

**Settling the Japan/Korea Dispute: An Opportunity to Begin a New Era** by Mark J. Valencia

The current period of quiescence in the dispute between South Korea and Japan involving sovereignty over some islets in the Sea of Japan (East Sea in Korean) may well be only the proverbial lull before the storm. However, resolving the issue for the long term could help improve Japan-South Korea, and indeed Japan-Asia, relations.

The potentially dangerous tussle publicly re-surfaced when Japan announced plans to survey the seabed in an area claimed by both South Korea and Japan as their Exclusive Economic Zone (EEZ). For both South and North Korea, Japan's planned action was a perceived reminder and remnant of its 1910-1945 colonial rule of the Korean Peninsula. The disputed area contains significant resources as well. Thus the dispute could easily turn violent. Indeed, the compromise that avoided a physical confrontation expires on 30 June 2006 and if no resolution is reached, conflict is still possible. Both parties have indicated as much with unhelpful public statements.

Ratcheting up the rhetoric and tension, Japan has warned that it will dispatch Coast Guard vessels to the area if a South Korean research expedition slated for July infringes on Japan's claimed EEZ. Needed urgently is agreement on guidelines and perhaps prior notification for activities in the disputed area. At the heart of the dispute are two tiny islets called Takeshima by Japan and Dok Do by the Koreans. Both Japan and the Koreans claim sovereignty over the islets which are located 47 nautical miles east of South Korea's Ullung Island and 86 nautical miles northwest of Japan's Oki Island. The islets appear to be unable to support human habitation without external assistance and arguably have no economic life of their own. If so, according to the 1982 UN Convention on the Law of the Sea (UNCLOS), they should not be able to generate a continental shelf or an EEZ.

South Korea has effectively controlled the islets since 1954. It occupies them and claims a 200 nm EEZ from Ullung Island which includes Dok Do. However, Japan argues that Takeshima can legally generate a Japanese continental shelf and EEZ. Its claim is motivated in part by its concern that abandoning such a position might undermine its other claims to ocean space and resources around isolated islets, such as the Senkakus in the East China Sea and Okinotorishima. The respective EEZ claims thus overlap and the area of overlap happens to include a rich squid fishery and potential deep water oil, gas hydrates, and valuable minerals.

Moreover, Seoul has recently responded to Japan's claim by announcing that it will now use Dok Do as a base point for its EEZ claim. This will extend South Korea's EEZ claim further to the east and thus expand considerably the maritime

area and resources in dispute. The legal situation is complex and uncertain. Both South Korea and Japan are parties to UNCLOS. But South Korea refuses to acknowledge Japan's claim either to Dok Do or to part of its EEZ. Its position is that a dispute over Dok Do does not exist because it is indisputably Korean territory. North Korea takes the same position and actually offered to help South Korea defend the features during the recent confrontation.

During the recent flare-up, South Korea said it would arrest Japanese Coast Guard vessels if they began to survey in South Korea's claimed EEZ. To back up its threat, it dispatched 20 gunboats to the area to conduct high seas seizure drills. But UNCLOS holds that government ships (like those of the Japanese Coast Guard) have immunity and thus presumably cannot be arrested. To do so could be considered an act of war.

The temporary compromise consisted of Japan canceling for the time being its planned survey and South Korea canceling its plan to register Korean names for submarine features near the disputed islets. However, it was pointed out that Japan had registered its names for some of the submarine features in 1978 and South Korea insisted that it is its sovereign right to do so as well and that it would indeed do so at an appropriate time. Meanwhile the two will try to negotiate their continental shelf and EEZ boundaries. Given the political sensitivities and the valuable resources in the disputed area as well as the legal complexities, this dispute is far from over. However, it would be far better for both parties, the region, and the United States if this explosive issue were settled once and for all.

Indeed, the dispute has presented a particular problem for the United States because South Korea and Japan are both its allies. Moreover, favoring Tokyo could drive Seoul closer to Pyongyang and Beijing, but favoring Seoul could push Tokyo towards more aggressive independent action. The maritime boundary cannot be resolved until there is agreement on what to do about the sovereignty of the islets. One possibility would be to enclave the islets in a 12nm territorial sea circle and to agree on a boundary equidistant between Ullung and Oki Islands. This approach would ignore the islets in boundary making and leave their sovereignty to be determined by a wiser generation.

A possible package deal would have Japan magnanimously recognizing Korean sovereignty over Dok Do – with several conditions:

- both Koreas agree not to use it as a base point in boundary negotiations;
- the settlement includes a caveat that it does not establish a precedent regarding any other unresolved maritime or territorial claims of either party; and

- Korea shares with Japan resources in the former area of EEZ overlap.

Such an agreement could mark the opening of a new chapter in Japan-Korea and even Japan-Asia relations. After all, the two share strong economic relations as well as a common desire to contain Pyongyang's nuclear threat and China's potential for regional political dominance. It would also be commensurate with the weight of the evidence, i.e., the Koreans' strong historical claim to the islets, Japan's historical acquiescence to South Korea's claim on several occasions, and South Korea's effective control of the features for more than 50 years. And it would comply with UNCLOS in that the islets would not affect the drawing of the EEZ boundary. Moreover, the islets and their territorial sea do not in themselves harbor significant resources and under this proposed settlement Japan would get a share of the resources in that part of the area that fell within its former EEZ claim.

In addition to removing this nettlesome issue from regional politics, Japan would be demonstrating to its Asian neighbors and beyond that it is benign, reasonable, far-sighted and generous – important qualities for a nation that aspires to regional leadership in the 21st Century.

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