



## **The East China Sea Dispute: Ways Forward** by Mark J. Valencia (abridged version)

The East China Sea is one of the last unexplored high-potential resource areas located near large markets. But the development of oil and gas in much of the area has been prevented for decades by conflicting claims to boundaries and islets in the area by China, Taiwan and Japan.

Such disputes over small islands and ocean space are usually ancillary to more fundamental geopolitical dialectics. However in certain situations of big power rivalry and competition for scarce petroleum resources, such issues may become the tail that wags the dog of international relations. The intensifying competition between China and Japan for gas resources in the East China Sea could become just such a situation. However, conflict is not inevitable. China's June 2004 proposal to jointly develop the hydrocarbon resources of the East China Sea is an opportunity to cap rising tension and, at long last, harvest the resources in the disputed area.

### **The Current Situation**

Over the last several years, China has been drilling ever closer to the equidistant line between undisputed territory of both countries that has been unilaterally declared as the boundary by Japan. And it is now producing gas from the Chungxiao field situated just on its side of that line. Tokyo has officially protested the drilling because it fears China will siphon off gas from its side of the "boundary" and is now considering allowing Teikoku oil company to drill on Japan's side of it. Just the possibility of such drilling by Teikoku has been fiercely protested by Beijing which claims most of the continental shelf in the East China Sea.

In September 2005, the dispute turned dangerous when five Chinese naval vessels including a guided missile destroyer were observed near the Chunxiao gas field. One of the warships pointed its gun at a Japanese P3-C surveillance aircraft. A day before bilateral talks on the boundary were to resume, China confirmed that it had established a 'reserve vessel squadron' in the East China Sea capable of "fighting during wars" and equipped to "eliminate obstacles at sea". For Japan, this assertive act, combined with the November 2004 detection of a Chinese nuclear submarine in Japanese territorial waters, increased electronic surveillance by Chinese aircraft, and the incursion of some 25 Chinese exploration ships into Japanese waters in the previous six months, meant China was a potential threat. Indeed, in its "Security and Guarding Plan," the Japanese Self-Defense Forces for the first time identified China as a threat and suggested several threat scenarios including a brigade size invasion of the Senkakus (called Diaoyu Islands by China).

### **Ways Forward**

Fortunately, there are factors at work that could ameliorate these disputes. The realization that a positive China-Japan relationship is simply too important to be destroyed by these disputes may be the catalyst necessary for wise leaders to forge at least a temporary solution. And despite chilly diplomatic relations, Japanese-Chinese trade and investment increase every year. Finally, there is growing pressure in both China and Japan to proceed with development of oil and gas in the area – and therefore increased motivation to reach a compromise.

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

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

- The first is agreement that the disputed territory (Senkakus/Diaoyutai) cannot be used as a basis for EEZ or continental shelf claims. Since Japan claims an EEZ and continental shelf from the Senkakus, this would be a concession by Japan that could be compensated by the division of the shares in a joint development scheme. If the two parties cannot agree on this point, then the sovereignty issue will impede the boundary negotiations indefinitely. If they can agree, then the sovereignty issue can be separated from the boundary issue.
- The second agreement necessary to negotiate a solution is that there be a unified boundary for both the EEZ and continental shelf. This would be a major concession on China's part which could be compensated by the location of the boundary or the division of the shares in the joint development scheme. Having two boundaries would be politically messy and impractical as well as a constant source of irritation and provocation as bilateral relations wax and wane.
- The third agreement necessary is that regardless of where the boundary is located, joint development of fish, minerals and hydrocarbon resources will be undertaken. This has essentially already been agreed in principle and in practice for fisheries. It would assure both parties that they would

retain a share of the resources – both known and unknown. It would also help to solidify the relationship because of the common goal of developing the resources.

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

In all options, the first step would be to agree to a 12 nm territorial sea enclave around the Senkaku/Diaoyu islets and to leave that area either as a “no-go” zone or for joint use and future settlement.

### ***A Modus Operandi***

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

The United States and Japan could help make this scenario a reality by making clear that its recognition of the PRC as the sole legitimate government of China carries with it recognition of the PRC as the sole representative of Chinese continental shelf and EEZ claims. This would encourage Japan to do likewise, and could incidentally help improve Sino-Japanese relations.

The U.S. government and companies should then tacitly encourage China and Japan to explore an agreement. China and Japan could then enter into negotiations for continental shelf and EEZ boundary-making in good faith, and during that time conduct joint exploration to determine the size of any hydrocarbon resources in an agreed area – perhaps the area of original overlapping claims. This would be similar to the *modus operandi* in the South China Sea involving China, the Philippines, and Vietnam. When the time is right, a full-scale joint development program could be launched in part or all of the area.

### **Seizing the Moment**

The Sino-Japanese maritime conflict has two fundamental dimensions: the sovereignty dispute over the Diaoyu (Senkaku) islands and the delimitation of a boundary for the vast EEZ and continental shelf of the East China Sea. Many commentators have considered the issues inseparable. They view settlement of the first as a necessary condition for the second. However, this view is outdated. Recent legal developments, international adjudications, state practice, and the ratification of the Law of the 1982 UNCLOS by the

claimants point to the possibility of separating the two issues. Islands of similar location, economic utility, and legal status to those of the Diaoyutai/Senkakus have invariably been ignored in seabed boundary delimitations between opposite states. This suggests that regardless of their ultimate owner, the features will only have a maximum 12 nm territorial sea around them. They will not be permitted to generate their own continental shelf or EEZ beyond that limit.

The implication of this conclusion for the Sino-Japanese maritime conflict is that the territorial and jurisdictional issues are separable and that the latter may be dealt with before the former is finally resolved. Agreement on the irrelevance of the Diaoyutai/Senkaku territorial dispute to, and detaching it from, the Sino-Japanese jurisdictional controversy would therefore be a major milestone on the path toward a solution. Indeed if such agreement were reached it would indicate that a boundary ignoring these features can be negotiated.

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

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