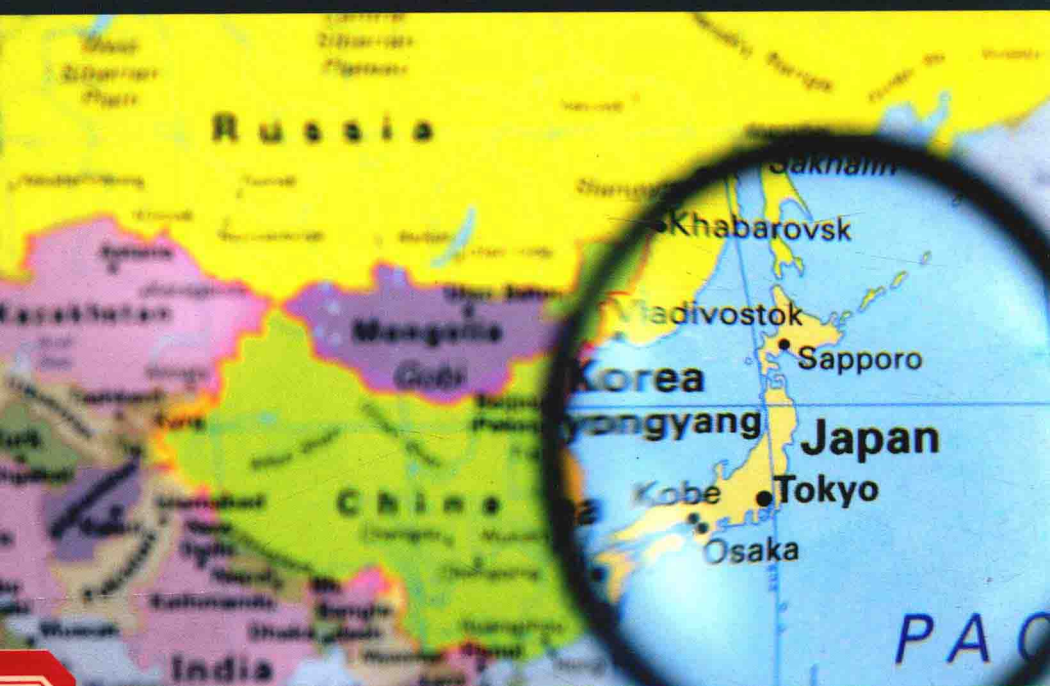


Peace in Northeast Asia

Resolving Japan's Territorial and Maritime Disputes
with China, Korea and the Russian Federation



Edited by
Thomas J. Schoenbaum



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1. Introduction: resolving the disputes on the basis of peace, justice and international cooperation

Japan has three long-festering territorial and maritime disputes with its three closest neighbors, China,¹ Korea² and the Russian Federation (see Figure 1.1). The three disputes have very different origins and are unrelated to one another. However, they have in common the fact that they are left-over remnants of Japan's conflicts with neighboring countries during the last 150 years. They are rooted in history as well as contemporary power politics. During most of the post-war period—the last 63 years—Japan, as well as the other countries involved, chose to de-emphasize or ignore the matters involved in order to concentrate on more pressing priorities, such as economic development. The disputes in question involve relatively small pieces of territory and ocean space. In the last ten years or so, however, the disputes have become bound up with economic development and the national interests of the disputants, especially Japan. As a result, these disputes have become more dangerous and can no longer be ignored or “swept under the rug.”

All three disputes have in common that they involve small islands and their surrounding maritime zones (see Figure 1.2). The three are as follows:

- The disputes with China involve legal title to the Senkaku (Diaoyu) Islands and the maritime delimitation of the East China Sea; an unrelated dispute concerns the status of the Japanese island of Okinotorishima in the Pacific Ocean.
- The dispute with Korea concerns legal title to the Takeshima (Dok/Dokdo/Tokdo) Islands and the maritime delimitation in the Japan Sea (East Sea).
- The dispute with Russia involves four disputed islands (known in Japan as the Northern Territories) north of Hokkaido, seized by the Soviet Union in 1945 at the end of World War II, as well as the surrounding maritime zones and maritime delimitation in this area.



Figure 1.1 Japan and neighboring countries

In 2007, Japan passed important legislation to assert its rights and to protect its interests in the maritime zone—known as the Exclusive Economic Zone (EEZ)—that it controls under the UN Convention on the Law of the Sea (UNCLOS). Japan also created a new cabinet minister in charge of maritime affairs and policies. This new assertiveness increases the potential for conflict with neighboring countries because the maritime boundaries of Japan are not settled.

The purpose of the series of essays in this volume is to set out the history and basis of all three disputes and to suggest concrete ways they may be resolved. An additional purpose of this work is to demonstrate how international law and international institutions can provide the basis for peaceful and harmonious settlement of sometimes dangerous international disputes. All too often, in ancient as well as recent history, states and individuals have resorted to violence and war as a means of dealing with international

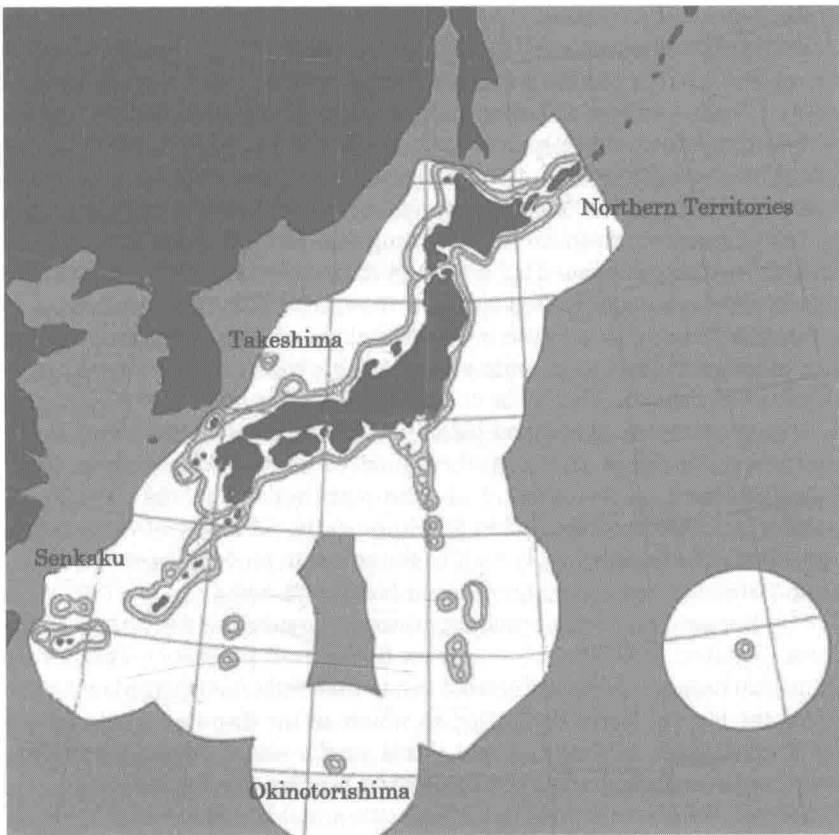


Figure 1.2 Japan's claimed maritime zones

problems. This is no longer acceptable, and in fact, resort to war is now prohibited by the United Nations Charter (Article 2, paragraph 4). The United Nations Charter, Article 33, further provides a series of methods for the peaceful resolution of disputes that are likely to endanger international peace.

Nevertheless, although most states and statesmen and stateswomen pay lip service to the principles of the United Nations Charter (adopted 26 June 1945), we see that in practice, states and their leaders often resort to the tired old game of emphasizing the necessity of asserting state interests and power to deal with any problems they may have with other countries. This way of dealing with international problems, known as “realism” (which comes in many varieties, such as classical [unalloyed] realism and “neo-realism”), does, however, make an occasional bow in the direction of international institutions.

A purpose of this book is to deride the idea that disputes, such as the ones that Japan has with its closest neighbors, can be successfully dealt with by realism and the assertion of state interests and power by the states concerned. Such a course will only result in disaster. Thankfully, the disputes in question have not (yet) been treated with the medicine of realism, and peace has mainly prevailed, despite a few nasty incidents. Instead, the states concerned have mainly chosen to de-emphasize or even ignore the disputes, choosing to move on to more interesting and promising matters, such as increasing economic ties. This course of action (or inaction) preserves the peace, although uneasily, and is therefore superior to outright realism. But an even better course is to use international law and institutions, including recognized methods of dispute settlement, to confront and permanently resolve the disputes. This is the course urged by this book.

Using international law and legal methods of dispute settlement is not now favored in the world. In another book (Chiba and Schoenbaum, 2008) I have referred to this method as “the path not taken.” In the current volume, I would accordingly like to demonstrate the utility of the international law approach by applying it to the concrete problem of maintaining (some would say establishing) peace in Northeast Asia.

This book espouses three guiding principles in proposing solutions to the three disputes. First, the disputes must be resolved peaceably. This is fundamental because the peaceful resolution of disputes is enshrined in Article 33 of the United Nations Charter, to which all the disputants belong and have subscribed. Accordingly, the threat or the use of force by any state must under no circumstance be brought to bear on the disputes.

Second, the disputes must be settled justly and fairly. Since the disputants are sovereign states, this means that international law should be an important basis for the settlement of the disputes. Only through adherence to principles of international law can justice be served for all sides in these matters.

Third, international cooperation between the participants is an important principle that must be served if the solutions found are to be permanent ones rather than simply preludes to new conflicts. International cooperation between Japan and its neighbors is also long overdue. Unlike Europe, the other major theater of World War II, Northeast Asia has not developed multilateral and cooperative institutions to deal with contemporary problems. Fostering international cooperation to end the three disputes would arguably not only end the disputes themselves, but would start a needed path of ever-broader cooperative effort to bring peace, prosperity and lasting goodwill among the peoples of Northeast Asia. The principle of international cooperation has the potential of turning the disputes from negative and disruptive irritations into sources of international harmony

and friendship. A negative factor can be turned into a positive influence for the future of all four countries. Thus, I will propose not a one-time solution to each dispute, but a continuing process of cooperation. Only a continuing process of international cooperation can truly keep the peace.

The key recommendation of this book is to propose that the three disputes in question be resolved through the conclusion of three separate negotiated agreements between Japan and each of its neighbors, whereby three separate Zones of Cooperation and Environmental Protection will be established in Northeast Asia. These three agreements would be international treaties with the purpose of establishing ongoing permanent cooperation in the three disputed areas. In addition, broader multilateral institutions of cooperation are needed, a matter addressed in the concluding Chapter 8.

After this Introduction, the second chapter of this book, by Professor Reinhard Drifte, will set out in detail the political background of the most dangerous of the three disputes, the East China Sea dispute between Japan and China. Professor Drifte's account shows that intensive discussion has been ongoing, but, for various reasons, has not yielded any concrete solutions. Both sides, however, have exercised admirable restraint, and their interest in a cooperative settlement is apparent. The stage is seemingly set for such a solution.

Chapter 3 of this book, by the editor, Thomas J. Schoenbaum, details the legal background and the international law arguments of the three disputes. This chapter also evaluates the legal positions of the disputants concerning the issues involved and explores how international law can provide the basis for solutions to all three disputes.

Chapter 4, by Professor Michael Hahn, explores the options that the parties have for peaceful settlement of the disputes. These options are very great: the parties can negotiate settlements in bilateral discussions; they can also choose to involve a third party as mediator or good offices facilitator. A third option is international arbitration to settle the differences. Fourth, the parties could submit the disputes to an international tribunal for a judicial proceeding and result. Both the UN Tribunal for the Law of the Sea and the International Court of Justice may be utilized for this purpose. Thus, the options for peaceful resolution of the disputes are many. Thus far, only bilateral discussions have occurred between the parties to the disputes. Perhaps it is now time to try additional options. The solutions proposed herein may be appropriate as suggestions for bilateral resolution of the claims involved, but may be easier to accept if a third-party dispute settlement option were to be utilized.

The next three chapters are detailed proposals for how the three disputes should best be resolved, keeping in mind the three criteria of (1) peace;

(2) justice; and (3) international cooperation. Chapter 5 proposes solutions for all three disputes Japan has with China; Chapter 6 proposes solutions to the disputes with South Korea; and Chapter 7 proposes a solution to the Northern Territories dispute with the Russian Federation. All these chapters are authored by the editor, Thomas J. Schoenbaum.

The final chapter, also by Thomas J. Schoenbaum, proposes the creation of two new international institutions as permanent security architecture for Northeast Asia: an Organization for Peace and Security Cooperation and an East Asian Economic Community.

NOTES

1. Technically the dispute is also with Taiwan, but for practical purposes, the People's Republic of China is the only disputant involved.
2. This dispute is also potentially with North Korea as well as South Korea, but only the latter is really involved.

REFERENCE

- Chiba, S. and T.J. Schoenbaum (eds) (2008), *Peace Movements and Pacifism After September 11*, Cheltenham, UK and Northampton, MA, USA: Edward Elgar.

2. The politics of the East China Sea gas dispute: ongoing discussion between China and Japan

Reinhard Drifte

2.1 INTRODUCTION

The political, juridical and historical circumstances of the territorial dispute in the East China Sea (Senkaku/Diaoyu Islands, Exclusive Economic Zone (EEZ) delimitation) are very complex and with China's relentless exploration efforts and increasing military presence in the area, to which the Japanese side has now started to respond more strongly, any peaceful solution will have to find a carefully calibrated balance of political and economic interests.

This chapter will look at the economic stakes and how both sides have tried since 1968 to come to some agreement about joint development of the energy sources in the East China Sea (ECS). It is generally assumed that joint development without first tackling the territorial claims of either side is the only way forward and both sides accepted this in 2006. However, as this chapter shows, China's exploration efforts as close as 5 kilometers (km) to the Japan-proposed median line have created political and economic faits accomplis that are difficult to circumvent and both sides still try to score points for their legal position when making proposals for joint development areas. The economic stakes are also not equal and therefore make it more difficult for Japan to compromise. Moreover, the political atmosphere between 2001 and 2006 as a result of Japanese Prime Minister Koizumi's China policy has not been helpful, although the situation somewhat improved after Abe Shinzo became the new prime minister in September 2006. In conclusion, a compromise is probably more likely if China shows more willingness to compromise on the economic side, Japan is willing to be more conciliatory on the political side, and both show a greater inclination to focus on defining a joint development area by genuinely putting territorial claims to one side without trying to score points for the latter.

2.2 THE ECONOMIC STAKES

2.2.1 Estimates of Resources in the East China Sea

The resources in the East China Sea are for the time being mainly gas and oil, but one also has to add the availability of considerable fish resources (not to be dealt with here), as well as until now unknown quantities of seabed-based mineral nodules for which economical technologies of mining do not yet exist. Even quantifying gas and oil resources is very difficult and existing information is often subject to commercial and/or state secrecy. Japan has hardly done any research on its side of the proposed median line in order not to antagonize China. Moreover, the exact geographic area of the various published estimates is never made clear. Attention started to be given to the area when the Committee for Coordination of Joint Prospecting for Mineral Resources in Asian Offshore Areas (CCOP) under the auspices of the UN Economic Commission for Asia and the Far East (ECAFE) conducted a geophysical survey in 1968 and said in a report that the continental shelf between Taiwan and Japan may be extremely rich in oil reserves.¹ According to a 1994 estimate by METI (Ministry of Economy, Trade and Industry), deposits of oil and natural gas on the Japan side of the East China Sea amount to 500 million kiloliters (kL) in crude oil volume.²

Selig Harrison mentions that Chinese estimates of potential ECS gas reserves on the entire shelf range from 175–210 trillion cubic feet (ft³) (Saudi Arabia alone has “proven and probable” gas reserves of 21.8 trillion ft³ and the United States 117.4 trillion ft³). Foreign estimates of potential oil reserves on the shelf have been as high as 100 billion barrels (Saudi 261.7 billion barrels, United States 22 billion barrels “proven and probable”). Harrison refers to Chinese estimates of “proven and probable” gas reserves of some 17.5 trillion ft³ on the Chinese side, much of it in the Xihu Trough. Both countries assume rich petroleum deposits in the seabed around the disputed Senkaku Islands where the Japanese government speaks of over 94.5 billion barrels of quality oil.³

2.2.2 Importance of the Oil and Gas Resources to Both Countries

Japan has reduced its oil dependence by a third since the oil crises in the 1970s, but it remains the world's third largest consumer of oil (after China and the United States) as well as the world's largest importer of liquefied natural gas (LNG), accounting for 40 percent of total world imports. While its energy consumption growth is expected to level off, Japan will continue to import vast quantities of oil and gas. China, which has now become the

world's second largest consumer of oil (it became a net oil importer in 1993), imports about 3 million barrels of oil per day (bpd), or roughly 50 percent of its total consumption. In 2006, China's oil imports grew 14.5 percent over the previous year. According to statistics compiled by British Petroleum, Chinese consumption of oil exceeded that of Japan in 2003, with China becoming the second largest oil consumer in the world after the United States.⁴ In 2004, China accounted for 8.2 percent of the world's energy consumption. It is predicted that its share will grow to more than 14 percent by 2025. In contrast, Japan's share in 2004 was 6.3 percent.

Gas only has a share of about 3 percent in China's total energy consumption but is rising fast, driven by a deliberate policy of reducing the environmentally damaging high coal consumption. In 2007, despite its own growing gas production, China will start to import gas in the form of LNG. It is also relevant in our context that China's leaders consider that control of foreign oil and gas fields is very important for guaranteeing a stable supply, rather than relying on market forces and diversification like Japan.

Clearly, the considerable oil and gas resources in the ECS would be important for both countries in terms of not only satisfying their absolute needs but also diversifying their import dependence, which is leaning heavily on the Middle East. China's oil and gas consumption is increasing faster and growing higher than that of Japan. Some Chinese specialists are even using this circumstance to press their country's territorial claims, arguing that as the bigger country it has the right to claim the whole continental shelf up to the Okinawa Trough for the delimitation of the EEZ. Implicitly, this contains the argument that as the bigger country with the greater need of energy resources, China has a greater right to these resources. This is very similar to China's official insistence that its continental shelf demand is in accordance with the UN Convention on the Law of the Sea (UNCLOS) because of the length of its coastal line and its population there—in contrast to the Okinawa island chain.⁵

However, there are purely economic and logistical reasons that in practice make the oil and gas reserves in the ECS more useful for China than for Japan. In the case of gas, which seems to be most abundant in the contested area, Japan imports gas only in the form of LNG and therefore a big land-based gasification plant would have to be built. This would require building a pipeline, which would be uneconomical because it would have to lead to Japan's major consumer centers, which are over 2000 km from the gas fields. Moreover, such a pipeline would have to traverse deep waters, including the Okinawa Trough.⁶ In the case of oil, opinions are more diverse because extracted oil could more easily be loaded on tankers, although using the existing Chinese pipeline structure to the Chinese mainland would be cheaper.

Obviously, one cannot conclude from these economic and logistical circumstances that Japan should abandon its territorial claims to facilitate a solution. There are no practical obstacles to Japan taking part in the exploitation of the oil and gas fields as well as sharing the profits as part of a bilateral agreement.

2.3 CHINESE AND JAPANESE OIL AND GAS DEVELOPMENTS IN THE ECS

2.3.1 Chinese Activities in the ECS

As a result of China's perception of its growing energy needs, later propelled by the internal dynamics of the small group of competing state-owned energy companies, and now also increasingly supported by a navy that is expanding its range towards the Pacific Ocean, China's exploration activities in the ECS started in the 1980s. In 1983 the Pinghu oil and gas field was discovered by the then Ministry of Geology and Mineral Resources and preparation for exploration began in 1992.⁷ In July 1995 China discovered for the first time oil in the Chunxiao field group.⁸

In the early 1990s, China stepped up exploration in Japan's claimed EEZ. In 1995–96 China launched test drilling in Japan's EEZ about 570 meters (m) away from the median line, which was met with a protest from the Japanese government.⁹ Beijing insisted that operations by Chinese ships in the zone were legitimate academic research under the UN Convention. However, the Japanese government often discovered evidence of China conducting exploration into natural resources in violation of the Convention. These activities included drilling into mineral deposits and firing air guns at the seabed. What was particularly alarming for the Japanese side was the sighting of the Chinese navy in the same areas. In May 1999, 12 Chinese warships conducted a maneuver in waters north of the Senkaku Islands. The exercise was the first of its kind to be carried out by China in that region. In July 1999 and March 2000, China conducted a full-scale anti-submarine maneuver in those waters.¹⁰

In February 1996 the Japanese government discovered that China was test drilling in waters known today as the Chunxiao gas field, which is only about 5 km from the median line.¹¹ The Chunxiao gas field is part of the Chunxiao group (Tengun in Japanese), which encompasses three gas fields: Tianwaitian, Chunxiao and Duanqiao. In November 1998 China started full operations of its first crude oil and natural gas field in the Pinghu field, about 70 km on the Chinese side of the median line (see Figure 2.1). The Japanese government's long-lasting tolerance of China's energy activities is