Understanding Maritime Disputes in Northeast Asia: Issues and Nature

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Abstract
Maritime disputes pose a great threat to stability and peace in Northeast Asia, where the region is integrating economically. There are a great number of unsolved maritime issues, on topics such as maritime boundary delimitation, territorial disputes, resources, and security. Many of the maritime disputes in Northeast Asia are deeply rooted in the colonial history of the region, and are attributed to disparities in the interpretation of the 1982 UN Convention on the Law of the Sea. The reshaping of international relations in the region in the post-Cold War period, the particular situation on the Korean Peninsula, and the Taiwan Strait add complexity. This paper attempts to unravel aspects of such maritime disputes in Northeast Asia and puts forward suggestions to ease tensions over them.

Keywords
maritime dispute; Northeast Asia; maritime sovereignty; UN Convention on the Law of the Sea

Introduction
Northeast Asia is the most dynamic and rapidly growing region in the world. A United Nations (UN) survey indicated that over the period from 1960 through 2003, the average economic growth rate of China, Japan, and South Korea was 5.35%, a growth rate which was more than double the average growth rate of OECD countries over the same period. Remarkably, the average growth rate of the three Northeast Asian countries is higher than those of other Asian countries which also have been experiencing faster economic growth than other regions. The economies of the three countries combined account for approximately one-fifth of the world’s GDP.

1 The rate was calculated with the statistics from the World Economic and Social Survey 2000, published by the Department of Economic and Social Affairs, United Nations (New York) in July 2000.
2 Ibid.
Northeast Asian countries, which geographically include China, Japan, South Korea, North Korea, Taiwan, and Russia, are very closely linked to each other in many aspects of international relations (see Map 1). With inter-state trade and investment expanding, the region is becoming increasingly integrated economically and is emerging as a global economic hub. Despite such interdependence and economic integration, stability and peace in the region are threatened by a number of potential conflicts, many of which are linked to the unique geopolitical situation and the legacy of the colonial period. A notable trend in this regard in the post-Cold War period is that maritime disputes are increasingly becoming a critical factor in determining international relations in Northeast Asia, whereas ideological confrontation prevailed during the Cold War period.
While conventional security threats still exist, as evinced by military build-ups and North Korea’s nuclear tests, maritime disputes are likely to militate against regional stability, given the importance of the sea for Northeast Asian countries in terms of shipping lanes, resources, and security.

Out of a wide range of issues with respect to maritime disputes, conflicting sovereignty claims to islands, maritime boundaries, and resources are the most salient. Geographically, Northeast Asian countries are adjacent or opposite to each other in semi-enclosed seas, many of which are less than 400 nautical miles wide, resulting in overlapping claims to maritime zones. Along with the unique geopolitical situation, disparities in the interpretation of the 1982 UN Convention on the Law of the Sea* are attributed to maritime disputes. In addition, the reshaping of international relations represented by the rise of China to a global power, the particular situation on the Korean Peninsula, and the Taiwan Strait add complexity.

This paper aims to unravel the nature of maritime disputes in Northeast Asia and puts forward suggestions for ways to address maritime disputes. Given the wide range of factors involved in maritime disputes, this paper takes a broad approach, covering the historical and international context beyond a purely legal perspective.

**Characteristics of Maritime Disputes in Northeast Asia**

**Sovereignty Issues over Boundary Delimitation and Ownership of Islands**

In the wake of the creation of the 1982 UN Convention of the Law of the Sea (LOSC or the LOS Convention), which codified coastal states’ rights and responsibilities with regard to claims of up to 200 nautical miles (nm) of the Exclusive Economic Zone (EEZ) and a further extension—up to 350 nm—of their claims to the continental shelf from the baselines, Northeast Asian countries have pursued the extension of their maritime jurisdiction beyond their traditional 3 nm of territorial waters.

In terms of geography and proximity, Northeast Asian countries are situated opposite and adjacent to each other across enclosed or semi-enclosed seas\(^3\) whose breadth is less than 400 nm wide. It was inevitable that this caused

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\(^3\) The seas include the Yellow Sea (or the West Sea of Korea) and the East China Sea, encompassing 362,000 nm\(^2\) and East Sea of Korea (or the Sea of Japan), 44,500 nm\(^2\), and the Sea of Okhotsk, 614,000 nm\(^2\).
overlapping claims to maritime boundaries and resources. Maritime boundary and territorial disputes in Northeast Asia can be boiled down to the following points in general: one is over the ownership of disputed islets, which is an issue of territorial sovereignty, and the other one concerns maritime boundary delimitation from the baselines of mainland coasts or from the disputed islands, and subsequently the exploitation of resources within these extended maritime boundaries—that is, a combination of sovereignty and sovereign rights.

**Baselines**

Many of the straight baselines claimed by Northeast Asian countries are challenged on the basis that they do not meet the criteria of straight baselines set forth in the LOS Convention, and as such they often serve as a starting point of dispute where maritime boundary delimitation is concerned. For China, for example, the waters enclosed by the new straight baseline system do not have a close relationship with the land, but rather reflect the characteristics of the high seas or the territorial sea. Of the 48 segments that connect the 49 base points and range in length from 0.1 nm to 121.7 nm, over half of the baseline segments are in excess of 24 nm in length, with 3 of the segments exceeding 100 nm. The Chinese coastline from the Shandong Peninsula to the area of Shanghai is essentially smooth with no fringing islands. Along this part of the coastline there are a few indentations which may meet the juridical bay

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4 LOSC Arts. 7–14: The normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast. The straight baseline may be employed in localities where the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity. The straight baseline may be further applied to mouths of rivers, closing lines of bays, ports, roadsteads, and archipelagic states. The drawing of straight baselines must not depart to any appreciable extent from the general direction of the coast, and the sea areas lying within the baselines must be sufficiently closely linked to the land domain to be subject to the regime of internal waters. The straight baselines should not be applied in such a manner as to cut off the territorial sea of another state from the high seas or an exclusive economic zone. The coastal state may determine its baselines by any of the methods in turn to suit different conditions.

5 China issued a Declaration on May 15, 1996, declaring a continuous set of straight baseline segments from the northeast section of its coast all the way to the west coast of Hainan Island. However, the Declaration addresses only part of China’s coastlines, leaving undeclared its baseline from China’s land boundary terminus with North Korea, along its coast in the Gulf of Tonkin, and around other islands it claims in the South China Sea. The Declaration of the Government of the People’s Republic of China of the Baselines of the Territorial Sea (15 May 1996), available from The Law of the Sea in Northeast Asia and the UN Convention on the Law of the Sea, Seoul: the Ministry of Foreign Affairs and Trade, South Korea (2006), pp. 397–399.
criteria. In addition, neighboring countries argue that Bohai Bay, whose mouth is 45 nm long, and Dong-dao, a barren islet 69 nm away from the coastline, do not conform to baseline requirements under the LOSC. South Korea has officially protested China’s straight baseline claim as incompatible with the criteria of the straight baseline under the LOSC, and challenges China’s use not only of Dong-dao as a base point, but also other base points north of Shanghai.

As for Japan, there are 162 straight baseline segments that range in length from 0.09 nm to 85.9 nm. Of these 162 baseline segments, about 72 percent are less than 24 nm in length. But the remaining 28 percent exceed 24 nm, with over 10 percent of baselines being longer than 48 nm. Generally, the coastal geography of these Japanese islands along which the straight baselines have been drawn does not conform to the requirements called for in the LOSC. For the most part, the coastlines of these Japanese islands are neither “deeply indented and cut into” nor is there a “fringe of islands” in the immediate vicinity. South Korea has claimed 19 straight baseline segments, beginning along its southeast coast, enclosing all the islands and rocks off its southern and western coasts. Five of the segments are between 24 and 48 nm, and 2 segments exceed 48 nm, with the longest segment being 60.3 nm in length. In the Western Channel of the Korea Strait, where Japan and South Korea agreed to limit their own territorial seas to 3 nm, South Korea has narrowed the high seas corridor by establishing a straight baseline in this area.

North Korea has not publicly declared its baselines on the east coast and the west coast, but its baseline on the east coast of North Korea is presumed to be the straight baseline, whose distance is 245 nm long. The presumed straight baseline is the closing line of Dong Han and Keyung Sung Bays. North Korea’s

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7 Ibid.
9 The terms ‘South Korea’ (the Republic of Korea) and ‘North Korea’ (the Democratic People’s Republic of Korea or DPRK) are used solely in the interest of convenience and clarity of discussion.
11 Ibid.
straight baselines do not meet the requirements for drawing straight baselines in a bay whose distance between the low-water marks of the natural entrance points of a bay should not exceed 24 nm.13 In addition, North Korea’s straight baselines do not conform to the general direction of the coast, and the sea areas within the baselines are not closely linked either.14

**Territorial Waters and Contiguous Zones**

Under the LOSC, Northeast Asian countries in general adopted 12 nm of territorial waters and a contiguous zone each, except in certain waters in which claims overlap between the states with opposite or adjacent coasts or other factors, like freedom of navigation and international relations, are considered. For the Western Channel of the Korea Strait,15 whose breadth is 23 nm, South Korea and Japan in 1977 restricted their territorial waters to 3 nm from their baselines,16 leaving the rest of the waters to serve as the high seas for freedom of navigation. Obviously both countries’ restriction of their territorial waters to 3 miles in the Korea Strait was contrary to a common state practice of 12 nm for territorial waters. South Korea was concerned particularly about a possible friction with the Soviet Union at the time, because the Strait was a choke point used by Soviet military vessels on their way to or from Vladivostok, the base of the Soviet Pacific Fleet.17 Japan’s concern was primarily about the possible infringement of its self-imposed nuclear policy, which does not allow the import of nuclear materials into its own territory, when nuclear-powered vessels from the U.S. and the Soviet Union pass through the Strait.18

The Chinese claim to its territorial waters is problematic, when considered in association with its straight baselines. China claimed its sovereignty over islands in dispute, such as the Senkaku Islands (vs. Japan), the Paracel (vs. Vietnam), and the Spratly Islands (vs. Brunei, Malaysia, the Philippines, Taiwan, and Vietnam), in its Law on the Territorial Waters and their Con-

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13 LOSC Art. 10.
15 Geographically the Korea Strait is divided into the Western Channel and the Eastern Channel: the former is located between Tsushima, a Japanese island, and the south coast of South Korea, and is 25 nm wide. The latter is in between Tsushima and the north coast of Japan and is 22.75 nm wide.
16 In 1977 both countries passed their own laws on the territorial waters which restricted their territorial waters to 3 nm in the Korea Strait.
18 Ibid.
tiguous Areas in 1992 and its Law on the EEZ and Continental Shelf in 1998 by declaring straight baselines, EEZs and continental shelves around those disputed islands. The Chinese Laws generated strong protests from claimants to the disputed islands, e.g., Japan, Malaysia and Vietnam. The Chinese Laws also stipulate the rights of pursuit by Chinese warships and aircrafts against foreign warships entering Chinese territorial waters without permission. This also raises a fear that the Laws would severely restrict the rights of freedom of navigation and the rights of innocent passage in the South China Sea, in violation of the LOSC and customary international law.

The Contentious Issue of the Northern Limit Line (NLL) on the Korean Peninsula

A particular concern is the dispute over maritime borders on the Korean Peninsula. Maritime boundaries were not clearly delimited when the Armistice Agreement to end the 1950–53 Korean War was concluded. Unlike the Military Demarcation Line (MDL) on land, maritime boundaries were not delimited by the Armistice Agreement, and maritime boundaries, particularly in the West Sea (or Yellow Sea), have been disputed, along with the status of the five West Islands off the coast of North Korea (see Map 2). The five West Islands, coming at their closest point to within seven nm of North Korea, are currently under the control of South Korea. Since the United Nations Command Headquarters (UNCH) in 1953 unilaterally proclaimed the Northern Limit Line (NLL) along these five small islands, the NLL in dispute has served as a *de facto* maritime borderline in the absence of an agreed maritime border in the West Sea (or Yellow Sea). South Korea views the maritime boundary between the two countries as the median line between these islands and the

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19 See the Chinese Law on the Territorial Waters and their Contiguous Areas (Art. 6). Concerning innocent passage of warships or non-commercial government vessels, China, Japan, and South Korea differ. As stated, foreign warships are required to have permission for their entry to China’s territorial waters. South Korea’s Law on the Territorial and Contiguous Area (Art. 5) and its Presidential Decree (Art. 4) require foreign warships and non-commercial government vessels to notify South Korea three days prior to their entry to its territorial waters. On the other hand, Japan is silent on this point.

20 LOSC Arts. 17–19 stipulate rights and conditions of innocent passage. Ships of all states enjoy the right of innocent passage through the territorial sea. Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal state, and shall be continuous and expeditious.

21 The five West Islands include Paek Ryung Do (47 km²), Dae Chung Do (45km²), So Chung Do (6km²), Yeoun Pyung Do (7.25km²), and Woo Do (0.2km²). They are situated along the NLL and northward of the median line claimed by North Korea.
North Korean coast.\textsuperscript{22} North Korea had observed the NLL for a couple of decades until it challenged the Line in the wake of a series of clashes in the West Sea (or Yellow Sea) in 1973. North Korea continued to attempt to invalidate the NLL and declared its EEZs in 1977 and 50 nm of a Military Boundary Zone both in the West Sea (or Yellow Sea) and in the East Sea (or the Sea of Japan) on the basis of an equidistance line, and it also challenged the status of the NLL and the five West Islands.

Map 2  The Northern Limit Line and West Islands in the Yellow Sea

In September 1999, North Korea unilaterally announced that it had redrawn the line so that it would extend from the land boundary into the Yellow Sea (or West Sea) and run perpendicular to the coastline (see Map 2).\textsuperscript{23}

Specifically, due to the discontinuity of South Korea’s straight baselines in waters off the five West Islands, the limit of South Korea’s territorial waters is disputed, which matters in particular in light of South Korea’s law enforce-


\textsuperscript{23} \textit{Ibid}. The Yellow Sea is another name for the West Sea of the Korean Peninsula.
ment with regard to Chinese fishing in those waters. Pursuant to the Territorial Sea Law which came into force in 1978, South Korea declared its territorial sea up to 12 nm along its coast, except in the Korea Strait. However, the straight baseline on the west coast of South Korea was drawn up to Soryung Do, an island south of the five West Islands. As a consequence, the limit of South Korea's territorial sea remains vague in waters off those five islands. The discontinuity appeared to be a strategic consideration by South Korea, in light of a particular situation of armistice on the Korean Peninsula. However, it was contrary to South Korea's Peace Line, proclaimed in 1952 to protect offshore fishery resources against Japanese fishing boats, under which South Korea claimed its sovereignty all the way along the coastline of the Korean Peninsula. In addition, a jurisdictional problem of sovereignty arises from the discontinuity of the straight baseline in this area, as the Constitution of South Korea covers its territory to North Korea, stating that "the territory of the Republic of Korea shall consist of the Korean peninsula and its adjacent islands."

Amid disputes concerning the legality of the NLL, tensions turned into serious conflicts in the area. A large number of South Korean fishermen were captured by North Korea when they were fishing around the disputed waters. The number of captured South Korean fishermen totaled 3,669 as of 2007. There were a couple of armed clashes in 1999 and 2002 in those waters; a number of soldiers from the two sides were killed in an exchange of heavy gun fire.

24 Kim, op. cit., supra note 17, at p. 130. The waters off the NLL are rich in blue crab. Chinese fishing vessels take advantage of the complicated maritime situation between South Korea and North Korea, and the lack of a legal regime by South Korea to govern the waters between the Special Zone, a maritime buffer zone, and the waters off the five West Islands. As such the law is not enforceable on those fishing boats operating within the distance of 12 nm from coastlines of the West Islands. The absence of a law to enforce against Chinese over-fishing in those waters causes controversy among locals of the West Islands.

25 Republic of Korea Presidential Proclamation of Sovereignty over Adjacent Seas. The demarcation line under the Proclamation was called a 'Peace Line,' or 'Rhee' Line, which was named after the then South Korean President Syngman Rhee.

26 The figure is based on the statistics of the Korea Coast Guard. It shows that 470 South Korean fishing boats were captured off the NLL from 1954 to 1995. Among them 67 boats and 470 fishermen are still in the custody of North Korea. No capture has been reported since 1996.

27 On June 15, 1999, a skirmish in the waters off the NLL to deter crossing of North Korean fishing boats and navy vessels escalated toward an armed clash. It was alleged that 13 South Korean and 7 North Korean navy vessels were engaged in heavy gunfire, leaving 20 North Korean soldiers dead and 9 South Korean soldiers injured. On June 29, 2002, when South Korean navy vessels attempted to deter a North Korean navy vessel from crossing the NLL, the North Korean navy vessel fired and heavy gunfire developed between the two navy vessels. As a consequence, four South Korean sailors died, one remains missing, and a number of sailors were injured. The number of North Korean casualties was not known, but a large number of sailors were presumed to be either dead or injured.
Along with reconciliatory efforts between the two Koreas, in 2004, South Korea and North Korea made an agreement, called “The Agreement on Maritime Transportation between South and North Koreas” (translated),28 to promote cooperation on maritime transportation and port affairs, recognizing that trade and economic cooperation between South Korea and North Korea are domestic matters.29 The Agreement was also aimed at accommodating navigational disputes in territorial waters, whereby North Korean vessels are permitted to exercise innocent passage through the territorial sea of South Korea, and both sides have free access to 13 designated ports.

Although the status of the NLL remains controversial, the President of South Korea, Rhoo Mu Hyun, and the Chairman of North Korea, Kim Jung Il, had a summit meeting in Pyongyang, North Korea in October 2007 and issued a joint statement: “The Proclamation on the Development of the South and North Relationships and Peaceful Prosperity” (translated). They agreed to establish a “Special Zone for Peace and Cooperation in the West Sea” (translated).30 The Special Zone, which covers the area of Hae-ju, a North Korean port off the five West Islands (see Map 2), and its adjacent seas, will serve as a joint fishing and peace zone, and a direct shipping route to the Port of Hae-ju for commercial vessels. They also agreed to hold talks between defense ministers to discuss the designation of a joint fishing zone to avoid accidental armed clashes as part of confidence-building in the military.31

Given that the area off the NLL is adjacent to the coast of North Korea, it is expected that issues will include what principles will be employed, in practice, in establishing the joint fishing zone: distance, area, or both combined.

**EEZs and Continental Shelves**

Where the delimitation of the Exclusive Economic Zone (EEZ) and continental shelf is concerned, many of the maritime boundaries in Northeast Asia remain

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28 The Agreement is available at the website of the Ministry of Maritime and Fisheries Affairs of South Korea: http://www.momaf.go.kr/. The Agreement includes navigational routes to the designated ports, navigational procedures and safety, law enforcement, search and rescue, and communication. Under the Agreement, shipping companies are required to give notice 3 days before their entry into the territorial waters of the other side (Art. 1). A council made up of representatives from the maritime authorities of the two sides was established to promote cooperation in maritime affairs and prevent maritime accidents (Art. 6).


31 Ibid., Art. 3.
unsettled. Of nine maritime boundaries32 in Northeast Asia, only one—North Korea vs. Russia—has been fully delimited, and the rest are either partially settled or remain unsettled, as seen in Table 1.

Aside from North Korea and Russia, which declared their EEZs earlier in 1977 and 1984, respectively, China, Japan, and South Korea did not declare their EEZs until South Korea and Japan enacted their EEZ laws in 1996, followed by China in 1998. Given that these Northeast Asian countries had actively pursued seagoing polices as part of their capacity building, their proclamation of EEZs later than other coastal countries seemed exceptional. This delay was largely because their claims overlap in the regional maritime geography of seas with less than 400 nm in width, and furthermore because the countries are engaged in territorial disputes over islands within their claimed EEZs.

In the East China Sea,33 the EEZ claims of China and Japan greatly overlap (see Map 3). With regard to the principles governing the division of maritime boundaries between states with opposite or adjacent coasts under LOSC Article 74,34 Japan refers to the principle of the median line, while China refers to the principle of natural prolongation of territory. China argues that the continental shelf of the East China Sea is the natural extension of its mainland territory on the ground that the continental shelf—which is less than 100 meters deep and has a gently rolling slope—extends all the way to the Okinawa Trough, in which the slope abruptly drops to the deepest point of 2,717 meters.

By the same token, China claims that the boundary lines of the EEZ and continental shelf should be drawn along the Okinawa Trough, which would result in two-thirds of the continental shelf coming under Chinese jurisdiction. China refers to the 1969 North Sea Continental Shelf Cases and the definition of the continental shelf under the LOSC. The International Court of Justice (ICJ) ruled on the continental shelf delimitation cases concerning Germany, the Netherlands, and Denmark by invoking the principle of natural prolongation of territory.35 The LOSC defines ‘continental shelf’ as—“beyond its terri-

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32 Where a state has more than two maritime delimitation disputes with other states, it is considered as one dispute for clarity.
33 The width of the East China Sea varies from 180 nm at the narrowest point to 360 nm at the widest point.
34 It states that the delimitation of the exclusive economic zone between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law—in order to achieve an equitable solution.
35 See 1968 North Sea Continental Shelf Cases, I.C.J. Rep., para. 43, in which the International Court of Justice (ICJ) ruled that “the ipso jure title which international law attributes to the coastal state in respect of its continental shelf, is the fact that the submarine areas concerned may be deemed to be actually part of the territory over which the coastal state already has dominion.” “Whenever a given submarine area does not constitute a natural extension of the
land territory of a coastal state, even though that area may be closer to it than it is to the territory of any other state, it cannot be regarded as appertaining to that state.” However, the principle of the natural prolongation of land territory receded in the wake of the 1982 LOS Convention, under which coastal states are entitled to claim their EEZ up to 200 nm on the basis of the concept of proximity. This trend was confirmed in the cases of 1982 Libya/Tunisia, I.C.J. Rep., para. 61, and 1985 Malta/Libya, I.C.J. Rep., para. 39, and afterward the natural prolongation of land territory was no longer a significant relevant circumstance and other relevant circumstances were considered in continental shelf delimitation cases. See the 1982 Libya/Tunisia Continental Shelf Case, I.C.J. Rep., paras. 61, 67 & 73, in which the ICJ ruled
torial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or” —.36

On the other hand, Japan holds the position that the maritime boundaries of both countries should be divided along a median line which is equidistant from each baseline of the states concerned. Japanese arguments seem to be in line with jurisprudence of the ICJ and arbitration tribunals after the 1969 North Sea Continental Shelf Cases. In the jurisprudence, relevant factors such as fishing grounds, geographical configuration, effects of islands, and prolongation of territory were examined, while rejecting the principle of natural prolongation as the single significant factor to be considered. 37

China and Japan are also in dispute with regard to the Japanese claim to the EEZ associated with Okinotori Island in the East China Sea. Okinotori, which lies southeast of Okinawa Island, is composed of two tiny low-tide elevations which completely submerge at high tide. Japan has declared the EEZ of Okinotori on the ground that it is an island entitled to have its own EEZ up to 200 nm under the LOSC. 38 However, China and other countries concerned argue that Okinotori Island consists merely of rocks which cannot have their own EEZ under the LOSC. For this reason China has kept challenging Japan’s claim by surveying the marine environment off Okinotori Island. Meanwhile, Japan has made efforts to maintain the low-tide elevations by building concrete installations and planting reefs as they have faded away. 39

When the status of Taiwan and the ownership of the Senkaku Islands (or Daioyu-Dao) are considered, the EEZ and continental shelf disputes between China and Japan become much more complicated. The boundary claims of...
the two countries should be affected, because China's claim to the EEZ will vary significantly, depending on the status of Taiwan, i.e., either being part of China or having a discrete existence as a political entity beyond mainland China's effective control. Of particular note is that the EEZs claimed by China and Japan enclose the disputed islands of Senkaku within their own maritime boundaries. In fact, a relationship between the maritime claims of both countries and the status of the Senkaku Islands is just like two sides of the same coin, because it is a matter of who owns the islands or of how to draw the maritime delimitation to enclose the islands.

For the provisional arrangement of the maritime boundary delimitation, China and Japan agreed, under the fisheries agreement signed in 1997, to EEZ areas extending 52 nm from each coastline, establishment of a joint fishing area (“Provisional Measures Zone”) in the waters between latitude 30° 40´ N and latitude 27° N where their claimed EEZs overlap, and for the marine resources to be jointly managed under the supervision of the China-Japan Joint Fisheries Committee.

China also applies the natural prolongation approach to the West Sea (or the Yellow Sea) in the delimitation of the continental shelf with South Korea, arguing that the continental shelf in the Yellow Sea (or West Sea) was formed by silt from the Hwang Ho and Yangtze Rivers. In addition, China claims that the sedimentation is reflected in the topography of the sea bed in the Yellow Sea (or West Sea), where an axial valley extending two-thirds of the way across the Yellow Sea (or West Sea) toward South Korea divides a smooth gentle slope extending from the Chinese shore from the steep and less regular slope off the Korean coast. For the same reason China protested the South Korea/Japan Agreement to jointly develop part of South Korea's Sea-Bed Zones IV, V, and VII in the Yellow (or West) and East China Seas—areas where their claims overlapped heavily. Nevertheless, China has not responded to Japanese and South Korean requests to discuss sea-bed boundary issues. Where the rule applicable to continental shelf delimitation with its neighbors is concerned, South Korea's position is contradictory. Whereas South Korea applies

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41 The 1997 China–Japan Fisheries Agreement, Arts. 6–7. For the Agreement, see Choi, op. cit., supra note 12, at pp. 574–578.
42 Van Dyke, op. cit., supra note 22, at p. 528.
43 Agreement between the Republic of Korea and Japan concerning Joint Development of the Southern Part of Continental Shelf adjacent to the Two Countries, available from the website of the Ministry of Foreign Affairs and Trade, South Korea: http://www.mofat.go.kr/index.jsp.
the principle of the natural prolongation of the land territory to Japan, it argues that the continental shelf delimitation with China should be drawn by the method of the median line.

While China and South Korea have negotiated maritime boundaries, both countries agreed to provisional maritime boundary arrangements in the fishery agreement signed in 1998. They include: to recognize the coastal EEZ area of each country (the width of this zone varies from 60 to 90 nm from the coastline) in which both countries are entitled to full sovereign rights; to establish a joint fishing area, called the “Provisional Measures Zone” in the central area where their claimed EEZs overlap and where they exercise equal rights and manage the species through the Korea-China Joint Fisheries Committee; to establish a transitional area (called the “Interim Co-Management Zone”) extending 20 nm in both directions from the joint fishing area, where the resources are to be shared for four years, and thereafter become part of each country’s coastal EEZ, under exclusive coastal state control.

The delimitation of maritime boundaries between South Korea and Japan in the East Sea (or the Sea of Japan) and the East China Sea also remains unsettled, except in the southern part of the continental shelf in the East Sea (or the Sea of Japan) of South Korea. Prompted by the need for the exploitation of oil on the continental shelf, South Korea and Japan agreed to the joint development of the disputed continental shelf south of Je-ju Island in 1974, in addition to the delimitation of the continental shelf in the Korea Strait. As with China and Japan, a disputed island, Dok-do (or Takeshima)—which is located 50 nm east of South Korea’s Ullung Island and 90 nm north-west of Japan’s Oki Islands, and is currently under South Korea’s control—lies at the core of the dispute over maritime boundary delimitation between the two countries. Whereas South Korea has argued that the EEZs of both countries should be divided along a median line between Ullung Island and the Oki Islands, Japan claims a median line between Ullung Island and Dok-do, arguing that Dok-do is its own island. Both countries’ claims enclose Dok-do within their own EEZs. The recent standoff by the coast guards of the two countries over Japan’s attempt to conduct a maritime survey in the disputed waters off Dok-do might represent the volatility of maritime issues between the two countries. In the wake of the standoff, the Korean government was

46 See Van Dyke, op. cit., supra note 22, at p. 529; Kim, op. cit., supra note 17, at p. 465.
47 When the Japanese government announced that it would conduct a maritime survey from 3–17 July 2006 in the waters off Dok-do, tensions escalated as the Korean government decided to deter Japanese survey ships from entering the Korean waters by any means in accordance
considering changing its baseline for the EEZ in the East Sea (or the Sea of Japan) from Ullnung Island to Dok-do in order to bolster its sovereignty claim to Dok-do.\textsuperscript{48} Another controversy over the delimitation of the maritime boundary is related to the legal status of Danjo Gun To and Tori Shima, a group of uninhabited and isolated islets and rocks owned by Japan, and located on the Okinawa Trough. The two separate islets are situated 18 nm apart.\textsuperscript{49} The controversy is derived from Japan’s use of the two islets as base points in drawing the median line for the delimitation of the maritime boundary between Japan and South Korea. South Korea claims that the two islets should not be base points, arguing that they are merely barren rocks which are not entitled to their own continental shelf and the EEZ under LOSC Art.121(3), and that the Japanese continental shelf terminates on the eastern edge of the Okinawa Trough.

Pending maritime boundary delimitation, in 1998 Japan and South Korea entered into a new fishery agreement\textsuperscript{50} designed to accommodate the continuing dispute over the area around Dok-do. The fisheries agreement introduced two “Provisional Zones” (or “Midway Zones”)\textsuperscript{51} in disputed areas, where fishing vessels from each country can operate, and also included a commitment by both countries to reduce their overall catch. One zone is in the East Sea (or the Sea of Japan), as indicated, and the other shared zone is situated in the

with international law, including stopping, inspection, and seizure. The diplomatic standoff between the two governments lasted until the Japanese government decided to put its plan on hold at talks held at the vice-ministerial level on 23 April 2006, in exchange for the Korean government’s decision that it would also put on hold its plan to register Korean names for undersea features off Dok-do with the International Hydrographic Organization (IHO). In addition, both countries agreed to resume EEZ delimitation talks, which had been on hold after four sessions of talks from 1996 to 2000.

\textsuperscript{48} The Chosun Daily (a Korean daily newspaper), June 6, 2006, at p. A21; a top security aide to the president of South Korea said in an interview with KBS (Korea Broadcasting System) on June 6, 2006 that “I think that we cannot help claiming Dok-do as a base point of EEZ” (translated), (given the political situation on the Dok-do issue).

\textsuperscript{49} Park, op. cit., supra note 17, at p. 25.

\textsuperscript{50} The Agreement on Fisheries between the Republic of Korea and Japan, available from the website of the Ministry of Foreign Affairs and Trade, South Korea: http://www.mofat.go.kr/index.jsp. When South Korea and Japan normalized their diplomatic relationships in 1965 after Korea became independent in 1945, they made a fisheries agreement. In the wake of the declaration of the EEZ, the two countries replaced the old agreement with a new one reflecting the EEZ regime.

\textsuperscript{51} South Korea names it the “Midway Zone” (translated) to achieve the effect that the name in Korean is meant to be merely a zone situated midway between South Korea and Japan in the East Sea (or the Sea of Japan), and not to prejudice its ownership of Dok-do. On the other hand, Japan calls it the “Provisional Zone,” as in the Japan and China fisheries agreement. Despite the disparity in name, it is believed that such a disparity does not affect the status of the joint fishing zone.
East China Sea off Je-ju Island just north of the Japan-China Provisional Measures Zone. The agreement also gave each country a zone that extends 35 nm from the coastlines and is called an exclusive economic zone.

However, problems arise from provisional boundary delimitation arrangements under the two fisheries agreements. First, part of the provisional zones between Japan and South Korea overlaps part of those between China and Japan in the waters between latitude 30° 40’ N and 29° 53’ N in the East China Sea, raising a law enforcement issue on fishing in the overlapped area. Second, these initiatives have serious drawbacks in that they only cover part of the fisheries concerned, they rely on enforcement by the flag-state of the law on the parties’ own vessels, and they are not relevant to the activities of third parties such as Taiwan.

North Korea declared its own EEZ up to 200 nm in 1977 and the Military Zone up to 50 nm in the East and the West Seas (or the Sea of Japan and the Yellow Sea, respectively) for the purpose of national defense in conjunction with its EEZ.52 The appropriateness of the Military Zone, which was declared unilaterally, and of the straight baselines, which do not meet the criteria of straight baselines under the LOSC, has been disputed.53

Table 1 Status of Maritime Boundary Delimitation in Northeast Asia

<table>
<thead>
<tr>
<th>States</th>
<th>Territorial Waters</th>
<th>EEZ</th>
<th>Continental Shelf</th>
</tr>
</thead>
<tbody>
<tr>
<td>South Korea vs. China</td>
<td>S(^1)</td>
<td>U(^2)</td>
<td>U</td>
</tr>
<tr>
<td>China vs. North Korea</td>
<td>U</td>
<td>U</td>
<td>U</td>
</tr>
<tr>
<td>China vs. Japan</td>
<td>S</td>
<td>U</td>
<td>U</td>
</tr>
<tr>
<td>Korea vs. Japan</td>
<td>S</td>
<td>U</td>
<td>PS(^3)</td>
</tr>
<tr>
<td>North Korea vs. Japan</td>
<td>S</td>
<td>U</td>
<td>U</td>
</tr>
<tr>
<td>Korea vs. North Korea</td>
<td>U</td>
<td>U</td>
<td>U</td>
</tr>
<tr>
<td>Japan vs. Taiwan</td>
<td>U</td>
<td>U</td>
<td>U</td>
</tr>
<tr>
<td>North Korea vs. Russia</td>
<td>S</td>
<td>S</td>
<td>S</td>
</tr>
<tr>
<td>Japan vs. Russia</td>
<td>U</td>
<td>U</td>
<td>U</td>
</tr>
</tbody>
</table>

Note: 1) Settled 2) Unsettled 3) Partially Settled

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52 Choi (2004), op. cit., supra note 12, at p. 408.
**Territorial Disputes**

Most important are the conflicting claims to disputed islands, because these concern the sovereignty of the disputants. It would be fair to say that all the maritime disputes in Northeast Asia are intricately linked to the ownership issue of the disputed islands, and the settlement of the maritime disputes would be unachievable without resolving the territorial disputes one way or the other, or at least without finding a way to bypass them. By the same token, Northeast Asian countries are engaged in provisional arrangements such as fishery agreements, in addition to the substantial issue of conflicting claims to maritime boundaries.

In origin, the territorial disputes in Northeast Asia stem from the tumultuous history in Northeast Asia, dating back to the colonial period and subsequent wars in the 19th and 20th centuries. The disputed islands include Dok-do (or Takeshima, South Korea vs. Japan), Senkaku Islands (or Diaoyu Dao, Japan, China vs. Taiwan), and Kuril Islands (or Northern Territories, Russia vs. Japan).

Dok-do is at the heart of strained relationships between South Korea and Japan over the legacy of the Japanese colonialism. Dok-do, composed of two tiny islets with a total area of 0.186 km², is situated in the central East Sea (or the Sea of Japan), and is currently under the control of South Korea. The historical evidence of the sovereignty claim to Dok-do by South Korea goes back to ancient times, when in 512 a Korean kingdom, called “Silla”, occupied “Usankuk”, an island country which governed Dok-do. Since then Dok-do has been under the control of Korea until it was incorporated into Japan’s local government as part of Shimane Prefecture in 1905.⁵⁴ Dok-do was under Japanese control until Korea became independent in 1945, and Korea gained sovereignty over Dok-do.

A controversy concerns a historical fact. Whereas Japan argues that the Empty Policy maintained for Dok-do from 1438 to the end of the 19th century by the Chosun Dynasty, the last kingdom on the Korean Peninsula, meant that the Dynasty gave up governing Dok-do, South Korea insists that it did not intend to abandon sovereignty over Dok-do.⁵⁵ Another controversy concerns the interpretation of the provisions of the 1951 San Francisco Peace Treaty, which stipulates that “Japan shall approve the independence of Korea and

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shall surrender all rights—title over and right of claim on Korea including Jeju-
do, Geomun-do, and Ulleung-do”, but fails to include Dok-do. Japan has claimed
that the exclusion means that Japan has regained ownership of Dok-do. South
Korea argues that the islands listed are examples of thousands of islands, and
that Japan intentionally caused Dok-do to be omitted by lobbying the U.S.
government in drafting the treaty.56

To sum up, the controversies over the ownership of Dok-do are as follows
1) documented evidence to support the territorial sovereignty claims; 2) geo-
graphical proximity to Dok-do from the mainland; 3) legality of Japanese
occupation during its colonial rule; and 4) interpretation of territory related
treaties in the post-war period.57 The standoff between the coast guards of the
two countries over a maritime survey off Dok-do in 2006 may represent the
seriousness of the Dok-do issue.

The Senkaku Islands lie at the heart of the maritime disputes between China
and Japan. The islands, situated between Taiwan and Japan’s Ryukyu Island,
are composed of five uninhabited coral islands and three barren rocks.58 The
Senkaku Islands, currently under Japanese control, are claimed by China and
Taiwan together. Historically the islands, along with Taiwan, were ceded to
Japan as a result of the Shimonoseki Treaty, concluded in 1895 when China
was defeated in the China-Japan War in 1894. After the period of U.S. con-
trol during the World War II ended, the islands reverted to Japan under the
Okinawa Revision Treaty in 1971.59 When Taiwan claimed its ownership over
the Senkaku Islands right after the treaty was signed, China also laid claim to
the islands as part of its claim to Taiwan. Tensions between China and Japan
over the islands escalated when the two countries declared their own territo-
rial waters and EEZs in the 1990s which enclosed the Senkaku Islands within
their own EEZs. China’s claim over the islands is mainly based on two inter-
related points: historical title and territorial cession. By contrast, Japan denies
that any dispute over the sovereignty of the islands exists, arguing that the
Senkaku Islands are an integral part of Japanese territory.60 The key questions
to be answered are: whether China had established title to the islands and
whether this sovereignty was maintained until Japan launched its claim in

56 Ibid.
57 See Jin Su Bae (1998), The Background and Status of Maritime Conflicts in East Asia, in:
Chun Keun Lee (ed.), Maritime conflicts in East Asia and a Buildup of Naval Power, Seoul:
Korea Institute for Maritime Strategy, pp. 32–34.
58 Park, op. cit., supra note 17, at p. 32.
59 See Victor Prescott and Clive Schofield (2005), The Maritime Political Boundaries of the
60 Steven Wei Su (2005), The Territorial Dispute over the Tiaoyu/Senkaku Islands: An Update,
Ocean Development & International Law, 36:45–61.
1894, and, if China had established title, whether the islands were ceded to Japan under the 1895 Treaty and then whether they were returned to China under the Peace Treaties of either 1951 or 1952.61

The Kuril Islands (referred to as the “Northern Territories” by Japan) are disputed by Russia and Japan; they specifically consist of three main islands, Etorofu, Kunashiri, and Shikotan, together with a cluster of smaller features, the Habomai Group, and have a combined area of just under 5,000 km².62 Under the terms of the Yalta Agreement63 between the World War II Allies in 1945, the Kuril Islands, along with the southern part of Sakhalin Island, were to be allocated to the Soviet Union. With the end of the War, under the 1951 San Francisco Treaty, the southern Sakhalin and the Kuril islands, including Etorofu and Kunashiri, were ceded to the Soviet Union, along with Shikotan and the Habomai Group, which were not parts of the Kuril Islands.64 With the end of the Cold War, there have been diplomatic efforts to resolve the territorial issue of the Kuril Islands between Russia and Japan, with no substantial progress yet. In the absence of maritime boundary delimitation, the waters off the islands have become a source of fishery disputes, as they are a very productive fishing ground. Numerous incidents, such as shootings and detentions of Japanese fishing boats and crew, have occurred when Japanese fishermen attempted to fish in the territorial waters claimed by Russia.

Any potential loss of territory, however small and seemingly insignificant the area concerned and whether inhabited or not, can be construed as a challenge to the sovereignty, security and integrity of the state. Boundary and territorial disputes therefore represent challenges to a state’s legitimacy and, ultimately, to the continued existence of the state itself.65 The disputed islands are mostly uninhabited islets, and subject to controversy as to whether they are islands or rocks under the LOSC, in which the legal title for a maritime boundary differs from its status.66 Together with sovereignty claims, the poten-

61 Ibid.
63 The conference at Yalta in the Crimea (February 4–11, 1945), joined by the heads of state of the United States, the United Kingdom, and the Soviet Union, took place from Feb. 4 to 11. The heads of state agreed to restore Russia’s rights violated by the attack of Japan in 1904, prescribing that “the southern part of Sakhalin as well as the islands adjacent to it shall be returned to the Soviet Union.” See http://www.cnn.com/SPECIALS/cold.war/episodes/01/documents/yalta.html.
64 Ibid.; see also Bae (1998), op. cit., supra note 57, at p. 40.
65 Prescott and Schofield (2005), op. cit., supra note 59, at p. 249.
66 According to LOSC Article 121, whereas an island is entitled to generate a territorial sea, a contiguous zone, an EEZ, and a continental shelf, rocks which cannot sustain human habitation or economic life of their own shall have no EEZ or continental shelf.
A Security Issue: Protection of Sea Lanes of Communication and National Security

The status of Northeast Asian states as trading states is on the rise, with globalization and interdependence expanding. According to the World Trade Organization,\(^\text{68}\) the trade share of the global trade volume of Northeast Asian economies, including China, Japan, South Korea, Hong Kong, and Taiwan, accounted for 20.4% of exports and 17.8% of imports in 2005. The growth of the Northeast Asian economies and the increase in trade volume result in their greater dependence on sea transportation.

Where Sea Lanes of Communication (SLOC) in Northeast Asia are concerned, they play a role as waterways which connect Northeast Asian economies to global trade and commerce. The significance of SLOC in Northeast Asia is often described as a lifeline, because Asian economies are overwhelmingly dependent on sea-borne trade and commerce with other countries across the oceans. Exports of goods and commodities, and imports of energy, such as oil and liquid natural gas (LNG), are carried by sea. Therefore keeping SLOC secure and open is extremely essential to the Northeast Asian economies and furthermore to their survival in an increasingly competitive world.

The shipping lanes of Northeast Asian countries pass mostly through the East China Sea, the Taiwan Strait, the South China Sea, the Malacca Strait, and the Indian Ocean. They extend to the Middle East, Africa, North America, and Europe for imports of energy resources and exports of commodities. Northeast Asian countries especially are totally dependent on energy shipments through these shipping lanes, to the extent that more than 80% of the crude oil supplies for Japan, South Korea, and Taiwan are shipped from the Middle East, Africa, and Southeast Asian nations through these shipping lanes.

The strategic status of these shipping lanes for the Northeast Asian countries and the rest of the world may be represented by the following statistics:\(^\text{69}\)

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\(^{67}\) Prescott and Schofield (2005), op. cit., supra note 59, at p. 249.


\(^{69}\) The statistics were adapted from the Shipping Statistics Handbook 2003, Seoul: Korea Maritime Institute.
more than 99.8% of trade by South Korea and 85% of trade by China are transported by ship; more than 80% of oil imports by Japan, South Korea, and Taiwan are shipped via these shipping lanes; 45% of all shipping worldwide moves through Asia’s waters; and two-thirds of worldwide LNG shipping passes through the sea lanes in East Asia.

Any disruption to any of the sea routes by, e.g., regional conflict, piracy, terrorism, accident or pollution would be catastrophic to the global economy, not to mention to the Asian economy. Despite their strategic value, the sea routes in East Asia are regarded as the most dangerous by the shipping community, because piracy most frequently occurs in the region, accounting for approximately two-thirds of worldwide piracy cases in the recent decade.70 Due to geographical distance, which can be up to thousands of nautical miles away, a direct response by trading states to any incident involving their flag vessels is very limited. Most importantly, a disparity exists between user and coastal states in terms of paying costs for using shipping lanes, because the shipping lanes of coastal states are predominantly used by trading states in Northeast Asia. As the trading states are fully dependent on the coastal states for the security of the shipping lanes, they are concerned with building cooperative relations with coastal states and with helping littoral states be committed to counter-piracy efforts.71

These considerations serve as a logical basis for Northeast Asian countries to build up their navies and to project their naval power presence to the oceans. The Northeast Asia region has experienced a substantial increase in military expenditures in the post-Cold War period, contrary to other regions, which have significantly reduced military expenditures over recent decades. The military build-up in the region is focused primarily on naval forces. With a significant increase in their budget to purchase vessels and equipment, and to modernize navies’ functions, a new role of navies, represented by sovereignty

70 Adapted from the IMB Annual Piracy Report 2004: Out of 3,084 worldwide piracy cases reported to the International Maritime Bureau (IMB) and the International Chamber of Commerce in the period between 1992 and 2003, Asia accounted for 67.4% (2,079 cases), followed by Africa (17.0%, 525 cases), and America(11.9%, 367 cases).

71 In the wake of the Alondra Rainbow incident in 1999, in which a Japanese-owned cargo ship was hijacked off the shores of Indonesia by a group of pirates, Japan has been actively involved in the capacity-building of coast guard agencies in Southeast Asian countries, such as Malaysia, Indonesia, and Philippines, by providing vessels and technical assistance in maritime affairs, and education in law enforcement skills. In addition, the Japan Coast Guard has hosted seminars and international conferences as an effort to build increased cooperation among regional states to combat piracy. The Korean navy established a cooperative tie with the Indonesian navy and the Singapore navy in 1999 and 2001, respectively. The Korea Coast Guard has also built cooperative relationships with the Coast Guard Agencies of Malaysia, Philippines, and Singapore, for joint efforts to combat piracy.
protection and coast guard-type activities, has been added to their traditional military roles, which are the projection and maintenance of a balance of power by exercising control over the oceans in times of peace and conflict, and are the support of foreign policy either through a passive presence or in a manipulative sense.\footnote{See Dick Sherwood (2000), Oceans Governance and its Impact on Maritime Strategy, in: David Wilson and Dick Sherwood (eds.), Oceans Governance and Maritime Strategy, Sydney: Allen and Unwin, pp. 27–29; Ken Booth (1991), The New World Order and the Future of Naval Power, Journal of the Australian Naval Institute, 17(4):17–33.}

China has tremendously increased its military expenditures, which has experienced a double-digit growth rate annually over the last 18 years. As shown in Table 2, the growth rate of military expenditures in China in recent years surpasses that of other countries in the region. The Chinese build-up is not only directed toward Taiwan, but is also aimed at developing capabilities of force projection beyond Chinese waters.\footnote{International Institute for Strategic Studies (2005), The Military Balance 2005–2006, London: Routledge. See also Richard Bernstein and Ross H. Munro (1998), The Coming Conflict with China, New York: Vintage.} According to the Forward Defense Strategy adopted in the wake of the end of the Cold War, China has shifted its strategic military focus from the mainland of China to the East and South China Seas, in which it sees that the likelihood of armed conflicts over disputed maritime territories is very high in the future. In the midst of its neighbors’ increasing concern, the Chinese build-up of naval forces is aimed at possible regional armed conflicts in the Taiwan Strait and the China Seas and the protection of the shipping lanes. In addition, the Chinese bitter experience that all invasions by European maritime powers over the last two centuries were from the sea also contributes to its aggressive build-up of naval forces.\footnote{See Jong Doo Kim (2003), A buildup of China’s naval power and Japan’s security strategy, in: Hong Pyo Lee (ed.), China’s Maritime Strategy and Security of East Asia, Seoul: Korea Ocean Strategy Institute, pp. 197–198. See also Hong Pyo Lee (1998), The Background and Status of Maritime Conflicts in East Asia, in: Chun Keun Lee (ed.), Maritime conflicts in East Asia and a Buildup of Naval Power, Seoul: Korea Institute for Maritime Strategy, pp. 155–168.}

While strengthening its security alliance with the U.S., Japan also has increased significantly its military spending over the same period, focusing on reinforcing its naval forces. Beyond its traditional mission to protect 1,000 nm of its SLOC and strategic domestic choke points such as Soya, Tsugaru and Tsushima, the Japanese navy seeks to expand its role toward the Pacific and the Indian Ocean. In the Japan–U.S. Joint Declaration on Security in 1996, Japan and the U.S. agreed to review the 1978 Guidelines for Japan–U.S. Defense Cooperation to accommodate Japan’s increased role in the Asia-Pacific region. The build-up of Japanese naval forces is concerned with protection of
the security of shipping lanes and with maritime conflicts with neighbors in the unstable security environment of the region, which might be related to North Korea’s military movements and 18 years of a double-digit growth rate in China’s defense budget.\textsuperscript{75} Japan’s efforts to build up its naval forces might be represented by the recent deployment of 6 Aegis\textsuperscript{76}-equipped warships and its plan to build 22 warships of over 5,000 tons until 2020 in addition.\textsuperscript{77}

South Korea, faced with North Korea’s nuclear threats, is concerned about the security of shipping lanes and possible maritime conflicts with neighbors over disputed maritime territories and resources. In response to neighbors’ military build-ups, South Korea is engaged in the Defense Reform 2020 initiative, launched in 2005 to modernize and streamline the military over next 15 years, which is projected to cost $280 billion.\textsuperscript{78} As part of its initiative, South Korea has pursued the building of a strategic maneuvers fleet which includes 6 Aegis-equipped warships.\textsuperscript{79}

<table>
<thead>
<tr>
<th>Table 2</th>
<th>Military Expenditures</th>
<th>US$ billion</th>
</tr>
</thead>
<tbody>
<tr>
<td>China</td>
<td>11.85</td>
<td>37.5</td>
</tr>
<tr>
<td>Japan</td>
<td>32.68</td>
<td>37.7</td>
</tr>
<tr>
<td>South Korea</td>
<td>10.77</td>
<td>13.2</td>
</tr>
<tr>
<td>North Korea</td>
<td>5.45</td>
<td>2.0</td>
</tr>
<tr>
<td>Taiwan</td>
<td>9.29</td>
<td>14.2</td>
</tr>
<tr>
<td>U.S.</td>
<td>303.6</td>
<td>271.3</td>
</tr>
</tbody>
</table>


\textsuperscript{76} The term ‘Aegis’ means a shield, protection, or sponsorship, originally derived from the name of the mythological protective shield of Zeus. The Aegis system is represented by an advanced, automatic detect-and-track, multi-function phased-array radar. This high-powered radar is able to perform search, track and missile guidance functions simultaneously with a track capacity of over 100 targets.


Spurred by the Chinese military build-up in a power vacuum during the post-Cold War period, the Northeast Asia region is engaged in a competition for armaments to the extent that it is called an arms race, backed up by the prominent economic prosperity over the last decades. Alfred Mahan perceived naval power to be a source of national wealth, and naval power is increasingly becoming a critical source of leverage to ensure the protection of national maritime interests and sovereignty in the Northeast Asia region.

Resource War

With the economies of Northeast Asian countries growing rapidly, energy demands are sharply increasing. Other than China, Northeast Asian countries have limited or virtually no domestic energy reserves, and they totally depend on imports of energy resources for their energy supplies. According to the U.S. Energy Information Administration (EIA), Japan, China, South Korea, and Taiwan are the largest oil importers in the world, ranking second, third, fifth and tenth respectively. China, which has 18.3 billion barrels of proven oil reserves, produces 3.8 million barrels per day and consumes 7.4 million barrels per day. Having been a net oil importer since 1993, and depending for 35% of its oil consumption on imports as of 2003, China’s oil demand is projected to reach 14.2 million barrels per day by 2025. This would lead China to rely on net imports of 10.9 million barrels per day, enhancing its dependence rate on imports to 76%. Japan, with limited domestic oil and gas reserves, relies almost totally on imports to meet its consumption needs, and is becoming the largest importer of LNG in the world. South Korea, with no domestic oil and gas reserves, imports all of its crude oil and natural gas supplies from other countries, although it began producing a small quantity of natural gas from one offshore field in early 2004.

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81 National competition to secure maritime resources in the East Asia region is so strong and relentless that it is often described as a “resource war.”
82 See the website of the U.S. Department of Energy: http://www.eia.doe.gov/.
83 Ibid.
84 Nihonkeizai Shinbun (a Japanese daily newspaper), August 31, 2004, at p. 5.
85 Ibid.
86 See the website of the U.S. Department of Energy: http://www.eia.doe.gov/.
87 Ibid.
While developing domestic oil and gas deposits on land, and pursuing oil and gas projects overseas in the form of joint ventures, Northeast Asian countries have sought to explore offshore oil and natural gas deposits to meet their sharply increasing energy needs. The salient problem with regard to offshore energy resources is that many of them are found on and in disputed continental shelves and EEZs. As the race for non-living seabed resources expands, disputes are bound to arise. Moreover, major problems may be brewing as oil and gas exploration and drilling extend farther offshore into disputed waters—and as international oil companies join the hunt.

The race among Northeast Asian countries for the development of offshore energy resources was initiated by a UN survey report about geological structures in the Yellow (or West) and East China Seas. In 1969 the Committee for the Cooperation on the Joint Prospecting for Mineral Resources in Asian Offshore Areas (CCOP) under the UN Economic Commission for Asia and the Far East (or ECAFE) issued a geological survey report, called the “Emery Report,” concluding: “a high probability exists that the continental shelf between Taiwan and Japan may be one of the most prolific oil reservoirs in the world” and that “a second most favorable area for oil and gas is beneath the Yellow Sea.” This report caused a great sensation among the oil-hungry coastal states and led to what might be termed an instant “oil war” in Northeast Asia. Upon the release of the Report, the three countries unilaterally declared their own mining blocks for oil development in the Yellow (or West) Sea and the East China Sea. As noted earlier, the three countries differed on the legal criteria for asserting their continental shelf claims: Japan on the median line rule; Taiwan on the natural prolongation of land territory; and South Korea on the combination of both, that is, it applied the principle of natural prolongation of land territory to Japan in the East China Sea and the median line rule to China in the Yellow (or West) Sea. In principle, although the claims were based on the countries’ own delimitation rules, their claims extended to where oil was most likely to be found.

90 The survey, led by K. O Emery, was conducted for 6 weeks (Oct. 12–29, 1968) on board a U.S. maritime survey ship.
Thus their claims overlapped in most parts of the mining blocks to such an extent that out of 17 designated areas claimed by Japan, South Korea, and Taiwan, only four remain uncontested.93 Japan divided the sea areas off the coast of Japan along the Okinawa Trough from the Korea Strait to the waters off the Senkaku Islands into four mining blocks and granted mining rights to Japanese oil companies. Taiwan claimed four mining blocks and signed four concession contracts with foreign oil interests. In 1970, South Korea also designated 7 mining blocks in the Yellow (or West) Sea and the East China Sea under the Submarine Mineral Resources Development Law. South Korea’s mining blocks overlapped with Japanese and Taiwanese mining blocks in three areas: K-6 vs. J-IV, K-5 & 7 vs. J-III and T-5.

Inspired by the anticipation of being oil-producing countries, the three countries agreed on joint development in mid-1970, pending the delimitation of contested areas. However, to complicate matters, Japan, China, and Taiwan were involved in a territorial dispute over the ownership of the Senkaku (or Diao-yu Dao) Islands in the East China Sea.94 Correspondingly, China strongly protested the joint development scheme between Japan, South Korea, and Taiwan on the grounds that China was entitled to the continental shelf areas proposed for joint development. As a consequence, the first attempt at joint development ended up in failure, and Taiwan dropped out of the joint development scheme for political reasons relating to China. South Korea and Japan again engaged in negotiations for joint development late in 1972, and the first oil crisis, which began in October 1973, gave a decisive impetus to their efforts, leading to an agreement for joint development in January 1974.95 Although no commercial discovery has been made yet, the agreement itself is a significant model for joint development of offshore energy resources in the absence of mutually agreed boundaries. Furthermore, the agreement is

93 Ibid., at p. 2.
94 Ibid., at p. 129.
95 In 1974 Japan and South Korea entered into two bilateral agreements: The “Agreement between the Republic of Korea and Japan concerning the Establishment of the Boundary in the Northern Part of the Continental Shelf adjacent to the Two Countries” is a continental shelf delimitation agreement based on the median line criteria in the Korea Strait. The “Agreement between the Republic of Korea and Japan concerning Joint Development of the Southern Part of the Continental Shelf adjacent to the Two Countries” is on the joint development in overlapping mining blocks in the East China Sea. Under the joint development agreement, the Joint Development Zone (JDZ) was established which covers 24,092 nm² of overlapping areas in the northern part of the continental shelf adjacent to the two countries. The JDZ was divided into 9 sub-zones, each of which shall be explored and exploited by concessionaires of the two states. These Agreements are available from the website of the Ministry of Foreign Affairs and Trade, South Korea: http://www.mofat.go.kr/index.jsp.
a cornerstone for further maritime cooperation in the region, given the complicated nature of maritime disputes in Northeast Asia.

Obviously overlapping claims to seabed resources are directly linked to territorial disputes, because many of the contested oil and gas deposits lie within the EEZs generated from disputed islands, such as the Senkaku and the Spratly Islands. As noted earlier, Japan and China each declared their EEZs in 1996 and 1998 in the East China Sea to enclose the disputed island of the Senkaku within their own EEZs, based on two different principles of EEZ boundary delimitation. In the absence of a mutually agreed demarcation line, China began explorations in the 1980s with a view to developing natural gas in the Xihu Trough, in which natural gas deposits are estimated at 8.49 billion m$^3$. The Chinese grand plan was to build seven oil and natural gas fields, including the Pinghu, Canxue, Duanqiao, Tianwaitian, and Chunxiao sites and covering an area of 22,000 km$^2$ (see Map 3). Among them, Pinghu began operation as early as 1998, with its natural gas product transported to Shanghai via undersea pipelines.\textsuperscript{96} According to the Chinese Xinhwa News, the East China Sea fields are estimated to contain 25 billion metric tons of oil and 237.72 billion m$^3$ of natural gas. Some commentators estimate that the fields will yield 7.7 billion metric tons of natural gas. Despite optimistic estimates, doubt exists about the size of the deposit, as shown in the recent withdrawal of Unocal and Shell from the region, with both companies citing poor test-drilling results.\textsuperscript{97}

While most deposits in the Xihu Trough are on the Chinese side of the Japanese-drawn median line, the Chunxiao gas field is 3.1 nm west of the Japanese median line to the Chinese side, and is thus becoming most controversial between the two countries. When China began to develop the Chunxiao gas field in August 2003, Japan demanded that China should stop the project because the gas field would siphon off its energy resources on the side of the Japanese EEZ. In addition, Japan argued that the results from the 2004 survey by the Ministry of Economy, Trade and Industry indicated that two of three major gas fields China plans to develop in the area extend into Japan.\textsuperscript{98} Japan also asked for detailed information about the Chunxiao gas field project to examine whether it extends to gas fields on the Japanese side. The Chinese government refused and instead asked the Japanese government to develop the gas field jointly.\textsuperscript{99} Rejecting the Chinese proposal, the Japanese government in

\textsuperscript{96} Hsiung (2005), \textit{op. cit.}, supra note 40, at pp. 518–519.
\textsuperscript{99} \textit{Ibid.}
July 2005 granted a private oil firm, Teikoku Oil Company, a permit to explore oil and gas fields in the vicinity of the median line claimed by Japan.

While in deteriorating relations with Japan over the legacy of history,\textsuperscript{100} the Chinese government strongly protested and decided to deploy a warship to the East China Sea to protect the Chinese-drawn EEZ. In a response, the Japan Defense Agency\textsuperscript{101} eased its restriction in the rules of engagement on the use of guns by pilots.\textsuperscript{102} The Japanese government was considering the additional deployment of navy and coast guard vessels to protect against the possible obstruction by Chinese vessels of the exploration activities by the Teikoku Oil Company.\textsuperscript{103} Meanwhile, China unilaterally announced that it would prevent ships from passing through waters off the Pinghu gas field in the period from March 1 to September 30, 2006 in order for it to lay cables and pipelines as part of its expansion of the field. The relevant areas included waters disputed by China and Japan, and would bring about protests from Japan.\textsuperscript{104} As recently as April 2007, Chinese Premier Wen Jiabao and Japanese Prime Minister Shinzo Abe agreed to jointly develop contested oil and gas fields in the East China Sea, but they remain wide apart on how to proceed with such a plan.\textsuperscript{105} Consequently, coastal states’ relentless quest for offshore oil and natural gas renders it more difficult to settle boundary delimitation issues and fuels territorial disputes over islands whose waters are said to be in rich in oil and natural gas.

Fisheries are also a critical source of maritime disputes in Northeast Asia. China, Japan, and South Korea are major marine fisheries production countries, of which China is by far the largest producer in the world, with capture fisheries production of 16.9 million metric tons in 2004.\textsuperscript{106} Japan ranks sixth, with production of 4.4 metric tons in 2004. China, Japan, and South Korea are also top global exporters and importers of fish and fishery products; China is the largest exporter, while Japan is the largest importer, followed by China and South Korea, which rank sixth and tenth, respectively, in the world.

\begin{thebibliography}{99}

\bibitem{100} In 2005 massive demonstrations occurred in several Chinese cities, protesting Japan’s playing down of its World War II atrocities against China; the demonstrations turned violent and Japanese businesses were vandalized.
\bibitem{101} The Japan Defense Agency was upgraded to the Ministry of Defense on January 9, 2007.
\bibitem{102} According to an article in Sankei Shinbun (a Japanese daily newspaper) on Jan. 4, 2006, at p.10, the Japan Defense Agency allowed fighter pilots to use arms under the direction of the commander in charge, although pilots are not in a situation of self-defense.
\bibitem{103} The Dong A Daily (a South Korean daily newspaper), January 15, 2006 at p. 16.
\bibitem{104} The Hankyoreh Daily (a South Korean daily newspaper), April 17, 2006 at p. 13.
\bibitem{105} Asahi Shinbun (a Japanese daily newspaper), May 2, 2007, at page 6.
\end{thebibliography}
Although fish remains a significant source of animal protein in the region, fisheries also played a great role at the initial stage of economic growth in those countries. Offshore fisheries in narrow semi-enclosed seas, which are among the productive fishing grounds of the world, often generate operational disputes and tensions in law enforcement. Fisheries disputes have been a long-held lingering issue in Northeast Asia and are associated with boundary and territorial disputes. Traditionally, Japanese fishing fleets, with advanced fishing technology and equipment, dominated the region in the post-World War II period when no fishery regimes were created in the midst of tumultuous political changes. Given the significance of a fisheries regime to govern fisheries in the region, regional countries made bilateral fishery agreements while they were in politically strained relationships in the Cold War period. South Korea and China, concerned about the exploitation of marine resources by Japanese fishing fleets, first regulated Japanese fishing activities in their offshore areas and then made fishery agreements with Japan in 1965 and 1975, respectively. South Korea and China did not create a fishery regime in the West (or Yellow) Sea until both countries normalized their relations in 1992.

Northeast Asian countries needed to review their old fishery agreements when they declared their own EEZs under the LOSC, in which coastal states are entitled to exercise sovereign rights to explore, exploit, manage and conserve natural resources. Unlike the fishery agreements between Russia and Japan, and between South Korea and Russia, both of which followed the EEZ regime, the fishery agreements among South Korea, China, and Japan were in significant need of change to accommodate the EEZ regime. Thus Northeast Asian countries came up with new fishery agreements pursuant to the EEZ regime: China and Japan in 1997, South Korea and Japan in 1998, and

107 Russia (then the Soviet Union) and Japan made a fishery agreement in 1956, followed by South Korea and Japan in 1965, China and Japan in 1975, Russia (then the Soviet Union) and Japan in 1977, North Korea and Japan in 1977, and South Korea and Russia in 1991.

108 In January 1952, South Korea unilaterally issued the “Republic of Korea Presidential Proclamation of Sovereignty Over Adjacent Seas”, called the “Peace Line” (also known as the “Rhee Line”, because it was proclaimed by then President Rhee) to declare sovereignty over the adjacent shelf and seas, and to protect natural resources. The demarcation line connects straight lines along the coast of the Korean Peninsula all the way from the East Sea (or Sea of Japan) to the Yellow (or West) Sea. The Proclamation was aimed at protecting fisheries off the coast of Korea from Japanese fishing.

109 LOSC Art. 56.

110 The Agreement on Fisheries between the People’s Republic of China and Japan, available from Choi, op. cit., supra note 12, at pp. 574–578.

111 The Agreement on Fisheries between the Republic of Korea and Japan, available from the website of the Ministry of Foreign Affairs and Trade, South Korea: http://www.mofat.go.kr/index.jsp.
South Korea and China in 2000. As noted earlier, they created four provisional zones under the fishery agreements, which are characterized either as co-management zones or the high seas, in order to address fishery issues while bypassing the boundary delimitation issue. The provisional arrangements aimed at managing and protecting fishery resources in a cooperative manner, pending the issue of maritime boundary delimitation. The four provisional zones include two between South Korea and Japan in the East Sea (or the Sea of Japan) and in the East China Sea, and one between South Korea and China in the West Sea (or the Yellow Sea), and one between China and Japan in the East China Sea.

Ways Ahead

Confidence and Ocean Regime Building

Despite a growing interdependence among Northeast Asian countries, emotional uneasiness still exists toward each other, derived mainly from the legacy of colonial history. This serves as a barrier to concerted efforts to address maritime disputes. In the absence of mutual trust, the reshaping of Northeast Asia’s political and economic landscape in the post-Cold War period, represented by the rise of China to a global power, renders regional issues more complicated, and any attempt to address maritime issues by one country would provoke suspicion by the rest of the countries in the region. Additionally, growing nationalism across the region promotes an emotional approach to maritime disputes and widens an emotional gap among the people of Northeast Asia.

For confidence-building, a strategic dual approach, in which “track-one” and “track-two” diplomacy are combined, is suggested. In the region, where a tradition of political cooperation is lacking, non-governmental (NGO) contacts, together with governmental contacts, should be expanded as a way to build a common ground for cooperative ocean management and to increase

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113 The “Provisional Measures Zones” under the fisheries agreements between China and Japan, and between China and South Korea, are co-management zones jointly administered by the countries concerned. The Provisional Zone in the East Sea (or the Sea of Japan) under the fisheries agreement between Japan and South Korea is characterized as the high seas, in which the flag state exercises jurisdiction over and law enforcement on its own vessels fishing in the zone.

mutual understanding of maritime issues. One of the reasons for little progress in governmental contacts to delimit maritime boundaries associated with sovereignty claims to disputed islets is that the issue was dominated by domestic politics, rather than international law and practice.

Freed from the pressure of constituencies, experts could freely exchange their views on cooperative uses of the seas and discuss ways for maritime dispute resolution, as shown in the activities of the Council for Security Cooperation in the Asia Pacific (CSCAP).115 Such contacts might be carried out in the form of a forum, NGO, workshop, exchange visit, scientific research or joint project.

A code of conduct at the regional level can also be considered for confidence building and conflict avoidance. The code of conduct may include a variety of cooperation modes by navy or coast guard ships when they are involved in any type of armed conflicts. An example is found in the South China Sea, in which China and ASEAN (Association of South East Asian Countries) countries agreed to a code of conduct in 2002 which provides confidence-building measures such as the peaceful settlement of territorial disputes and the reduction of military installations and activities in the South China Sea. Based on confidence-building measures, Northeast Asian countries need to build robust regional maritime regimes for ocean governance, with a recognition that maritime affairs are transnational in nature.

**Joint Development & Unitization**

During the transitional period until the final delimitation of maritime boundaries, states concerned can enter into provisional agreements of a practical nature for the exploitation of seabed resources in dispute, as stipulated in the LOSC.116 Joint development and unitization may represent a common way to develop disputed seabed resources in a collaborative manner between or among countries concerned, pending maritime boundary delimitation.

For joint development in disputed areas, states concerned first establish a joint development zone (JDZ), and develop the JDZ together, on an equal revenue and expense basis. It is distinctive that joint development is a com-

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115 Established in 1992–93, the Council for Security Cooperation in the Asia Pacific (CSCAP) is a non-governmental organization (NGO). The essential purpose of CSCAP is to provide “a more structured regional process of a non-governmental nature” to contribute to the efforts toward regional confidence-building and enhancing regional security through dialogues, consultation, and cooperation. CSCAP deals with a wide range of security issues in the region, including maritime security and environment.

116 LOSC Arts. 74(3) & 83(3).
A particular note in this regard is a joint development agreement for disputed continental shelf areas between South Korea and Japan, as noted earlier. The joint development agreement has served as a model for the future settlement of seabed resource disputes in the region, although no commercial discovery has yet been made. It was recognized that the agreement has greatly contributed to easing tensions between the two countries concerning the exploitation of the continental shelf. On the other hand, unitization is applicable to an identified straddling field where a mutually agreed maritime boundary already exists. Whether or not an agreed maritime boundary exists is a distinction between joint development and unitization. Given the dispute over the development of seabed resources which are argued to straddle the EEZ claimed by both China and Japan, either joint development or unitization will contribute to a peaceful settlement for the maritime boundary dispute, or at least to the reduction of tensions generated by the dispute.

Building a Co-operative Maritime Security Framework and Reinforcement of Coast Guards

With disputes over seabed resources and maritime boundary increasing, a higher likelihood exists that an increased naval presence by China and Japan in the East and South China Seas could escalate incidents toward armed confrontation. In order to ease tensions and prevent incidents from developing into armed conflict, two options can be considered: a cooperative maritime security framework and a reinforcement of coast guard agencies.

Cooperative security is defined as a cooperative relationship on security issues between antagonists, not between allies. The idea starts from a perception that although countries are antagonistic to each other, they share significant areas of common interest in terms of avoiding war, especially nuclear war, and of reducing the level of military expenditures to the minimum level. Cooperative security is multi-dimensional in scope, it emphasizes reassurance rather than deterrence, it is not restrictive in membership, and it stresses the value of creating a “habit of dialogue” on a multilateral basis. Cooperative security is regarded as security with rather than against the adversary. The idea of cooperative


maritime security would be applicable to the region of Northeast Asia, given that regional countries share vital national interests in protecting SLOC and seek to avoid military confrontation. If implemented, the cooperative security strategy would serve as a framework of ocean governance in the region to manage and settle maritime conflicts in a peaceful and cooperative manner, regardless of maritime disputes at the individual level. The most important prerequisite for the exploration of cooperative maritime security in Northeast Asia is to build confidence and share the need for possible benefits of a multilateral security framework. Despite its necessity, the prospect of the cooperative maritime security strategy system being implemented appears low, given certain unique factors in Northeast Asia such as increasing hegemonic rivalries, the legacy of history, and the particular situation of the Korean Peninsula and the Taiwan Strait.

The role of coast guard agencies should be reinforced, as a way to avoid armed conflict by military encounters. Coast guard agencies carry out a wide range of missions, varying from country to country; these include: law enforcement activities concerning illegal fishing, illegal migration, trafficking, security and safety of sea traffic; counter-terrorism activities, port security, search and rescue operations; marine environment preservation and pollution control; and activities to maintain the integrity of the maritime territory and protection of security of SLOC. They are either law enforcement agencies or quasi-military organizations supplementary to navies; coast guards in China, Japan, and South Korea are, in principle, law enforcement agencies, but the Russian coast guard, which is under the Russian Federal Border Service, is a quasi-naval force.

Coast guards are lightly armed, and they are distinguished from navies in the sense that their activities have fewer political implications and are focused primarily on law enforcement. Securing the maritime domain is becoming a primary mission, and thus coast guards are engaged in the forefront of maritime disputes, as evinced in a standoff between the coast guards of South Korea and Japan over the disputed Dok-do Island in 2005. Coast guards in Northeast Asian countries are also expanding their role beyond policing in offshore areas to protecting the security of SLOC in Southeast Asia.119

119 The examples are found in the activities of Korean and Japanese Coast Guards. The Korea Coast Guard made bilateral cooperation agreements with coast agencies in Southeast Asian countries in combating piracy and maritime terrorism, and in search and rescue operations. The Korea Coast Guard has conducted joint counter-piracy exercises with the Malaysian Marine Police in the Malacca Strait. The Japan Coast Guard has actively pursued strengthening cooperation with Southeast Asian countries by providing technical and educational assistance and having joint exercises and fora.
Closing Words

As noted above, the factors involved in maritime disputes in Northeast Asia are very diverse and interconnected to each other. Under unstable security circumstances, the issue of maritime disputes is becoming a critical factor which could undermine peace and stability in Northeast Asia. The issue is not expected to be resolved in the near future, and the disputes could even become more intense, given the national interests at stake. The seas of Northeast Asia are likely to remain as a potential source of conflict, unless Northeast Asian countries find a solution to pending maritime issues. There is little doubt that one cannot expect long-term stability in Northeast Asia without resolving maritime disputes.