

Disputed Claims in the East China Sea

An Interview with James Manicom

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By Chris Acheson

The East China Sea is believed to contain significant quantities of hydrocarbon resources, which could benefit both China and Japan in their quests to diversify their energy supplies. Yet extraction of these hydrocarbon resources has been stalled by overlapping jurisdictional and exclusive economic zone (EEZ) claims.

Hope of an interim solution to the competing claims emerged in 2008, when Tokyo and Beijing reached a principled consensus on joint development of an area that includes the potentially gas-rich Chunxiao/Shirakaba field. However, subsequent events, including the 2010 ramming of Japanese Coast Guard cutters by a Chinese fishing boat and the subsequent arrest of the Chinese captain by the Japanese, have halted all movement toward formalizing the 2008 consensus.

Maritime security expert James Manicom provides insights into the current status of the dispute and the implications for policy moving forward. He is an SSHRC Post-doctoral Fellow at the Balsillie School of International Affairs in Waterloo and a Visiting Researcher at the Ocean Policy Research Foundation in Tokyo. This interview appeared on the NBR website: www.nbr.org.

China and Japan have overlapping jurisdictional claims in the East China Sea, which include areas potentially rich in hydrocarbon resources. What is the basis for each country's claim?

China and Japan both claim sovereignty over the Senkaku/Diaoyu Islands. Sovereignty over these islands affects the delimitation of the southern part of the East China Sea. China claims jurisdiction in the East China Sea based on the natural prolongation of its continental shelf and a two hundred nautical mile (nm) EEZ. In 2009 China submitted a claim to the UN Commission on the Limits of the Continental Shelf (UNCLCS) that provided data supporting its claim to an extended continental shelf beyond 200 nm, as far as the Okinawa Trough. Japan claims an EEZ as far as a median line that bisects the East China Sea, the coordinates of which it has never published. In its EEZ law, Japan says that in the event of an overlap of claims, a median line should serve as the boundary. China has never recognized this median line. Since 2005, some Japanese officials have suggested that Japan actually claims a full 200 nm EEZ, including space beyond the median line in the East China Sea.

Some Japanese legal scholars have argued that the median line in the East China Sea was simply intended to be a provisional boundary until delimitation could be negotiated. However, Japan's stated opposition to China's development of the Chunxiao/Shirakaba field creates some confusion. When Japan protested Chinese activities at the Chunxiao/Shirakaba field in 2004 and 2005, it was on the basis that the gas field extends across the median line and, consequently, Japanese resources were being "stolen." The Japanese Ministry of Economy, Trade, and Industry (METI) commissioned a Norwegian survey vessel, the *Ramform Victory*, to prove this was the case. However, if Japan did in fact claim an EEZ as far as 200 nm,

then it should have simply protested China's activities at the Chunxiao/Shirakaba field as a violation of Japan's EEZ jurisdiction, since the Chunxiao/Shirakaba field is within 200 nm of Japan's coast. Japan didn't do this. By implicitly recognizing that the Chunxiao/Shirakaba field is at least partially in Chinese waters, Japan has undermined somewhat its claim to a full 200 nm EEZ in that area.

How significant are the hydrocarbon reserves in the East China Sea to China's and Japan's energy security?

The hydrocarbon reserves are not very significant at all, especially when considered against Chinese and Japanese energy consumption. Thus far, little evidence has been found of the Chinese-estimated 160 billion barrels of oil. Chinese estimates of natural gas are also quite high at about 175 to 210 trillion cubic feet. Natural gas discoveries have been more plentiful than oil discoveries thus far. The Chunxiao/Shirakaba field is the most promising field with gas reserves of 168 billion cubic feet. So, the *proven* East China Sea gas fields are not a game changer for the energy security of either state. That doesn't mean that these reserves are not useful however. The gas reserves are located in relatively shallow waters and are proximate to high demand areas in China. So, there is an argument that the China National Offshore Oil Corporation (CNOOC) has an interest in developing these gas resources in order to tap into a share of the growing Shanghai natural gas market. Some estimates suggest that gas from the East China Sea could be cheaper than gas piped through the West-East Gas Pipeline run by PetroChina. Nevertheless, the reserve base in the East China Sea is considerably smaller than the reserves of Xinjiang province and, in time, the gas fields in Kazakhstan that will supply the West-East Gas Pipeline.

From Japan's perspective, the gas reserves are relatively worthless. A pipeline from the East China Sea to the Japanese mainland would be expensive and technologically intimidating because of the distance and two thousand meter plunge the ocean floor takes at the Okinawa Trough. This is partly why Japan's argument has shifted away from demanding a share of the gas produced, to demanding a share of the profits from the fields that cross the median line.

I sometimes wonder whether or not the reserve base of the East China Sea is a blessing or a curse. While it could be argued that more reserves would make the area more valuable and increase the likelihood of conflict, I suspect that significant gas reserves would create a commercial rationale to set aside political differences and start making money. After all, one side effect of all the wrangling over these fields is that there is little production of gas actually happening and very little exploratory drilling, relative to the size of the area. If the two sides were really desperate for energy, presumably they would recognize that the fastest way to access the resources is to exploit them, rather than argue over them.

In 2008, China and Japan signed a "principled consensus" on Sino-Japanese cooperation in the East China Sea, but little progress has been made in the interim. What are the primary challenges impeding implementation of a more formal agreement?

The "principled consensus" calls for three things: a joint development zone, the participation of Japanese oil companies in the Chunxiao/Shirakaba field operating under Chinese law, and negotiations toward a treaty. The main barrier to implementing the consensus is the state of the political relationship between China and Japan. As long as relations are poor, there is little motivation on either side to negotiate this treaty. After the consensus was announced, China and Japan spent the following year arguing over two details. First, which fields were included? Japan assumed that China would freeze production at other fields near the median line, while China argued that the consensus only applied to the Chunxiao/Shirakaba field. Secondly, the two sides argued over the precise nature of development at Chunxiao/Shirakaba and in the joint development zone (JDZ). Beijing was likely seeking assurances that Tokyo recognized Chinese sovereignty over the Chunxiao/Shirakaba field, which Tokyo has been

reluctant to acknowledge explicitly. All this arguing did little to encourage the kind of political relationship necessary to negotiate the treaty. It looked like there was some momentum building towards treaty negotiations in the summer of 2010, but these talks were the first casualty of the collision between the Chinese fishing boat and the Japan Coast Guard vessel in September 2010.

In the longer term, there are two main hurdles to implementing the consensus. First, the fact that the JDZ straddles the median line is a significant concession by China, but one that was criticized domestically as being too conciliatory. Certainly the prospect of jointly exploring for resources with Japan in contested seas is something that is resisted by constituencies in China that favor the defense of China's "maritime rights and interests." So, Chinese leaders need to be willing to risk further vilification by Chinese nationalists and hardliners in order to implement the consensus. This is possible, but probably not in the lead up to the 2012 leadership transition.

The second barrier relates to the development of Chunxiao/Shirakaba. The sides have been negotiating informally over what percentage of the profits Japanese entities are entitled to, but so far no Japanese entity has expressed an interest in actually participating. As I said earlier, the reserves are not terribly attractive, particularly for an energy company that seeks to compete globally. While Teikoku Oil won the bid for exploration activities on the Japanese side of the median line in July 2005, actually producing resources there is difficult because gas would likely have to be sent to China, given the costs of pipelines to Japan. That fact in itself seems to require an improvement in the political relationship. Under current circumstances, Japanese companies may be more interested in commercial opportunities elsewhere in the world. There are cheaper, more accessible, and less politically contentious gas fields in Indonesia, Australia, Canada, and elsewhere.

Could the Japan-Korea Joint Development Zone serve as a model for China and Japan?

There are a number of joint development zones in the world and any number could serve as a model for the JDZ in the East China Sea. The idea that the Japan-Korea JDZ agreement could serve a model assumes that Beijing and Tokyo are somehow stymied by technical or legal details and need ideas to overcome these barriers. This is not the case. They know what needs doing to create a functioning joint development zone, but there is simply a lack of political will on either side to proceed. Both are concerned about the domestic consequences of cooperating with the other and both are concerned about the implications of an agreement for their wider maritime claims.

Curiously, there is very little commercial production in the Japan-Korea JDZ, which is perhaps what we should hope for in the Japan-China JDZ. If nothing is found in the Japan-China JDZ, perhaps this will reduce the incentive to explore in the vast areas of the East China Sea that are not covered by the principled consensus. Reinhard Drifte has pointed out that Japan would likely not favor applying the Japan-Korea JDZ model to the East China Sea as the entirety of the Japan-Korea JDZ is located on the Japanese side of its claimed median line between the Japanese and Korean coasts. Japan has already achieved better than this in the East China Sea because the JDZ straddles the median line.

South Korea has recently announced its intention to claim part of the seabed in the East China Sea in an upcoming submission to the UNCLCS later this year. What is South Korea expected to claim? Will this action have any bearing on Chinese or Japanese claims?

That's a tough question. Seoul protested the principled consensus when it was announced in June 2008, on the grounds that the joint development zone overlapped slightly with the Japan-Korea joint development zone. South Korea's extended continental shelf claim will likely reach to the Okinawa Trough, thereby overlapping with the northern part of China's continental shelf claim and Japan's EEZ claim in the East China Sea. It gets tricky here because Korea's extended continental shelf claim will also

overlap with portions of the existing Japan-Korea fisheries agreement and it looks like it extends out of the eastern most boundary of the Japan-Korea JDZ. In terms of what impact this claim will have on Japan and China's claims, it's hard to say. States do not tend to view new claims as in any way affecting their existing claims. But this claim is not a sudden development. Chinese, Japanese and Korean officials are discussing these issues and they know what to expect.

Analyzing extended continental shelf claims is tough because there is a 25–30 year backlog at the UNCLCS, so it will likely be some time before China and South Korea receive a definitive answer as to the merits of their respective submissions. Even then, the UNCLCS does not resolve disputes; it simply evaluates the technical merits of an extended continental shelf claim. It's up to states to settle their disputes or seek third party arbitration. The UNCLCS may not even rule on a submission to which another country has registered an objection, which would include almost all submissions made by East Asian states! I'm reluctant to speculate further as to the political effects without more information. In all likelihood bilateral relations and geopolitical calculations will have some effect on how the issue evolves.

In September 2010 a collision occurred between a Japanese Coast Guard vessel and a Chinese fishing boat in the territorial sea of the disputed Senkaku/Diaoyu Islands. How did the incident happen and what are the longer term policy implications for the East China Sea dispute?

This is the million dollar question and everyone seems to have an opinion. I don't want to speculate as to whether or not the incident was fabricated or who bears responsibility for the actual collision. The incident stands as an archetypical example of what can go wrong when two countries claim sovereignty and jurisdiction over the same maritime space. In the years leading up to the collision, the Japan Coast Guard (JCG) presence around the Senkaku/Diaoyu Islands was getting heavier, in order to enforce Japan's jurisdiction. Likewise, there had been a steady build-up of Chinese fishing boats in the area around the islands. Both the Chinese fishing boat and the JCG vessel were allowed to be in the territorial sea of the Senkaku/Diaoyu Islands, according to each country's interpretation of its claim. The JCG vessel exercised Japan's territorial sea jurisdiction and tried to expel and then detain a foreign vessel that would not leave. The Chinese captain, according to China's claim to sovereignty over islands, did not accept the legitimacy of the JCG's efforts, as he was in what he viewed as Chinese waters.

Many in Japan were critical of the Japanese response. However, Japan actually did the minimum necessary to assert its claim over the islands, nothing more. It exercised its jurisdiction and set about applying Japanese domestic laws against someone who committed an offence in an area Tokyo sees as subject to Japanese law. Japan also exercised its sovereign right to let the captain go as a matter of foreign policy and received a reiteration of the U.S. view that the Senkaku/Diaoyu Islands are administered by Japan, and as such fall under the purview of the U.S.-Japan alliance. On balance, these outcomes are better than if Japan had done nothing and allowed Chinese vessels to fish willy-nilly in contested territorial seas and certainly better than further escalating the situation. China's response was also designed to assert its claim to the islands, which is considerably more difficult since it does not occupy them. Nevertheless, it demanded the release of the captain and crew on the basis that they were operating in Chinese waters. The remainder of China's response—freezing bilateral relations and so on—is harder to interpret as an effort to assert its sovereignty over the islands.

In five years, we might look back and decide that the September 2010 collision was the best thing that could have happened. It certainly could have been worse; a Chinese coast guard helicopter could have collided with a Japanese destroyer, for example. There are a growing number of government vessels enforcing jurisdiction in the East China Sea. Both the Chinese and Japanese navies are more active than ever. China also has five different civilian agencies that enforce some aspect of its maritime jurisdiction and the JCG is the only Japanese foreign policy actor that is allowed to open fire on those that violate Japan's maritime jurisdiction. These agencies do not speak to each other but interact with greater

frequency in areas where both China and Japan claim jurisdiction. Hopefully, the September crisis will generate some momentum to improve ties between these agencies and to arrive at some form of protocol for their interactions.

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