natural resources is influenced by international law. In particular, the search for natural resources in offshore territories and disputed maritime areas have been deeply affected and

influenced by UNCLOS. The latter was adopted on 30 April 1982 and came into force on 16 November 1994. It was ratified, among others, by the Philippines, Vietnam, Singapore, and eventually by Brunei, China, Japan, Malaysia and South Korea in 1996. The United States has yet to ratify the 1982 Convention. Since its replacement by the People's Republic of China as the representative of China at the United Nations (UN) in 1971, Taiwan, or the Republic of China, has not been a member of the world body and has thus not been in a position to become a signatory to UNCLOS. Taipei has, however, stated its compliance to the Convention.

The Convention aims to establish a maritime regime by calling for closer cooperation on maritime issues, offering procedures for the resolution of territorial disputes, and introducing new concepts, rights and responsibilities.³² The 1982 Convention is based on assumptions of agreement on sovereignty. Part XV of UNCLOS provides a comprehensive dispute resolution mechanism under the Convention's provisions, including its compulsory obligations. Yet, the signatory states have the right to opt out of the compulsory settlement process for certain types of disputes, including those related to security as well as fisheries and boundary disputes.³³ International or regional arbitration is therefore not compulsory under the terms of the Law of the Sea for disputes related to boundaries and fisheries. If international arbitration is rejected by the disputants, a bilateral diplomatic compromise remains an option to resolve a specific maritime boundary dispute. One should add that Part IX of UNCLOS places a strong obligation on all littoral states to rely on functional cooperation in the case of enclosed and semi-enclosed seas.³⁴ The Sea of Japan as well as the East and South China Seas are semi-enclosed seas and all the claimant countries are thus expected to cooperate.

The UN Convention imposes conditions to regulate internal waters, archipelagic waters, territorial seas, contiguous zones, exclusive economic zones, continental shelves, and high seas. Maritime zones are determined by base points on land. The Convention provides coastal states with the authority to extend their sovereign jurisdiction under a specific set of rules. It authorizes expansion of the territorial sea to 12 nautical miles (nm) and limits the contiguous zone to 24 nm. The EEZ 'shall not extend beyond the 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.'³⁵ The sovereign rights of a coastal state over the EEZ are limited to the exploration and exploitation of all its living and non-living resources. It is estimated that the 200 nm EEZs established by all the coastal states contain over 90

per cent of all commercially exploitable fish stocks and over 80 per cent of the world's known submarine oil reserves.³⁶ Continental shelves may not be extended beyond a limit of 350 nm from territorial baselines. The continental shelf regime grants the coastal state sovereign rights over the seabed and subsoil resources. The sovereign rights of a coastal state over the continental shelf are therefore reduced to the exploration and exploitation of its sedentary living resources (clams, pearl shells, corals and others) as well as its non-living resources (natural gas, oil and others). The Convention defines the rights and privileges of archipelagic states and recognizes that archipelagic waters fall within their sovereign jurisdiction. It also ensures the freedom of navigation, the right of innocent passage and the passage through straits.

It is important to note that under the Convention, islands are entitled to the normal maritime zones afforded coastal states: a 12 nm territorial sea, a 12 nm contiguous zone, a 200 nm exclusive economic zone and a continental shelf up to 350 nm. However, article 121, paragraph 3 of UNCLOS stipulates that '[R]ocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.'³⁷ This distinction is significant as most topographical features disputed in the East and South China Seas cannot sustain human life. In other words, a strict interpretation of UNCLOS may prevent some, if not most, of the features disputed in our case studies from generating an EEZ, hence limiting the possible areas of overlapping claims. Yet, the definition of the term 'rock' is open to interpretation, as are the exact requirements prescribed to 'sustain human habitation or economic life.'³⁸ The discussion of whether tests can be applied to determine if a feature should be classified as an island or a rock has become rather academic.³⁹ Beyond the controversy surrounding what constitutes an island, the use of continental shelves to claim territory might be equally problematic. Although many of the claimant states in East Asia have invoked the extension of the continental shelf to justify their arguments, this is seen to be 'an insufficient legal basis to claim islands.'⁴⁰ Maritime zones defined under UNCLOS may confer the right to exploit the resources therein, but they do not confer the islands themselves. Still, these legal points remain very much open to debate.

In short, UNCLOS has allowed coastal states to claim sovereignty rights to living and non-living natural resources in an EEZ of up to 200 nm and to the sedentary and non-living resources in a continental shelf not to be extended beyond 350 nm. A coastal state has the right to claim

an EEZ and a continental shelf from either its mainland or its islands. The following sections of the monograph discusses three particular cases where boundaries have overlapped and generated maritime territorial disputes due to the absence of agreements on maritime boundary delimitations. Boundary disputes can only be settled bilaterally by the parties involved. The three maritime territorial disputes in the Sea of Japan and East and South China Seas are examined from a natural resource dimension, covering sovereignty rights to fisheries and sovereign jurisdiction over seabed energy resources, particularly oil and gas. This is done while keeping in mind the rising resource requirements of the East Asian countries in light of their rapid and sustained economic growth. As mentioned above, rather than discussing what the claimant states should do, special attention is given to attempts at establishing joint development schemes in the disputed areas under consideration and to assessing their viability at defusing conflict.

Notes

- 1 Robyn Lim (2003) *The Geopolitics of East Asia* (New York: Routledge), p. 155.
- 2 For a discussion on fisheries in Southeast Asia, see J. G. Butcher (2004) *The Closing of the Frontier – A History of the Marine Fisheries of Southeast Asia c. 1850–2000* (Singapore: Institute of Southeast Asian Studies).
- 3 R. P. Weidenbach and J. E. Bardach (1992) 'Fisheries and Aquaculture', in J. Morgan and M. J. Valencia (eds) *Atlas for Marine Policy in East Asian Seas* (Berkeley: University of California Press), p. 100.
- 4 Banyan (4 February 2012) 'The Devil in the Deep Blue Detail', *The Economist*.
- 5 *Reuters* (22 September 2010) 'China, Japan, US Lead Fish Consumption-Report', (available at <http://www.worldfishing.net/news101/report-china,-japan,-us-lead-fish-consumption>).
- 6 Global Agriculture Information Network (2011) *People's Republic of China Annual Fishery Products* (Washington DC: GAIN), p. 7.
- 7 Food and Agriculture Organization (2010) *The State of World Fisheries and Aquaculture 2010* (Rome: FAO), p. 10.
- 8 'Seafood to Taiwan: Trends and Opportunities' (21 November 2011), (available at <http://www.austrade.gov.au/Seafood-to-Taiwan/default.aspx>); 'South Korea' (1 November 2009), (available at <http://www.worldfishing.net/features101/new-horizons/south-korea>).
- 9 'Indonesia to Boost Sustainable Fisheries Production' (14 March 2012), (available at <http://www.worldfishing.net/features101/new-horizons/indonesia-to-boost-sustainable-fisheries-production>).

- 10 Southeast Asian Fisheries Development Center (2012) *The Southeast Asian State of Fisheries and Aquaculture 2012* (Bangkok: SEAFDEC), p. 100.
- 11 Southeast Asian Fisheries Development Center (2012) *The Southeast Asian State of Fisheries and Aquaculture 2012*, p. 21.
- 12 Global Agriculture Information Network (2011) *People's Republic of China Annual Fishery Products*, p. 4
- 13 'Japan Targets Greater Self-Sufficiency' (3 November 2010), (available at <http://www.worldfishing.net/features101/new-horizons/japan-targets-greater-self-sufficiency>).
- 14 'South Korea' (1 November 2009); 'Taiwan' (1 December 2009), (available at <http://www.worldfishing.net/features101/new-horizons/taiwan>).
- 15 'Indonesia to Boost Sustainable Fisheries Production', (14 March 2012).
- 16 Southeast Asian Fisheries Development Center (2012) *The Southeast Asian State of Fisheries and Aquaculture 2012*, p. 66.
- 17 L. R. Garces, M. D. Pido and R. S. Pomeroy (2008) 'Fisheries in Southeast Asia: Challenges and Opportunities', in A. Pandya and E. Laipson (eds) *Transnational Trends – Middle Eastern and Asian Views* (Washington DC: Henry L. Stimson Center), p. 175.
- 18 See for example D. Rosenberg (2009) 'Fisheries Management in the South China Sea', in S. Bateman and R. Emmers (eds) *Security and International Politics in the South China Sea: Towards a Cooperative Management Regime* (London: Routledge), pp. 61–79.
- 19 *Agence France-Press* (30 May 2011) 'Philippines Arrests 122 Vietnamese Fishermen', (available at <http://globalnation.inquirer.net/2684/philippines-arrests-122-vietnamese-fishermen>).
- 20 *China Daily* (17 April 2012) 'Nations Agree on Tackling Illegal Fishing', (available at <http://www.infoyou.net/NewsCenter/Fishing/12-4-17-20.html>).
- 21 M. T. Klare (2001) *Resource Wars* (New York: Henry Holt and Company LLC), p. 115.
- 22 For a discussion on how China's energy needs shape its economic and diplomatic strategies and how these influence international politics, see P. Andrews-Speed and R. Dannreuther (2011) *China, Oil and Global Politics* (London: Routledge).
- 23 Klare, *Resource Wars*, p. 113.
- 24 P. K. Lee (2005) 'China's Quest for Oil Security: Oil (Wars) in the Pipeline?', *The Pacific Review*, vol. 18 (2), p. 265.
- 25 Lim (2003) *The Geopolitics of East Asia*, p. 152
- 26 E. S. Downs and P. C. Saunders (2000) 'Legitimacy and the Limits of Nationalism: China and the Diaoyu Islands', in M. E. Brown, O. R. Cote, Jr., S. M. Lynn-Jones and S. E. Miller (eds) *The Rise of China: An International Security Reader* (Cambridge: MIT Press), p. 71.
- 27 K. E. Calder (March 2001) 'Japan's Energy Angst and the Caspian Great Game', *National Bureau of Asian Research*, vol. 12 (1), p. 11.

- 28 X. L. Liao (2005) 'The Petroleum Factor in Sino-Japanese Relations: Beyond Energy Cooperation', *International Relations of the Asia-Pacific*, vol. 7, p. 27.
- 29 Energy Information Administration (2006) 'Country Analysis Briefs: Vietnam', (available at <http://www.eai.doe.gov/emeu/cabs/Vietnam/Full.html>).
- 30 *People's Daily* (13 August 2011).
- 31 While Indonesia remains the largest oil producing country in Southeast Asia, it became a net importer of the commodity in 2006.
- 32 See R. M. M. Wallace (1992) *International Law*, 2nd edn (London: Sweet & Maxwell), pp. 128–165.
- 33 See R. R. Churchill and A. V. Low (1999) *The Law of the Sea*, 3rd edn (Manchester: Manchester University Press), pp. 454–456.
- 34 S. Bateman (Fall 2007) 'UNCLOS and its Limitations as the Foundation for a Regional Maritime Security Regime', *The Korean Journal of Defense Analysis*, vol. 19 (3), pp. 53–54.
- 35 See article 57 of the 1982 UNCLOS Convention in the United Nations (1983) *Official Text of the United Nations Convention on the Law of the Sea with Annexes and Index* (New York: United Nations).
- 36 See C. K. Kim (2004) *Issues and Disputes on the Delimitation of the Exclusive Economic Zone (EEZ) Between Korea and Japan, and Between Korea and China* (Thesis submitted to the School of Marine Affairs, University of Washington, Seattle), p. 4.
- 37 See article 121 (3) of the 1982 UNCLOS Convention.
- 38 Refer to article 121 (3) of the 1982 UNCLOS Convention.
- 39 See V. Prescott and C. Schofield (2005) *The Maritime Political Boundaries*, 2nd edn (Leiden: Martinus Nijhoff Publishers), p. 76.
- 40 L. Buszynski and I. Sazlan (2007) 'Maritime Claims and Energy Cooperation in the South China Sea', *Contemporary Southeast Asia*, vol. 29 (1), p. 147.

3

The Sea of Japan

Abstract: *The Dokdo/Takeshima dispute has remained a major irritant in Japan–Korea relations, preventing a deepening of diplomatic ties. Nationalism and the quest for natural resources have, in the context of the Dokdo/Takeshima issue, been locked in a complex relationship. The availability of abundant fisheries in the waters surrounding the islets has caused tensions between the two nations since the 1950s. This chapter discusses the prospect for resource management in the disputed territory by focusing on fisheries and to a lesser extent on hydrocarbon resources. It concludes that a climate of relations undermined by nationalistic sentiments and memory politics has not been conducive to negotiating a long-lasting agreement on the common development of natural resources.*

Key words: Dokdo/Takeshima, Japan, Korea, natural resources, nationalism, joint development.

Emmers, Ralf. *Resource Management and Contested Territories in East Asia*. Basingstoke: Palgrave Macmillan, 2013. DOI: 10.1057/9781137310149

The nature of the Dokdo/Takeshima dispute

The Dokdo or Takeshima Islands, as they are respectively known to the Koreans and the Japanese,¹ are a group of small islets in the Sea of Japan or the East Sea as it is called in Korea. The disputed islands are respectively 116 nm and 114 nm from mainland Korea and Japan and located approximately 47 nm from Korea's Ullung Island (called Utsuryo in Japanese) and 85 nm from Japan's Oki Island. The islets would appear to be of little initial value to either country, as the contested territory consists of two volcanic rock formations and 30-odd reefs, with total land mass amounting to one-fourteenth of a square mile. Widely considered uninhabitable, a South Korean fisherman and his wife are, apart from stationed ROK Coast Guard patrols, the sole residents of the islands. The ROK Coast Guard is patrolling the waters around the islets to reinforce South Korea's control of the disputed islands, in effect since the 1950s, and to dissuade Japanese vessels from approaching.

Complicated legal and historical documentation is presented by South Korea and Japan to argue that the Dokdo/Takeshima Islands are rightfully their own. Assertions of Korean claims to the islands rest mainly on the basis of discovery and usage, which date back to the sixth century. According to South Korean scholars, Dokdo/Takeshima was first conquered in 512 AD by Chi Jung Wang of the Silla Kingdom, as inferred by the *Samguk-Sagi* (Chronicles of Three Kingdoms), Korea's oldest history text published in 1145.² South Korea further argues that disputes over fisheries in the surrounding waters were resolved in 1696 when Korean control was recognized by Japan and the Tokugawa Shogunate banned Japanese fishing in the area.³ Japan, however, counters that the ban only prohibited Japanese passage to Utsuryo/Ullung Island, and not Dokdo/Takeshima, further asserting that Seoul has yet to demonstrate a clear basis for its claim that Korea controlled the disputed islands prior to Japanese rule.

On its part, Japan argues that its sovereignty over the islands was established at the latest by the seventeenth century, noting that several trade families made use of the Dokdo/Takeshima Islands for fishing. Japan's Ministry of Foreign Affairs (MOFA) writes that formal incorporation of Dokdo/Takeshima into Japanese territory was established by a 22 February 1905 Cabinet decision of the Shimane Prefecture in the effort to curb the amount of sea lion hunting taking place.⁴ Japan considered the territory as *terra nullius* (unclaimed territory) and Korea

did not protest to the Cabinet decision at the time. Viewing the current South Korean occupation of the islets to be 'illegal', the Japanese MOFA maintains that the country has consistently held the same position on the issue. The 1905 doctrine is therefore said to have simply reaffirmed its already existent claim to the territory.

South Korea dismisses this claim, instead viewing the annexation of the Dokdo/Takeshima Islands in 1905 as the first territorial expansion by an aggressive and imperialist Japan that would, by 1910, have claimed sovereignty over the entire Korean Peninsula. In a special message to the nation, the late South Korean President Roh Moo-hyun stated in 2006 that 'Dokdo is our territory that was first to be annexed by Japan in the course of its usurpation of the Korean Peninsula.'⁵ Korea was colonized by Japan until its wartime defeat at the end of the Second World War in 1945. Prior to its full annexation by Japan in August 1910, Korea had already been transformed into a Japanese protectorate through the Protectorate Treaty of November 1905.

Historical ambiguity over Dokdo/Takeshima is matched by the American hesitancy in effectively deciding the issue following Japan's defeat in the Second World War. The Cairo Declaration of 1943 called for the forfeit of Japanese territory taken 'by violence or greed.'⁶ The 1945 Potsdam Declaration additionally stated that 'Japanese sovereignty shall be limited to the islands of Honshu, Hokkaido, Kyushu, Shikoku and other minor islands as we determine.'⁷ Under the Instrument of Surrender, signed by Japan in September 1945, the terms of both were agreed with. However, the San Francisco Peace Treaty of 1951, in which Japan recognized the independence of Korea, did not directly address the question of the Dokdo/Takeshima Islands. The consequent confusion over the offshore territory either specified or implied as belonging to Japan and Korea by these treaties has since left the issue open to debate. While the South Koreans argue that the Cairo Declaration returns the disputed islands to its ownership, the Japanese government contends that, as Dokdo/Takeshima is viewed as an 'integral' part of its own territory, the Declaration is inapplicable.⁸ Moreover, the deletion of Dokdo/Takeshima from the final version of the San Francisco Peace Treaty was taken by Japan as an international recognition of its sovereignty over the islands.⁹

Early versions of the San Francisco draft had concluded that the islets were a part of Korean territory. Until November 1949, circulated proposals by the United States planned for the return of the islands to

Korean control. However, within the span of a few years, Washington had switched positions arguing that there were legitimate historical reasons for believing the islets to be considered Japanese territory.¹⁰ By the time the actual Treaty was signed in 1951, the issue was left off the agenda altogether.

Prior to the San Francisco Treaty of 1951, the 'MacArthur Line' had demarcated the contested area. It benefited the Korean fishing industry by keeping Japanese boats out of the zone. The San Francisco Treaty terminated the 'MacArthur Line', despite a Korean request to preserve it. In response, the South Korean Government of President Syngman Rhee (Yi Seungman) unilaterally declared the 'Peace Line' (known as the 'Rhee Line' to the Japanese) in January 1952, circumscribing Dokdo/Takeshima within its territory. Japan responded to the proclamation of the Peace/Rhee Line by refusing to recognize the Korean claim to the islets. In July of that year, Japan declared the ABC line, which included the Dokdo/Takeshima and Jeju Islands. The United Nations Supreme Commander, Mark Clark, reacted to the bilateral dispute in September 1952 by declaring the 'Clark Line', which worked favourably for Seoul by including the islands on its side and which was therefore disregarded by Tokyo. South Korea later established effective control of the islets through its continued presence of the Coast Guard. Normalization of ties between Japan and South Korea occurred in June 1965 only when the issue was set aside in favour of advancing relations. The Dokdo/Takeshima Islands were not mentioned in the Treaty on Basic Relations, which normalized bilateral ties.

The Japanese claims to Dokdo/Takeshima are for Koreans a painful reminder of the annexation of the islands in 1905 and the start of the forceful Japanese colonization of the peninsula. The fact that Tokyo continues to claim the islets is an indication to many Koreans that Japan is not fully remorseful for its past. Thus, Cha writes that "forgiving" Japan or remaining even mildly neutral to Japanese actions is, in essence, to deny a critical part of one's identity as Korean.¹¹ The emotional significance of the islands to the Korean psyche is largely tied to that of anti-Japanese nationalism. Indeed, parts of the Korean identity are 'constructed in linear opposition to Japan'.¹² Highly emotive, Korean nationalism over the islands has been evident in the 1980s pop song, 'Dokdo is Our Land', as well as the 'Save Dokdo' video game where contestants compete to successfully repel Japanese invaders to the islets. As a further illustration of

nationalistic fervour, South Korea named the first of its large amphibious ships *Dokdo* when it entered service into the ROK Navy in July 2007.

The reactions of the Japanese government have, in comparison to its South Korean counterpart, been less driven by nationalism. Dismissing the colonial legacy of the dispute, Tokyo has urged the South Korean government to move forward and approach the issue strictly from a territorial and resource management point of view. Attempts by Japan to resolve the case at the level of the International Court of Justice (ICJ) in The Hague have met with resistance from South Korea since first proposed in 1954, however. A similar proposal was again rejected by Seoul in 1962. According to the Korean position, the *Dokdo/Takeshima* dispute does not exist as the islands are indisputably Korean territory.¹³ Moreover, as South Korea is in actual control of the islands, the Japanese seemingly have nothing to lose by taking the issue before an international arbiter.¹⁴ Even so, the *Dokdo/Takeshima* issue is seen as vitally important for Japan due to the other territorial disputes in which it is involved. Should Japan lose its claim to the islets, similar claims made to the North Territories/Kurils and the *Senkaku/Diaoyu* Islands, contested respectively with Russia and China/Taiwan, may also be undermined.¹⁵ As all these disputes derive from a similar interpretation of the San Francisco Peace Treaty, Japan would, by renouncing its claims over the *Dokdo/Takeshima*, weaken its position with regards to the others.¹⁶

Resource management: mixed results

Fisheries

Although the *Dokdo/Takeshima* Islands are poor in fresh water reserves necessary to sustain human life, the waters surrounding the islets are rich in fish. These waters have been exploited by Korean and Japanese fishermen for centuries. The availability of abundant fisheries already caused severe conflicts between the two nations in the 1950s. Japan and South Korea have large commercial fishing capabilities active in their respective territorial waters, the Sea of Japan, the East China Sea and beyond. South Korea has approximately 83,000 registered fishing vessels while Japan has about 210,000 vessels involved in the commercial fishing industry.¹⁷ It should be noted that industrial commercial fishing vessels generally weigh more than three gross tons. Over-fishing in

coastal areas and the Sea of Japan has been a serious problem in recent decades causing a depletion of fish stocks. Records of some categories of fish harvested in these areas indicate a gradual decline.

Fishery matters between Japan and South Korea were, for more than 30 years, regulated by the *Agreement between Japan and the Republic of Korea Concerning Fisheries* signed in 1965. The latter established that each country had the right to set up a fishery zone which extended up to 12 nm from their respective coastal base lines, over which they would have exclusive jurisdiction with respect to fisheries. Beyond the exclusive 12 nm zone, it provided for free fishing based on the principle of freedom of the high seas. However, the agreement was unbalanced in that it regulated fishing activity in the waters around ROK but not Japan. Kang has noted that it was primarily the result of a Korean attempt at preventing intensive Japanese fishing in its waters and of a Japanese effort at extending its own fishing activity in Korean waters.¹⁸

The Dokdo/Takeshima issue was affected by the Japanese and South Korean ratification of UNCLOS in 1996. In particular, the establishment of overlapping EEZs significantly escalated the role of resource competition in the dispute. Following their ratification of the Convention, Japan and South Korea established their respective EEZs. As Green writes of the Dokdo/Takeshima, of 'marginal strategic importance themselves, the rocks became crucial as markers of each nation's Exclusive Economic Zone'.¹⁹ Generating a 200 nm area from the baseline, an EEZ could grant Tokyo and Seoul critical access to the living resources contained therein. Yet, as both states claim sovereignty over the islands, their claimed EEZs thereby overlap, raising additional questions of legality for the two sides in their fishing exploitation.

In 1998, Japan abolished the 1965 agreement on fisheries. Tokyo announced its termination after a series of difficult bilateral negotiations that had failed to revise the agreement. The Japanese action was expected by the South Korean side. The termination of the 1965 agreement was ostensibly intended to allow Tokyo to claim its EEZ as provided for by UNCLOS. Negotiations for a new fisheries agreement had already begun in March 1996, with an agreement concluded on 28 November 1998 and entering into force on 22 January 1999. It was based on the EEZ fisheries regime. It tried to respond to the difficulties that resulted from Japan and South Korea's overlapping EEZs and to establish consensus regarding the disputants' fishing rights in these overlapping economic zones. As there was no consensus on ultimate delineation of their EEZs, the new

agreement constituted a *provisional treaty*, in accordance with article 74, paragraph 3 of UNCLOS. Article 74 (3) allows states to establish provisional fisheries agreements, in order to establish joint fishing zones in overlapping areas until the final delineation of EEZ boundaries.²⁰ Since the signing of the agreement, however, Japan and South Korea have failed to reach a consensus on where the fishing boundary should be drawn. This impasse is primarily due to the territorial dispute over the Dokdo/Takeshima Islands.

The 1998 agreement differs from the 1965 agreement in that it establishes 35 nm exclusive fishing zones from the two countries' respective coastal lines. It classifies waters into EEZs, 'Middle' waters and 'Other' waters.²¹ In the EEZs, it provides for enforcement and jurisdiction to be enjoyed by the respective coastal state, and abides by the flag state principle in the middle waters. Fishing in the EEZs is to be regulated by quotas and regulations set by the coastal state and management, and conservation of fishery resources in the middle waters are to be based on recommendations and decisions taken by the Joint Fisheries Commission (JFC). This distinction between recommendations and decisions is significant in the context of the Dokdo/Takeshima dispute. Among the two joint fishing zones that the agreement established in areas where the EEZs overlap (in the middle of the Sea of Japan and in the East China Sea), the JFC is only mandated to make recommendations with regards to conservation and management in the Sea of Japan, whereas it is empowered to make decisions on the same matters in the East China Sea. Ultimately, South Korea did not want to appear as though it was permitting joint management around the Dokdo/Takeshima Islands, territory which it regards as its own but which is still included in the joint fishing zone.²²

Some have contended that the 1998 agreement has effectively designated the waters around the islands as neutral, leading to criticism in South Korea that it has diminished the nation's sovereign rights to the islands. As Kim points out, 'Korea had managed to maintain exclusive territorial control over these islets until this sovereignty issue was put again at stake on the occasion of signing the 1998 Fisheries Agreement.'²³ By agreeing to a joint fishing zone, Seoul acknowledged Japan's sovereignty claims over the disputed islands, and vice versa. In other words, the fisheries agreement put the sovereignty issue back on the table and arguably fuelled nationalist sentiments in Korea. In terms of moving beyond a provisional arrangement, South Korea has so far 'refused to

further the preliminary agreement into a completed treaty' and to 'enforce the resource regulating measures in the arranged zone'.²⁴ Tokyo has not pushed Seoul to move ahead arguably because the existing agreement gives it sufficient ground to demonstrate South Korea's acquiescence of its territorial claims.

Hydrocarbons

In addition to the exploitation of fish stocks, a hydrocarbon dimension has been added to the Dokdo/Takeshima question, especially after 2005. It is anticipated that the surrounding waters contain natural gas reserves estimated at 600 million tons.²⁵ The Korea Gas Corporation projects that the amount of methane hydrate deposits to be found in the surrounding seabed would be capable of fulfilling South Korean demand for natural gas for 30 years.²⁶ Gas exploration is currently undertaken at two sites in waters surrounding the Dokdo/Takeshima, one by the state-owned Korea Gas and the other jointly by Korea National Oil and Australia's Woodside Petroleum. Korea imports 100 per cent of its gas in the form of liquefied natural gas (LNG). While Japan imports most of its gas in the form of LNG, it also has offshore gas fields in the East China Sea. Nevertheless, it is worth repeating that no natural gas of sufficient commercial value has so far been found in the seabed around the Dokdo/Takeshima Islands.

The issue of control over the seabed around the disputed islands has been left unsettled. Several rounds of negotiation between the two countries in 2006 resulted in naught when agreement over how to delineate their respective maritime boundaries could not be reached. In the early spring of 2006, Japan dispatched two ships with the intention of conducting maritime surveys surrounding the islets, without formal notification to Seoul. The planned surveys of the waters by Japan were revoked following the complaint of the South Korean government and the dispatch of more than 20 warships. Seoul viewed the attempt as a demonstration of Japan's expansionist ambitions.²⁷ Yet it promised not to submit Korean names for seabed features of the area in return for the cancellation of the survey. Some undersea basins and ridges in the surrounding waters have not yet been named. An agreement was signed by the two parties in April 2006, which led to the suspension of the planned surveys in return for Seoul promising not to register Korean names for submarine features near the islets at an International Hydrographic Organization (IHO) meeting in June 2006.

The agreement was still perceived in Korea as a concession to Japan. Notably, a statement from the Korean Secretary for Public Information declared:

Exactly 100 years after its occupation of Korea, Japan is again attempting to rob us of our history. The key to the Dokdo issue is the liquidation of the war of the Japanese imperialists' aggression. In that sense, Dokdo stands at the center of our efforts to rectify a history distorted by a war of aggression.²⁸

On its part, the Japanese government warned the same year that it would send its own Coast Guard to the area should South Korean surveyors infringe on their proclaimed EEZ. In July 2006, a Korean ship conducted a survey in the disputed area leading the Japanese foreign ministry to complain. The South Korean energy ministry reiterated in August 2008 the importance of developing energy resources, such as gas hydrates, in the seabed and announced the building of a solar power facility on the disputed territory.

Conclusion

The exploitation of fish stocks has constituted the core of the resource dimension of the Dokdo/Takeshima dispute although a hydrocarbon component has also emerged and further complicated the issue since 2005. While gas reserves are suspected to lie in the seabed surrounding the disputed islands, the existence of natural gas is still an unproved claim. Japan's objective to guarantee access to the area's living and non-living natural resources is not surprising, however, in light of South Korea's control over the islets and overlapping EEZ with Japan. In the second half of the 1990s, the resource dimension of the dispute was exacerbated by the enforcement of UNCLOS and the establishment of overlapping EEZs in the Sea of Japan.

South Korea and Japan still succeeded in reaching a temporary resource management agreement through the fisheries agreement of 1998. The latter has continued to operate as a collaborative scheme, where both parties gain economically from the joint exploitation of living natural resources in the waters between South Korea and Japan. Still, UNCLOS and the fisheries agreement put the sovereignty question back on the table. The agreement was criticized in South Korea for having diminished the nation's sovereign rights to the islands by giving ground

to Japan's territorial claims. Seoul has so far refused to transform the preliminary agreement into a treaty and the ongoing failure to demarcate the overlapping EEZs between South Korea and Japan has continued to fuel the situation.

It is perhaps unsurprising that no progress has been made towards the establishment of a joint hydrocarbon exploration scheme. A climate of relations undermined by nationalistic sentiments and memory politics has not been conducive in negotiating an agreement on the common development of potential hydrocarbon resources in the Sea of Japan. Tokyo's attempts at addressing cooperatively the energy dimension of the dispute by seeking to solve the issue of control over the seabed have fuelled nationalism in South Korea. In a recent development, President Lee Myung-bak was the first Korean head of state to visit the Dokdo/Takeshima Islands on 10 August 2012. The visit provoked an immediate diplomatic response from Tokyo including the calling back of the Japanese ambassador to South Korea for consultation. This was followed by popular protests in both countries and a significant worsening in bilateral relations. The dispute is therefore representative of the emotional tension accompanying the bilateral relationship, as it is perceived in South Korea as an illustration of Japan's failure to confront its colonial past.

Notes

- 1 The Korean name of the islands is romanized either Tokdo or Dokdo. The 'Dokdo' spelling is used in this monograph, as it is the official name used by the Korean government. The islands are also referred to as Liancourt Rocks, after the French whaling ship – the Liancourt – which charted the islets in 1849. The name 'Liancourt Rocks' is often used by neutral observers of the dispute.
- 2 I. Ue (20 March 2005) 'An Island Dispute with a Past', *Yomiuri Shimbun*.
- 3 M.A. Weinstein (10 May 2006) 'South Korea's and Japan's Dokdo/Takeshima Dispute Escalates toward Confrontation', (available at http://www.pinr.com/report.php?ac=view_report&report_id=487).
- 4 Ministry of Foreign Affairs of Japan (not dated) 'Outline of the Issue of Takeshima', (available at <http://www.mofa.go.jp/region/asia-paci/takeshima/position.html>).
- 5 M. H. Roh (25 April 2006) 'Special Message by President Roh Moo-hyun on Korea-Japan Relations', (available at <http://www.mofat.go.kr/english/help/include/newopenmofat.jsp.html>).

- 6 As cited in K. Hara (2007) *Cold War Frontiers in the Asia – Pacific: Divided Territories in the San Francisco System* (New York: Routledge), p. 17.
- 7 Hara (2007) *Cold War Frontiers in the Asia – Pacific*, p. 17.
- 8 Ministry of Foreign Affairs of Japan (March 2004) ‘The Issue of Takeshima’.
- 9 Ue (20 March 2005) ‘An Island Dispute with a Past’.
- 10 See Hara (2007) *Cold War Frontiers in the Asia – Pacific*.
- 11 V. D. Cha (2000) ‘Hate, Power, and Identity in Japan–Korea Security: Towards a Synthetic Material–Ideational Analytical Framework’, *Australian Journal of International Affairs*, vol. 54 (3), p. 314.
- 12 Cha (2000) ‘Hate, Power, and Identity in Japan–Korea security’, p. 314.
- 13 M. Valencia (16 June 2006) ‘Settling the Japan/Korea Dispute: An Opportunity to Being a New Era’, (available at http://www.glocom.org/debates/20060616_valencia_set/index.html).
- 14 Weinstein (10 May 2006) ‘South Korea’s and Japan’s Dokdo/Takeshima Dispute Escalates toward Confrontation’.
- 15 L. Buszynski (2011) ‘The Dokdo Dispute in Perspective and Avenues for Resolution’, in S. Lee and H. E. Lee (eds) *Dokdo: Historical Appraisal and International Justice* (Leiden: Martinus Nijhoff Publishers), pp. 209–221.
- 16 T. Savage (19 April 2006) ‘Japan–South Korea Ties on the Rocks: Dokdo/Takeshima Dispute Once Again Roils the Waters’, *My News International*.
- 17 ‘South Korea’ (1 November 2009), (available at <http://www.worldfishing.net/features101/new-horizons/south-korea>); ‘Japan Targets Greater Self-Sufficiency’ (3 November 2010), (available at <http://www.worldfishing.net/features101/new-horizons/japan-targets-greater-self-sufficiency>).
- 18 J. S. Kang (2003) ‘The United Nations Convention on the Law of the Sea and Fishery Relations between Korea, Japan and China’, *Marine Policy*, 2003, pp. 111–124.
- 19 M. J. Green (March 1999) ‘Japan–ROK Security Relations: An American Perspective’, *Shorenstein APARC*, p. 10, (available at <http://iis-db.stanford.edu/pubs/10060/Green.pdf>).
- 20 See article 74 (3) of the 1982 UNCLOS Convention in the United Nations (1983) *Official Text of the United Nations Convention on the Law of the Sea with Annexes and Index* (New York: United Nations).
- 21 See Kang (2003) ‘The United Nations Convention on the Law of the Sea and Fishery Relations between Korea, Japan and China’.
- 22 S. P. Kim (2003) ‘The UN Convention on the Law of the Sea and New Fisheries Agreements in North East Asia’, *Marine Policy*, vol. 27 (2), pp. 97–109.
- 23 Y. K. Kim (2008) ‘Sovereign Rivalry between Korea and Japan Fermented by a Distorted Fisheries Agreement’, in Y. K. Kim (ed.) *An Empirical Analysis on Korean Government’s Policies Managing the Dokdo and NLL Issues* (Busan: Dasom Publishers), p. 14.

- 24 Kim (2008) 'Sovereign Rivalry between Korea and Japan Fermented by a Distorted Fisheries Agreement', p. 42.
- 25 Weinstein (10 May 2006) 'South Korea's and Japan's Dokdo/Takeshima Dispute Escalates toward Confrontation'.
- 26 K. T. Kim (20 April 2006) 'South Korea Warns of Sea Clash with Japan Amid Talks on Disputed Islets; EU Urges Calm', *Associated Press*.
- 27 Kim (20 April 2006) 'South Korea Warns of Sea Clash with Japan Amid Talks on Disputed Islets; EU Urges Calm'.
- 28 As cited in Kim (20 April 2006) 'South Korea Warns of Sea Clash with Japan Amid Talks on Disputed Islets; EU Urges Calm'.

4

The East China Sea

Abstract: *This chapter studies the Senkaku/Diaoyu dispute involving Japan, China and Taiwan.¹ Sovereignty, nationalism and access to natural resources are found to be at the core of the territorial dispute. The chapter examines how the dynamics of the dispute have been informed by the quest for natural resources and it assesses the prospect for their joint development. It notes that China and Japan have at least succeeded in reaching a fisheries agreement and an ‘in-principle consensus’ (although never implemented) on joint gas development in a disputed area of the East China Sea. The chapter concludes, however, that the recent escalation of tensions and the absence of a regional conflict management mechanism have severely complicated the joint management of resources in the East China Sea.*

Key words: Senkaku/Diaoyu, China, Japan, Taiwan, natural resources, nationalism, joint development.

Emmers, Ralf. *Resource Management and Contested Territories in East Asia*. Basingstoke: Palgrave Macmillan, 2013. DOI: 10.1057/9781137310149

The nature of the Senkaku/Diaoyu dispute

The Senkaku or Diaoyu Islands, as they are respectively known to the Japanese and Chinese, are approximately 120 nm northeast of Taiwan, 200 nm east of China and 200 nm southwest of the Japanese island of Okinawa. Five are considered islets while three are identified as barren rocks. In total, their land amasses to just seven square kilometres. The Senkaku/Diaoyu Islands are considered valuable as they are strategically located near vital sea lines of communication (SLOCs) and are suspected to be atop a significant amount of natural resources. Moreover, the disputed islands are significant in view of their potential value in maritime boundary delimitations. The strategic, economic, and territorial importance of the islands is matched by their symbolic significance to China, Japan and Taiwan. Furthermore, the fate of this dispute bears importance for other territorial claims held by the contenders, making concession on the issue unlikely.

Following the conclusion of the Okinawa Reversion Treaty in 1971, Japan has been in physical control of the Senkaku/Diaoyu Islands since 1972. In the agreement, control of the Senkaku/Diaoyu Islands and the neighbouring Okinawa Island was returned to Japan after having been administered by the United States since the end of the Second World War. Prior to this period, the Senkaku/Diaoyu Islands were also widely considered to be Japanese territory, having been incorporated into the country at the end of the nineteenth century. However, controversy over the circumstances both at the time of Japan's incorporation and reversion of the islands has left the dispute open to Chinese claims.²

China's case lies on the principles of historical discovery and usage, dating back to the Ming Dynasty.³ Beijing contends that the Senkaku/Diaoyu Islands were first found by Chinese fishermen travelling to the Ryukyu/Nansei Island chain. The PRC states that references to Senkaku/Diaoyu were recorded as early as the sixteenth century when the islets became part of China's coastal defence system.⁴ In 1893, Qing Dynasty Empress Dowager Tsu Hsi issued an imperial edict to one of her subjects, Sheng Hsuan-huai, granting him some of the islands as private property to collect rare medicinal herbs. The discovery of the islands combined with this official act constitutes the thrust of China's historical claim to sovereignty today.⁵ In short, China argues 'that from 1372 to 1895, the country maintained a "continuous and peaceful display of territorial sovereignty" over the Tiao yu Islands in the only

conceivable forms, given the conditions of such desolate islands and the pre-industrial age.⁶

Following the end of the Sino-Japanese War in 1895, China contends that the islands were ceded to Japan, as part of Taiwan, under the Treaty of Shimonoseki. This Treaty was reversed in 1943 when the Cairo Declaration demanded the return of territory conquered by Japan through ‘violence or greed.’⁷ The Potsdam Declaration of 1945, issued by the United States, the United Kingdom and China, further limited Japan’s sovereignty to ‘the islands of Honshu, Hokkaido, Kyushu, Shikoku and such minor islands as we determine.’⁸ When the San Francisco Peace Treaty was signed in 1951, Japan renounced all claims over Taiwan. Yet the Senkaku/Diaoyu Islands remained in US control. The issue, therefore, is whether the Treaty of Shimonoseki should be interpreted as inclusive of the Senkaku/Diaoyu Islands. As Taiwan is the nearest territory to the disputed territory, China concludes that the Treaty was referring to the Senkaku/Diaoyu when including Taiwan’s ‘appertaining islands’. Beijing considers Taiwan to be part of the PRC under the one-China policy.

In refutation, Japan asserts it had already legally acquired the islands in January 1895.⁹ It further claims that even if China had discovered the Senkaku/Diaoyu, merely seeing an island cannot in itself demonstrate the intention of establishing sovereignty. Instead, according to Japan, the islands were surveyed in the final years of the nineteenth century and found to be unoccupied with no signs of formal control.¹⁰ Considered to be *terra nullius* (unclaimed territory), the islands were incorporated into the Okinawa Prefecture through a Cabinet decision unrelated to the Sino-Japanese War and the Shimonoseki Treaty. From the 1950s, the islands were leased to the American civil administration for their use in military exercises. Japan consequently argues that the Treaty of Shimonoseki is inapplicable to the dispute. Moreover, the Shimonoseki, Cairo, Potsdam and San Francisco treaties all appear to be unclear on the subject, as they fail to mention the Senkaku/Diaoyu Islands by name. According to Japan, the only treaty that does explicitly list the islands is the Okinawa Reversion Treaty.

With the onset of the Korean War and the rise of communism in the region, China was seen as one of the biggest threats to American goals. Washington focused therefore on strengthening its relations with Japan as a potential counterweight to China and the Soviet Union. Okinawa gained in strategic importance to the United States as one of its

‘important defense points.’¹¹ Accordingly, when the San Francisco Treaty was drafted, the United States retained Okinawa and Senkaku/Diaoyu for security reasons. Twenty years later, control of Okinawa was returned to Japan. However, as the Senkaku/Diaoyu Islands were included in the Okinawa Reversion Treaty, China quickly voiced its concerns.

The Senkaku/Diaoyu territorial dispute also affects related maritime questions. Without knowing the eventual fate of the islands’ sovereignty, border demarcation between China and Japan in the East China Sea is left open to dispute. Complicating the issue further is the presence of the Okinawa Trough in the continental shelf of the East China Sea. Water depth for most of the semi-enclosed sea rarely reaches more than 200 m, but drops steeply off to 2,300 m in the Trough. The Trough is located substantially east of the equidistant line between Japan and China and is thus closer to the former. Depending on the circumstances, such geological features are not always taken into consideration in delimiting maritime borders.¹² Still, natural prolongation remains a powerful consideration where the continental shelf is involved. The Okinawa Trough is a significant feature, as there is little doubt that it marks the end of the natural prolongation of the Asian landmass. The Trough is thus critical when it comes to the delimitation of maritime boundaries in the East China Sea and it would greatly impact China and Japan’s continental shelf claims.¹³ Overall, the interpretability of existing law has led Tokyo and Beijing to take substantially different approaches to the issues of the islands’ status, baselines, continental shelf demarcation, and territorial sea boundaries.

Japan argues that the Senkaku/Diaoyu can be considered as islands capable of generating both an EEZ and a continental shelf. Tokyo extends its claims to the East China Sea by using the islands as its base points and takes the Okinawa Trough as merely an incidental depression in the East China Sea’s continental shelf. As a result, it advocates that a median line division be used to determine the maritime boundary between itself and China.¹⁴ Significantly, while the Senkaku/Diaoyu are beyond the territorial seas of China and Japan, they lie on the western side of the Trough. Hence, without ownership of the islands, Japan’s boundary could be limited and the country may have ‘no legal claim to any share in that part of the continental shelf.’¹⁵ Reversely, if the islands are rightfully Japanese, the Trough would ‘probably not pose an obstacle to linking the maritime zones generated from the Ryukyus and the Senkakus.’¹⁶ Sovereignty over the islands is therefore imperative to Japan’s larger seabed claims.

In contrast, the natural prolongation argument constitutes the basis of China's claim to the area surrounding the Senkaku/Diaoyu Islands. By arguing that the continental shelf is a natural extension of its own continental territory, the PRC is able to assert substantial claims over the East China Sea.¹⁷ If recognized, such claims could support the argument that the Okinawa Trough should be used as the natural marker dividing the countries' continental shelves. This would push the maritime border closer to Japan. It is on these bases that the Chinese government has stated that, '[T]he People's Republic of China has inviolable sovereignty over the East China Sea continental shelf.'¹⁸ Even if the islands were ignored completely when deciding the maritime boundary between Chinese and Japanese territory, the two would still find themselves in conflict over the range of their EEZs. As the distance separating the coasts of the two is less than 400 nm at the widest point, the claims of each to their respective 200 nm EEZ inevitably overlap.

China's formal protests contesting Japanese sovereignty over the Senkaku/Diaoyu Islands were filed following a 1968 UN geological survey that estimated that a high quantity of oil and gas was present in the surrounding area. Not until 1970 did both the PRC and the ROC claim that the Senkaku/Diaoyu Islands were part of Taiwanese territory. Until then, Japan did not pay much attention to the islands either and China arguably appeared to have forgotten its own historical claims. Suganuma notes that, the 'Diaoyu Islands seemed to be worthless to both countries prior to 1969.'¹⁹ Yet after realizing their economic significance, Chinese protests rallied around the Senkaku/Diaoyu issue. The Chinese Ministry of Foreign Affairs (MFA) proclaimed that the islands 'have been an inalienable part of Chinese territory.'²⁰

Tensions later subsided as both sides worked to normalize their relations in 1972. It was agreed that the dispute would be shelved and drilling in the disputed area ceased. The larger advantages provided by the Peace and Friendship Treaty led to the deferral of the issue in favour of increased bilateral trade and cooperation.²¹ Deng Xiaoping, then China's Vice Premier again reiterated the policy shared by both governments of shelving the issue, noting that the 'next generation will certainly be wiser. They will find a solution acceptable to all.'²²

Despite Deng's words of wisdom, neither China nor Japan has backed down on its claims to sovereignty since the normalization of bilateral relations in 1972. There has been no concession made over the fundamental question of rightful ownership. While China has settled 17 of

its 23 territorial disputes since 1949, Beijing has offered no compromise on the Senkaku/Diaoyu Islands. On its part, Japan is hesitant to admit that its claims are in question. As neither China nor Japan is open to negotiation on the issue, the entire sovereignty dispute remains at an impasse. The dispute over sovereignty has caused repeated diplomatic rows as well as clashes between China, Japan and Taiwan. It has also evoked strong nationalist sentiments in the claimant states. With regards to their sovereignty claims, the Chinese and Japanese governments have generally sought to control domestic nationalist movements and monitor their patriotic rhetoric in an attempt to maintain stable bilateral relations. However, officials have at times used and manipulated popular nationalist sentiments invoked by the Senkaku/Diaoyu issue to gain domestic support.

A low point in Sino-Japanese relations was reached in 2005. In February of that year, the Japanese placed under state control a lighthouse built by activists in 1988 on the largest of the Senkaku/Diaoyu Islands. Tokyo claimed that the activists, who had initially built the lighthouse, were no longer in a position to run it. In response, a Chinese foreign ministry spokesperson reiterated China's historical claim to the islands and labelled any unilateral action as 'illegal and invalid'.²³ Combined with contentious history textbook and wartime reparation controversies, '[s]immering bilateral tension came to a boiling point in April 2005 when a series of violent anti-Japanese rallies broke out in the major cities of China'.²⁴ The situation was further exacerbated when Tokyo authorized in July 2005 the Japanese company Teitoku Sekiyu to drill in a contested area of the East China Sea for the purposes of extracting natural resources from the seabed. The Chinese formally protested, stating that 'Japan's actions constitute a severe provocation to the interests of China as well as the norms governing international relations'.²⁵ Moreover, in August 2005, then Taiwanese President Chen Shui-bian set foot on the islet of Pengjia, for which sovereignty is not disputed and is located about 76 nm away from the Senkaku/Diaoyu Islands, to reiterate the ROC claims of sovereignty over the Senkaku/Diaoyu. This had come in the wake of clashes between Taiwanese fishermen and the Japanese coast guard the previous month, part of a long running dispute over fishing rights.

These events led to a further militarization of the dispute. In response to the Japanese exploratory drilling, five Chinese naval vessels from the People's Liberation Army Navy (PLAN), including the *Sovremenny* destroyer, were spotted near the Chunxiao/Shirakaba gas field in

September 2005. One of the warships even allegedly pointed its guns at a Japanese P3-C surveillance aircraft. China also increased the number of military surveillance flights into the disputed airspace. In December 2005, Japanese Minister for Foreign Affairs Taro Aso declared that the military build-up of China was a threat to Japanese interests. Tokyo then suspended its loans to China, prompting Beijing to cancel high-level meetings with Japan.²⁶

The most recent escalation in the Senkaku/Diaoyu issue started in mid-July 2012 when the Japanese government announced its intention to buy the disputed islands. While Japan has controlled and administered the islands since 1972, its government still leased them from a private owner with the exception of the islet of Taisho which was already state-owned. Prime Minister Yoshihiko Noda's announcement was in response to a proposal by Tokyo's Governor Shintaro Ishihara to purchase the Senkaku/Diaoyu under the Tokyo regional government for commercial development. Noda wanted the disputed territory to remain undeveloped so as to prevent an escalation of the sovereignty dispute with China.²⁷ Beijing nonetheless condemned Noda's plan stating that the islands were Chinese territory and could not therefore 'be bought or sold'.²⁸ These events were followed by three Chinese patrol vessels sailing in waters near the disputed Senkaku/Diaoyu Islands further raising friction between Tokyo and Beijing. Japan responded by calling back to Tokyo its ambassador to China for consultation. In August 2012, Japanese authorities arrested 14 Chinese activists after some of them set foot on one of the Senkaku/Diaoyu Islands.

Japan eventually nationalized the Senkaku/Diaoyu Islands on 11 September 2012. In response, anti-Japanese protests erupted in several Chinese cities and at least a dozen Chinese surveillance ships as well as numerous fishing vessels sailed into the territorial waters of the disputed islands. Days of popular anti-Japan demonstrations peaked on the anniversary of the 'Mukden Incident' that occurred on 18 September 1931 and became the pretext for the Japanese invasion of China. In addition, Beijing cancelled the celebrations marking 40 years of diplomatic relations with Tokyo. As many as 40 Taiwanese fishing boats and 12 Taiwanese patrol vessels also entered the contested waters near the Senkaku/Diaoyu Islands in late September 2012 in response to the nationalization of the islands by Japan. The victory of Shinzo Abe and of his centre-right political party, the Liberal Democratic Party (LDP) of Japan, at the national elections of 16 December 2012 is expected to raise

the nationalistic rhetoric in Japan and to further complicate bilateral relations with Beijing over the Senkaku/Diaoyu issue.

Resource competition

Fisheries

The Senkaku/Diaoyu dispute is influenced by access to fisheries as well as potential gas and oil deposits. The sovereignty dispute is therefore in part a dispute over control of offshore resources. If either China or Japan were to establish sovereignty over the islands, they would be entitled access to approximately 11,700 square nm of maritime space.

Dependency on fisheries is becoming more pressing amidst increasing regional and global consumption. Japanese, Chinese and Taiwanese fishing vessels are particularly active in the East China Sea with, for example, roughly 10 per cent of China's total catch coming from the semi-enclosed sea. In Chapter 3, it was noted that the Japanese commercial fishing industry consists of approximately 210,000 vessels. In comparison, the number of registered fishing vessels in China and Taiwan is about 192,000 and 25,000 respectively.²⁹ Over-fishing practices and land based pollution have resulted in declining fish stocks in the East China Sea. For example, China's fish harvest from the semi-enclosed sea dropped from 1.3 million tons in 2001 to 980,000 in 2005 while the sea was rated category four on a five-tier scale for pollution in 2006.³⁰

Standoffs involving fishermen and coast guards have also been recurrent in the disputed waters. A major fisheries incident in 2010 illustrated once again the nationalist sentiments invoked by the sovereignty dispute. On 7 September 2010, a Chinese fishing vessel operating in disputed waters collided with patrol boats of the Japanese Coast Guard (JCG).³¹ The subsequent detention of the Chinese skipper led to a major diplomatic incident between Beijing and Tokyo, including the cancellation by China of the planned summit with the Japanese Prime Minister Naoto Kan. The Japanese authorities eventually released the Chinese captain on 24 September 2010, although this appeasing gesture did not prevent Beijing from asking for an apology and compensation from Japan the following day. In the midst of the crisis, US Secretary of State Hillary Clinton declared that the Senkaku/Diaoyu Islands fell under article five

of the US–Japan Defence Treaty implying that Washington would support Tokyo in case of a military conflict with Beijing over the disputed territory.

Following the 2010 crisis, the JCG seized a Chinese fishing vessel accused of illegally harvesting corals near the Senkaku/Diaoyu Islands in December 2011. The Japanese authorities arrested the Chinese captain and crew members, which threatened to once again escalate bilateral relations. Yet, in contrast to the events of 2010, the Chinese Foreign Ministry only called on Tokyo to respect the rights of the arrested fishermen.³²

Hydrocarbons

Oil and gas are suspected to be found in the seabed surrounding the Senkaku/Diaoyu Islands. Access to such resources would help sustain the economies of both China and Japan. Oil present in the East China Sea has been projected to be between 10 and 100 billion barrels worth.³³ Other estimates have referred more specifically to a capacity of 80 to 100 billion barrels of oil reserves.³⁴ The amount of natural gas believed to be at stake varies greatly, for example, in the case of the Chunxiao/Shirakaba field, from Japan's estimate of 200 billion cubic meters to China's estimate of 20 million.³⁵

The 1967 report by Hiroshi Niino and K. O. Energy first identified the hydrocarbon potential of the East China Sea. It proclaimed the semi-enclosed sea to be 'one of the most potentially favourable but little investigated' continental shelves worldwide.³⁶ The much publicized 1968 UN seismic study of the East China and Yellow Seas stated that 'the shallow sea floor between Japan and Taiwan might contain one of the most prolific oil and gas reservoirs in the world, possibly comparable with the Persian Gulf area.'³⁷ As Suganuma writes, the study further identified 'the most favorable part of the region for development... as a 200,000-square-kilometer area just northeast of Taiwan or almost exactly the location of the Diaoyu Islands – where the Neogene sediment is more than 2,000 meters thick.'³⁸ In 1970, Yutaka Ikebe, director of the Japan Petroleum Development Corporation, compared the potential of the East China Sea to Saudi Arabia.³⁹ Geologist Michihei Hoshino predicted that the shelf would soon be 'one of the five biggest oil producing regions in the world.'⁴⁰

It was at this point that the conflict fully erupted. By September 1970, 25,000 applications for drilling rights had been filed with the Ryukyu

local government. When China voiced its objections, however, the two sides shelved the dispute and ‘virtually all exploration activities throughout the Yellow Sea and the East China Sea came to a stop by the middle of April 1971.’⁴¹ Since then, even talk of drilling near the median line has consistently met with protest. The presence of Taiwan limits Japan’s own claims on the East China Sea. It restricts the country’s access to the southern part of the continental shelf.

In an effort to explore the resources of the East China Sea, the PRC signed in the early 1990s agreements with international oil companies, including Royal Dutch Shell, Chevron, and Texaco. The exploration schemes only took place within the Chinese EEZ, however, and therefore did not occur in the contested maritime zone surrounding the Senkaku/Diaoyu Islands. In August 2003, China agreed on a deal to develop gas fields with a number of oil firms. In April 2005, Japan announced that it would begin test drilling in the East China Sea unless China stopped its exploration activities in the Chunxiao/Shirakaba gas field.⁴² While China had restricted its drilling in this area to its side of the median line, Japan was still concerned that it might siphon resources from its own side. Beijing refused to cease its activities and later firmly criticized Tokyo’s decision to open bids for exploration contracts.

In July 2005, the Japanese Ministry of Economy, Trade, and Industry (METI) followed by Prime Minister Junichiro Koizumi himself authorized the company Teitoku Sekiyu to test drill on the Japanese side of the median line for the purposes of extracting natural resources from the seabed.⁴³ As mentioned before, a deployment of Chinese naval military might was employed to convey a strong message to Japan regarding China’s territorial claims and its sovereign rights over the natural resources in the disputed areas. The dispute heightened in 2006 when it was revealed that the PRC was operating production from the Chunxiao/Shirakaba field. Tensions were further exacerbated when China later conducted an unauthorized survey in Japanese claimed territory.⁴⁴

Resource management: mixed results

Fisheries

China and Japan made significant progress on joint fisheries management when they agreed to a bilateral fisheries agreement on 11 November

1997. It later came into force on 1 June 2000. The agreement established three different zones where different fisheries regimes are applied to address the Chinese and Japanese overlapping claims in the East China Sea. The three zones were set as follows: the first established exclusive fishing zones in the respective EEZs up to 52 nm from each state's baselines; the second consisted of a joint regulation area beyond 52 nm from their baselines; and the third zone remained unregulated high seas where the fisheries agreement did not apply.⁴⁵ The agreement also created a China–Japan joint fisheries commission to make recommendations on catch quotas and other relevant issues.

Significantly, the two countries agreed to move ahead in terms of joint fisheries management while circumventing the territorial dispute in the East China Sea. The area around the Senkaku/Diaoyu Islands was carefully avoided in the fisheries agreement. The latter did not in any way or form undermine the Chinese and Japanese EEZ and continental shelf claims nor did it question their sovereign rights to the disputed islands.⁴⁶ Instead, it was announced as a temporary agreement pending the final negotiation of the boundary delimitation. The bilateral agreement did not, however, apply to Taiwan and its fishing fleet active around the Senkaku/Diaoyu Islands. Beijing and Tokyo did subsequently sign an agreement in February 2001 indicating that both parties would give two months notification on marine research conducted in each other's EEZ. Yet the agreement failed to determine a precise line in the East China Sea beyond which notification would be necessary.

Hydrocarbons

As far as the joint management of hydrocarbon resources is concerned, South Korea and Japan signed an initial joint development agreement in 1974 in the wider context of the 1973 oil crisis and their objective to reduce their dependence on Middle Eastern oil.⁴⁷ The 1974 agreement was applied to their overlapping claims to the continental shelf in the East China Sea. It covers an area southeast of Jeju Island and does not therefore include the disputed Dokdo/Takeshima. Beijing protested, however, that part of the agreed area is also claimed by China. No hydrocarbon resources have so far been found in the joint development zone.

Chinese and Japanese oil companies and officials were involved in informal discussions on the prospect of reaching a hydrocarbon

development agreement during most of the 1980s and 1990s. This process was made official when Beijing and Japan started engaging from 2004 in a series of bilateral talks focusing on the prospect of joint exploration and exploitation in the East China Sea. Due to the larger issue of Chinese sovereignty, Taiwan was excluded from the talks as a protagonist in the dispute. The prospect of joint development in the East China Sea met with resistance, however, from both sides since first suggested. Between 2004 and early 2008, Tokyo and Beijing failed in a dozen rounds of bilateral talks to reach an agreement on the issue. In essence, Japan feared that collaboration would acknowledge that its sovereignty was in question. China, on the other hand, worried that such consent would give validity to Japan's adherence to an equidistant line approach. In 1970, Japan and Taiwan had already agreed to joint oil development, but this plan was soon scuttled when China raised objections. After that, no progress was made and proposals of joint development were rejected by both sides. China proposed joint development in 2004 and 2006, Japan in 2005. Yet, Beijing confined its proposal to the Japanese side of the median line. This was repeatedly rejected by Tokyo.

The two sides accepted to resume their talks on the subject of joint development by the summer of 2006. It was agreed that a technical and legal experts group would be set up to discuss the matter, as would a maritime hotline to 'deal with unpredictable situations in the area.'⁴⁸ In December 2006, the first ministerial level meeting to touch on the East China Sea oil and gas dispute was held between the foreign ministers of China and Japan in Cebu in the Philippines at the sidelines of the East Asia Summit (EAS).

Despite the positive consultative efforts, the dispute continued to affect Sino-Japanese relations. Chinese plans to develop a new gas field, Bajiaoting, were also protested to by Japan as being within its EEZ. Japan later opposed Chinese production from the disputed Pinghu oil and gas field.⁴⁹ In February 2007, Japan issued a warning to China over an unauthorized ship intruding in its claimed EEZ. The vessel was believed to be carrying out maritime surveying activities in the disputed area around the Senkaku/Diaoyu Islands.⁵⁰

Nonetheless, Chinese Premier Wen Jiabao's successful visit to Japan in April 2007 was perceived as a strong indication that China and Japan might be willing to move forward on the issue of joint development. The matter was discussed again during the visit by Japanese Prime Minister Yasuo Fukuda to China in December 2007 but no agreement

was reached. Following the visit, Japanese Vice-Foreign Minister Mitoji Yabunaka and his Chinese counterpart Wang Yi pledged to work at finding a resolution of the East China Sea dispute during a bilateral strategic dialogue held in Beijing in February 2008. Subsequently, further discussions were held in an attempt to resolve the dispute prior to Chinese President Hu Jintao's state visit to Japan in early May 2008. Yet Japanese Chief Cabinet Secretary Nobutaka Machimura acknowledged that while talks were 'getting closer to a conclusion' there was 'still a wide gap before we can reach an agreement'.⁵¹ During the visit itself, Japanese Prime Minister Fukuda declared that there had been 'great development' in discussions over the issue, particularly the joint development of gas fields in the East China Sea including the Chunxiao/Shirakaba field.⁵² The Chinese and Japanese leaders pledged during the visit to transform the East China Sea into a 'Sea of friendship, peace and prosperity'.

On 18 June 2008, it was officially announced that China and Japan had reached an 'in-principle consensus' on joint development of gas deposits in the East China Sea, starting with an initial block in the Chunxiao/Shirakaba field. Taiwan was not part of the in-principle consensus. China and Japan announced that both parties would continue discussions to identify other suitable areas for joint development in the East China Sea, including the Longjing field. However, the exact details concerning the companies involved in the exploration were not released, though it was understood that Japanese private sector firms would be participating in the project. It was suggested that the deal was part of an effort to transform the East China Sea into an area of 'peace, cooperation and friendship' benefiting the interests of the two nations.⁵³

The in-principle consensus signed in June 2008 purposely did not address the continuing dispute over boundary demarcation. Perhaps unsurprisingly, however, Beijing stressed that the deal 'fully embodies China's sovereign rights over the Chunxiao gas field' and that 'China has never and will not recognize the so-called "median line" as advocated by Japan. China upholds the principle of natural prolongation to solve the delimitation issue of East China Sea continental shelf'.⁵⁴ It is interesting to note that despite having reached a consensus, China was quick to criticize Japan for intruding on its sovereignty after Japanese lawmakers conducted an aerial survey of the Senkaku/Diaoyu Islands on 1 July 2008.⁵⁵

Furthermore, the Chunxiao/Shirabaka gas field is located on China's side of the so-called 'median line'. If Beijing and Tokyo had agreed on a disputed field that lay on the Japanese side of the median line, it would have brought China closer to the disputed Senkaku/Diaoyu Islands and extended its naval presence closer to the Japanese mainland.⁵⁶ This was most likely unacceptable to Tokyo. Likewise, however, the in-principle consensus did not impact negatively on the Chinese claims in the East China Sea either.⁵⁷ China and Japan stressed that they maintained their sovereignty claims over the disputed territory. As discussed above, a joint development scheme is not intended to constitute an agreement over maritime boundaries. The Chinese Foreign Minister Yang Jiechi therefore announced that the consensus did not mean that the dispute over boundary demarcations, sovereignty, and EEZs had been resolved and he emphasized that the PRC would not recognize the 'median line' formula proposed by Japan. Instead, he declared that Beijing continues 'to uphold the principle of natural prolongation to solve the delimitation issue of East China Sea continental shelf'.⁵⁸

In short, the in-principle consensus only came about after a protracted and highly complex negotiation process that had taken place since 2004. Involving private Japanese and two Chinese state-owned companies, profits were meant to be divided in proportion to the investments made.⁵⁹ Taiwan was not a party to the agreement. The specific details of the consensus, such as which Japanese commercial firms would be involved, were not specified. Furthermore, the in-principle agreement on the joint development of resources was only signed with regards to one specific area in the Chunxiao/Shirakaba field. Despite the consensus reached in 2008, disagreements quickly appeared due to different interpretations of what had been agreed upon. Tokyo claimed that both parties were supposed to carry out joint development in the Chunxiao/Shirakaba field while Beijing argued that it had only agreed to capital participation and that Japan had recognized China's sovereign rights over the field.⁶⁰

The 2008 agreement has so far not been implemented. China and Japan have also failed to reach similar agreements applicable to other disputed areas in the East China Sea. Instead, cases of unilateral survey drilling have continued to cause tensions since 2008. Moreover, the diplomatic consequences of the 2010 crisis, which resulted from a collision between a Chinese fishing vessel and a Japanese Coast Guard ship, and the nationalization of the Senkaku/Diaoyu Islands by Japan in 2012 have further complicated the implementation of the in-principle consensus.

The militarization of the dispute and the absence of conflict management

In addition to ongoing unilateral survey drilling and repeated fisheries incidents, the prospect for the joint development of resources has also been diminished by the further militarization of the East China Sea dispute in recent years. China's rising economic and military power challenges Japan regionally as well as its status over the Senkaku/Diaoyu Islands. By all estimates, Japan's military strength is superior to that of the PRC. For one, Japan has the advantage of having the reinforcement of the US military, the largest naval power in the region. Moreover, although officially 'disarmed' under article nine of its constitution since the end of the Second World War, Japan's military power remains impressive. Despite Japan's superior defence capabilities and equipment, China's naval build-up and its wider strategic aspirations in the East China Sea have contributed to fuelling power competition in recent years. The PRC has been a rising strategic concern for Japan since the end of the Cold War era. Strengthening its navy has been seen by China as a necessity for raising the status of the nation in Asia and beyond. By building a blue-water navy and acquiring possibly several aircraft carriers, the PRC is extending its defence perimeter into the Western Pacific. Moreover, China has a strategic advantage over Japan due to its geographical proximity to the disputed islands. These wider geopolitical considerations have undeniably complicated the joint management of resources in the East China Sea.

Northeast Asia lacks regional institutions to diffuse tensions in the East China Sea through conflict management and resolution mechanisms. The Northeast Asian states have not established their own security dialogue despite being members of various ASEAN-led regional institutions. The divisive forces that still dominate the international relations of Northeast Asia have remained a major stumbling block toward deeper regional cooperation.

Established in December 2008, the Japan–China–South Korea Trilateral Summit has gained some momentum on the economic front, including the launch of free-trade negotiations, but it has not moved ahead in diffusing sources of regional conflict. Similarly, the Trilateral Summit has not discussed the prospect for the joint development of resources in contested areas nor has it focused on the sustainable management of resources and environmental security. Moreover, the Six

Party Talks, that brings together the two Koreas, China, Japan, Russia, and the United States to prevent nuclear proliferation on the Korean peninsula, has not been transformed into a wider regional security mechanism specific to Northeast Asia. This shift remains unlikely in the years to come due to conflicting responses to the North Korean question and also because of a series of ongoing territorial disputes and deep sentiments of mistrust and antipathy. China, Japan and South Korea are therefore likely in the short to medium term to continue relying on bilateralism and in the case of Tokyo and Seoul on defence ties with the United States to preserve stability in Northeast Asia. As a result, the prospect for conflict management and resolution in the East China Sea through institutional means remains limited.

Notes

- 1 Parts of this chapter draw from R. Emmers (2010) *Geopolitics and Maritime Territorial Disputes in East Asia* (London: Routledge), pp. 48–51, 57–60.
- 2 China is understood to be inclusive of both the PRC and the ROC, as their claims are the same and are generally considered as one. For a discussion of the Japanese and Chinese claims, see G. Ji (October 1995) ‘Maritime Jurisdiction in the Three China Seas’, *Institute on Global Conflict and Cooperation*, Policy Paper no. 19, (San Diego, California: University of California), p. 7; M. J. Valencia (2007) ‘The East China Sea Dispute: Context, Claims, Issues, and Possible Solutions’, *Asian Perspective*, vol. 31 (1), p. 150–151; J. M. F. Blanchard (2001) ‘The U.S. Role in the Sino-Japanese Dispute Over the Diaoyu (Senkaku) Islands, 1945–1971’, *The China Quarterly*, no. 161, p. 96; and Huang C. C. (June 1997) ‘ICE Case Studies: Diaoyu Islands Dispute’, (available at <http://www.american.edu/TED/ice/DIAOYU.HTM>).
- 3 E. S. Downs and P. C. Saunders (2000) ‘Legitimacy and the Limits of Nationalism: China and the Diaoyu Islands’, in M. E. Brown, O. R. Cote, Jr., S. M. Lynn-Jones and S. E. Miller (eds) *The Rise of China: An International Security Reader* (Cambridge: MIT Press), p. 52.
- 4 T. Cheng (1974) ‘The Sino-Japanese Dispute Over the Tiao-yu-tai (Senkaku) Islands and the Law of Territorial Acquisition’, *Virginia Journal of International Law*, vol. 14 (2), p. 256; Valencia (2007) ‘The East China Sea Dispute’, p. 153.
- 5 Ji (October 1995) ‘Maritime Jurisdiction in the Three China Seas’, p. 11.
- 6 Cheng (1974) ‘The Sino-Japanese Dispute’, p. 259.
- 7 As cited in K. Hara (2007) *Cold War Frontiers in the Asia – Pacific: Divided Territories in the San Francisco System* (New York: Routledge), p. 17.
- 8 As cited in Hara (2007) *Cold War Frontiers in the Asia – Pacific*, p. 17.

- 9 Valencia (2007) 'The East China Sea Dispute', p. 152.
- 10 Cheng (1974) 'The Sino-Japanese Dispute over the Tiao-yu-tai (Senkaku) Islands and the Law of Territorial Acquisition', p. 244.
- 11 Blanchard (2001) 'The U.S. Role in the Sino-Japanese Dispute Over the Diaoyu (Senkaku) Islands, 1945–1971', p. 106.
- 12 J. I. Charney (1995) 'Central East Asian Maritime Boundaries and the Law of the Sea', *The American Journal of International Law*, vol. 89 (4), p. 740.
- 13 S. W. Su (2004) 'The Tiaoyu Islands and their Possible Effect on the Maritime Boundary Delimitation between China and Japan', *Chinese Journal of International Law*, vol. 3 (2), p. 391.
- 14 L. Hagstrom (2005) 'Quiet Power: Japan's China Policy in Regard to the Pinnacle Islands', *The Pacific Review*, vol. 18 (2), p. 166.
- 15 Cheng (1974) 'The Sino-Japanese Dispute over the Tiao-yu-tai (Senkaku) Islands and the Law of Territorial Acquisition', p. 264.
- 16 Charney (1995) 'Central East Asian Maritime Boundaries and the Law of the Sea', p. 740.
- 17 Valencia (2007) 'The East China Sea Dispute', p. 147.
- 18 Statement by the Chinese Ministry of Foreign Affairs (13 June 1977), as cited in Ji (October 1995) 'Maritime Jurisdiction in the Three China Seas', p. 10.
- 19 U. Sukanuma (2000) *Sovereign Rights and Territorial Space in Sino-Japanese Relations: Irredentism and the Diaoyu/Senkaku Islands* (Honolulu: University of Hawaii Press), p. 124.
- 20 Statement of PRC MFA (13 June 1971), as cited in Ji (October 1995) 'Maritime Jurisdiction in the Three China Seas', p. 10.
- 21 Koo M. G. (March 2006) 'Liberal Peace Theory and the Disputes Over the Dokdo/Takeshima, Senkaku/Diaoyu, and Paracel and Spratly Islands', (paper presented at the Conference on Northeast Asia's Economic and Security Regionalism: Old Constraints and New Prospects, Center for International Studies, University of Southern California), p. 13.
- 22 Statement by Deng Xiaopeng, as cited in Z. Q. Pan (2007) 'Sino-Japanese Dispute Over the Diaoyu/Senkaku Islands: The Pending Controversy from the Chinese Perspective', *Journal of Chinese Political Science*, vol. 12 (1), p. 74.
- 23 *China Daily* (9 February 2005) 'Japan's Action on Islands "Illegal"'; (available at http://www.chinadaily.com.cn/english/doc/2005-02/09/content_416047.htm).
- 24 Koo (March 2006) 'Liberal Peace Theory and the Disputes', p. 15.
- 25 Pan (2007) 'Sino-Japanese Dispute over the Diaoyu/Senkaku Islands', p. 76.
- 26 Valencia (2007) 'The East China Sea Dispute', p. 133.
- 27 *The Financial Times* (10 July 2012) 'Save the Senkaku from Jingoism', p. 8.
- 28 Cited in *Bloomberg* (8 July 2012) 'Japan Plan to Buy Disputed Islands Draws China's Condemnation', (available at <http://www.bloomberg.com/news/2012-07-08/japan-plan-to-buy-disputed-islands-draws-china-s-condemnation.html>).

- 29 Food and Agriculture Organisation (2010) 'Fishery and Aquaculture Country Profiles: China', (available at http://www.fao.org/fishery/countrysector/FI-CP_CN/en); 'Taiwan' (1 November 2009), (available at <http://www.worldfishing.net/features101/new-horizons/taiwan>).
- 30 *Reuters* (17 August 2006) 'Pollution, Overfishing is Killing East China Sea: Paper', (available at <http://chinadigitaltimes.net/2006/08/pollution-overfishing-killing-east-china-sea-reuters>).
- 31 For an in-depth discussion of the events, see Y. Tiberghien (Winter 2010) 'The Diaoyu Crisis of 2010: Domestic Games and Diplomatic Conflict', *Harvard Asia Quarterly*, vol. 12 (3 & 4), pp. 70–78.
- 32 *CNN* (20 December 2011) 'Japan Arrests Chinese Fishermen after 7-hour Chase', (available at <http://edition.cnn.com/2011/12/20/world/asia/japan-china-fisherman/index.html>).
- 33 Downs and Saunders (2000) 'Legitimacy and the Limits of Nationalism', p. 51.
- 34 J. M. Paul (Summer 2008) 'Territorial Dispute in the East China Sea and Its Effects on China–Japan Relations', *Maritime Affairs*, vol. 4 (1), p. 116.
- 35 Valencia (2007) 'The East China Sea Dispute', p. 132.
- 36 As cited in S. S. Harrison (1977) *China, Oil, and Asia: Conflict Ahead? A Study from the Carnegie Endowment for International Peace* (New York: Columbia Press), p. 174.
- 37 Suganuma (2000) *Sovereign Rights and Territorial Space*, p. 129; Su (2004) 'The Tiaoyu Islands and their Possible Effect on the Maritime Boundary Delimitation between China and Japan', p. 388.
- 38 Suganuma (2000) *Sovereign Rights and Territorial Space*, p. 130.
- 39 Harrison (1977) *China, Oil, and Asia*, p. 175.
- 40 As cited in Harrison (1977) *China, Oil, and Asia*, p. 175.
- 41 Suganuma (2000) *Sovereign Rights and Territorial Space*, p. 133.
- 42 J. Manicom (4 June 2008) 'Hu-Fukuda Summit: The East China Sea Dispute', *China Brief*, The Jamestown Foundation, vol. 8 (12), p. 10.
- 43 M. Valencia (2007) 'The East China Sea Dispute', p. 132; Paul (Summer 2008) 'Territorial Dispute in the East China Sea and Its Effects on China–Japan Relations', pp. 125–126.
- 44 Valencia (2007) 'The East China Sea Dispute', p. 135.
- 45 M. Valencia (December 2002) 'Maritime Confidence and Security Building in Asia: Recent Progress and Problems', (Paper presented at the 12th Meeting of the CSCAP Maritime Cooperation Working Group, Singapore), p. 4.
- 46 Valencia (December 2002) 'Maritime Confidence and Security Building in Asia: Recent Progress and Problems', p. 5.
- 47 T. Davenport, I. Townsend-Gault, R. Beckman, C. Schofield, D. Ong, V. Becker-Weinberg, and L. Bernard (June 2011) *Conference Report* (Conference on Joint Development and the South China Sea, Organized by the Centre for International Law), p. 15.

- 48 Valencia (2007) 'The East China Sea Dispute', p. 137.
- 49 Valencia (2007) 'The East China Sea Dispute', p. 138.
- 50 *Associated Press* (6 February 2007) 'Japan Warns China over Ship in Disputed Waters'.
- 51 W. Lee (1 May 2008) 'Japan, China at Odds on Gas Fields ahead of Visit by Chinese President', *Platts Oilgram News*.
- 52 *Yomiuri Shimbun* (9 May 2008) 'Shirakaba Field Key to Progress, Japan China Closer To Joint Development', (available at <http://www.yomiuri.co.jp/dy/world/20080509TDY01303.htm>).
- 53 Embassy of the People's Republic of China in the United States of America (24 June 2008) 'Chinese Foreign Minister Yang Jiechi on the East China Sea Issue', (available at <http://www.china-embassy.org/eng/xw/t450662.htm>).
- 54 Embassy of the People's Republic of China in the United States of America 'Chinese Foreign Minister Yang Jiechi on the East China Sea Issue'.
- 55 *Reuters* (1 July 2008) 'China Chides Japan for Flight over Disputed Islands'.
- 56 Manicom (4 June 2008) 'Hu-Fukuda Summit', p. 10.
- 57 Manicom (4 June 2008) 'Hu-Fukuda Summit', p. 10.
- 58 Embassy of the People's Republic of China in the United States of America 'Chinese Foreign Minister Yang Jiechi on the East China Sea Issue'.
- 59 *The Economist* (21 June 2008) 'China, Japan and Taiwan', p. 40.
- 60 T. Davenport et al. (June 2011) *Conference Report*, p. 21.

5

The South China Sea

Abstract: *The South China Sea is at the centre of competing territorial, economic, and strategic interests.¹ The claimant countries are Brunei, China, Malaysia, the Philippines, Taiwan, and Vietnam. This chapter reviews how economic interests have negatively influenced the peaceful management of the maritime territorial dispute. No bilateral or multilateral fisheries agreement has so far been negotiated in the South China Sea. Likewise, the prospect for the joint development of hydrocarbon resources has been under discussion since the early 1990s but no tangible results have so far been reached. The recent escalation in tensions as well as rising great power competition has further complicated the joint development of resources.*

Key words: South China Sea, Spratlys, Paracels, nationalism, natural resources, joint development.

Emmers, Ralf. *Resource Management and Contested Territories in East Asia*. Basingstoke: Palgrave Macmillan, 2013. DOI: 10.1057/9781137310149

The nature of the Paracel and Spratly disputes

The Paracel and Spratly Islands are at the centre of competing territorial, economic, and strategic interests. In contrast to the Dokdo/Takeshima and Senkaku/Diaoyu disputes, the debate over the Spratlys and Paracels is complicated by the number of disputants. While the claimants to the Paracels are China, Taiwan, and Vietnam, six states assert ownership over the Spratly Islands and/or their surrounding waters, namely, Brunei, China, Malaysia, the Philippines, Taiwan, and Vietnam.² At present, all, with the exception of Brunei, have established a physical presence in the Spratlys. The Spratly and Paracel Islands take on symbolic and tangible value when put into the context of their surroundings. The islands may serve as the legal base points needed for states to gain exclusive jurisdictional rights over the waters, as well as the resources found therein. Tonnesson writes that ‘where early maritime mapmakers exaggerated the size and importance of the reefs in order to warn against them, modern mapmakers exaggerated their size and importance to claim them for their respective nations.’³ The area is considered important for its fisheries as well as potential oil and gas reserves. In addition to its natural resources, the free navigation of commercial vessels in the South China Sea is essential for regional and international trade. More than 50 per cent of the world’s annual merchant fleet tonnage crosses through the Malacca, Sunda, and Lombok Straits with the majority continuing on into the South China Sea.

Sovereign rights to the South China Sea were historically contested by China and Vietnam.⁴ China arguably has the longest ties to the region, dating its involvement with the Spratlys to as far back as the second century.⁵ Resting its claim on the principle of first discovery, the country has argued that Chinese fishermen used the islands as transit points during the Western Han dynasty. China also contends that the Ming dynasty sent several expeditions to the Spratlys in the fifteenth century and that periodic references to the islands were made in Chinese records up to the seventeenth century.

Challenging China’s assertion of continuous involvement, Vietnam’s historical claims to the area date back several hundred years. In 1956, South Vietnam made the statement that the Paracels had been incorporated into Vietnam by the unification of the country in 1802 under the Nguyen dynasty. Vietnam has claimed that its administration over the Spratlys dates to the reign of King Thanh Tong in the fifteenth century.

Vietnamese maps documenting the Spratlys' existence first appeared in the seventeenth century.

Japan and several European nations began surveying the Paracel and Spratly Islands in the 1840s. France declared formal possession of the islands in 1933, maintaining them as part of its colonial administration over Vietnam. Japan seized many of the major islets in the Spratlys and Paracels in 1939 for strategic purposes. Following the country's defeat, however, Tokyo withdrew its troops from the Spratlys in 1945 and left the archipelago unoccupied. Following the vacation of territory, various governments sought to secure their positions through the reiteration of claims and the occupation of islands. In 1947, the Nationalist government of Chiang Kai-Shek defined China's traditional claims by an area limited by nine interrupted marks, often referred to in the literature as the U-shaped line or the nine-dash line, that cover most of the South China Sea. When the Nationalists lost the Chinese Civil War, they were forced to abandon many of the islands. Yet, the presence of the United States and the Soviet Union in the region prevented the newly established People's Republic of China (PRC) from firmly occupying the vacant island chain.⁶

Relying on the U-shaped line, Chinese Premier Zhou Enlai formalized the claims for the PRC in 1951 as a response to the San Francisco Peace Treaty in which Japan renounced all claims over the Spratly and Paracel Islands without stating their new ownership. The allied powers failed at the conference to identify a rightful owner to the islands. Importantly, China's territorial claims in the South China Sea have not changed since 1951. In February 1992, Beijing passed the Law of the People's Republic of China on the Territorial Waters and Contiguous Areas. It reiterated China's claims in the South China Sea and stipulated the right to use force to protect islands, including the Paracels and Spratlys, and their surrounding waters. China's historical claims are based on the discovery and occupation of the territory. Relying on its claim to historical administration of the area, Beijing has not provided a legal explanation for or given specific delimitations to its territorial claims.

In January 1974, China established its control over the Paracel archipelago by acting militarily against South Vietnam before the expected fall of Saigon and the reunification of the country.⁷ Until the reunification of Vietnam in April 1975, Hanoi had recognized Chinese sovereignty over the Paracel and Spratly Islands. Since 1975, however, Vietnam has claimed both islands based on historical claims of discovery and occupation. Its

claims rely on the Vietnamese administration of these islands in the nineteenth century and on the French involvement in the area as a colonial power. Vietnam also established a 200 nm EEZ in May 1977. Its National Assembly passed the Sea Law of Vietnam in June 2012 that reasserted the country's sovereignty over the Paracel and Spratly Islands.

The Philippines joined the debate through the actions of Thomas Cloma who had previously claimed in 1947 to have 'discovered' an unknown and unoccupied archipelago between the Spratlys and the Philippine island of Palawan.⁸ In 1956, Cloma claimed 53 of the formations for the Philippines and named them *Kalayaan* (Freedomland). Not until 1971, however, did Manila state its official position and adopt Cloma's claim of 53 structures in the Spratlys. The country then declared the islands to be an 'integral' part of Philippine territory. This claim was reiterated in the Presidential Decree no. 1596 of 1978 adopted by the Ferdinand Marcos government, which placed *Kalayaan* under the administration of Palawan province. The Philippines has additionally backed up its claims by invoking the principle of continental shelf extension by arguing that the continental shelf of *Kalayaan* is juxtaposed to Palawan Province.

Malaysia entered the Spratly dispute in 1978 prompted by Vietnam's new occupancy of islets in the archipelago as well as the Philippines' declaration of sovereignty.⁹ Malaysia based its claim on the principle of continental shelf extension, making it the only claimant to the Spratlys with Brunei to have no historical case for its argument.¹⁰ In total, the country claimed sovereignty over 12 islands found in the southern part of the Spratlys.

Brunei entered the dispute in the 1980s when it established an exclusive fishing zone in the area. The Sultanate claims Rifleman Bank and the seas around Louisa Reef. Like Malaysia, Brunei bases its maritime territorial claim on the prolongation of the continental shelf principle.¹¹ A map published in 1988 depicted a continental shelf extended to 350 nm. The country at present has no military presence in the region and has not put up any installations on disputed reefs.

Resource competition

Fisheries

Economic interests have influenced the South China Sea disputes. The semi-enclosed sea is economically important due to its fishing and

hydrocarbon resources. One report in *Jane's Intelligence Review* went as far as to suggest that the Sea's fisheries may prove to be 'more commercially significant than oil'.¹² As mentioned in Chapter 4, the large commercial fishing capabilities of China and Taiwan consist of 192,000 and 25,000 vessels respectively. In contrast, the Philippines' commercial fishing fleet is limited to about 6,000 vessels.¹³ Yet, the Philippines and Vietnam, the two primary Southeast Asian claimants, have large numbers of unregulated and mostly non-motorized fishing vessels (each with a weight of less than three gross tons) active in the South China Sea.

Long-term productivity in the South China Sea is declining due to over-fishing, coral reef damage, and growing coastal pollution. Particular fishing techniques like dynamite and cyanide fishing as well as bottom trawling have all contributed to the fisheries depletion. The latter is increasingly noticeable. For example, China's fish harvest in the semi-enclosed sea dropped from 5 million tons in 1989 to 3.4 million in 2005.¹⁴ It is now estimated that 40 per cent of the fish stocks in the South China Sea have disappeared while 70 per cent of its coral reefs are in poor or fair condition.¹⁵ Lyons and Davenport argue that 'the risk of overfishing and destructive fishing methods resulting in a permanent change to the marine environment is particularly acute'.¹⁶ The declining long-term productivity of the fish stocks accentuates the need for cooperative fisheries management in the semi-enclosed sea. Yet, no bilateral or multilateral fisheries agreements have so far been concluded by the claimant states, with the exception of the Vietnam-PRC agreement for the Gulf of Tonkin (Beibu) that came into force in 2004.

Hydrocarbons

Besides fisheries, the South China Sea is economically important due to its expected oil and gas reserves. Zhang Dawei, an official at China's Ministry of Land Resources, has optimistically claimed that the South China Sea might hold an estimated 23 to 40 billion tons in oil reserves, or 168 to 220 billion barrels.¹⁷ This would constitute a greater amount than China's onshore resources. Additionally, the PRC has estimated the disputed areas to contain more than 2,000 trillion cubic feet (Tcf) of natural gas reserves.¹⁸ If this were accurate, natural gas would be the most abundant resource in the South China Sea. Unsurprisingly, expectation of resource availability has encouraged the Philippines, Malaysia, and Vietnam to control a number of islands and has been partly responsible for China's increased activity in the area.

The existence of vast commercially viable quantities of hydrocarbon resources has nonetheless been questioned. Despite the data circulated by the Chinese, a 1993–1994 US Geological Survey, for example, put the number of oil reserves at 28 billion barrels.¹⁹ The US Energy Information Administration lists proven oil reserves at 960 million tons, or 7 billion barrels.²⁰ A 1995 study by the Russian Research Institute of Geology of Foreign Countries estimates that there are only 6 billion barrels worth, 70 per cent of which would be natural gas.²¹ One of the more optimistic Western estimates place total natural gas resources in the Spratlys at 35 Tcf.²² Rowan stated in 2005 that ‘this region retains proven oil reserves of seven billion barrels and a production capacity of 2.5 million barrels per day.’²³

The oil and gas reserves of the South China Sea have generally remained uncertain and initial estimations have been revised to lower figures.²⁴ Moreover, as mentioned above, estimates have varied greatly. While Western studies have often referred to reserves of up to 30 billion barrels of oil and 16 Tcf, similar Chinese studies have claimed that the South China Sea may hold up to 200 billion barrels and more substantial gas reserves. It should be added that roughly only 10 per cent of the resources are generally recovered from the overall reserves; the resources constituting the commercially and technically exploitable reserves found.²⁵ With the improvement of exploration techniques, however, oil reserves lying under the seabed in deep waters have become more viable. This is significant as oil and gas reserves are expected to be discovered in the deep-water areas of the South China Sea, including zones that are as deep as 5,000 metres. Overall, it should be stressed that the perception that the South China Sea is rich in oil and gas matters more than variations in reserve estimates when seeking to explain the ongoing rivalry over maritime resources.

Oil companies began surveying the area as early as the 1960s and 1970s, with concessions being issued by a number of states in the 1970s. By 1992, nearly all claimants were involved in offshore oil exploration. In January of that year, Vietnam and Malaysia announced their interest in joint development. Beijing considered the move as a threat to its own economic and energy security. Motivated by declining domestic oil production and what it perceived to be an encroachment into its territory, China began to make deeper penetrations into the Spratlys.²⁶

In May 1992, China awarded a concession for oil exploration to the US based Crestone Energy Corporation, which overlapped with Vietnam’s

continental shelf claim. Hanoi viewed the concession as illegal but was hesitant to criticize Crestone for fear of jeopardizing the recent American decision to remove its trade embargo on Vietnam.²⁷ A month later, Vietnam responded by signing a deal with a Norwegian company covering the same territory as the Crestone block. Sino-Vietnamese tensions rose when Vietnam began drilling in the area. The drilling rig was only withdrawn on the eve of the visit by the Chinese defence minister to Vietnam.²⁸

In 1994, the Philippines engaged Texas-based Vaalco Energy to search for oil and issued a six-month oil exploration permit to Alcorn Petroleum and Minerals. Interpreting the move as a unilateral attempt at exploiting the resources of the Spratlys, China reacted by reiterating its sovereignty claims. In response, Manila tried to backpedal, even inviting China to become a partner in the project. Yet, the diplomatic damage had already been done and China advanced further East 'for better surveillance coverage of any Philippine-sponsored oil exploration.'²⁹

Between 1994 and 1997, Vietnam and China clashed again over their overlapping blocks. In 1996, Hanoi awarded a concession to the US firm Conoco. In 1997, China took bolder steps, sending Kanto Oil Platform Number Three along with two other ships to carry out exploratory drilling in an area Hanoi claimed to be part of its continental shelf. The rig was soon withdrawn, however, after repeated Vietnamese protests.³⁰ While Beijing and Hanoi acknowledged that they could not settle the sovereignty issue, they agreed not to let the dispute affect their relations. Vietnam did not want to antagonize China, and Beijing likewise did not wish to escalate tensions with the Southeast Asian claimants over the issue.³¹

Other oil and gas explorations followed.³² In 1998, PetroVietnam, Conoco, the Korean National Oil Company (KNOC), and Geopetro negotiated a joint agreement to exploit the Cuu Long field. Oil was later discovered in August 2000 and October 2001, with large-scale production beginning in the fall of 2003. Other agreements included the Hoan Vu joint venture to explore the Ca Ngu Vang field and the Truong Son joint venture signed between PetroVietnam and various partners. PetroVietnam also collaborated with Petronas Carigali, Indonesia's Pertamina and KNOC for the development of gas fields in the Vung Tau province.

Besides Vietnam, the Philippines continued to initiate exploration efforts. In August 1998, Royal Dutch Shell was given a contract to drill in

the Malampaya natural gas field. In 2000, the company announced the discovery of oil. In October 2003, Philippine Energy Secretary Vicente Perez declared 46 exploration blocks open to public tender. In the spring of 2007, British Petroleum (BP) shelved plans to develop an oil and gas field off the Southern Vietnamese coast due to ongoing friction between Beijing and Hanoi. By July 2008, however, BP announced that its Vietnamese partner, PetroVietnam, had resumed its surveying activities in the maritime area disputed by Beijing.³³

Recent escalation

Since 2010, there has been a significant increase in the number of incidents all over the South China Sea involving the harassment of survey vessels, the cutting of cables and the repeated arrest of fishermen. For example, in June 2010, an incident involving ten Chinese fishing vessels, a Chinese coast guard ship as well as an Indonesian navy patrol boat occurred within Indonesia's EEZ near the Natuna Island.³⁴ In May 2011, Vietnam accused China of cutting the exploration cables of one of its oil survey ships. Vietnam responded by staging a live fire exercise 25 nm off its coast. In February 2012, Manila announced new exploration licenses for petroleum blocks off the Philippines' south-western Palawan Island, causing an immediate Chinese protest. Beijing asserted that these blocks are part of the Spratly Islands and that they fall under its jurisdiction. New spats between Beijing and Hanoi involved the arrest of 23 Vietnamese fishermen by Chinese officials in March 2012 accused of illegal fishing and poaching near the Paracel Islands. The fishermen were released seven weeks later by the Chinese authorities after strong Vietnamese protest.³⁵ The Taiwanese maritime authorities have also recently complained of a rising number of Vietnamese vessels illegally intruding into Taiwan's claimed waters in the South China Sea.³⁶

The most significant escalation occurred in April 2012, however, with Chinese and Philippine vessels involved in a stand-off at Scarborough Shoal in the South China Sea. Philippine naval authorities had discovered several Chinese fishing vessels anchored at the Shoal disputed by both China and the Philippines. A Philippine navy ship attempted to arrest the Chinese fishermen allegedly accused of poaching and illegal fishing. Two Chinese maritime surveillance ships intervened, however, and prevented the arrest from occurring. This incident led to a tense stand-off between the Philippine navy ship and the Chinese maritime

vessels and eventually resulted in severe tensions between Beijing and Manila that lasted for several weeks.³⁷ These events also coincided with the Philippines and the United States holding their annual military exercises on Palawan Island.³⁸

Finally, in June 2012, the state-owned China National Offshore Oil Company (CNOOC) invited foreign energy companies to tender for exploration rights for nine oil blocks in a southern area of the South China Sea. Discussing the significance of the CNOOC announcement, Beckman writes that it seems to ‘confirm the suspicion that although China is only claiming “sovereignty” over the islands and their adjacent waters, it is also claiming “rights and jurisdiction” to the resources in and under the waters within the nine-dashed lines.’³⁹ Vietnam reacted angrily to the CNOOC tender stating that the area under consideration was located within its 200 nm EEZ and that it impinged on blocks Hanoi had already awarded to Gazprom and ExxonMobil for oil exploration.⁴⁰ The legality of CNOOC’s offer is dubious, as it infringes on Vietnam’s sovereignty rights within its own EEZ and is thus incompatible with UNCLOS.⁴¹

Resource management: repeated failures

Fisheries

No bilateral or multilateral fisheries agreement has so far been negotiated in the South China Sea, except for the Vietnam–PRC agreement for the Gulf of Tonkin (Beibu). This makes the semi-enclosed sea one of the few East Asian seas where no cooperative agreement has been reached. The need for cooperation in the conservation and exploitation of marine resources is critical to address illegal and over-fishing, coral reef damage, coastal pollution and poor fishing practices detrimental to the marine ecosystem. Yet, the declining trends and environmental concerns have increased rather than reduced fishing activity in the disputed areas, both as an attempt by countries to exploit what they see to be their sovereign resources and to defend their claims against others. The lack of progress thus derives from the fact that the fisheries issue is clearly weaved into the sovereignty question.

The absence of a cooperative arrangement can be contrasted to the Sea of Japan and the East China Sea where successful bilateral fisheries

agreements have been reached. Discussing the South China Sea situation, Lyons and Davenport explain that ‘the difference between the fishing capacity of the Claimants makes the reaching of a cooperation agreement particularly challenging. Claimants which rely on smaller fishing vessels and traditional and artisanal fishing methods (notably Vietnam and the Philippines) cannot compete with China’s industrial fisheries.’⁴² In contrast, the arrangements on fisheries cooperation established in the Sea of Japan and the East China Sea can partly be explained by the fact that China, Japan and South Korea have similar commercial fishing capabilities easing the reaching of an agreement. Furthermore, besides the difference in fishing capabilities, the sheer number of claimants in the South China Sea complicates the issue and hinders cooperation, as there are multiple sets of national interests competing with each other. Hence, unlike in the Sea of Japan and the East China Sea, bilateral agreements in the South China Sea may not work as well since the territorial disputes affect more than two countries.

Concluded in 2000, the Vietnam–PRC agreement constitutes the one exception, as it succeeded in establishing fishery and management zones in the Gulf of Tonkin (Beibu). Illegal and over-fishing have continued, however, further undermining the marine ecosystem in the Gulf.⁴³ Beijing and Hanoi have also failed to reach a similar agreement covering other parts of the South China Sea where their claims overlap. This is particularly due to their sovereignty dispute over the Paracel Islands.⁴⁴

Finally, Indonesia and Malaysia signed a memorandum of understanding in January 2012 that stipulated that their respective fishermen would no longer be arrested by the other party when fishing in their disputed maritime territories, including in the South China Sea. This constitutes an important step to defuse fisheries incident before they escalate into diplomatic crises. It is yet to be seen whether this approach will be adopted by other claimants.

Hydrocarbons

The prospect for the joint development of hydrocarbon resources in the South China Sea has been under discussion since the early 1990s. Chinese Premier Li Peng already stated in 1990 that Beijing was ready to shelve the issue of sovereignty in favour of joint development in the semi-enclosed sea. Moreover, Vietnam and China agreed in October 1993 that, while negotiating a settlement over the territorial question, ‘the two sides shall not conduct activities that may further complicate the

disputes.⁴⁵ During Chinese President Jiang Zemin's visit to Vietnam in November 1994, a bilateral working group on the issue was established, with meetings beginning in 1995.

Unofficial Track-Two Workshops on Managing Potential Conflicts in the South China Sea were also launched in 1990. The workshops were an Indonesian-led project financed by Canada, focusing on confidence building over maritime issues. By avoiding the question of sovereign jurisdiction, the workshops attempted to encourage a multilateral dialogue and enhance a peaceful management of the conflict.⁴⁶ In January 1990, an initial workshop was organized in Bali that gathered the six ASEAN states to a preliminary meeting. Held in Bandung in July 1991, the second event brought together the members of the Association, China, 'Chinese Taipei', Vietnam and Laos, and produced a joint statement on managing potential conflicts in the South China Sea.⁴⁷ The 1991 workshop culminated in a six-principle agreement, calling for joint resource development, the non-use of force, and self-restraint. In his opening statement, Indonesia's Foreign Minister Ali Alatas declared that 'our attention and efforts have been and should continue to be directed towards finding ways to transform potential sources of conflict into constructive forms of cooperation for mutual benefit.'⁴⁸

Nonetheless, diplomatic commitment to the joint development of hydrocarbon resources has not been translated into action. Following the 1991 workshop, China subsequently indicated that Beijing would only concede to joint cooperative activities if the other claimants first acknowledged Chinese sovereignty over the South China Sea.⁴⁹ Moreover, China's unilateral agreement with Crestone was reached in 1992 in spite of its earlier assurances that it would engage in joint exploration. In February 1992, the Chinese National People's Congress passed the controversial Law on Territorial Waters and Their Contiguous Areas. It reaffirmed Chinese sovereignty over the Paracel and Spratly Islands and laid claim to a large but unclarified part of the South China Sea.⁵⁰ Moreover, the law claimed a right to evict other nations' vessels from its claimed waters. Foreign warships were also required to give notification of intent to pass through China's territorial sea and receive permission to do so.

Additionally, despite the 1993 agreement with Hanoi, five Vietnamese ships chased a Chinese exploration vessel from the Da Lac Reef area in April 1994. Three months later, two Chinese vessels blocked a Vietnamese oil rig from operating in the Crestone block.⁵¹ As mentioned in Chapter

2, the Philippines discovered Chinese constructions on Mischief Reef, an unoccupied feature 135 nm west of Palawan, in February 1995. China's grab of Mischief Reef was the first major new occupation in the South China Sea after the end of the Cold War. It enhanced regional concern over an expanding China and worries that the PRC would seek to dominate the South China Sea militarily. China built new structures on Mischief Reef in 1998 and 1999, fuelling the idea of a 'China threat' in Southeast Asia.

Tensions eased somewhat with the signing of the Declaration on the Conduct of Parties in the South China Sea (DOC) by China and the ASEAN members in November 2002. The agreement was intended to prevent further tensions over the disputed territories and to reduce the risks of military conflict in the South China Sea. The signing of the DOC coincided with the increase in economic relations and a proliferation of joint venture agreements.⁵² In 2002, Malaysia's oil company Petronas, Indonesia's Pertamina, and PetroVietnam agreed to establish the joint operating company Con Son to conduct exploration in two blocks off the Vietnamese coast. A second agreement was reached in 2003 to explore and develop hydrocarbon resources off Sarawak. In 2003, the Philippine National Oil Company (PNOC) negotiated a joint venture with Petronas to explore the area off of Mindoro.

China, the Philippines, and Vietnam concluded a three-year agreement in March 2005 designating their state-owned oil companies to conduct a joint seismic study in the South China Sea. This deal had originally been signed by China and the Philippines in 2004 before Vietnam joined in 2005. The Joint Marine Seismic Undertaking (JMSU) took effect on 1 July 2005. It was a commercial rather than a political agreement among the PNOC, CNOOC, and the Vietnam Oil and Gas Corporation. Despite having been signed by oil companies rather than national governments, no Taiwanese party was invited to take part in the undertaking. The agreement was heralded by the parties involved as a significant breakthrough. For example, Philippine President Gloria Arroyo deemed the JMSU to be a 'diplomatic breakthrough for peace and security in the region'.⁵³

While the 2002 DOC had initially contributed to efforts at diffusing tensions in the South China Sea, the signing of the JMSU was thereafter welcomed as a first attempt at de-escalating the resource question. The signing of such type of agreements would guarantee that Manila and Hanoi be at least included in the exploration process in areas where they

have overlapping sovereignty claims with Beijing. It is worth repeating that the agreement was signed by national oil companies rather than states, which was expected to simplify the process. It is also important to stress that the JMSU was not a joint development agreement but an initial joint seismic survey. Such surveys are meant to determine the size of the available hydrocarbon resources and thus often precede the negotiation of a JDA.

The significance of the JMSU was rapidly questioned, however. Some analysts were critical about whether the JMSU should be regarded as a step in the right direction. The JMSU did arguably weaken the ASEAN solidarity on the South China Sea question by encouraging the individual Southeast Asian claimants to negotiate directly and unilaterally, rather than as a group, with the PRC. Dosch argued, for instance, that it reflected 'a new strategic setting in which the Southeast Asian claimants compete for the most favorable bilateral or multilateral agreements with China'.⁵⁴ Similarly, Wain noted that the agreement broke ranks with the other ASEAN claimants involved in the disputes.⁵⁵ Valencia additionally asserted that the joint survey came at a cost to the Philippines, as it covered an area of its legal continental shelf that China and Vietnam had not claimed. Moreover, the agreement was giving legitimacy to Chinese and Vietnamese 'legally spurious claims to that part of the South China Sea'.⁵⁶

The JMSU expired on 30 June 2008 and was never extended by the parties involved. The Philippine opposition parties had criticized the JMSU as an illustration of how the government had undermined its claims in the South China Sea and violated the Philippine Constitution. Moreover, the renewal of the agreement was put into question due to allegations of corruption linking Chinese loans to the reaching of the initial deal signed in 2005.⁵⁷ The failure of the JMSU is therefore a clear reminder that such undertakings can be undermined by domestic politics. It is unlikely that a revised version of the JMSU will be revived as long as it generates domestic controversy in the Philippines and to a lesser extent Vietnam.⁵⁸

China and Vietnam pledged once again to jointly explore energy resources in disputed maritime areas during a visit by Vietnamese Prime Minister Nguyen Tan Dung to Beijing in late October 2008. The joint declaration stated that both nations would 'collaborate on oceanic research, environmental protection, meteorological and hydrological forecasts, oil exploration and information exchanges by the two armed

forces.⁵⁹ The visit also included the signing of a cooperation agreement between the state-owned PetroVietnam and CNOOC. This occurred only a few months after ExxonMobil had reportedly been informed that it would be banned from operating in the PRC if it did not drop a joint exploration deal with Hanoi. Following the high-level visit, a Chinese warship docked in Vietnam for the first time in seven years in late November 2008.

The Philippines, Malaysia and Vietnam submitted supplementary claims to the United Nations Commission on the Limits of the Continental Shelf (CLCS) in May 2009. States that joined UNCLOS by 1999 had to submit by 13 May 2009 their supplementary claims to economic rights when their continental shelf extends more than 200 nm beyond a baseline. Significantly, Malaysia and Vietnam submitted joint claims that took the position that 'sovereign rights to the resources in the South China Sea should be determined by principles governing the continental shelf as measured from the mainland coast'.⁶⁰ By excluding EEZs and continental shelves measured from claimed islands, Hanoi and Kuala Lumpur essentially argued that no islands in the disputed waters should be entitled to more than a 12 nm territorial sea. As a result, the two claimants sought to restrict the Chinese right to claim a continental shelf from its mainland only and not from the Spratly Islands. While the CLCS is not permitted to consider submissions in an area subject to a sovereignty dispute, the joint Malaysian and Vietnamese submission still 'amounted to a claim by these countries to the resources of the entire southern part of the South China Sea'.⁶¹

Beijing reacted angrily and branded the submission of the new claims as a violation of its jurisdiction and sovereign rights over the South China Sea.⁶² China's response was not unexpected, as the joint submission overlapped with its own claims and excluded the PRC from a large part of the South China Sea, including in terms of the allocation of its hydrocarbon resources. In its response, Beijing included the U-shaped line map in its *Note Verbale* to the UN Secretary-General, therefore reviving old suspicions in Hanoi, Kuala Lumpur and Manila. Beijing also established a new Department of Boundary and Ocean Affairs and enhanced its patrolling capabilities in an attempt to further assert its sovereignty in the South China Sea.

Nevertheless, some progress toward the management of hydrocarbon resources was made in 2009. The Malaysian state-owned company Petronas and the Brunei National Petroleum Company signed a

commercial agreement on the exploration and production of oil and gas in two deep-water blocks offshore the Brunei–Sarawak border in the South China Sea. The agreement followed the bilateral resolution of the Limbang land and maritime boundary issues. Significantly, Malaysia agreed to give up its territorial claims over the respective blocks disputed with Brunei in exchange for Petronas being allowed to take part in the development of their hydrocarbon resources.⁶³ It is too soon to say whether this particular commercial agreement, involving one party renouncing its sovereign rights in exchange for its participation in a development scheme, may constitute a new cooperative approach applicable elsewhere in the South China Sea.

During a visit by Vietnam's Communist Party Leader Nguyen Phu Trong to Beijing in October 2011, both countries signed an 'agreement on basic principles guiding the settlement of sea issues', which referred once again to the joint development of resources. Yet, after 16 years of bilateral negotiations, the PRC and Vietnam have not been able to discuss their overlapping claims in the South China Sea nor make substantial progress toward the negotiation of a joint development agreement in the disputed waters.⁶⁴ This is in sharp contrast to the settlement of their land border dispute in 1999 and the negotiation of the delimitation of their continental shelves and EEZs in the Gulf of Tonkin (Beibu) that took effect in 2004.

Benigno S. Aquino, Philippine president since June 2010, tabled a proposal to resolve the South China Sea disputes in 2011 called the Zone of Peace, Freedom, Friendship and Cooperation (ZoPFFC). The proposal advocated 'a multilateral, ruled-based approach to the disputes, in contrast to China's oft-stated preference for bilateral talks.'⁶⁵ Significantly, it aimed to 'segregate' disputed from non-disputed areas in the South China Sea as a starting point in negotiating joint cooperation and development zones. ZoPFFC called for the establishment of 'enclaves' of disputed areas in the Spratlys where progress could be made toward the implementation of a code of conduct as well as the demilitarization of the disputed reefs and the establishment of a joint development agency. Furthermore, under ZoPFFC, the joint exploration of resources would be excluded within non-disputed areas, as states would instead be allowed to develop resources unilaterally within their defined EEZ and continental shelf.

President Aquino therefore recommended a 'what is disputed can be shared' formula to be applied to the disputed Spratly Islands in the South China Sea. The ZoPFFC proposal was notably different from the JMSU,

which had allowed for joint seismic surveys to be conducted within the Philippine 200 nm EEZ. Illustrating this shift, in February 2012 Aquino rejected a Chinese offer to jointly explore for hydrocarbon resources in areas that the Philippines does not consider to be disputed with Beijing. One of these areas, Reed Bank off Palawan Island, is expected to hold natural gas reserves of at least 3.4 Tcf, making it possibly the Philippines' largest natural gas field.⁶⁶ Manila offered three exploration contracts at Reed Bank in late July 2012. Yet, none of the large oil and gas companies entered bids to avoid upsetting Beijing, as two of these areas overlapped with Chinese claims.⁶⁷

The PRC quickly rejected the ZoPFFC proposal, presumably because the maritime areas claimed by the Philippines to be non-disputed fall within the U-shaped line. The ASEAN members failed to reach a consensus, with only Vietnam supporting the proposal. Laos and Cambodia did not even attend the ASEAN maritime legal expert meeting hosted by Manila in September 2011 to present its ZoPFFC proposal. Rather than adopting this new initiative, Indonesia, acting as the ASEAN Chair, instead repeated through its Foreign Minister Marty Natalegawa at the ASEAN summit held in Bali in November 2011 that the Association remained committed to the adoption with Beijing of a regional code of conduct for the South China Sea.⁶⁸

In short, the PRC has over the years developed its own capabilities to explore and exploit hydrocarbon resources in the South China Sea. China's deep-water oil and gas exploration technologies have continued to advance rapidly. In particular, CNOOC is investing heavily to explore deep-water hydrocarbon resources. For example, the state-owned company launched its newest drilling rig in May 2012 that can for the first time mine seabed resources as deep as 3,000 metres.⁶⁹ It has also invited foreign energy companies to tender for exploration rights in disputed areas. CNOOC has done so while Beijing has continued to protest against survey drilling conducted by other claimant states within the U-shaped line.⁷⁰

China has simultaneously called for the joint development of resources in the South China Sea. Wain notes, however, that joint development is 'a long-proclaimed Chinese policy that has proved elusive, mainly because Beijing has not clarified its claims in the South China Sea, and there is no consensus on areas in dispute that may be subject to joint development arrangements.'⁷¹ Beckman makes a similar point when noting that joint development agreements may only be concluded in the South China Sea

once all the claimants have clarified their ambiguous claims in conformity with UNCLOS.⁷²

The Southeast Asian states have generally supported in principle the idea of joint development in disputed areas defined in accordance with the principles of UNCLOS.⁷³ The Malaysia–Brunei commercial agreement negotiated in 2009 constitutes a successful example of joint management of hydrocarbon resources. While all the claimants have rhetorically been committed to joint development and various proposals have been tabled, no JDA has so far been signed between the PRC and a Southeast Asian claimant state. Likewise, it should be stressed again that no bilateral or multilateral fisheries agreement has so far been negotiated in the South China Sea, except for the Vietnam–PRC agreement for the Gulf of Tonkin (Beibu). The fisheries issue is thus equally weaved into the sovereignty question. This can be contrasted to the Sea of Japan and the East China Sea where successful bilateral fisheries agreements have been reached.

Conflict management and great power rivalry in the South China Sea

Conflict management

The Southeast Asian nations have aspired to establish a code of conduct for the South China Sea since the early 1990s based on the principles enumerated in the Treaty of Amity of Cooperation (TAC) and facilitated by ASEAN's informal style of diplomacy. Adopted in 1976, the TAC is at the core of the organization's conflict management model, as it provides the Association with a norm based and informal code of conduct for regulating regional interstate relations and managing existing or potential disputes.⁷⁴ It relies on a modest set of international norms and principles well known in the study of international relations. They represent the underlying foundations of the traditional states system constructed on the sovereignty of nation-states, the non-interference in the affairs of other states and the peaceful settlement of disputes. The Treaty also includes a provision for a dispute resolution mechanism, a High Council, for establishing techniques of mediation and consultation.⁷⁵ The provision for a High Council has never been invoked by the ASEAN members, however.

Since the early 1990s, ASEAN has aimed to manage the South China Sea disputes by including the PRC in the diplomatic consultations. A

first attempt to do so was the ASEAN Declaration on the South China Sea endorsed during the annual meeting of the foreign ministers held in Manila in July 1992.⁷⁶ The declaration sought to promulgate an informal code of conduct based on self-restraint, the non-use of force and the peaceful resolution of disputes. It relied on the norms and principles initially introduced in the TAC. The declaration did not address the problem of sovereign jurisdiction seeking instead to contribute to conflict avoidance in the South China Sea. China was not receptive to the declaration, however, and did not formally adhere to its principles. Beijing ignored the document and repeated its preference for bilateral rather than multilateral discussions on the territorial disputes.

Nevertheless, Beijing shifted its approach in the late 1990s and has since endorsed, at least rhetorically, ASEAN's norms and principles as well as its style of informal diplomacy. Beijing has done so in an attempt to deepen its economic and diplomatic relations with the Southeast Asian nations and soften the 'China threat' image in the region. Its willingness to adhere to ASEAN's norm based approach was typified by its signing of the DOC in November 2002 and the TAC in October 2003.

ASEAN's model of conflict management was illustrated by the DOC. The parties to the declaration stipulated their adherence to the principles of the UN Charter, UNCLOS, the TAC, and the Five Principles of Peaceful Coexistence. They agreed to resolve their territorial disputes by peaceful means, 'without resorting to the threat or use of force, through friendly consultations and negotiations by sovereign states directly concerned, in accordance with universally recognized principles of international law'.⁷⁷ The parties also pledged to practice self-restraint in activities that could spark disputes and to enhance their efforts to 'build trust and confidence between and among them'.⁷⁸ A step in the right direction, the declaration was part of ASEAN's search 'for explicit confirmation that China's presence in the South China Sea will not jeopardize peaceful coexistence'.⁷⁹ It openly denounced the use of force in the South China Sea and mitigated the disputes by emphasizing shared principles and attempting to establish common norms of behaviour. In that sense, it contributed towards the easing of tensions between the claimant states. Still, the document was 'simply a political statement'⁸⁰ that could not prevent the occurrence of incidents over territorial claims in the South China Sea.

Significant for the theme of this monograph, the DOC did not refer to the joint development of natural resources in the South China Sea. Paragraph six of the declaration did, however, encourage the claimants to

undertake a series of 'cooperative activities', including scientific research and marine environmental protection. Still, very little has been done since 2002 in terms of sustainable resource management and development, either bilaterally or multilaterally. In that sense, it illustrates how the DOC was primarily meant as an attempt at conflict management and prevention rather than developed within a framework of environmental security.

The prospect for conflict management and the joint development of natural resources has been further diminished in recent years due to a re-escalation of the South China Sea disputes.⁸¹ Conflict prevention has stalled as no progress has been made toward the implementation of the 2002 DOC.⁸² As mentioned above, the cooperative activities in marine environmental protection have also remained limited, to say the least. The new guidelines for developing a code of conduct for the South China Sea, signed by China and the ASEAN countries in July 2011, were non-specific and generally perceived as disappointing.

In July 2012, the foreign ministers of the Southeast Asian nations failed to come up with a common statement on the South China Sea disputes and as a result to issue a joint communique at the end of the ASEAN Ministerial Meeting (AMM) in Phnom Penh.⁸³ The Philippines insisted on a reference to the stand-off between Manila and Beijing at Scarborough Shoal earlier in 2012 but Cambodia acting as the ASEAN Chair and a close economic partner of Beijing refused on the grounds that the territorial disputes with China are bilateral. Cambodia also rejected Vietnam's call for a statement on the respect for EEZs (arguably in response to the 2012 CNOOC tender and other developments) on similar grounds. The lack of a joint communique, a first in the organization's 45-year history, thus derived from the Philippines' and Vietnam's insistence on the one hand and Cambodia adopting China's negotiating position on the other, highlighted the lack of unity among the Southeast Asian nations. Beijing has traditionally called for the South China Sea issue not to be discussed at international forums, preferring instead to negotiate bilaterally with the other smaller claimants.

After a round of consultative diplomacy undertaken by Indonesia, Cambodia released an ASEAN statement a week after the failed AMM that listed six basic principles on the South China Sea. Among others, it referred to the exercise of self-restraint and the non-use of force, to an early adoption of a code of conduct as well as to the peaceful resolution of conflicts in accordance with international law, including UNCLOS. The

statement was a watered-down document that made no reference to the recent incidents in the South China Sea. A joint communique was not issued, however, due to a lack of consensus among the member states.

November 2012, the tenth anniversary of the DOC, had been set as a provisional deadline for the completion of a code of conduct for the South China Sea in time for the ASEAN summit to be held in Cambodia. The deadline was not met, however. Instead, the ASEAN states and China failed to even start the discussions with Beijing stating that 'the time was not ripe' to negotiate a code of conduct while the DOC had not yet been fully implemented.

Besides ASEAN's disunity and Beijing's resistance to negotiate a code of conduct, China has continued to act assertively in the disputed territories. In late July 2012, Beijing set up an army garrison and expanded the administrative centre on Woody Island, which is located in the South China Sea, more than 200 nm southeast of Hainan. All these recent developments question the prospect for conflict management in the South China Sea.

Sino-US competition

In the meantime, the distribution of power in the South China Sea is still in a state of flux, which contributes to the fragility and possible volatility of the situation on the ground. The build-up of China's Southern Fleet, even if it is gradual, is a concern for the other claimants, especially because its geographical area of operation is the South China Sea. The PLAN is also constructing an underground nuclear submarine base near Sanya on Hainan Island. The base will significantly increase China's strategic presence in the semi-enclosed sea. Increased Chinese submarine activity in the disputed waters is a great source of concern to the other claimant states. They are worried that China's rising naval power could be used to back-up with force its territorial claims. In response, the Philippines and Vietnam have sought to strengthen their own naval capabilities as well as the military structures on the reefs and islands they respectively occupy. Hanoi announced, for example, the purchase of six Russian Kilo class submarines in April 2009. Manila has reinforced its defence arrangement with the United States through the holding of more joint naval exercises.

Beyond the claimant states, increased Sino-US competition in East Asia has affected the South China Sea disputes. The incident involving the harassment of the ocean surveillance vessel USNS *Impeccable* by

Chinese navy and civilian patrol vessels south of Hainan Island in March 2009 caused concern in Washington and most Southeast Asian capitals. While Beijing claimed that the *Impeccable* was involved in marine scientific research in its exclusive economic zone that requires Chinese consent, Washington argued that the activities of the surveillance vessel were legitimate under the freedom of navigation principle. The latter is mostly associated in this context with the freedoms of navigation and overflight of military ships and aircrafts, as no restriction to commercial shipping is expected in the disputed waters.⁸⁴ The *Impeccable* incident was perceived by Washington and the Southeast Asian claimants as an example of rising Chinese assertiveness in the South China Sea.

At the 2010 Shangri-La Dialogue, US Secretary of Defence Robert Gates declared that while the United States does not take sides in the sovereignty disputes it would, however, oppose any action that could threaten the freedom of navigation in the South China Sea. A statement made by US Secretary of State Hilary Clinton at the ASEAN Regional Forum (ARF) in July 2010 declaring that the United States has a national interest in the freedom of navigation in the South China Sea further angered China. Her comments were perceived by Beijing as a form of external interference. Besides the United States, 11 other ARF participants, including all the Southeast Asian claimant states, mentioned the disputes in their statements. China had managed until 2010 to keep the South China Sea off the ARF agenda.⁸⁵ Yet, as the ASEAN Chair and host of the ARF, Vietnam sought in 2010 to internationalize the discussion on the South China Sea. The latter was again mentioned by Clinton at the ARF meeting held in Bali in July 2011. After the Vietnamese and Indonesian chairmanships of ASEAN, it is expected, however, that the next three annual chairs, Cambodia, Brunei and Myanmar, will seek to appease Beijing by minimizing the internationalization of the South China Sea issue. As discussed above, this already occurred at the AMM in July 2012 when Cambodia endorsed China's diplomatic position that the disputes should be discussed bilaterally rather than multilaterally.

US President Barack Obama himself raised the South China Sea question at the East Asia Summit (EAS) in Bali in November 2011. He restated that the United States takes no sides in the disputes but that its interests include the freedom of navigation and unimpeded international commerce in the semi-enclosed sea. Sixteen of the 18 leaders present at the summit mentioned maritime security in their remarks.⁸⁶ Chinese Premier Wen Jiabao responded by reaffirming the freedom of navigation

principle and calling for a peaceful resolution of the South China Sea disputes.

After the terrorist attacks on 11 September 2001, the Bush administration focused its foreign and security policy on fighting terrorism and the wars in Iraq and Afghanistan. In contrast, the Obama administration has partly refocused its diplomacy and military forces toward the Asia–Pacific, as part of a larger ‘pivot’ or rebalancing strategy. For example, besides deepening its military ties with the Philippines, the United States also announced in late 2011 the rotational deployment of 2,500 US Marines in Darwin, Australia, and the deployment of up to four of its littoral combat ships (LCS) in Singapore. These initiatives have caused concern in Beijing. In particular, there is a strong perception in the PRC that the United States is enhancing its involvement in the South China Sea and that Washington is thus interfering in what it considers to be a bilateral issue with the four Southeast Asian claimant states. As Beijing and Washington compete for regional influence, there is ‘little doubt that the two are engaged in a struggle for the “hearts and minds” of Southeast Asia.’⁸⁷ Rising China–US rivalry and competition in the South China Sea should be expected to further complicate the joint management of resources in the disputed waters.

Notes

- 1 Parts of this chapter draw from R. Emmers (2010) *Geopolitics and Maritime Territorial Disputes in East Asia* (London: Routledge), pp. 66–69, 77–80.
- 2 For an overview of the claims, see N. Lu (1996) *Flashpoint Spratlys!* (Singapore: Dolphin Trade Press Pte Ltd), p. 5–35; C. C. Joyner (2002) ‘The Spratly Islands Dispute: Legal Issues and Prospects for Diplomatic Accommodation’, in J. C. Baker and D. G. Wiencek (eds) *Cooperative Monitoring in the South China Sea* (Westport, Connecticut: Praeger), p. 19; A. Shephard (August 1996) ‘Testing the Waters: Chinese Policy in the South China Sea’, Australian Defence Studies Centre Working Paper no. 39 (Canberra: Australian Defence Studies Centre), p. 3; B. Catley and M. Keliat (1997) *Spratlys: The Dispute in the South China Sea* (Aldershot, UK: Ashgate Publishing), p. 26; S. Tonnesson (2000) ‘Can China Resolve the South China Sea Dispute?’, EAI Working Paper no. 39, (Singapore: East Asia Institute), p. 8; L. G. Cordner (1994) ‘The Spratly Islands Dispute and the Law of the Sea’, *Ocean Development and International Law*, vol. 25, pp. 61–74; B. L. Thomas and D. J. Dzurek (Winter 1996) ‘The Spratly Islands Dispute’, *Geopolitics*

- and *International Boundaries*, vol. 1 (3), pp. 300–326; S. B. Kaye (September/October 1998) ‘The Spratly Islands Dispute: A Legal Background’, *Maritime Studies*, vol. 102, pp. 14–25; K. Y. Zou (1999) ‘The Chinese Traditional Maritime Boundary Line in the South China Sea and Its Legal Consequences for the Resolution of the Dispute over the Spratly Islands’, *The International Journal of Marine and Coastal Law*, vol. 14 (1), pp. 27–55.
- 3 S. Tonnesson (2005) ‘Locating the South China Sea’, in P. H. Kratoska, R. Raben and H. Schulte Nordholt (eds) *Locating Southeast Asia: Geographies of Knowledge and Politics of Space* (Singapore: Singapore University Press), p. 210.
 - 4 China here is understood to be inclusive of both the PRC and ROC, as their claims are the same and are generally considered as one.
 - 5 Catley and Keliat (1997) *Spratlys: The Dispute in the South China Sea*, p. 24.
 - 6 L. Buszynski and I. Sazlan (2007) ‘Maritime Claims and Energy Cooperation in the South China Sea’, *Contemporary Southeast Asia*, vol. 29 (1), p. 145.
 - 7 See G. Segal (1985) *Defending China* (Oxford: Oxford University Press), pp. 197–210.
 - 8 Tonnesson (2005) ‘Locating the South China Sea’, p. 219.
 - 9 Buszynski and Sazlan (2007) ‘Maritime Claims and Energy Cooperation in the South China Sea’, p. 147.
 - 10 Catley and Keliat (1997) *Spratlys: The Dispute in the South China Sea*, p. 35.
 - 11 Joyner (2002) ‘The Spratly Islands Dispute’, p. 20.
 - 12 Cited in Shephard (August 1996) ‘Testing the Waters’, p. 14.
 - 13 ‘Philippines’ (1 August 2009), (available at <http://www.worldfishing.net/features101/new-horizons/philippines3>).
 - 14 K. Sato (19 December 2011) ‘South China Sea: China’s Rise and Implications for Security Cooperation’, (available at <http://nghiencuubiendong.vn/en/conferences-and-seminars-/the-third-international-workshop-on-south-china-sea/645-south-china-sea-chinas-rise-and-implications-for-security-cooperation-by-koichi-sato>).
 - 15 H. L. Wang (21 July 2011) ‘Joint Development of Marine Fisheries Resources’, (available at <http://nghiencuubiendong.vn/en/conferences-and-seminars-/second-international-workshop/598-join-development-of-marine-fisheries-resources-by-wang-hanling>).
 - 16 See Y. Lyons and T. Davenport (3 July 2012) ‘South China Sea: Limits to Commercial Fishing by Claimants’, *RSIS Commentaries* (Singapore: S. Rajaratnam School of International Studies).
 - 17 Buszynski and Sazlan (2007) ‘Maritime Claims and Energy Cooperation in the South China Sea’, p. 156.
 - 18 E. Kreil (2002) ‘Energy Issues in the South China Sea Region’, in J. C. Baker and D. G. Wiencek (eds) *Cooperative Monitoring in the South China Sea* (Westport, Connecticut: Praeger), p. 43.
 - 19 Kreil (2002) ‘Energy Issues in the South China Sea Region’, p. 42.

- 20 Buszynski and Sazlan (2007) 'Maritime Claims and Energy Cooperation in the South China Sea', p. 156.
- 21 Scott Snyder (1996) 'The South China Sea Dispute: Prospects for Preventive Diplomacy', Special Report 18 (Washington D.C.: United States Institute of Peace).
- 22 Kreil (2002) 'Energy Issues in the South China Sea Region', p. 43.
- 23 J. P. Rowan (2005) 'The US-Japan Security Alliance, ASEAN, and the South China Sea Dispute', *Asian Survey*, vol. 45 (3), p. 417.
- 24 For a recent and comprehensive review of the hydrocarbon resources of the South China Sea, see N. A. Owen and C. H. Schofield (May 2012) 'Disputed South China Sea Hydrocarbons in Perspective', *Marine Policy*, vol. 36 (3), pp. 809–822.
- 25 See Owen and Schofield (May 2012) 'Disputed South China Sea Hydrocarbons in Perspective'.
- 26 M. Studeman (Spring 1998) 'Calculating China's Advances in the South China Sea: Identifying the Triggers of "Expansionism"', *Naval War College Review*, vol. 51 (2), pp. 1–5.
- 27 Studeman (Spring 1998) 'Calculating China's Advances in the South China Sea', p. 8.
- 28 D. Wurfel (1999) 'Between China and ASEAN: The Dialectics of Recent Vietnamese Foreign Policy', in C. A. Thayer and R. Amer (eds) *Vietnamese Foreign Policy in Transition* (Singapore: Institute of Southeast Asian Studies), p. 152.
- 29 Studeman (Spring 1998) 'Calculating China's Advances in the South China Sea', pp. 8–9.
- 30 Wurfel (1999) 'Between China and ASEAN', p. 156.
- 31 Buszynski and Sazlan (2007) 'Maritime Claims and Energy Cooperation in the South China Sea', p. 158.
- 32 Buszynski and Sazlan (2007) 'Maritime Claims and Energy Cooperation in the South China Sea', pp. 158–161.
- 33 M. Richardson (30 July 2008) 'Asia's Hunger for Oil and Natural Gas: Rising Demand for Oil to Churn up South China Sea', *The Straits Times*, (available at: newspapers.nl.sg/Digitised/Issue/straitstimes20080730-1.aspx).
- 34 K. Currie (6 August 2010) 'Why is China Picking Fights with Indonesia?', *The Weekly Standard*, (available at <http://www.weeklystandard.com/blogs/why-china-picking-fights-indonesia>).
- 35 *Agence France-Presse* (20 April 2012) 'China Releases Vietnamese after Maritime Row', (available at <http://news.yahoo.com/china-releases-vietnamese-maritime-row-023411890.html>).
- 36 *Agence France-Presse* (2 May 2012) 'Taiwan Sets Up Airborne Unit for Spratlys', (available at <http://globalnation.inquirer.net/35497/taiwan-sets-up-airborne-unit-for-spratlys>).

- 37 Matikas Santos (11 April 2012) 'Poaching Triggers Scarborough Stand-off', *Philippine Daily Inquirer*, (available at <http://globalnation.inquirer.net/32493/illegal-poaching-activities-of-chinese-vessels-cause-standoff>); M. Valencia (14 May 2012) 'Current Spat may be a Sign of Future Tensions', *The Straits Times*, (available at newspapers.nl.sg/Digitised/Issue/straitstimes20040514-1.aspx).
- 38 *The Economist* (28 April 2012) 'Shoal Mates: America's Navy Riles China in its Backyard'.
- 39 Robert Beckman cited in William Choong (9 July 2012) 'Coping with China's Strategic Rise', *The Straits Times*.
- 40 *The Financial Times* (28 June 2012) 'China-Vietnam Dispute Deepens'.
- 41 *The National Bureau of Asian Research* (16 July 2012) 'ASEAN and the South China Sea: Deepening Divisions – An Interview with Ian Storey', NBR Expert Q & A (Washington: National Bureau of Asian Research).
- 42 Lyons and Davenport (3 July 2012) 'South China Sea: Limits to Commercial Fishing by Claimants'.
- 43 H. L. Wang (21 July 2011) 'Joint Development of Marine Fisheries Resources'.
- 44 D.T. Nguyen (9 June 2011) 'China's Fishing Ban in the South China Sea: Implications for Territorial Disputes', *RSIS Commentaries* (Singapore: S. Rajaratnam School of International Studies).
- 45 Wurfel (1999) 'Between China and ASEAN', p. 156.
- 46 See I. Townsend-Gault (2002) 'Preventive Diplomacy and Pro-Activity in the South China Sea', *Contemporary Southeast Asia*, vol. 20 (2), pp. 171–190; H. Djalal (2002) *Preventive Diplomacy in Southeast Asia: Lessons Learned* (Jakarta: The Habibie Center).
- 47 Workshop on Managing Potential Conflicts in the South China Sea (15–18 July 1991) *Joint Statement* (Bandung, Indonesia).
- 48 Ali Alatas (1991) *Opening Address*, the Second Workshop on Managing Potential Conflicts in the South China Sea (Bandung, Indonesia).
- 49 Shephard (August 1996) 'Testing the Waters', p. 5.
- 50 For a recent discussion of China's claims in the South China Sea, see R. Beckman (7 March 2012) 'The China-Philippines Dispute in the South China Sea: Does Beijing have a Legitimate Claim?', *RSIS Commentaries* (Singapore: S. Rajaratnam School of International Studies).
- 51 Buszynski and Sazlan (2007) 'Maritime Claims and Energy Cooperation in the South China Sea', p. 158.
- 52 Buszynski and Sazlan (2007) 'Maritime Claims and Energy Cooperation in the South China Sea', pp. 163–164.
- 53 L. Baguioro (15 March 2005) 'Three Nations Sign Pact for Joint Spratly Survey', *The Straits Times*.
- 54 J. Dosch (2007) 'Managing Security in ASEAN-China Relations: Liberal Peace of Hegemonic Stability', *Asian Perspective*, vol. 31 (1), p. 222.

- 55 B. Wain (March 2008) 'Gloria Arroyo at Sea with China', *Far Eastern Economic Review*, (available at <http://testfeer.wsj-asia.com/politics/2008/march/gloria-arroyo-at-sea-with-china>).
- 56 M. J. Valencia (4 June 2007) 'In Response to Robert Beckman', *RSIS Commentaries* (Singapore: S. Rajaratnam School of International Studies).
- 57 I. Storey (28 April 2008) 'Trouble and Strife in the South China Sea Part II: The Philippines and China', *China Brief*, The Jamestown Foundation, vol. 8 (9), p. 6.
- 58 T. Davenport, I. Townsend-Gault, R. Beckman, C. Schofield, D. Ong, V. Becker-Weinberg, and L. Bernard (June 2011) *Conference Report* (Conference on Joint Development and the South China Sea, Organized by the Centre for International Law), p. 37.
- 59 *Agence France-Presse* (27 October 2008) 'China-Vietnam Ties on the Mend'.
- 60 R. Beckman (16 August 2010) 'South China Sea: Worsening Dispute or Growing Clarity in Claims?', *RSIS Commentaries* (Singapore: S. Rajaratnam School of International Studies).
- 61 S. Bateman (16 August 2010) 'The South China Sea: When the Elephants Dance', *RSIS Commentaries* (Singapore: S. Rajaratnam School of International Studies).
- 62 I. Storey (26 May 2009) 'China-Vietnam's Year of Friendship Turns Fractious', *The Straits Times*.
- 63 T. Davenport et al. (June 2011) *Conference Report*, p. 20.
- 64 B. Wain (18 November 2011) 'Navigating Tensions in the South China Sea', *The Straits Times*.
- 65 A. San Pablo-Baviera (5 January 2012) 'The South China Sea Disputes: Is the Aquino Way the "ASEAN Way"?', *RSIS Commentaries* (Singapore: S. Rajaratnam School of International Studies), p. 2.
- 66 *The Straits Times* (3 May 2012) 'Keeping the Peace in South China Sea', (available at <http://www.asianewsnet.net/home/news.php?id=30164&sec=3>).
- 67 J. Guinto and D. T. Kate (31 July 2012) 'Oil Majors Avoid Philippine Bids for China-claimed Sea Blocks', *Bloomberg*, (available at <http://www.bloomberg.com/news/2012-07-31/philippines-to-offer-offshore-oil-blocks-in-china-claimed-areas.html>).
- 68 San Pablo-Baviera (5 January 2012) 'The South China Sea Disputes', p. 2.
- 69 Z. Dubel (2 July 2012) 'Regional Implications for China's Newest Oil Rig', *Stimson Spotlight*, (available at <http://www.stimson.org/spotlight/regional-implications-for-chinas-newest-oil-rig/>).
- 70 This point was made by Tran Truong Thuy in his presentation on the South China Sea disputes at the RSIS-OPRF International Conference on 'Security Environment of the Seas in East Asia: Power Shift and Response', held on 28–29 February 2012, Singapore.
- 71 Wain (18 November 2011) 'Navigating Tensions in the South China Sea'.

- 72 R. Beckman (31 July 2012) 'The South China Sea Disputes: How States can Clarify their Maritime Claims', *RSIS Commentaries* (Singapore: S. Rajaratnam School of International Studies).
- 73 Tran Truong Thuy (28–29 February 2012).
- 74 The TAC mentioned the principles of the United Nations Charter and the principles endorsed at the Asian–African Conference in Bandung, Indonesia, in April 1955. The Treaty also referred to the 1967 Bangkok Declaration and 1971 Kuala Lumpur Declaration.
- 75 Treaty of Amity and Co-operation in South-East Asia, Bali, Indonesia, 24 February 1976.
- 76 ASEAN Declaration on the South China Sea, Manila, the Philippines, 22 July 1992.
- 77 Declaration on the Conduct of Parties in the South China Sea, Phnom Penh, Cambodia, 4 November 2002.
- 78 Declaration on the Conduct of Parties in the South China Sea, 4 November 2002.
- 79 L. Odgaard (2003) 'The South China Sea: ASEAN's Security Concerns about China', *Security Dialogue*, vol. 34 (1), p. 22.
- 80 S. Tonnesson (2003) 'Sino-Vietnamese Rapprochement and the South China Sea Irritant', *Security Dialogue*, vol. 34 (1), pp. 55–56.
- 81 See R. Emmers (Winter 2010) 'The Prospects for Managing and Resolving Conflict in the South China Sea', *Harvard Asia Quarterly*, vol. XII (3 & 4), pp. 13–17; and R. Emmers (December 2010) 'The Changing Distribution of Power in the South China Sea: Implications for Conflict Management and Avoidance', *Political Science*, vol. 62 (2), pp. 118–131.
- 82 See I. Storey (2012) 'The Institutionalization of ASEAN-China Relations: Managing the South China Sea Dispute', in R. Emmers (ed.) *ASEAN and the Institutionalization of East Asia* (London: Routledge), pp. 145–149.
- 83 Puy Kea (13 July 2012) 'S. China Sea Row Forces ASEAN to Forego Communique for 1st Time in 45 years', *Kyodo News*, (available at <http://asc.iseas.edu.sg/about-us/home/item/124-s-china-sea-row-forces-asean-to-forego-communique-for-1st-time-in-45-years>).
- 84 S. Bateman (16 August 2010) 'The South China Sea: When the Elephants Dance'.
- 85 I. Storey (27 July 2010) 'Power Play in S. China Sea Stirs Up Tension', *The Straits Times*.
- 86 C. A. Thayer (25 November 2011) 'South China Sea Two-Step', *The Wall Street Journal*.
- 87 M. Valencia (24 July 2012) 'Is ASEAN becoming a Big-Power Battleground?', *The Straits Times*.

6

Conclusion

Abstract: *International arbitration does not constitute a likely scenario to resolve the overlapping claims in the Sea of Japan and East and South China Seas. Rather than a legalistic approach, some form of joint exploration and exploitation of resources has instead often been envisioned as the most feasible way forward. Temporary fisheries agreements have been negotiated to regulate fishery matters in the Sea of Japan and the East China Sea. Much less has been achieved on the joint exploration of hydrocarbon resources. Rising nationalism and regional competition are making cooperative schemes much harder to negotiate and implement. This makes the joint development of hydrocarbon resources an unlikely scenario in the years to come.*

Key words: International arbitration, joint development, resource management, nationalism.

Emmers, Ralf. *Resource Management and Contested Territories in East Asia*. Basingstoke: Palgrave Macmillan, 2013. DOI: 10.1057/9781137310149

Joint resource management in disputed waters: an unlikely scenario?

International arbitration does not constitute a likely scenario to resolve the overlapping claims in the Sea of Japan and East and South China Seas. The United Nations Convention on the Law of the Sea (UNCLOS) provides a comprehensive system for the resolution of disputes and it places a strong obligation on all littoral states to cooperate in enclosed and semi-enclosed seas. Yet, as permitted under the Convention for certain categories of disputes, the claimant states have opted out of the compulsory settlement process. Regional arbitration is also unlikely, as no regional third-party mediator is either willing or invited by the claimants to help solve the maritime boundary disputes in the East Asian seas. The ARF, the ASEAN + Three (China, Japan, South Korea) and the EAS lack an institutional mechanism for resolving disputes while ASEAN itself has traditionally focused on conflict avoidance rather than conflict resolution.

In the Dokdo/Takeshima case, Japan is keen to present the overlapping claims to the International Court of Justice (ICJ) but South Korea has refused to defer the question to an international arbitration. Seoul does not recognize the dispute as it considers the islands to be indisputably Korean territory. Tokyo has a different attitude to arbitration. It links the Dokdo/Takeshima issue to other territorial disputes it is involved in, namely, the North Territories/Kurils with Russia and the Senkaku/Diaoyu Islands with China and Taiwan. Besides the limited prospect for international arbitration, there is, at this stage, no formal framework between South Korea and Japan for seeking to resolve the issue bilaterally.

The Senkaku/Diaoyu dispute in the current circumstances is not prone to the resolution of the sovereignty question and the delineation of maritime boundaries. China and Japan are unlikely to agree to bring the case before the ICJ in The Hague or the International Tribunal for the Law of the Sea in Hamburg. Moreover, Taiwan is not a member of the United Nations and thus in no position to submit its claims to the ICJ or the International Tribunal.

Likewise, the South China Sea disputes are not prone to resolution in light of the number of countries involved and the complexity of the overlapping territorial claims. International arbitration does not, as in the previous cases, constitute a likely scenario to solving the disputes. No

obvious legal resolution to the competing claims in the South China Sea exists. Their resolution is indeed difficult to conceive. All the claimants have repeated their sovereignty and they have been unwilling to make concessions with regard to their territorial claims. Moreover, they have so far refused to discuss the problem of sovereign jurisdiction over the islands and their overlapping claims have not been presented to the ICJ or the International Tribunal.¹

Rather than a legalistic approach, some form of joint exploration and exploitation of resources has generally been envisioned as the most feasible way forward. While maritime territorial disputes are known to be a major irritant in interstate relations, it is regularly argued that joint development 'provides a means to remove this irritant, albeit temporarily, in a way that does not compromise the claims or positions of the states parties.'² Yet, based on the evidence presented in this monograph, this logic seems to have worked partially for fisheries management but not hydrocarbon resources. Fisheries agreements have been negotiated to regulate fishery matters in the Sea of Japan and the East China Sea. However, no similar agreements, neither between China and a Southeast Asian nation nor between two or more ASEAN countries, have been signed with regards to the disputed waters of the South China Sea. The number of claimant states clearly complicates the reaching of cooperative arrangements due to the many national interests competing with each other. Unlike in the Sea of Japan and the East China Sea, bilateral agreements may therefore not work in the South China Sea due to the multilateral nature of the disputes. Moreover, as discussed in Chapter 5, China's industrial fisheries cannot be compared to the traditional fishing methods still employed by smaller Vietnamese and Philippine fishing vessels active in the South China Sea.³ The significant difference in fishing capacity, in addition to the multilateral nature of the sovereignty question, has arguably contributed to the lack of a cooperative arrangement. In contrast, the bilateral disputes and the fact that China, Japan and South Korea have similar commercial fishing capabilities may partly explain why agreements on fisheries cooperation have been easier to reach in the Sea of Japan and the East China Sea.

Technically, all the East Asian seas are included in the Western and Central Pacific Fisheries Commission (WCPFC), a regional fisheries management organization (RFMO) created under the 1995 UN Fish Stocks Agreement.⁴ The Southeast Asian nations have also signed a Code of Conduct for Responsible Fisheries (CCRF) and established

an ASEAN–Southeast Asian Fisheries Development Center while the participants of the Asia Pacific Economic Cooperation (APEC) forum have committed to a Bali Plan of Action for Responsible Fisheries. Nevertheless, the activities and ultimate impact of such region-wide fisheries regimes have generally been undermined by a lack of political will and resources as well as the self-interested behaviour of the participating states.

While progress has been made in the joint management of fisheries through the signing of bilateral cooperative arrangements in two of our three case studies, much less has been achieved on the joint exploration of hydrocarbon resources.

The joint development formula could be extended in the Sea of Japan to include hydrocarbon resources. Having already reached an agreement on fisheries management, the joint exploration of natural gas could constitute the next step in the cooperative process. Going further, the Dokdo/Takeshima dispute could conceivably be resolved if Japan were to recognize South Korea's sovereignty to the islets, while being conceded greater access to the area's maritime resources by the latter. This could mitigate the nationalistic sentiments and resource considerations that have historically fuelled the dispute. Such a bilateral arrangement would arguably go beyond a joint development scheme, which theoretically at least only involves the temporary shelving of the sovereignty question. Dujarric argues that it would be cost-free for Japan to renounce its claims to the Dokdo/Takeshima Islands 'since there is no plausible scenario under which they could become Japanese. But doing so would remove an unfortunate source of tension and misunderstanding between both societies.'⁵

The prospects of such a long-term scenario are unclear, however. As nationalism and the historical legacy of occupation remain so deeply intertwined in South Korea, it seems unlikely that Seoul will be ready anytime soon to concede Japan greater access to the area's maritime resources. Making any concession to Japan would be dangerous for South Korean policymakers, since nationalistic fervour is so strong in South Korea on this issue. Likewise, the likelihood of Japan recognizing Korean sovereignty remains small at this stage, as the issue continues to resonate with Japanese nationalist groups and evoke domestic nationalistic sentiments. Moreover, a renouncement of its claims to the Dokdo/Takeshima Islands might affect similar claims made by Japan to the North Territories/Kurils and the Senkaku/Diaoyu Islands. The

prospect for conflict diffusion thus very much depends on a sustained and long-term process of bilateral reconciliation based on the reduction of nationalistic dispositions and popular antipathy.

Rising economic interdependence between China and Japan has been regarded as an opportunity to open up venues for greater collaboration in the exploration of hydrocarbon resources in the East China Sea. Yet, it is important to point out that this scenario will eventually depend on a Sino-Japanese process of reconciliation sustained in the longer term. The visit by Japanese Prime Minister Yasuo Fukuda to China in December 2007 and the return visit by Chinese President Hu Jintao in May 2008 were welcomed as indications that both countries were willing to moderate their position and focus on the future. Still, the in-principle consensus concluded in June 2008 was limited in scope, restricted to one disputed gas field only, and ultimately never implemented due to disagreements over its content. Instead, the bilateral relationship worsened again after September 2010 due to a high-profile fisheries incident in the disputed waters and an ongoing militarization of the East China Sea. Sino-Japanese ties further deteriorated in 2012 over the nationalization of the Senkaku/Diaoyu Islands by Japan.

The joint exploration of resources combined with the temporary shelving of the sovereignty question is generally discussed as the only feasible option to enhance cooperation and stability in the South China Sea. Beckman stresses that it would be 'necessary to first negotiate a framework document that "shelves" or "freezes" existing claims and sets out the principles upon which cooperation and joint development can proceed'.⁶ The Timor Gap Treaty between Australia and Indonesia, the Gulf of Tonkin (Beibu) Treaty between China and Vietnam and the Malaysia–Brunei 2009 commercial agreement have been regarded as possible models on which to establish a joint exploration and exploitation scheme for the South China Sea. Still, the Joint Marine Seismic Undertaking (JMSU), involving China, the Philippines and Vietnam, lapsed on 30 June 2008 due to domestic factors in the Philippines while the 2011 Zone of Peace, Freedom, Friendship and Cooperation (ZoPFFC) scheme proposed by Philippine President Aquino was flatly rejected by China. Significantly, the ASEAN members, with the exception of Vietnam, failed to support the Philippine proposal, which further undermined the ASEAN cohesion on the South China Sea question. Unsurprisingly, these developments coincided with a significant rise in tension in the South China Sea and a further militarization of the disputes. While an armed conflict seems

unlikely in the short to medium term, risks exist of miscalculations or accidents leading to limited confrontation.

Consequently, the cases of the Sea of Japan and the East and South China Seas show that the joint management of hydrocarbon resources in the absence of a negotiated maritime delimitation has so far not constituted a feasible strategy to de-escalate maritime sovereignty disputes in East Asia. While all the parties involved have been rhetorically committed to the joint development of seabed resources, no binding arrangement has been successfully negotiated and implemented with the 2009 Brunei–Malaysian commercial agreement as a rare exception. The claimant states have continued to argue over sovereignty issues instead of temporarily shelving these questions to the benefit of the establishment of joint development schemes. As mentioned above, in contrast to JDAs on hydrocarbon resources, progress has been made in the Sea of Japan and the East China Sea on fisheries management. This suggests that living and non-living resources in disputed waters may have to be managed differently. Moreover, it shows that fisheries agreements do not act as a stepping stone towards the negotiation of joint development agreements on hydrocarbon resources.

Due to the high economic costs and interests at stake, it is perhaps unsurprising that little progress has been made towards the joint development of hydrocarbon resources in contrast to the adoption of bilateral joint fishery schemes in the Sea of Japan and the East China Sea. While fishing activities have been going on in these seas for centuries, claimants still prefer to explore for oil and gas unilaterally in areas they consider to be rightfully their own. The time frame associated with the exploitation of living and non-living resources is also remarkably different. While fisheries interests tend to be pressing and their development immediate, oil and gas exploration in off-shore areas is a capital-intensive activity with no guarantee of commercial success.⁷ There is also generally a ten-year gap between the discovery of hydrocarbon resources and their ultimate exploitation. Moreover, claimant states often need to rely on funds and expertise of private oil and gas companies to exploit their seabed resources.⁸ Yet, due to the high costs of exploration and exploitation, such companies are 'reluctant to operate in disputed territory',⁹ as they prefer the disputes over maritime delimitation to be resolved first.

Furthermore, a joint development scenario is not risk-free, especially for the weaker claimant states. Even if the size of the oil and gas reserves is ever determined, the disputants would still have to decide on how to

share these commodities. Beyond the joint exploration of resources, reaching an agreement on their common exploitation will ultimately be more complex and difficult. The asymmetry in power capabilities and the absence of an overall agreement on the sovereign rights of the coastal states could affect the negotiating position of the weaker parties as well as leave them in a fragile situation if economic conditions were to change in the disputed areas. Specifically, the disputes could escalate further if proof was found of sufficient oil and gas reserves for commercial use in a joint development zone. Paradoxically, joint exploration in a disputed area may thus ultimately raise rather than defuse a sovereignty dispute if abundant resources were to be discovered under a JDA.

To prevent such a scenario from occurring, a joint development agreement should be as clearly negotiated and specific as possible. The claimant states first need to bring their claims into conformity with international law so as to precisely identify the overlapping areas where cooperative arrangements can be reached.¹⁰ Furthermore, Tonnesson reminds us in the context of the South China Sea that if 'oil is going to be produced, a sophisticated legal regime with clear rules for how to divide costs, obligations, and revenues must be established.'¹¹ He adds that this may 'be as difficult to agree upon as to delimitate maritime borders, particularly when there are more than two parties involved.'¹² Tonnesson's comments suggest that it may be better to postpone exploration schemes until the sovereignty disputes have been resolved. Yet, as discussed above, the resolution of the territorial question seems particularly unlikely in the context of the South China Sea.

So what explains the ongoing failure to conclude joint hydrocarbon agreements in East Asia's most pressing maritime territorial disputes despite the fact that they are commonly perceived as the only way forward? The negotiation of such agreements and their potential de-escalating attributes have been undermined in our three case studies by rising nationalism and militarization. In other words, nationalism and regional competition are rising, thus making joint development schemes much harder to negotiate and implement. This clearly demonstrates that cooperative resource exploitation cannot be separated from nationalist considerations and power politics calculations. Nationalist sentiments, especially if they are utilized by national governments as part of wider domestic political strategies, have constituted a formidable stumbling block toward the joint management of resources in disputed waters. Moreover, the rising perception of military power as a valid and

useful instrument to guarantee access to natural resources has led to the further militarization of maritime territorial disputes. In particular, renewed Chinese assertiveness linked with its expanded naval military capabilities has accelerated this process with regards to the East and South China Sea disputes. The joint management of natural resources will become increasingly unlikely if military power were to be perceived as an indispensable instrument to advance energy considerations in East Asia.

The logic mentioned above should thus be turned on its head. Rather than acting as a de-escalating force capable of neutralizing tensions over overlapping sovereignty claims or reducing power competition among the claimant states, collaborative resource schemes are dependent on an improvement in interstate relations first before they can be negotiated and implemented successfully. For example, the in-principle agreement signed in June 2008 resulted from improved Sino-Japanese relations. Likewise, the JMSU was signed after the 2002 Declaration on the Conduct of Parties in the South China Sea and improved regional ties thanks to deepening economic relations. As a result, the development of natural resources was briefly perceived by the various disputants as a source of possible collaboration rather than competition. In both cases, however, the agreements eventually lapsed or failed to be implemented due to a subsequent deterioration in the climate of relations and increased power competition, also involving external parties to the disputes.

Wider geopolitical considerations have transformed the dynamics of the East and South China Sea disputes and once again confirmed the resource question as a source of interstate competition. Hence, whether the availability of oil and gas in a disputed maritime zone becomes a source of conflict or cooperation depends on other considerations, namely, sovereignty/nationalism and power relations. While the militarization of the Sea of Japan has not occurred in a similar fashion between two US allies, nationalism is still strong in the context of the Dokdo/Takeshima dispute, especially in South Korea where the sovereignty dispute is associated with the Japanese colonization of the entire Korean Peninsula from 1910 to 1945.

The increased volatility of a maritime territorial dispute makes it close to impossible for the disputants to envisage temporarily putting off the question of boundaries and seeking instead to conclude a joint development agreement. For the economic logic to prevail, a de-escalation of nationalist sentiments and a stable distribution of power are first needed.

Neither is likely in the coming years, as nationalism and the militarization of maritime territorial disputes are on the rise in the East and South China Seas. This makes the joint development of hydrocarbon resources an unlikely scenario in the years to come. It is perhaps equally unlikely in the Sea of Japan due to prevailing nationalist sentiments. The only scenario even less likely to materialize in the near to medium term, especially in the South China Sea, is the resolution of the sovereignty disputes through the successful delimitation of maritime borders. The volatility of the maritime territorial disputes in East Asia should thus prevail in the coming years.

Notes

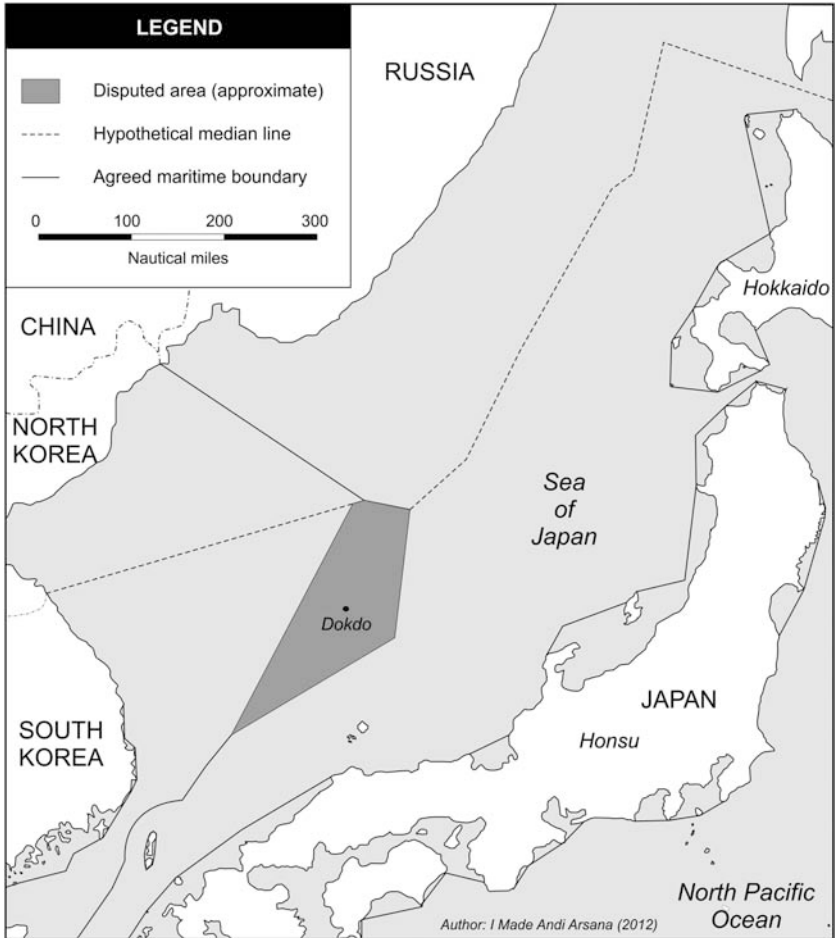
- 1 This can be contrasted to other territorial disputes in Southeast Asia. For example, in November 2007 Singapore and Malaysia submitted their sovereignty claims over the island of Petra Branca/Pulau Batu Puteh to the ICJ for international arbitration. Ending a 28-year dispute over sovereignty, the court ruled in May 2008 in favour of Singapore but awarded two smaller outcrops, called Middle Rocks, to Malaysia.
- 2 T. Davenport (February 2012) 'Joint Development in Asia: Some Valuable Lessons Learned', in C. Schofield (ed.) *Maritime Energy Resources in Asia: Legal Regimes and Cooperation*, NBR Special Report #37 (Seattle: The National Bureau of Asian Research), p. 140.
- 3 Y. Lyons and T. Davenport (3 July 2012) 'South China Sea: Limits to Commercial Fishing by Claimants', *RSIS Commentaries* (Singapore: S. Rajaratnam School of International Studies).
- 4 D. Rosenberg (2009) 'Fisheries Management in the South China Sea', in S. Bateman and R. Emmers (eds) *Security and International Politics in the South China Sea: Towards a Cooperative Management Regime* (London: Routledge) p. 70.
- 5 R. Dujarric (15 October 2010) 'Enhancing Japan's Position in the Senkaku Dispute', *PacNet #50*, (available at <http://csis.org/publication/pacnet-50-enhancing-japan's-position-senkaku-dispute>).
- 6 R. Beckman (2009) 'Legal Regimes for Cooperation in the South China Sea', in S. Bateman and R. Emmers (eds) *Security and International Politics in the South China Sea: Towards a Cooperative Management Regime* (London: Routledge), p. 233.
- 7 M. Masahiro (no date available) 'Seabed Petroleum in the East China Sea: Law of the Sea Issues and the Prospects for Joint Development', (Faculty of Law, Aichi University, Japan), p. 6.

- 8 Davenport (February 2012) 'Joint Development in Asia: Some Valuable Lessons Learned', p. 138.
- 9 S. Tonnesson (Winter 2010), 'China's Changing Role in the South China Sea: Reflections of a Scholar's Workshop', *Harvard Asia Quarterly*, vol. XII (3 & 4), p. 26.
- 10 R. Beckman (31 July 2012) 'The South China Sea Disputes: How States can Clarify their Maritime Claims', *RSIS Commentaries* (Singapore: S. Rajaratnam School of International Studies).
- 11 Tonnesson (Winter 2010) 'China's Changing Role in the South China Sea: Reflections of a Scholar's Workshop', p. 26.
- 12 Tonnesson (Winter 2010) 'China's Changing Role in the South China Sea: Reflections of a Scholar's Workshop', p. 26.

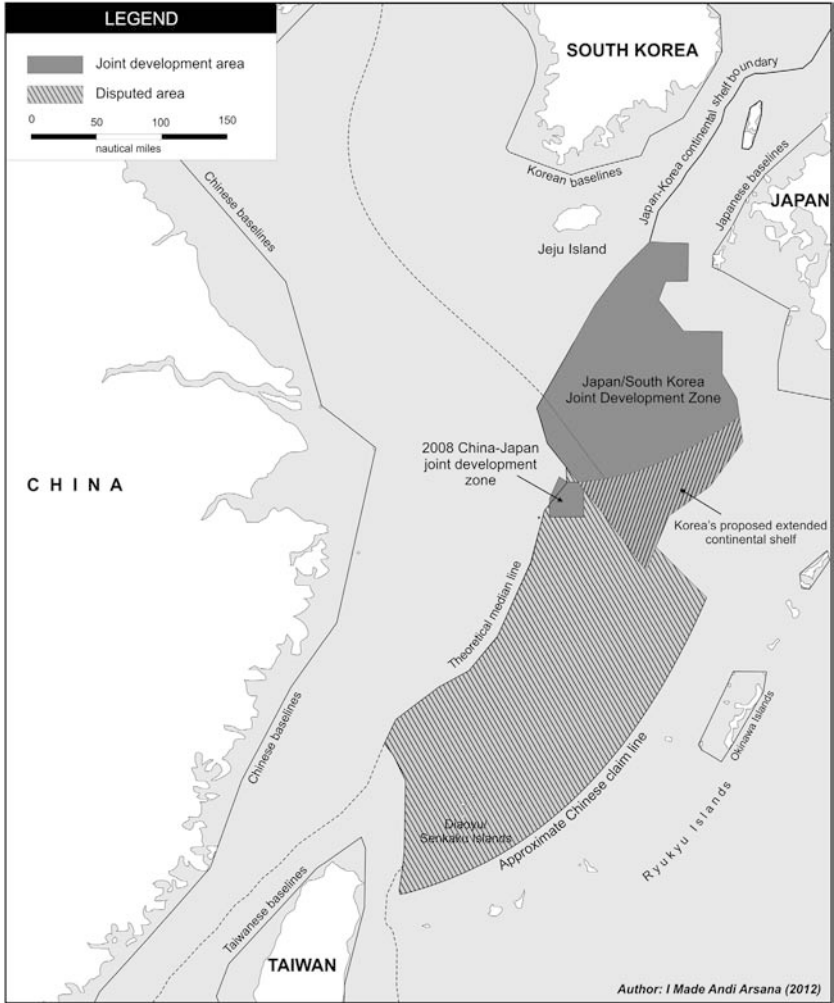


Appendix: Maps of the Sea of Japan and the East and South China Seas

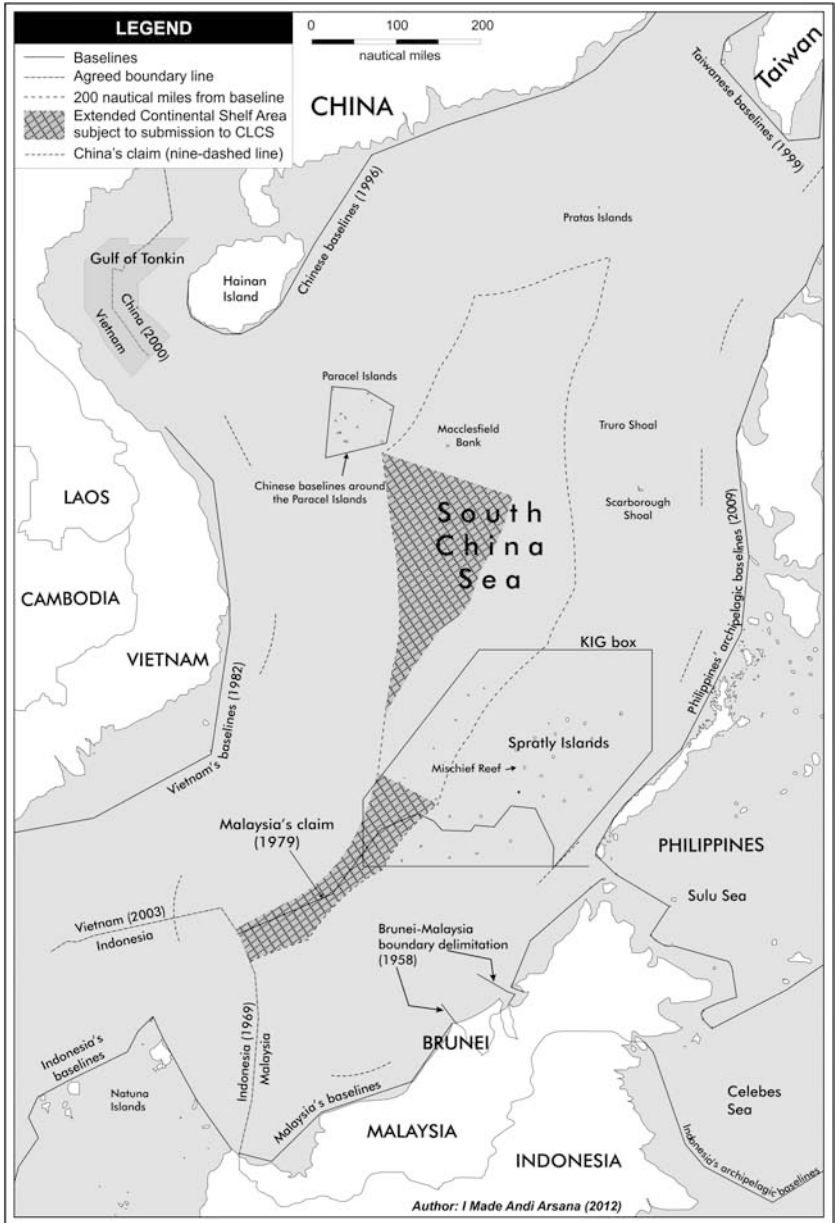
The Sea of Japan



The East China Sea



The South China Sea



Index

Notes: Page references in bold followed by “m” refer to maps.

- Abe, Shinzo, 38
- Agreement between Japan and the Republic of Korea Concerning Fisheries* (1965), 25
- differences between 1998 *provisional treaty* between Japan and South Korea and, 25–6
- Aquino, Benigno S., 65–6
- ASEAN (Association of Southeast Asian Nations)
- conflict management of South China Sea disputes, 67–70
- JMSU’s impact on solidarity of, 63
- Aso, Taro, 38
- Brunei, 14
- claims to Spratly Islands, 54 and Malaysia 2009 commercial agreement, 64–5, 82, 83
- Brunei National Petroleum Company, 64–5
- Chen Shui-bian, 37
- Chiang Kai-Shek, 53
- China (PRC)
- claims to Paracel and Spratly Islands, 52, 53
- claims to Senkaku/Diaoyu Islands, 33–4, 36
- constructions on Mischief Reef, 62
- energy cooperation with Japan, 12
- energy disputes with neighbours, 13–14
- energy needs and concerns of, 10–11
- fishery products exports of, 9
- fishing activities in East China Sea, 39
- hydrocarbon exploration in East China Sea by, 41
- illegal fishing by, 10
- need for sustained reconciliation process with Japan, 82
- rejection of international arbitration of disputed waters, 79–80
- rejection of ZoPFFC proposal, 66
- seafood consumption in, 8 and United States competition in East Asia, 70–2
- and Vietnam agreement of Gulf of Tonkin (Beibu), 60, 82

- see also* Paracel and Spratly Islands dispute; Senkaku/Diaoyu Islands dispute
- China-Japan-South Korea Trilateral Summit, 46–7
- China National Offshore Oil Company (CNOOC), 59, 62, 66
- Chunxiao/Shirakaba field, 40, 41, 44–5
- Clark, Mark, 23
- CLCS, *see* United Nations Commission on the Limits of the Continental Shelf
- Clinton, Hilary, 39–40, 71
- Cloma, Thomas, 54
- CNOOC, *see* China National Offshore Oil Company
- conflict management and resolution
 joint development formula for, 80–7
 of Paracel and Spratly Islands dispute, 67–70
 of Senkaku/Diaoyu Islands dispute, 46–7
 UNCLOS provisions on, 15, 79
- Con Son (company), 62
- continental shelves
 CLCS, 64
 UNCLOS provisions on, 16
 use to claim territory in South China Sea, 54
 use to claim territory, 16
see also Okinawa Trough
- Crestone Energy Corporation, 56–7, 61
- Declaration on the Conduct of Parties in the South China Sea (DOC), 62, 68
- Deng Xiaoping, 36
- Dokdo/Takeshima Islands dispute, 21–4, **89m**
 conflict management by joint development agreements, 81–2
 conflict management issues, 79
 fisheries resources competition and management, 24–7, 28–9
 hydrocarbon resources competition and management, 27–8
- East China Sea
 fishing activities in, 39
 hydrocarbon potential of, 40
 territorial disputes in, 12, **90m**
see also Senkaku/Diaoyu Islands dispute; South China Sea
- EEZ, *see* exclusive economic zones
- energy security
 of China, 10–11
 of Japan, 11–12
 of Philippines, 13–14
 of South Korea, 12
 of Taiwan, 12
 of Vietnam, 13
see also hydrocarbon resources; joint development of hydrocarbon resources
- exclusive economic zones (EEZ), 4–5
 in Dokdo/Takeshima Islands, 25–6
 in Senkaku/Diaoyu Islands, 42
 UNCLOS provisions on, 15–17
- fisheries resources
 competition in East China Sea, 39–40
 competition in South China Sea, 54–5
 East Asian needs of, 8–10
see also joint development of fisheries resources
- Fukuda, Yasuo, 82
- Gates, Robert, 71
- Gulf of Tonkin (Beibu) Treaty, 60, 82
- Hu Jintao, 82
- hydrocarbon exploration
 China's capabilities, 66
 in East China Sea, 41
 in Sea of Japan, 27
 in South China Sea, 56–8
see also joint development of hydrocarbon resources
- hydrocarbon resources
 China's need of, 10–11
 competition in East China Sea for, 40–1
 East Asian joint development agreements on, 3

- East Asian needs of, 10–11
 issue in Dokdo/Takeshima Islands dispute, 27–8, 29
 Japan's need of, 11
 potential in South China Sea, 55–6
see also joint development of hydrocarbon resources
- illegal fishing, 10
- Indonesia
 and Malaysia cooperative fisheries management in South China Sea, 60
 seafood consumption in, 8
 track-two workshops on managing potential conflicts in South China Sea, 61
 'in-principle consensus' (2008), 44–5, 82, 85
 international arbitration, and East Asian maritime disputes resolution, 15, 79–80
 international law, and quest for natural resources, 14–17
- islands
 UNCLOS provisions on maritime zones of, 16
see also Dokdo/Takeshima Islands dispute; Paracel and Spratly Islands dispute; Senkaku/Diaoyu Islands dispute
- Japan
 claims to Dokdo/Takeshima Islands, 21–2
 claims to Senkaku/Diaoyu Islands, 34, 35
 conflict management of disputed waters, 79
 energy needs and concerns of, 11–12
 hydrocarbon exploration in East China Sea by, 41
 need for sustained reconciliation process with China, 82
 seafood consumption in, 8
 termination of 1965 fisheries agreement by, 25
- JDA, *see* joint development agreements
- JMSU, *see* Joint Marine Seismic Undertaking
- joint development agreements (JDA)
 and de-escalation of maritime territorial disputes, 2–3, 4–5, 80–7
 definition of, 2
 significance of, 2–3
- joint development of fisheries
 resources, 3
 in East China Sea, 42–3
 as means of cooperation and conflict management, 80–1
 repeated failures in South China Sea, 59–60
 in Sea of Japan, 25–7
see also fisheries resources
- joint development of hydrocarbon resources, 3
 causes of failures of, 84–6
 in East China Sea, 42–5
 as means of cooperation and conflict management, 81–3
 risks for weaker claimants in, 83–4
 in South China Sea, 60–7
see also hydrocarbon resources
- Joint Marine Seismic Undertaking (JMSU), 62–3, 82
- Koizumi, Junichiro, 41
- Korea Gas Corporation, 27
- Korea National Oil, 27
- Law of the People's Republic of China on the Territorial Waters and Contiguous Areas, 53
- Lee Myung-bak, 29
- Malaysia
 and Brunei 2009 commercial agreement, 64–5, 82, 83
 claims to Spratly Islands, 54
 energy security, 14
 submission of supplementary claims to CLCS, 64

- maritime territorial disputes,
de-escalation by joint development
agreements, 2–3, 4–5, 80–7
- nationalism, impact on joint
development agreements, 5, 84–6
- natural resources
needs of East Asian countries, 8–11
quest for, and international law, 14–17
significance of, 2–3
- Nguyen Tan Dung, 63–4
- Noda, Yoshihiko, 38
- Obama, Barack, 71
- oil and gas exploration, *see*
hydrocarbon exploration
- Okinawa Reversion Treaty, and
Senkaku/Diaoyu Islands dispute,
34–5
- Okinawa Trough, significance in East
China Sea, 35–6
- Paracel and Spratly Islands dispute,
13–14, 52–4, **91m**
conflict management issues, 79–80
fisheries resources competition in,
54–6
fisheries resources management in,
59–60
hydrocarbon resources competition
in, 55–8
impact of Sino-US competition in
East Asia on, 70–2
and joint development of resources,
82–3
recent escalation of, 58–9
rhetorical commitment to joint
development of hydrocarbon
resources, 60–7
- People's Republic of China (PRC), *see*
China
- Pertamina, 57, 62
- Petronas, 64–5
- PetroVietnam, 57, 58, 62, 64
- Philippine National Oil Company
(PNOC), 62
- Philippines
Chinese illegal fishing in the
territorial waters of, 10
claims to Spratly Islands, 54
energy needs and concerns of, 13–14
hydrocarbon exploration in South
China Sea by, 57–8
seafood consumption in, 9
stand-off at Scarborough Shoal with
China, 58–9
submission of supplementary claims
to CLCS, 64
see also Paracel and Spratly Islands
dispute
- PNOC, *see* Philippine National Oil
Company
- Republic of China (ROC), *see* Taiwan
- Republic of Korea (ROK), *see* South
Korea
- Roh Moo-hyun, 22
- Royal Dutch Shell, 57–8
- San Francisco Peace Treaty, and Dokdo/
Takehima Islands dispute, 22–3
- seafood consumption, in East Asia,
8–9
- Sea of Japan, **89m**
see also Dokdo/Takehima Islands
dispute
- Senkaku/Diaoyu Islands dispute, 33–9,
90m
conflict management issues, 79
fisheries resources competition,
39–40
fisheries resources management,
41–2
hydrocarbon resources competition,
40–1
hydrocarbon resources management,
42–5
and joint development of resources,
82
militarization of, 37–8, 46
- Shimonoseki Treaty, and Senkaku/
Diaoyu Islands dispute, 34

- South China Sea
 - militarization of, 70
 - territorial disputes in, 13–14, **91m**
 - see also* East China Sea; Parcel and Spratly Islands dispute
- South Korea (ROK)
 - claims to Dokdo/Takeshima Islands, 21
 - criticism of 1998 provisional agreement with Japan in, 26–7
 - energy concerns of, 12
 - refusal of international arbitration of Dokdo/Takeshima Islands dispute, 79
 - see also* Dokdo/Takeshima Islands dispute
- Spratly Islands dispute, *see* Parcel and Spratly Islands dispute
- Taiwan (ROC)
 - energy concerns of, 12
 - see also* Senkaku/Diaoyu Islands dispute
- Treaty of Amity of Cooperation, 67
- UNCLOS, *see* United Nations Convention on the Law of the Sea
- United Nations Commission on the Limits of the Continental Shelf (CLCS), 64
- United Nations Convention on the Law of the Sea (UNCLOS), 14–17
 - Article 74 (3), 26
 - conflict management provisions in, 15, 79
 - ratification of, 15
- United States
 - and China competition in East Asia, 70–2
 - position on Dokdo/Takeshima Islands dispute, 22–3
 - position on Senkaku/Diaoyu Islands dispute, 39–40
- USNS *Impeccable* (ship) incident, 70–1
- Vaalco Energy, 57
- Vietnam
 - and China agreement of Gulf of Tonkin (Beibu), 60, 82
 - claims to Parcel and Spratly Islands, 52–4
 - energy concerns of, 13
 - submission of supplementary claims to CLCS, 64
 - see also* Parcel and Spratly Islands dispute
- Vietnam Oil and Gas Corporation, 62
- Wen Jiabao, 71–2
- Woodside Petroleum, 27
- Zhou Enlai, 53
- Zone of Peace, Freedom, Friendship and Cooperation (ZoPPFC), 65–6, 82