

# CARVING UP THE EAST CHINA SEA

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Peter Dutton

*As the primitive society pushed ahead and the population of clan groups increased, the balance between the material requirements of the clan groups and the total quantity of the natural materials for living in their localities was upset . . . resulting in the earliest form of war of human society.*

THE SCIENCE OF MILITARY STRATEGY

*The dispute over the continental shelf in the East China Sea . . . is a battle of energy and a battle of geography. It is a fight for the benefit of the ocean, and it is a contest for development of a country and the destiny of its people.*

JIANCHUAN ZHISHI

**I**t is a timeless and fundamental question: *Must competition for scarce resources inevitably lead to conflict?* Today, that age-old question is often asked in reference to the many sites in the world's oceans in which neighboring coastal states are

shouldering each other for the authority to claim the potentially vast sources of hydrocarbons embedded in the continental shelf and the fishing rights to the waters above it.<sup>1</sup>

With more than a billion people to feed and a surging economy that demands ever more energy, the People's Republic of China (PRC) has become one of the world's fiercest competitors for the ocean's resources.<sup>2</sup> China's oil consumption, already the second largest in the world after the United States, is forecast by some to grow to 590 million metric tons in 2020 (up from 220 million tons in 2000), nearly three-quarters of which will be imported by that time.<sup>3</sup> By some estimates, gas and oil deposits in the central area of the East China Sea could go a long way to alleviating the energy

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deficit the country faces: the Chunxiao Natural Gas Development Project, an area of hydrocarbon exploitation by the Chinese, is publicly estimated to contain a reserve of 65.2 billion cubic meters of natural gas and 12.7 million tons of oil.<sup>4</sup> This development project, which involves American and European oil companies as minority stakeholders, lies in the heart of the disputed zone in the East China Sea.<sup>5</sup> China has accommodated and cooperated to develop disputed areas with several other of its maritime neighbors and even to resolve some of those disputes amicably—most notably those with Vietnam, the Philippines, and Malaysia, with whom it shares overlapping claims in the South China Sea;<sup>6</sup> nonetheless, the competition between China and Japan over the resources in the East China Sea remains confrontational, causing some concern that the competition for regional predominance between these two powerful nations could spark armed conflict if not carefully managed.<sup>7</sup>

In the recent statements of Chinese leaders—such as the conciliatory meeting in early August 2006 with the Chinese ambassador to Japan, Wang Yi—and in the recent decrease in Chinese research in the disputed zone, there are glimmers of hope that China will pursue policies of cooperation with Japan.<sup>8</sup> Additionally, China reopened talks with Japan in July 2006 to attempt to resolve competing claims to the gas reserves in the East China Sea.<sup>9</sup> In the South China Sea, by contrast, China completed cooperative development agreements with Vietnam and the Philippines in March 2005;<sup>10</sup> it did so again recently with Malaysia, in a manner that implicitly accepts Malaysian, rather than Chinese, sovereignty over the disputed portion of the South China Sea.<sup>11</sup> These latter decisions reflect Beijing's active wooing of support from Association of Southeast Asian Nations (ASEAN) members as part of its "peaceful rise" strategy.<sup>12</sup> However, the strategic situation between China and Japan is significantly different. Even with China's accelerated economic development, Japan still possesses the second-largest economy in the world and consumes a proportional share of global petroleum resources—resources China may also need to continue its economic rise and the rejuvenated international status it desires.<sup>13</sup> More important, however, is the fact that Beijing sees Tokyo as a potential rival for predominance in Southeast Asia, a perception that despite a recent thaw in relations makes the possibility of long-term cooperation and compromise in the East China Sea less likely.<sup>14</sup>

The focus of the dispute between China and Japan in the East China Sea is an expanse of nearly seventy thousand square nautical miles of water space that constitutes the overlap between China's claim—which reaches from the mainland eastward to the Okinawa Trough just west of the Ryukyu Islands chain—and Japan's claim along a line equidistant from the shores of each state (see chart 1). China asserts its claim to the full continental shelf—and the waters above

it—on the basis of the continental shelf provisions in the 1982 United Nations Convention on the Law of the Sea (UNCLOS), and Japan correspondingly points to the provisions related to the exclusive economic zone as the legitimate starting point to determine a maritime boundary.

In part the dispute arises from the fact that UNCLOS essentially imported existing international law related to the continental shelf without also incorporating the pre-UNCLOS maritime delimitation standard based on equidistance.<sup>15</sup> Alongside it, UNCLOS set new law governing the creation of exclusive economic zones—that is, the waters above the continental shelf extending to two hundred nautical miles from the shoreline—stating only that “an equitable solution” should be achieved in delimiting maritime boundaries for both the continental shelf and the exclusive economic zone.<sup>16</sup> UNCLOS provides no guidance as to just what factors constitute an equitable means of dividing between two claimants the seabed with its resources and the water column with its resources. Many international courts and tribunals have reverted to the equidistance standard with corrections for factors such as offshore islands, disparate lengths of opposing coastlines, and economic considerations.<sup>17</sup> Still, because signatories to UNCLOS are bound only to its provisions and not to the decisions of international tribunals, no unified standard exists to bring stability and predictability to this volatile area of international law.

#### THE CHINESE POSITION ON THE EAST CHINA SEA

Since the period of negotiations that led to the United Nations Convention on the Law of the Sea, China has advocated that the “middle line” principle should be considered merely one delimitation method out of several, rather than the mandated means to achieve a fair and reasonable result, especially in cases that involve both continental shelf boundaries and exclusive economic zone boundaries.<sup>18</sup> China has consistently adhered to this position, and today, with virtually a unanimous voice, Chinese scholars and political actors alike argue that the “principle of fairness” and the “principle of natural extension”—referring to the coastal state’s automatic authority over the continental shelf as the natural extension of its continental territory—are the most equitable means of resolving their maritime delimitation disputes in the East China Sea.<sup>19</sup>

Out of this legal perspective arises a theme that recurs with remarkable consistency in the statements of Chinese scholars (and government authorities): the sense that the continental shelf off the coast of China is actually historical Chinese *territory*, not simply an area to be claimed under the international regime of oceans law. One discussion of the topic by Chinese oceans scholars refers to the regression of water during the Ice Age, extending the Yellow and Yangtze and other rivers out onto the continental shelf, where they deposited silt from the

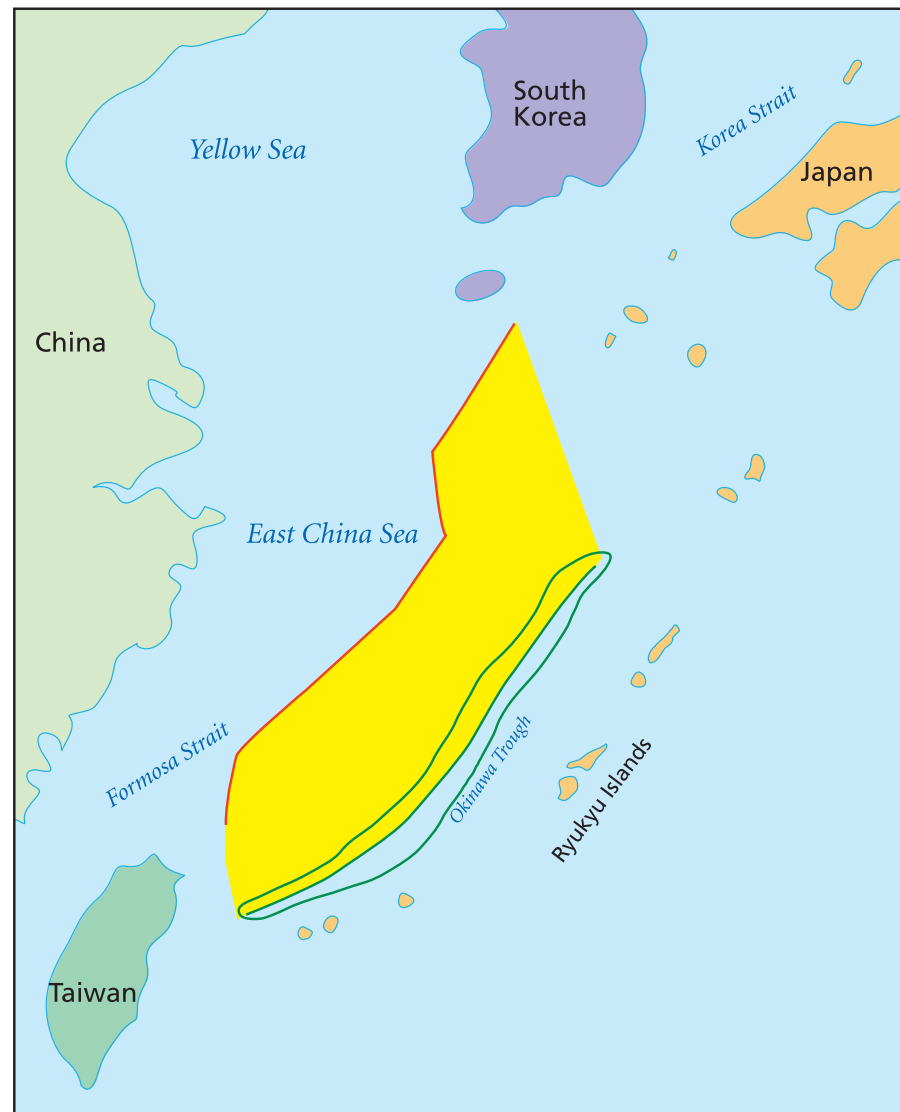
Chinese mainland. On this basis, the scholars claim that “the East Sea continental shelf is a natural extension of Chinese territory.”<sup>20</sup> This emphasis helps to put in context the strength of feeling by many Chinese, who seem to view competing claims on the continental shelf as actual encroachments on their rightful repossession of the continental shelf and its resources. Accordingly, the Chinese position on delimitation is that the entire continental shelf under the East China Sea—from the mainland coast to the Okinawa Trough just west of the Ryukyu Islands chain—should be Chinese and that delimitation of the maritime boundary should therefore occur in that area (see chart 1).<sup>21</sup>

These same scholars view compromise on the economic resources in the water column above the continental shelf through a different lens. Their position that China should also rightfully claim the majority of the waters in the East China Sea is based on concern for the Chinese fishermen who “would lose their traditional fishing grounds . . . [causing] unacceptable losses to the Chinese fishing industry.”<sup>22</sup>

Just as nationalism is reflected in the Chinese view of the continental shelf, there is also a nationalist aspect to China’s view of its exclusive economic zone claim over the East China Sea. The language of UNCLOS recognizes coastal state *sovereignty* over the territorial sea and implicitly conveys the full jurisdictional authority of the state in that area. However, it affords coastal states only specified *sovereign rights* in the exclusive economic zone and no more jurisdiction than is necessary to enforce those rights.<sup>23</sup> UNCLOS specifically provides all states the right to high seas freedoms in the exclusive economic zone of a coastal state, subject only to the “due regard” standard that is also applied on the high seas.<sup>24</sup> Chinese commentators, however, treat the concepts of sovereignty and sovereign rights as if the distinction were insignificant and argue that coastal states have, for instance, “sovereignty . . . over the natural resources,” as opposed to the sovereign right to harvest them.<sup>25</sup>

Using this approach, the Chinese assert that “it is perfectly justifiable, reasonable and legal for the coastal State to exercise *exclusive jurisdiction* within [the exclusive economic zone, and] although other states enjoy freedoms of navigation, overflight, and the laying of undersea cables and pipelines within this zone, such freedoms are conditional and restricted.”<sup>26</sup> The view that a coastal nation has authority in the exclusive economic zone that approaches full sovereignty—at least over the resources—may be contrary to the purposes of the drafters of UNCLOS and a novel approach to maritime law, but it is a view that is widely held among influential Chinese and one that informs their positions on boundary disputes. They view maritime boundary negotiations as essentially “winner takes all” endeavors, which actually result in enhanced or depleted sovereignty for the coastal state.<sup>27</sup>

CHART 1



The shaded area marks the disputed zone in the central East China Sea. Japan claims delimitation should be based on the median line; China views the Okinawa Trough as the appropriate boundary.

### THE JAPANESE POSITION ON THE EAST CHINA SEA

Japan too, as a major importer of energy resources and one of the world's strongest economies, has interests in the resources of the continental shelf.<sup>28</sup> Nonetheless, Japan bases its claim to water space and the continental shelf resources under it on provisions in UNCLOS related to the exclusive economic zone, which have significant differences from the continental shelf provisions and allow Japan to make a legitimate claim on more of the East China Sea than do the provisions on which China relies. Specifically, while China relies on the

“principle of natural prolongation” (found in Article 76) on the continental shelf and refers to the Okinawa Trough just off the Ryukyu Islands as a natural, geomorphological dividing point, Japan relies on the “equidistance principle,” as articulated in many of the maritime delimitation decisions of international courts.<sup>29</sup> Japan is critical of China’s claim, with some support from the International Court of Justice, which has ruled out geomorphology as a relevant basis under international law for most maritime delimitations.<sup>30</sup> Thus, Japan asserts that neither in law nor in fact should the Okinawa Trough form the basis for a maritime delimitation, since geomorphologically it is just an “incidental impression in an otherwise continuous continental shelf” and therefore not a true boundary.<sup>31</sup> Accordingly, Japan concludes, an equitable division of the East China Sea should be devised through an equal division of the waters created by drawing a line equidistant to the baselines of the Chinese coast and the baselines of the Ryukyu Islands chain (see chart 1).<sup>32</sup> The legal basis for the dispute between the two states is therefore one of interpretation of the text of UNCLOS and of the relevant factors, as developed through the application of international maritime law by other states and international bodies, that should sway in favor of one interpretation or the other in the particular case of the East China Sea.

### THREE OPTIONS FOR PEACEFUL DELIMITATION

Despite the legal difficulties, there are reasons to hope that the political will for a peaceful and lasting compromise may be developing. For instance, both sides have agreed to cooperation;<sup>33</sup> both sides have agreed to seek an equitable solution through negotiation;<sup>34</sup> both sides agree that shared fishing rights are mutually beneficial and have agreed to a joint fishing regime;<sup>35</sup> both sides express an interest in joint development of the hydrocarbon resources of the East China Sea;<sup>36</sup> and perhaps most importantly, both sides recognize the potential for undesirable conflict and agree to exercise self-restraint and apply international law as expressed in and through UNCLOS in formulating a solution.<sup>37</sup> These areas of agreement provide a substantial basis upon which to forge cooperation and compromise, reached in accordance with international law of the sea, which will serve to decrease tensions in the region and increase the efficient use of the East China Sea’s resources.

#### *A Single Integrated Boundary: The Gulf of Maine Case*

Perhaps the single best guide to the international law that governs resolution of maritime boundary disputes like the one in which the Chinese and Japanese find themselves engaged in the East China Sea is the 1984 *Case Concerning the Delimitation of the Maritime Boundary in the Gulf of Maine Area* (the Gulf of Maine Case), decided by the International Court of Justice.<sup>38</sup> In that case, as do the Chinese and

the Japanese today, Canada and the United States found themselves in a dispute involving overlapping continental shelf claims, overlapping exclusive economic zones, and the proper means of drawing a maritime boundary in resource-rich waters with historical use by the people of both countries.<sup>39</sup> The international law of boundary delimitation was at the time (and remains, as we have seen) fraught with ambiguity that encouraged parties to stake out and stand by irreconcilable approaches to drawing a common and accepted maritime border. Canada and the United States were unable to resolve their differences through negotiation because there was no commonly accepted set of principles from which to start realistic negotiations. However, the factors considered and the approach taken by the International Court in the Gulf of Maine Case can shed light on a fruitful path forward in the East China Sea.

Canada and the United States disputed the appropriate basis on which to demark the international maritime boundary in the Gulf of Maine (see chart 2). Canada's position was based on a straightforward rendering of the principles of the equidistance line (for laterally adjacent coasts) or the median line (for opposite coasts), which hold that unless there are special circumstances, an equal division of the areas of overlap is the most equitable result.<sup>40</sup>

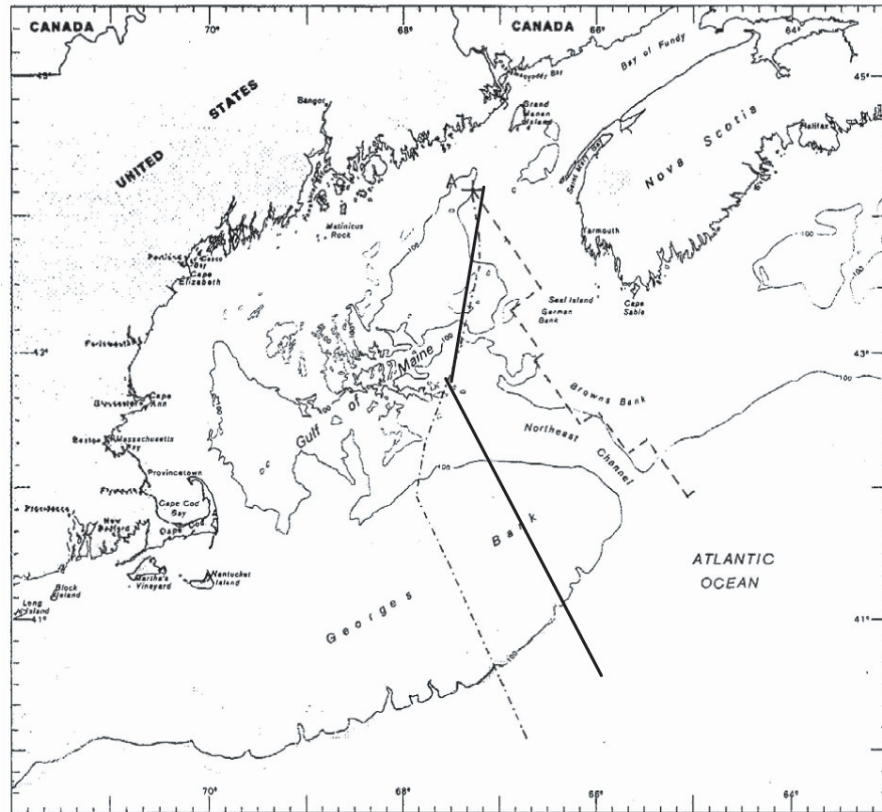
The American position was that holding strictly to the equidistance principle would lead to an inequitable division of the waters; accordingly, the United States urged the Court to apply a more nuanced balancing of relevant factors to achieve an equitable result.<sup>41</sup> Specifically, the American side argued that the Court should blend considerations of continental shelf delimitation and economic zone delimitation. In such blended situations, the United States argued, international law requires the Court to apply equitable principles, such as consideration of the *geographic* features of the relevant coastlines; *ecological* features, including the nature and location of commercial fish stocks; and *special circumstances*, such as the historical dominance over the area by American fishermen and government authorities for more than two hundred years.<sup>42</sup>

The Court began its analysis of relevant international law and the parties' positions with an important observation—that it was not determining a true boundary between sovereign states but merely delimiting zones of jurisdiction or sovereign rights outside each state's sovereign waters.<sup>43</sup> The Court recognized that the international community had relevant rights in these areas that would not be affected by whatever the Court decided, since, presumably, the international rights in these waters were predominant and would therefore remain unchanged regardless of which coastal state ultimately possessed the rights to the resources in the disputed area.<sup>44</sup>

The key to the Court's ultimate decision was an essential acceptance of the U.S. position that geographic circumstances are relevant to maritime delimitation



## CHART 2 GULF OF MAINE: FISHERY ZONE AND CONTINENTAL SHELF CLAIMS



International Court of Justice Year 1984, 12 October 1984, *Case Concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)*. The solid line represents the boundary set by the Court to delimit both the exclusive economic zone and the continental shelf.

decisions. In an unexpected move, however, the Court decided to define what the parties had not: it took an expansive view of what constitutes the Gulf of Maine, to include the protrusions caused by Cape Cod Bay and Massachusetts Bay on the American side and the Bay of Fundy on the Canadian side (see chart 2), a position that neither party had apparently anticipated.<sup>45</sup>

Fundamentally, the Court rejected delimiting a maritime boundary based solely on either the basis of the continental shelf or the exclusive economic zone. In doing so, it determined that international law requires that delimitation in such complex, overlapping zones be based on equitable criteria in relation to the geographical features of the region.<sup>46</sup> Having rejected either geomorphological or resource-related attributes as a basis for delimitation, the Court drew a boundary based on the geography of the adjacent and opposing coastlines, adjusting it for relevant special circumstances in order to achieve an equitable result. The first special circumstance of which the Court took note was the

presence of the adjacent Bay of Fundy, which it used to increase the overall allocation of space to Canada. The Court also took note of a few very small Canadian islands in the Gulf of Maine and adjusted the line slightly to give them only half effect, in order to avoid cutting into the U.S. allocation of space by an amount disproportionate to the islands' diminutive size. Finally, the Court chose to divide the Georges Bank between the parties, because "a decision which would have assigned the whole of Georges Bank to one of the Parties might possibly have entailed serious economic repercussions for the other," given the historical dependence of the inhabitants of both countries on the fishing resources in that area.<sup>47</sup>

Applying to the East China Sea the same rules that the International Court of Justice applied to the Gulf of Maine, China and Japan can negotiate agreement of a single maritime boundary. An equitable division of the space can be achieved using geographical features as a starting point and taking into account the special circumstances. One special circumstance is the dispute over the Senkaku/Diaoyu Islands; another is historical patterns of use by each country. In order to achieve an equitable result that does not harm the long-term interests of either party, accommodation of these issues must be considered.

One omission in the Chinese literature—and a fairly curious one, in light of the Gulf of Maine Case—is any assertion that the Yellow Sea should be taken into account as a special circumstance in addressing an appropriate ratio to guide allocation of water space between the two countries. The International Court having held that the adjacent presence of the Bay of Fundy as a dependent body of water of the Gulf of Maine should weigh in Canada's favor when delimiting the maritime boundary, one would think that the Chinese might make the same claim for the effect of the Yellow Sea on China's rightful allotment of the waters of the East China Sea. But recently the description by a pair of Chinese oceans scholars of the northern border of the East China Sea as "the Yangtze River's entrance at Qidong to the southwest corner of the Korean peninsula" specifically excluded the Yellow Sea, thus excluding that sea as a consideration in this context.<sup>48</sup>

Delimiting a single boundary to mark both the exclusive economic zone and the continental shelf between China and Japan has the benefits of clarity and certainty, and it therefore minimizes the potential for future conflict over resource rights and sovereign jurisdiction. However, given the suspicion that hangs over the relationship between the two countries because of the history of Japanese use of force against China to pursue territory and resources, the likelihood that this kind of comprehensive solution to the boundary dispute can be successfully negotiated is remote. The positions of these states are too divergent; agreement on relevant factors and the weight to be given them is unlikely; and,

because of the confused state of the law, each side has at least some legal support for its position as to the proper location of a unified boundary. Therefore, other approaches to boundary delimitation should be considered.

*Multiple Functional Boundaries: The Australia–Papua New Guinea Treaty*

Chinese scholars have been considering another potential model for peaceful and equitable resolution of the boundary dispute: delimitation of nonidentical boundaries for the continental shelf and for the economic zones in the waters above it.<sup>49</sup> An example of this type of dispute resolution can be found in the Australia–Papua New Guinea Border Treaty, which set a precedent for creativity in international dispute resolution and founded the practice of cooperative jurisdiction between interdependent states.<sup>50</sup> The two states, which share only a maritime boundary, agreed to four distinct types of boundaries between them: sovereign boundaries between territorial waters in the narrow Torres Strait, in which overlapping territorial water claims existed; a seabed boundary; a fisheries boundary in the water column; and a special reservation area for aboriginal peoples living on the islands in the Torres Strait. This agreement broke new ground, so to speak, in that the two states agreed to exclusive jurisdiction in separate forms over the same space. Additionally, the two states recognized the special status of islands with cultural and historical significance and accommodated those values by carving out a special zone for them.

The preamble to the treaty addresses the fundamental values that the two states applied in coming to the creative solution and that they sought to protect and preserve by accepting multiple boundaries. It especially emphasizes freedom of navigation and overflight, conservation and sharing of fishing resources, regulation of seabed mineral resources, the importance of preserving the marine environment, and the desire to protect the historical way of life of Torres Strait Islanders and indigenous coastal peoples.

The multiple boundary approach helps resolve the tension left within UNCLOS between delimitation of exclusive economic zones and delimitation of the continental shelf. Although the Australia–Papua New Guinea Treaty was negotiated before the convention, it presaged at least one answer to the thorny dilemma presented by the two approaches to maritime delimitation. As one Chinese scholar has noted:

Although the UN Convention on the Law of the Sea adopted a compromise position between the “natural extension principle” [of continental shelf delimitation] and the “centerline principle” [of exclusive economic zone delimitation] . . . it only provided guidance in the most general terms saying that states should proceed in accordance with international law . . . in order to attain an equitable solution. Although this stipulation sets down the principle of peaceful and equitable dispute resolution . . . it is

nonetheless overly general and simplistic and lacking in rigorous standards, and as a result the two sides engaged in a border negotiation often wind up offering widely divergent or even contradictory interpretations of this principle in actual practice. . . . And with regard to whether the exclusive economic zone and the continental shelf should share the same boundary or have two different boundaries, the Convention on the Law of the Sea was completely silent.<sup>51</sup>

Although this scholar probably overstates the “silence” of UNCLOS concerning boundary delimitation methods where both exclusive economic zone and continental shelf boundaries are under consideration, if the Chinese and Japanese governments were to apply this multiple boundary method to the dispute in the East China Sea, each principle could be applied to its own zone.<sup>52</sup> The delimitation of the seabed boundary may be based on the continental shelf approach of “natural extension,” taking into account primarily geomorphological factors of the seabed to delimit this boundary and adjusting for “special circumstances” such as the presence of the Senkaku/Diaoyu Islands, which will be discussed below. With regard to the exclusive economic zone, a separate boundary could be established using the median line principle, achieving an equitable result by again adjusting for such special circumstances as the ratio of the length of each state’s coastline, the presence of the Yellow Sea adjacent to and arguably a part of the East China Sea, and the historical use of the waters by each state’s coastal population for fishing and harvesting of other resources.<sup>53</sup> Boundaries thus established would have the benefit of resolving a long-standing source of friction between China and Japan, and they would allow for the exploitation of hydrocarbon resources in the wide expanse in the middle of the East China Sea that each side has agreed not to develop.<sup>54</sup>

In the negotiated compromise reached by the Australians and the Papua New Guineans each side was confident of future stable relations between them, but future stability across the East China Sea is less assured. The most significant aspect of the treaty between Australia and Papua New Guinea is clearly the implementation of a delimitation system of overlapping jurisdictions, which will require substantial and perpetual cooperation between the two states to implement effectively. In other words, Australia’s ability to exploit its seabed rights will be forever dependent on Papua New Guinea’s acquiescence to Australia’s presence in the waters over which Papua New Guinea has economic jurisdiction, and vice versa.

In the Gulf of Maine, another location in which international stability between the negotiating states was reasonably assured, the parties chose to implement a single boundary in order to guarantee future peaceful relations concerning the maritime space and the resources contained within it. Jurisdictional authority in the Torres Strait region was also successfully separated, but

between Australia and Papua New Guinea the possibility for friction continues unless each state habitually accommodates the other. Habitual accommodation has worked reasonably well between Australia and Papua New Guinea, which have no long history of antagonism and neither of which is presently vying for regional predominance. It might have worked well between the United States and Canada, but each side wisely chose to avoid even the possibility of friction. However, in the case of China and Japan, hope for such accommodation over time is rather far-fetched, given the long history and recent geopolitics. Chinese scholar Li Yi of the College of Political Science and International Relations at Beijing University, in commenting on this multiboundary approach, has suggested a compromise that may help to reduce tension in the East China Sea—that the area of overlap formed by the two different boundaries (continental shelf and exclusive economic zone) be designated a joint development zone.<sup>55</sup> Although such an agreement would move relations a step closer to the harmony each side professes to desire, it still relies on political compromise to diffuse tension, and history suggests that such compromise, if ever achieved, would be fleeting, since the fundamental bases for mistrust have not been addressed. That said, a third approach to maritime delimitation—creation of a zone of shared jurisdiction—is worth examining to determine whether any agreement in existence could offer a stability-building compromise.

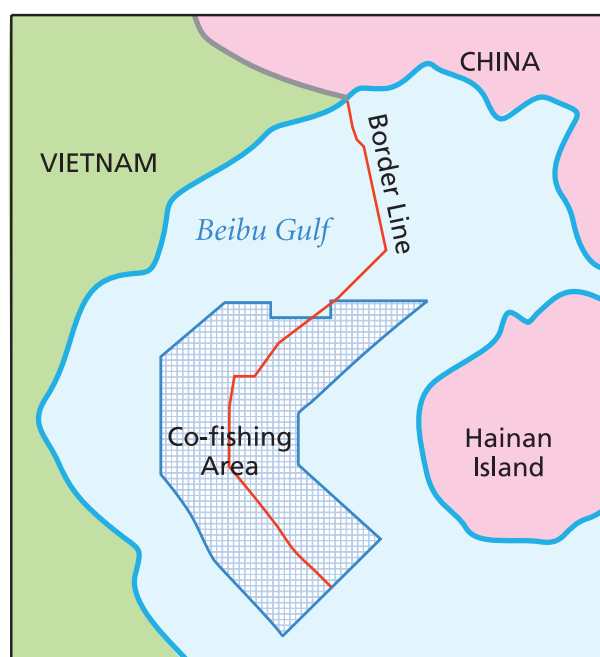
*Agreement and Cooperation: Joint Jurisdictional Zones*

The idea of creating a zone of mutual jurisdiction was to some degree taken up in the Australia–Papua New Guinea Treaty, in relation to “reservation zones” set aside for free use by the indigenous population. In that case, neither state party to the treaty is authorized to exercise jurisdiction—except its seabed or fishery rights—without the concurrence of the other state party.<sup>56</sup> This is an approach to boundary and resource disputes well known to the Chinese. In May 1979, for instance, Deng Xiaoping, then vice premier, proposed to Japan that the dispute over the sovereignty of the Senkaku/Diaoyu Islands be resolved “through bilateral negotiations and joint development, without touching upon the issue of territorial sovereignty.”<sup>57</sup>

*Joint Use and Development: The China-Vietnam Model.* On Christmas Day in 2000, Vietnam and China signed a comprehensive—and creative—maritime delimitation agreement for the waters of the Tonkin Gulf (Beibu Gulf, to the Chinese).<sup>58</sup> The Tonkin Gulf is a stretch of water bounded by Vietnam on the west, mainland China on the north, and China’s Hainan Island on the east. The agreement created the first finalized maritime border between China and a neighboring coastal state. It divided the waters roughly equally, delineating territorial waters and exclusive economic zones and allocating continental shelf

rights.<sup>59</sup> In this case, the exclusive economic zone and the continental shelf boundary are coterminous. The creative aspect of the agreement is the establishment of a joint fisheries zone in waters with historical significance to both countries in the middle of the gulf (see chart 3).<sup>60</sup> Fishing vessels of both states have the right to fish for a period of twelve years—with three years of automatic extensions—after which the waters will revert to full sovereign control on either side of the agreed-upon line. Since the agreement came into effect on 30 June 2004, China and Vietnam have begun joint maritime research and joint patrols in the fisheries zone.<sup>61</sup>

**CHART 3**  
**TONKIN/BEIBU GULF CO-FISHING AREA**



Creation of the fishing area constituted a key aspect of maritime boundary negotiations between China and Vietnam.

This agreement demonstrates that the two states, which have engaged in open conflict over border and resource disputes in recent decades, can move beyond the past to peaceful resolution of their differences, to mutual benefit. As one Chinese commentator noted,

The delimitation and fishing agreements between the two countries are mutually beneficial. It shows that the two sides are fully capable of resolving historical problems through friendly consultation. It will also boost the development of bilateral ties and promote lasting stability, neighborliness, amity and overall cooperation between the two countries. At the same time, it will further strengthen mutual political trust

and their cooperation in other fields, which are favorable to the peace and stability of the [Tonkin] Gulf area.<sup>62</sup>

Indeed, China and Japan had a similar burst of bilateral sentiment in 1997, when they signed an agreement for cooperative fisheries management in the East China Sea. However, unlike the growing cooperation between China and Vietnam in the Tonkin Gulf, the intervening years since the China-Japan East Sea Fisheries Agreement have been unproductive in reaching a larger settlement and are better characterized by reported tense, armed standoffs between the two powers.<sup>63</sup> Even if the political circumstances do not currently permit the 1997 agreement to serve as the starting point for cooperative compromise across the East China Sea, the possibility of a broader, long-term solution could be improved if China and Japan took smaller confidence-building steps toward that goal.

*Joint Business Development: The PRC/Vietnam/Philippines Model.* One such confidence-building step was taken in the form of a business arrangement by China, the Philippines, and Vietnam to develop jointly the hydrocarbon resources under the South China Sea. Although each state maintained its rival claim of sovereignty over all or portions of the Spratly Islands, the three countries agreed in March 2005 to perform a joint survey of potential hydrocarbon deposits in the disputed areas of the South China Sea.<sup>64</sup> Each country claims sovereignty over some or all of the Spratly Islands, which pepper the South China Sea, and accordingly each claims rights to the continental shelf and exclusive economic zone that would pertain to the islands under the UNCLOS framework. The tripartite agreement authorizes the state-owned oil companies of each country (China National Offshore Oil Corporation, the Philippine National Oil Company, and the Vietnam Oil and Gas Corporation) to engage in joint seismic exploration, sharing costs equally, as a commercial transaction specified to last three years and to have no effect on political claims.<sup>65</sup>

Cooperation among state-owned oil companies is certainly not new, but an agreement among rival claimants—whose rivalries led to armed skirmishes in the 1970s, '80s, and '90s—to cooperate in the development of maritime resources while postponing final agreement over sovereignty is a potential model for cooperation between China and Japan in the East China Sea. One of the stumbling blocks to a final agreement between China and Japan is a lack of shared information about the nature of likely resources under the East China Sea's continental shelf. Suspicion by each of the exploratory activities of the other is in part responsible for the heightened tensions and increased potential for military conflict.<sup>66</sup> Joint exploration in the East China Sea using the Spratlys cooperative business plan as a model could lead to joint development with mutual benefits and will at least afford a more complete picture of the resources



available for negotiation. Even though it may be a small step in a much longer process, an agreement on joint exploration would form the basis for increased trust and confidence and demonstrate a real desire by each side to move forward cooperatively. Additionally, China and Japan have each stressed the importance of the resources in and under the East China Sea to their respective economies, and joint exploitation may result in more efficient use of the oil and natural gas resources available to lessen each country's dependence on external energy supplies.

Establishing a joint development zone in the East China Sea, either through a business-based agreement or a mechanism that allows for joint resource exploitation for a period of time, has the benefit of building upon the factors upon which China and Japan both already agree. It helps alleviate each country's need for resources without touching the "third rail" of sovereignty, the issue on which neither side seems ready to compromise. Perhaps most importantly, joint development could serve as the foundation of trust and confidence necessary to move forward on a comprehensive delimitation agreement. That said, the potential for conflict remains as settlement of the key issue of sovereignty is once again put off for another day. Perhaps that is the most that can be hoped for, given the complicated political factors that make negotiations in the East China Sea so difficult.

#### TAIWAN AND THE SENKAKU/DIAOYUTAI DISPUTE AS COMPLICATING FACTORS

Significantly complicating factors in the delimitation of the maritime boundary in the East China Sea are the dispute over the sovereignty of the Senkaku Islands (Diaoyutai, to the Chinese) and the unique status of Taiwan.<sup>67</sup> The Senkaku/Diaoyu Islands are a group of five small uninhabited rocky islets, the largest of which is 3.6 square kilometers in area.<sup>68</sup> Historically, they were known to the Chinese and mentioned in official documents as early as the Ming dynasty (1368–1644), but there is no evidence they were ever taken under effective administration or control by the Chinese, the necessary element under international law for a state to assert legitimate sovereignty over territory.<sup>69</sup> They have been administered and controlled by Japan since 1895—with the exception of the post–World War II occupation by the United States between 1945 and 1972—based on Japanese claims of discovery in about 1894. China's view is that they were stolen from Chinese control as a result of the 1895 Sino-Japanese War and should have been returned to China after World War II.<sup>70</sup> Military posturing between Chinese and Japanese naval forces in the waters around these islands has been intense in recent years, including aggressive Japanese tracking of a Han-class Chinese nuclear submarine in the area in



November 2004 and joint U.S.-Japanese naval exercises to practice defending the islands in November 2006.<sup>71</sup>

Resolution of the issue of sovereignty and the naval tensions that attend it, however, are only the first complicating factors concerning these islets. An equally strident argument is ongoing over the extent of water and continental shelf space to which this small but crucial group of outcroppings is entitled—regardless of which side receives final sovereignty over them. The crux of the problem is, again, ambiguity in the language of UNCLOS, which states that if these outcroppings can be considered islands—that is, if they can support human habitation or commercial activity—they should normally receive a full two-hundred-nautical-mile exclusive economic zone. However, if they are merely rocks—that is, if they cannot sustain human habitation or commercial activity—they receive no exclusive economic zone or continental shelf.<sup>72</sup> Although the islands have never been inhabited and have not sustained commercial activity of any kind in approximately eighty years (they were used briefly around the turn of the last century to harvest guano and perhaps at various times as a refuge for fishermen) the dispute remains whether they *could* support human habitation or commercial activity, and thus whether the exclusive economic zone and continental shelf boundaries in the East China Sea should be adjusted for them.<sup>73</sup> The difference is not insignificant: perhaps as much as eight thousand square miles of ocean space—and the rich resources in and below the water that go with it—are at stake.

Taiwan's status is another complicating factor to boundary delimitation, given the visceral way in which Beijing reacts to any suggestion that Taiwan has a legitimate status apart from the rest of China.<sup>74</sup> Nonetheless, Taiwan maintains an independent claim over the Senkaku Islands (called the Tiaoyutai by the Taiwanese), and Taiwanese fishing boats have historically plied the waters around the islets and continue to do so regularly with nationalistic support from portions of the Taiwanese population and their representatives in government.<sup>75</sup> Japan's geostrategic support for Taiwan will remain an obvious irritant to the prospects of a lasting peaceful compromise in the East China Sea, but on a practical level, Taiwan's nonacceptance of any agreement between Tokyo and Beijing could prevent meaningful application of confidence-building measures that would form the necessary first step of any lasting agreement.

The Chinese reaction to these two concerns—the Senkakus and Taiwan—demonstrates that unresolved territorial claims remaining from the period of Japanese aggression during World War II still evoke strong Chinese memories of suffering as a nation at the hands of outside colonial powers. This in turn may limit the freedom of the Chinese government to compromise with the Japanese and at the same time maintain legitimacy in the eyes of its populace.

### ANOTHER COMPLICATION: CHINA MAY NOT WANT TO RESOLVE THE DISPUTE

It is entirely possible that regardless of the overtures of friendliness recently extended to the Japanese by Chinese leaders, the Chinese may not actually see it as in their best interest to settle these disputes. The tension between China and Japan over resources, boundaries, and sovereignty in the East China Sea—and especially the confrontation over Japanese administration of, and claim of sovereignty to, the Senkaku/Diaoyu Islands—provides to the PRC government a lever of nationalism with which to divert the attention of the Chinese people from domestic difficulties and shore up support for the central government during times of domestic political competition.<sup>76</sup> In this context, Chinese leaders have historically used economic advantage and territorial nationalism as two sources of legitimacy—emphasizing economic progress during periods of prosperity and blaming outside powers during times of instability.<sup>77</sup>

One reason why China has successfully negotiated a path forward in its disputes with Vietnam, Malaysia, and the Philippines in the South China Sea but has refused to do so with similar disputes with Japan in the East China Sea is that China has never been dominated by the former states: accommodation with them allows China to portray itself as internationalist and cooperative with its neighbors. Put simply, Japanese aggression within the living memory of many Chinese makes Japan an easy object for nationalist fervor. Whenever Chinese leaders desire to enhance Chinese nationalist sentiment, they need only remind their people of the territorial disputes in the East China Sea to call to mind Japan's occupation of large portions of Chinese territory only decades ago. This, combined with an unbending stand against Japanese encroachment on China's maritime claims, demonstrates to the Chinese people that the PRC government will never again allow outside powers to humiliate them. Thus, by negotiating cooperatively with its other neighbors but remaining in controlled conflict with Japan, China balances its domestic and regional political messages in a way that contributes both to domestic stability and regional rise.

It is likely that there exists a spectrum of contending causal forces that move international relations between China and Japan along a sliding scale between cooperation and competition.<sup>78</sup> Domestic political concerns, international power dynamics, resource requirements, economic fluctuations, and even major events like the 2008 Summer Olympics can move their relationship from a static competitive dynamic toward cooperation. Perhaps Hu Jintao's recent signals of rapprochement with Japan after the election of Prime Minister Shinzo Abe reflect confidence by Beijing in China's economic future and a desire for international goodwill before the Olympics and that the time may indeed be right to move forward on the East China Sea dispute. Perhaps. But China's long-term

strategic interests are still captive to its geographic position, bounded as the mainland is by the island chain that runs along China's coastline from the Kuriles to the archipelagoes of the South China Sea. As James R. Holmes and Toshi Yoshihara have observed,

China's naval and air modernization efforts point to a build-up toward a strategy of sea denial against U.S. forces seeking to intervene in Asian waters. . . . [In time of conflict], the closer U.S. military forces get to [Chinese] territory, the more competitive the [Chinese] will be. This arises from a combination of political, physical, and technological facts. These facts combine to create a contested zone—arenas of conventional combat where weak adversaries have a good chance of doing real damage to U.S. forces.<sup>79</sup>

In other words, because it provides the Chinese with a larger operational space within which to contest legitimately the presence of non-Chinese warships, it may be to China's military advantage to maintain its claim over the full breadth of the waters of the East China Sea, from the mainland to the Okinawa Trough and the doorstep of American bases on Japanese territory, rather than to reach a compromise with the Japanese that might restrict China's legitimate freedom of action during any future conflict.<sup>80</sup> Still, China has no short-term interest in allowing the dispute over maritime boundaries in the East China Sea to get out of hand and spill over into actual conflict. Only if its assertion of sovereignty over Taiwan were severely threatened would China be likely to take military control over the full extent of its East China Sea claim.

#### CHARTING THE COURSE

Before agreement can be reached, China must conclude that it is genuinely in its interest to compromise with Japan. This is no small hurdle. Beijing may perceive managed conflict as an essential tool in maintaining political legitimacy as China develops the "harmonious society" that Hu Jintao intends to build.<sup>81</sup> Accordingly, until China's domestic growing pains are eased and Taiwan's status is settled, there may never be a policy toward Japan that is fully cooperative. Still, effective interim steps can be taken that will ensure that the current competition does not unintentionally escalate into open conflict.

First, agreement should be reached that the Senkaku/Diaoyutai dispute is to be removed from the equation through agreement that no matter how the sovereignty question is ultimately settled, the islets will receive no territorial effect beyond the twelve-nautical-mile territorial sea. The waters around the islands could be designated a joint fisheries zone on behalf of China, Taiwan, and Japan, with a cooperative approach to policing—perhaps on a rotating basis. Stakeholders with hydrocarbon exploration and exploitation concessions in the area

could be given financial compensation for affected rights.<sup>82</sup> Deng was right: the way forward requires both sides to “shelve the dispute over sovereignty and proceed with mutual development.”<sup>83</sup>

Additionally, first steps toward building trust and confidence for mutual development could be undertaken by an agreement to abide scrupulously by the provisions of the 1997 Fishing Agreement and to build a joint enforcement team composed of both Chinese and Japanese officials to police the East China Sea fisheries zone. This should be followed by a new agreement, similar to the existing agreement between China, Vietnam, and the Philippines, to develop jointly the hydrocarbon resources in the disputed area of the East China Sea. Furthermore, both sides should agree that during the period of joint development, final boundary delimitation will be negotiated in good faith.<sup>84</sup> Negotiators should consider the advantages and disadvantages of delimitation of a single boundary as opposed to multiple boundaries, paying special attention to solutions that promote permanent avoidance of friction.

If a negotiated settlement cannot be reached during that period, both sides could demonstrate their commitment to the rule of international law, as Canada and the United States did in the Gulf of Maine, by agreeing to submit specified questions to an international tribunal as called for in UNCLOS. The stated commitment of both states to resort to the rule of law rather than to confrontation and intimidation would offer hope that the region can move beyond the geopolitical rhetoric that has informed public discourse to date and would serve as a model of accommodation and cooperation between former competitors.

So far, China and Japan seem to be talking past each other rather than to each other in their public discourse surrounding their dispute over the East China Sea. However, the stakes are high, given the possibility that supposedly “managed” conflict can always result in unintended war.<sup>85</sup> Substantial economic and political benefits could be derived from a cross-sea détente, but this would require both sides to choose to set aside old grudges and move forward cooperatively rather than competitively. The examples provided by the agreements between the United States and Canada and between Australia and Papua New Guinea demonstrate that international law charts several productive paths for this way forward. Tokyo and Beijing should begin this journey by developing a trusting and cooperative spirit through step-by-step implementation of precursor agreements similar to the tripartite agreement for hydrocarbon exploration in the Spratlys and to the joint fisheries agreement between China and Vietnam. Only then will East Asia be able to demonstrate that competition for scarce resources need not inevitably lead to conflict.

## NOTES

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1. Epigraphs from Peng Guangqian and Yao Youzhi, eds., *The Science of Military Strategy* (Beijing: Military Science Publishing House, Academy of Military Science of the Chinese People's Liberation Army, 2005), p. 2; and Jianchuan Zhishi, "Behind the Disputes in the East China Sea between China and Japan," *Naval and Merchant Ships* 27, no. 6 (November 2005).
2. Kosuku Takahashi, "Gas and Oil Rivalry in the East China Sea," *Asia Times*, 27 July 2004, available at [www.atimes.com](http://www.atimes.com).
3. *Ibid.*
4. "Development Project Awarded," *Tenaris Pipeline Services News*, November 2003, p. 6, available at [www.tenaris.com/archivos/documents/2003/704.pdf](http://www.tenaris.com/archivos/documents/2003/704.pdf).
5. *Ibid.*
6. Greg Austin, *China's Ocean Frontier: International Law, Military Force and National Development* (Canberra: Allen and Unwin, 1998), pp. 152–61.
7. Norimitsu Onishi and Howard W. French, "Ill Will Rising between China and Japan," *New York Times*, 2 August 2005. Despite thawing relations between China and Japan, development of oil and gas fields in the East China Sea continues to be a source of friction. As recently as November 2006 Japan's request that China halt new production in the disputed waters was met with obfuscation by a spokesperson of PRC's foreign ministry. Takahashi Hirokawa and Shigeru Sato, "Japan Asks China to Halt Gas Output in Disputed Field," *Bloomberg*, 1 February 2007, [www.bloomberg.com/apps/](http://www.bloomberg.com/apps/).
8. "PRC Naval Vessel Activities in East China Sea 'Drop Sharply' in 2006," *Sankei Shimbun*, 4 November 2006. For Wang Yi's meeting, Jiang Wenren, "China and Japan: Reconciliation or Confrontation," *China Brief*, 16 August 2006, p. 5. The focus of the meeting was reportedly on the most promising things the two countries could do to advance reconciliation.
9. "China, Japan Hold Talks on East China Sea Gas Reserves," *Taipei Times*, 9 July 2006, p. 5.
10. "Crossfire War: South China Sea," *Times of Oman*, 15 March 2005.
11. Michael Richardson, "Sovereignty Tussle Key to China-ASEAN Ties," *Straits Times* (Singapore), 9 November 2006.
12. Charles Hutzler, "China Promotes 'Peaceful Rise' to Quell U.S. Fears," *Wall Street Journal*, 13 September 2005, p. 13.
13. Peng and Yao, eds., *The Science of Military Strategy*, p. 443.
14. Richard Halloran, "The Rising East," *Honolulu Advertiser*, 10 September 2006; Doug Struck and Rajiv Chandrasekaran, "Nations across Asia Keep Watch on China," *Washington Post*, 19 October 2001, p. 23.
15. John Donaldson and Alison Williams, "Understanding Maritime Jurisdictional Disputes: The East China Sea and Beyond," *Journal on International Affairs* 59, no. 1 (Fall/Winter 2005), p. 141.
16. Satya N. Nandan and Shabtai Rosenne, eds., *United Nations Convention on the Law of the Sea 1982: A Commentary* (Dordrecht, Neth.: Martinus Nijhoff, 1993), vol. 2, pp. 827–29. The basic provisions of the 1958 Convention on the Continental Shelf were retained; however, UNCLOS does provide additional regulation of the outer limits of legitimate coastal state claims to the continental shelf.
17. Donaldson and Williams, "Understanding Maritime Jurisdictional Disputes," pp. 141–42.
18. Zhang Dongzhiang and Wu Weili, "A Discussion of the Sino-Japanese Delimitation Issue in the East China Sea and Its Settlement," *Shijie Yu Zhengzhi*, 14 April 2006, translated FBIS CPP20060427329001, pp. 35–42.
19. U.S. Defense Dept., *Department of Defense Maritime Claims Reference Manual*, DoD 2005.1-M (Washington, D.C.: December 2003), p. 106; Zhang and Wu, "A Discussion of the Sino-Japanese Delimitation Issue in the East China Sea and Its Settlement," p. 35; 张耀光, 刘锴 [Zhang Yaoguang and Liu Kai], "东

- 海油气资源及中国, 日本在东海大陆架划界问题的研究” [A Study of East Sea Oil and the China-Japan East Sea Continental Shelf Demarcation Dispute], 资源科学 [Resources Science] 27, no. 6 (November 2005), p. 11, para. 3.1.
20. Zhang and Liu, “A Study of East Sea Oil and the China-Japan East Sea Continental Shelf Demarcation Dispute,” p. 11, para. 3.3. See also Zou Keyuan, “Historic Rights in International Law and in China’s Practice,” *Ocean Development and International Law* 32, no. 2 (April 2001), p. 163, where the author states, “In China’s view, a claim derived from historic rights may seem more forceful and valid in law than claims simply based upon the EEZ concept.”
  21. 杨雷 [Yang Lei], 中日东海争端的背后 [Behind the Sino-Japanese Dispute in the East Sea], 舰船知识 [Naval and Merchant Ships] (June 2006).
  22. Zhang and Liu, “A Study of East Sea Oil and the China-Japan East Sea Continental Shelf Demarcation Dispute,” p. 11, para. 4.2.
  23. Compare UNCLOS Article 2, “The sovereignty of a coastal state extends . . . to an adjacent belt of sea, described as the territorial sea,” with Article 56, “In the exclusive economic zone, the coastal state has *sovereign rights* for the purpose of exploring and exploiting, conserving and managing the natural resources” and “*jurisdiction* as provided for in the relevant provisions of this Convention” [italics added].
  24. UNCLOS Article 58 specifically states that “in the exclusive economic zone, all States . . . enjoy . . . the freedoms referred to in Article 87,” concerning freedom of the high seas.
  25. See, for example, 李广义 [Li Guangyi], “论专属经济区军事利用的法律问题” [On Legal Issues Associated with the Military Usage of Exclusive Economic Zones], 西安政治学院学报 [Journal of Xi’an Politics Institute] 18, no. 2 (April 2005), p. 56.
  26. *Ibid.*, pp. 54–55.
  27. See, generally, *ibid.*, p. 54.
  28. Japan imports 80 percent of its oil, 88 percent of which comes from the politically unstable Middle East. For a good discussion of the varying interests between China and Japan in development of hydrocarbon resources under the East China Sea, see Zhang and Liu, “A Study of East Sea Oil and the China-Japan East Sea Continental Shelf Demarcation Dispute.”
  29. Moritaka Hayashi, “Japan: New Law of the Sea Legislation,” *International Journal of Marine and Coastal Law* (November 1997), pp. 570, 573–74. UNCLOS Article 74 states that delimitation shall be based on international law and in order to achieve an “equitable solution.”
  30. Since UNCLOS allows states to claim continental shelf rights out to two hundred nautical miles regardless of the features of the seabed, the International Court of Justice concluded that where opposing coasts are less than two hundred nautical miles apart, the geological and geomorphological characteristics of the seabed are entirely irrelevant to delimitation. *Case Concerning the Continental Shelf (Libya and Malta)*, International Court of Justice, Judgment of 3 June 1985, paras. 39–41.
  31. Mark J. Valencia, “East China Sea Dispute Ways Forward,” Pacific Forum CSIS PacNet 47, 15 September 2006, available at [www.csis.org/](http://www.csis.org/).
  32. Moritaka Hayashi, “Japan: New Law of the Sea Legislation,” pp. 570, 573–74.
  33. Mayumi Negishi, “Teikoku Oil Seeks Rights to Test-Drill in Disputed Seas,” *Japan Times*, 29 April 2005; James Brazier, “China and Japan: Friendlier Still,” *AsiaInt Political and Strategic Review* (December 2006). See also Ji Guoxing, “Maritime Jurisdiction in the Three China Seas: Options for Equitable Settlement,” Institute on Global Conflict and Cooperation, October 1995, available at [www.ciaonet.org](http://www.ciaonet.org).
  34. Permanent Mission of the People’s Republic of China to the United Nations Press Conference, “Foreign Ministry Spokesman Qin Gang’s Comments on China’s Relevant Oil and Gas Exploration in the East China Sea,” available at [www.china-un.org/eng/fyrth/t269599.htm](http://www.china-un.org/eng/fyrth/t269599.htm); *White Paper on China’s National Defense*, 2002, Xinhua, p. 16. It is also worth noting that both countries have accepted the requirement of UNCLOS Article 74(1) to settle disputes in order to “achieve an equitable solution . . . through negotiation.”

35. Mark J. Valencia and Yoshihisa Amae, "Regime Building in the East China Sea," *Ocean Development and International Law* 34 (2003), pp. 189, 193–96.
36. "Japan, China to Discuss Disputed Gas Field in July," Reuters, 30 June 2006; Valencia, "Ways Forward"; Brazier, "China and Japan."
37. UNCLOS, Article 74(1). For self-restraint, Mayumi Negishi, "Teikoku Oil Seeks Rights to Test-Drill in Disputed Seas"; Valencia and Yoshihisa Amae, "Regime Building in the East China Sea," pp. 189, 191; James C. Hsiung, "Sea Power, Law of the Sea, and China-Japan East China Sea 'Resource War,'" conference paper, Forum on China, Institute of Sustainable Development, Macao, 9–11 October 2005, available at [www.nyu.edu](http://www.nyu.edu).
38. *Case Concerning the Delimitation of the Maritime Boundary in the Gulf of Maine Area* [hereafter *Gulf of Maine Case*], 1984 *Yearbook of the International Court of Justice*, p. 246.
39. To be precise, the parties requested the court to assist in the delimitation of a "200-mile exclusive fishery zone," but in the intervening years, with the growing acceptance of the term "exclusive economic zone" established in the United Nations Convention on the Law of the Sea, both parties have accepted the newer concept and changed their terminology accordingly.
40. *Gulf of Maine Case*, p. 300.
41. *Ibid.*, pp. 258–60.
42. *Ibid.*, p. 284.
43. *Ibid.*, p. 265.
44. *Ibid.* Whether the Court was correct in its assessment is debatable. For instance, different states have different treaty obligations vis-à-vis third states for such rights as fishing and hydrocarbon exploitation that could well be affected by the Court's choice of boundary. Additionally, coastal states differ with regard to their understanding of passage rights available to the international community in the waters and airspace over them. China in particular maintains that it has the right to regulate many activities in the airspace above its exclusive economic zone despite the fact that UNCLOS specifies that they are international in character. Thus, as maritime boundaries change, so do the zones of interpretation and obligation change.
45. *Gulf of Maine Case*, p. 270.
46. *Ibid.*, p. 278.
47. *Ibid.*, p. 343.
48. Zhang and Liu, "A Study of East Sea Oil and the China-Japan East Sea Continental Shelf Demarcation Dispute"; 杨雷 [Yang Lei], "中日东海争端的背后" [Behind the Sino-Japanese Dispute in the East Sea], 舰船知识 [Naval and Merchant Ships] (June 2006), pp. 22–24.
49. 李毅 [Li Yi], "论澳巴海洋边界划分方法之特色及其对中日东海海域划界之借鉴意义" [A Discussion of the Distinguishing Features of the Division Methods for the Maritime Boundary between Australia and Papua New Guinea and the Lessons of and Significance for the Delimitation of the Maritime Boundary between China and Japan in the East China Sea], 东北亚论坛 [Northeast Asia Forum] 14, no. 3 (May 2005).
50. The treaty, which consists of thirty-two articles and nine appendixes, was concluded in 1978 and came into effect in February 1985. It is available online from the Australian Government Publishing Service at [www.austlii.edu.au](http://www.austlii.edu.au).
51. Li, "A Discussion of the Distinguishing Features."
52. The equidistance line method is mentioned in neither UNCLOS Article 74 nor Article 83, which relate to delimitation of exclusive economic zone and continental shelf boundaries. Both articles require, however, that delimitation be "effected by agreement on the basis of international law" and "in order to achieve an equitable solution." This is a significant departure from Article 6 of the 1958 Geneva Convention on the Continental Shelf, which required the equidistance line method unless historical title or special circumstances existed. Donaldson and Williams, "Understanding Maritime Jurisdiction Disputes," pp. 135–56.
53. For a thorough treatment of this approach, see, generally, Li, "A Discussion of the Distinguishing Features."
54. "Japan Foreign Minister Defends PRC Marine Survey in EEZ," *Tokyo Sankei Shimbun*, 21 June 2001, FBIS JPP20010621000023.

55. Li, "A Discussion of the Distinguishing Features."
56. *Treaty between Australia and the Independent State of Papua New Guinea*, Part 2, Article 4.
57. Li, "A Discussion of the Distinguishing Features."
58. "China, Vietnam Ink Deals Ending Tonkin Gulf Border Row," *Kyodo News International*, 1 January 2001.
59. "VN-China Gulf Pact to Enhance Relations," *Vietnam News*, 2 July 2004, available at [www.vietnamnews.vn/vnnet.vn/2004-07/02/Stories/02.htm](http://www.vietnamnews.vn/vnnet.vn/2004-07/02/Stories/02.htm). Under the agreement, Vietnam is entitled to 53.23 percent of the Gulf's total area and China is entitled to 46.77 percent.
60. Xiao Jianguo, "Drawing the Line," *Beijing Review*, [www.bjreview.com.cn/200432/World-200432\(A\).htm](http://www.bjreview.com.cn/200432/World-200432(A).htm).
61. "Chinese President and Party Leader to Visit Vietnam," *Vietnam Net*, 11 November 2006, [www.vnn.vn](http://www.vnn.vn).
62. Xiao, "Drawing the Line."
63. Christian Caryl, with Akiko Kashiwagi, "A Risky Game of Chicken," *Newsweek* (International Edition), 18 September 2006; Kosuke Takahashi, "Gas and Oil Rivalry in the East China Sea," *Asia Times*, 27 July 2004, available at [www.atimes.com](http://www.atimes.com); Tim Johnson, "Rift between Two Asian Powers Grows Wider," *Philadelphia Inquirer*, 8 May 2006; Valencia, "Ways Forward."
64. "Crossfire War: South China Sea," *Times of Oman: International News*, online edition, 15 March 2005.
65. "Beijing, Manila, Hanoi Strike Deal over Spratleys' [sic] Oil," *AsiaNews*, online edition, 15 March 2005.
66. Andrea R. Mihailescu, "UPI Energy Watch: More Security Challenges," [eurasia21.com](http://eurasia21.com), 16 March 2005; "Chunxiao Oil/Gas Field to Be Completed This October," *People's Daily Online*, 21 April 2005.
67. China's Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone, effective 25 February 1992, specifically states that the land territory of the People's Republic of China includes the Diaoyu Islands. *Department of Defense Maritime Claims Reference Manual*, p. 108.
68. Austin, *China's Ocean Frontier*, p. 162.
69. *Ibid.*, pp. 163–164.
70. Zhang and Wu, "A Discussion of the Sino-Japanese Delimitation Issue in the East China Sea and Its Settlement," p. 35; Austin, *China's Ocean Frontier*, p. 163.
71. "Japan's Navy Denies Practice Invasion," Associated Press, 31 December 2006, available at [www.newsmax.com](http://www.newsmax.com). For a thorough discussion of the Han incident, see Peter Dutton, "International Law Implications of the November 2004 'Han Incident,'" *Asian Security* (June 2006).
72. UNCLOS, Article 121.
73. Austin, *China's Ocean Frontier*, p. 168.
74. Jianchuan Zhishi, "Behind the Disputes in the East China Sea between China and Japan."
75. "New Party Blasts Government on Tiaoyutais," *Taipei Times*, 23 April 2005.
76. Erica Strecker Downs and Philip C. Saunders, "Legitimacy and the Limits of Nationalism: China and the Diaoyu Islands," *International Security*, no. 23 (Winter 1998/99), pp. 114, 116; Norimitsu Onishi and Howard W. French, "Ill Will Rising between China and Japan," *New York Times*, 2 August 2005.
77. For a view to the contrary, see M. Taylor Fravel, "Regime Insecurity and International Cooperation," *International Security* 30, no. 2 (Fall 2005), pp. 46–83. Professor Fravel argues that PRC regime insecurity actually increases the likelihood of compromise. His examples of past compromise, however, all involve land borders in the western portion of China where territorial compromise was seen as the best means of gaining and maintaining control over groups of non-Han Chinese citizens. He acknowledges that where historical Han territorial interests have been at stake, such as in Hong Kong or Macau (and, I argue, the maritime claims in the East China Sea), China has been much less willing to compromise and indeed sees recovery of these territories as central to the legitimacy of the Communist Party regime.
78. For a good discussion of power dynamics in the relations between the United States and China, see Aaron L. Friedberg, "The Future



of U.S.-China Relations," *International Security* 30, no. 2 (Fall 2005), pp. 7–45.

79. James R. Holmes and Toshi Yoshihara, "China and the Commons: Angell or Mahan?" *World Affairs*, 22 March 2006, p. 9.
80. As one Chinese commentator put it, "If China can control the East China Sea, it can establish a protective screen as a strategy at sea and to enhance its strategic defense from the east." Jianchuan, "Behind the Disputes in the East China Sea between China and Japan." See also Ho Szu-shen, "China Interested in Japan's Waters," *Taipei Times*, 9 September 2004, quoting Liu Huaqing, former first vice chairman of China's Central Military Commission, as saying that China's blue-water naval strategy is to allow it to move its defense from the coastline to the first chain of outlying islands—Japan, Taiwan, the Philippines, and Indonesia—and perhaps beyond.
81. See, for example, Will Lam, "Hu Jintao's 'Theory of the Three Harmonies,' *China Brief* 6, no. 1 (3 January 2006), p. 1.
82. This is also discussed by Valencia, in "Ways Forward."
83. Jianchuan, "Behind the Disputes in the East China Sea between China and Japan."
84. Indeed, UNCLOS Articles 74 and 83 require states to "make every effort to enter provisional agreements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement."
85. For a description of one such dangerous game of chicken—in October 2004, between the Chinese marine surveillance ship *Haijian* and the Norwegian research vessel *Ramform Victory*, contracted by the Japanese government to gather data on oil and gas reserves in the disputed area—see Yoichi Funabashi, "Can Dialog Resolve China-Japan Oil Clash in East China Sea?" *International Herald Tribune/Asahi Shimbun*, 13 October 2004. In that incident, Chinese and Japanese crews exchanged warnings, and "the Chinese vessel venture[d] within a hairsbreadth" of Japanese research equipment. In September 2005, a Chinese naval vessel operating in the disputed area reportedly trained its guns on a Japanese P-3 maritime patrol aircraft that was surveilling the area. ("Japanese MSDF Spots Five Chinese Naval Ships near East China Sea Gas Field," *Kyodo World Service*, 9 September 2005.) Another "brief row" occurred in April 2006, when Chinese authorities banned ship traffic near the Penghu gas fields in the disputed area of the central East China Sea. Johnson, "Rift between Two Asian Powers Grows Wider."