

Sea Power, Law of the Sea, and China-Japan East China Sea "Resource War"

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Abstract

I deal with three counterintuitive truisms: First, despite advances in inter-continental nuclear weaponry and the heavy buildup of land power over six decades, sea power continues to be a strategic imperative; and its importance has only increased after the end of the Cold War. Second, contrary to the expectations of nations, the 1982 Law of the Sea Convention is no panacea for resolving international maritime delimitation disputes. Its two cardinal principles --the natural prolongation of continental shelf, and the exclusive economic zone (EEZ) — are potentially in conflict. When invoked by contending neighboring states, the two principles may lead to a deadlock that the Convention was meant to preclude. And, thirdly, in the neo-Mahanian age, maritime geography, rather than military power, is seen by some as a decisive criterion for determining who owns what bit of sea. A combination of these three conditions underscores the China-Japan conflict over the massive oil-gas deposits in the East China Sea. I go on to assess the conflict’s implications for the Liberal Theory of Peace that inspired the post-WWII global economic order, built on the premise that if world markets are freely open, then nations have no reason to go to war for the resources obtainable from the free market, at much lower costs. I discuss that the kind of “resource war” gripping China and Japan in the oil-rich East China Sea today, quite typical of an age of resource scarcity, had not been foreseen by the proponents of the theory, thus calling for its updating and moderation. (256 words)

I.. Sea and Sea Power

The sea has since traditional times held the fascination of humans. It has long been a highway for commerce and war as well as a provider of food and other resources. For obvious reasons, the sea traditionally commanded more attention of the maritime states (e.g., Spain, Portugal, Britain, Greece, Japan, etc.) than nations with a landmass and a built-in agrarian economy to boot (such as China). Hence, the fight in history to gain supremacy of the sea was confined mainly to maritime powers. In international law as well as in international politics, the alternative doctrines of closed vs. open sea depended on who was the dominant maritime power of the day. Under bulls of Pope Alexander VI in 1493, Spain and Portugal —probably the world’s earliest modern naval powers — colluded to divide the oceans between themselves. Their claims, and the underlying doctrine of closed sea, went unchallenged for a century,¹ or as long as no other power could challenge them at sea.

Not until 1609 did Hugo Grotius publish his *Mare Librum* (open sea doctrine) in

justification of the Dutch resistance to the Spanish and Portuguese claims, maintaining that the sea could not be made the property of any state. The year 1609 happened to coincide with the dawn of a new era of the Netherlands' naval power (1609-1713), replacing the one dominated by the Spanish-Portuguese co-dominium.² Although John Selden replied in 1635 with the *Mare Clausum* (closed sea) doctrine, defending the ephemeral English position at the time, the world ever since Grotius came to embrace the doctrine of the freedom of the high seas. The reason is the irreversible proliferation of naval powers since then.³ Despite John Selden's espousal to the contrary, the British embraced the open-sea doctrine when they, after 1714, became the world's next dominant naval power.⁴ By the 19th century, a legion of European powers had naval and merchant marine vessels regularly plying the oceans, which came to receive increasing worldwide attention.

From observing the scramble by European nations for maritime power in the 19th century, Alfred Thayer Mahan, the American historian of British strategy, became the most fervent advocate of sea power as *the* path to national greatness. Although bounded on three sides by oceans (the Arctic, Pacific, and Atlantic), however, the United States always lived in insularity as a continental power until the mid-Twentieth Century. It then learned to strive for a world-class naval power in control of the seas after 1946, when it succeeded to world leadership after Britain's retreat. The subsequent Cold War conflict and the NATO land-force amassment, pitted against the Soviet heartland power, may have masked the prominence of the maritime-power component of America's total military might. After the end of the Cold War and the collapse of Soviet power, the United States finds itself with the world's largest navy. Surface combatants of its two super fleets (Atlantic, Pacific) are further divided into smaller fleets assigned to cover the Indian Ocean, the Persian Gulf, the Red Sea, and the Mediterranean as well as the Western Pacific. They are joined by 72 submarines, 12 aircraft carriers (including 9 nuclear-powered), 22 cruisers, 55 destroyers, 35 frigates, etc., etc.⁵

But, the irony is that after the Cold War and into the twenty-first century, which is sometimes dubbed the age of sea power, naval power is not sea power per se, as we will see below.

II. Sea Power and Naval Power

In the Twenty-First Century.

A number of points need be clarified regarding sea power in the new century. First, the rise of geoeconomics means that the economic uses of the sea far eclipse its military use. The whole subject of sea power is thus more complex than it once seemed in the age of Mahan. As Eric Grove perceptively notes,⁶ the states that possess the most powerful navies (hence, naval power) do not possess the world's largest merchant fleet, in the emergent age of sea power. The United States, the most powerful naval power, was by the end of 1986 outflanked in merchant shipping by Liberia, Panama, Japan, and Greece.⁷ Neither Liberia nor Panama-- together accounting for 26.6 percent of the world's total deadweight tonnage of merchant ships-- has a navy, only a few patrol boats. The world's

No. 3, Japan, however, is an exception in this group. With almost 9 per cent of the world's tonnage (56 million deadweight tons) of merchant ships, Japan has an "ocean going navy."⁸ By comparison, the United States is only third in merchant ship ownership, behind Japan and Greece, despite its most powerful navy.

Second, with the enclosure of 200 nautical miles of exclusive economic zone (EEZ) beyond a coastal state's 12-mile territorial sea, as authorized by the Third Law of the Sea Convention of 1982, the high seas have shrunk to only about 64% of the world's total sea area. What Mahan called a "wide commons" is increasingly fenced. All this change prompted Geoffrey Till to remark that *maritime geography*, rather than military power, is seen as the main criterion for deciding who owns what bit of sea.⁹

Third, with the increasing importance of seaborne trade, protection of commercial shipping is, potentially, just as important as in the days of the sail.¹⁰ But, a return of the "convoy system" (the direct escort of ships by warships), harking back to the Mahanian age of naval power, is not in the cards. Those who rely on naval power to control the seas in order to assure the safety of the sea lanes may opt to rely more on submarines and, by extension, on the power of submarine-launched ballistic missiles (SLBMs). The latter, incidentally, has another strategic importance in the event of an acute naval-power contest in that it can thwart the security guaranteed by theater missile defense (TMD) and national missile defense (NMD). To the extent that both TMD and NMD are poised against frontal nuclear attacks, SLBMs are a cheap counter-force that can exploit the enemy's vulnerable flanks. Not surprisingly, both the United States and Japan, with a superior naval power and a joint program to develop a common TMD system in East Asia, have reasons to fear China's strategy of developing a strong submarine force armed with SLBMs.¹¹ This is why the episode of a brief entry, allegedly "by [navigational] mistake," of a Chinese Han Class submarine into Japanese territorial waters, in November 2004, became such an alarming event for Japan.¹²

Fourth, in the age of increasing resource scarcity, the potential for an armed conflict increases when known (or even suspected) seabed resources are at stake, such as in the East China Sea and the South China Sea as well.¹³ Given these circumstances, it becomes instinctive for states to possess a Mahanian kind of naval supremacy, at least over one's territorial sea and EEZs, in order to secure their national interests. When sea routes are absolutely essential for access to vital resources (such as oil) from far-away sources, a strategy that can be used against an opponent state is "sea denial," a throw-back to the *guerre de course* of traditional times.¹⁴ This is why the Chinese are especially jittery about a presumed threat of sea denial posed by Japan to their access to the sea. China has a coastline 18,000 kilometers (10,800 miles) in length, but its exits to the sea run into the exclusive economic zones (EEZs) of neighboring states, including the two Koreas and Japan. The latter is a geographic "opposite" state whose long coastline, interrupted by gaps, linking the islands of Japan proper with the Ryukyus (Okinawa), is parallel to the Chinese coastline. The maritime territory claimed by Japan, which in the Chinese view far exceeds what is allowed under the law of the sea (see below), obstructs

the Chinese access to the seabed oil/gas resources over which China has sovereign rights under the same law. Because Japan claims its EEZ extends to the disputed Diaoyutai, which is under 200 nautical miles from the Chinese coastline and is claimed by China, its sea-denial threat actually extends into China's maritime territory. The only open entry left for mainland China to the high seas is through the Taiwan Strait. Even there, it has to be careful not to trespass into the other half of the Strait shared with Taiwan, as the latter remains outside PRC jurisdiction and claims a separate identity, with the support of Japan and the United States.

China's stakes in keeping the sea open are evidenced in its heavy dependence on seaborne trade, as 50 per cent of the country's GDP is from foreign trade and 70 per cent of its oil supplies is imported. An estimated 60 per cent of the ships that sail through the busy, strategic Strait of Malacca, linking the South China Sea and the Indian Ocean, are en route to and from China, mostly carrying oil from the Middle East.¹⁵ By necessity, the Chinese have been carefully building up sea lanes from the South China Sea to the Middle East, to protect their energy interests.¹⁶ Part of the reasons why they place so much emphasis on sea lanes through the South China Sea is, presumably, to avoid direct confrontation with the Japanese presence in the East China Sea, as already noted.

Fifth, owing to the facts of geography, the oceans cover three quarters of the earth. And, 87 per cent of the world's oil reserves are in the seabed. Thus, as we shall see below, the East China Sea, especially in the Xihu Trough area, is the last remaining richest unexploited repository of oil and natural gas. As such, it is the hot seat of contest between China and Japan. The two neighboring states are among the world's topmost importers of primary energy. The rich wealth of oil/gas resources on the seabed of the East China Sea is, therefore, like a dragnet of conflict, further exacerbated by the latent competition for sea power dominance in the region. Although maritime geography and the law of the sea seem to be on the Chinese side, Japan is not likely to budge from its present position, considering that the 1982 Law of the Sea Convention is subject to different interpretations in accordance with two cardinal principles for maritime delimitation, as we shall discuss below. Whether or not the final resolution will be decided by naval power depends on the success or failure of diplomacy, and ultimately on whether rationality will triumph over base instinct that has marred Sino-Japanese relations since traditional times (since the 16th century).

III. The Duel over East China Seabed Oil & Gas Resources

Two Applicable, but Potentially Conflicting

Principles of Maritime Delimitation

The East China Sea Basin is vast, but its exact scope varies with different estimates. Western sources usually agree on a total of about 300,000 square kilometers (or roughly 162,000 square nautical miles).¹⁷ But according to a Chinese source, it covers a total area of 770,000 square kilometers (or 415,766 square nautical miles).¹⁸ It is shallow, with water depths of less than 200 meters except in the Okinawa Trough

along the Japanese coast. The seabed slopes gently from the Chinese coast until it drops abruptly into the Okinawa Trough (which the Chinese call Sino-Ryukyu Trough) whose depth reaches nearly 2,300 meters at its deepest. China holds that the Okinawa Trough, which does not follow the Japanese coast closely, proves that the continental shelves of China and Japan are not connected, and that the Trough serves as the boundary between them.¹⁹ Japanese demurrer notwithstanding, the Chinese position seems to find support in the International Court of Justice's (ICJ) ruling in the Case Concerning the Continental Shelf (Libya vs. Malta). "If there exists a fundamental discontinuity between the [continental] shelf area adjacent to one Party and the [continental] shelf area adjacent to the other," the Court said, "the boundary should lie along the general line of the *fundamental discontinuity*" (emphasis added; ICJ Judgment of 3 June 1985).

According to the LOS Convention, one of the two applicable principles for delimiting maritime boundaries, or determining who owns what part of this expanse of the sea, and hence its seabed resources, is to follow the natural prolongation of the continental shelf. Article 76(1) defines a coastal state's continental shelf as comprising "the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured..." (emphasis added). In a subsequent paragraph, however, the same article (Art. 76(6)) provides that "...on submarine ridges, the outer limit of the continental shelf shall not exceed 350 nautical miles from the baselines from which the breadth of the territorial sea is measured" (emphasis added). China adheres to this principle of the natural prolongation of land territory, holding that "[t]he East China Sea continental shelf is the natural extension of the Chinese continental territory. The People's Republic of China (PRC) has inviolable sovereignty over the Chinese continental shelf."²⁰ Thus, as one writer points out,²¹ the Chinese continental-shelf claim extends all the way to the axis of the Okinawa Trough (about 350 nautical miles from the China coast), enclosing essentially all of the petroleum potential in the East China Sea.

The other equally applicable principle enshrined in the LOS Convention for delimiting maritime boundaries, such as in the East China Sea under contention, is by reference to the coastal states' respective exclusive economic zones (EEZ). Article 57 of the Convention defines a coastal state's EEZ as not extending beyond 200 nautical miles from the straight baselines from which the breadth of the territorial sea is measured. Japan and China are two states with opposite coasts, but the body of waters between them is less than 400 nautical miles in total. The width varies from 180 nautical miles at the narrowest points to 360 nautical miles at the widest. It is 1,300 kilometers (or 702 nautical miles) in length from north to south.²²

Thus the two EEZs present a serious overlap problem. Theoretically, a solution is provided in Art. 74(1): "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 equitable solution” (emphasis added). I should add that Art. 74(1) does not just make a reference to international law, but specifically mentions “international law, as referred to in Article 38 of the Statute of International Court of Justice.” For the layperson, let me explain that Art. 38 of the ICJ Statute declares that international law does not merely consist of treaty law, but equally derives from custom and “general principles of law of civilized nations,” plus teachings of publicists and judicial decisions, as subsidiary sources of international law. The specific wording in Art. 74(1) of the LOS Convention, therefore, is so chosen as to drive home that in arriving at a mutual agreement regarding delimitation of their EEZ boundaries, the opposite states should take a wider consideration of all facts and norms within the context of general international law, thus defined, which is larger than the law of the sea per se.

In the absence of a mutual agreement, the Japanese unilaterally drew a “median line,” which is rejected by China on the ground that it is skewed in favor of Japan. The line not only veers into the Chinese side of what an “equitable” line would be by connecting the middle points between the two shores, but also meanders to the west to enclose the disputed Diaoyutai (or Senkaku in Japanese) islands on the Japanese side of the line. Japan considers all waters east of this unilaterally drawn “median line” to be Japanese territory. The Chinese would draw the line quite differently; and it would run in the middle course between the western coastline of the Ryukyus (Okinawa) and the eastern coastline of Taiwan, which Beijing considers to be part of China. A line thus drawn, even without the Taiwan part, would have Diaoyutai (Senkaku) in the Chinese EEZ, instead.

Japan declared its EEZ in 1996, and China in 1998, in accordance with the LOS Convention. Despite the absence of a mutually agreed middle line, the Chinese began explorations in the 1980s with a view to developing natural gas in the Xihu Trough, a region slightly under 200 nautical miles in a bee line from the nearest point of the China coast baseline, or 215 nautical miles (or 398 kilometers) diagonally to the coastal city of Ningbo, to the northwest. The area is about two-thirds the size of Taiwan and is endowed with natural gas deposits estimated at 300 billion cubic feet. The Chinese grand plan was to build seven oil and natural-gas fields, including the Pinghu, Canxue, Duanqiao, Tianwaitian, and Chunxiao sites, covering an area of 22,000 square kilometers (roughly 11,879 square nautical miles). Among them, Pinghu began operation as early as 1998, with its natural-gas product transported to Shanghai via undersea pipelines.²³ Pinghu is 45 miles on the Chinese side of the “median line” drawn by the Japanese.

In response to an inquiry, the Oceanic Strategy Institute, of the National Oceanic Bureau, in Beijing, brushed aside concerns about the precise distance of the Xihu Trough from the nearest point of the China coast baseline. The reason given was that, from Beijing’s point of view, the whole area is within Chinese maritime territory because it is within the natural prolongation of the Chinese continental shelf. I disagree with this nonchalance, because it matters a great deal whether the Xihu Trough is or is not under 200 nautical miles from the nearest point of the China coast baseline. If it is, then even

unequivocally within the Chinese EEZ, thus depriving Japan of any basis for challenging the Chinese claim. Within its own EEZ, according to Article 56 of the LOS Convention, China has “sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources . . . , of the waters superjacent to the seabed and of the seabed and its subsoil”

Work to develop the Chunxiao oil/gas field began in August 2003. The Chinese Offshore Oil Corporation (Cnooc) and the Chinese Petroleum Corporation (Sinopec) entered into a joint venture agreement in 2003 with Unocal (the eighth largest American oil company)²⁴ and Royal Dutch/Shell for oil development. Although these foreign companies suddenly withdrew in 2004 under mysterious circumstances, the Chinese went ahead with drilling on their own, beginning in early 2005.²⁵

Much (rough 80%) of the Xihu Trough is on the Chinese side of the Japanese-drawn “median line.” The Chunxiao oil/gas field, perhaps the flag ship in the group of seven under development, is 150 nautical miles from the nearest point of the Chinese coast, about 188 nautical miles (348 kilometers) southeast of Ningbo, and 5 kilometers (or 3.1 miles) west of the Japanese median line. Hence, it properly falls within the Chinese EEZ even by the Japanese measure.²⁶

If the choice of the Chunxiao site is an example of Chinese self-restraint, staying clear of the controversial “median line,” reciprocal self-restraint shown on the Japanese side was Tokyo’s ban on exploration by Japanese companies in the East China Sea. But, the ban was lifted in April 2005, when the Japanese government formally announced it was ready to receive applications from Japanese companies for license to develop oil and natural gas in the East China Sea.²⁷ A Japanese newspaper report said that Japanese Exploration Co. and Teikoku Oil Co. had been seeking approval to explore oil/gas in an area some 450 kilometers (243 nautical miles) west of Japanese southern Okinawa island, or at least 43 nautical miles beyond Japan’s EEZ,²⁸ and into China’s maritime territory. After Tokyo lifted the ban, approval was promptly granted to Teikoku on July 14, 2005, much sooner than expected.²⁹ One wonders about the consequences that will ensue once the Japanese firms begin to drill 43 nautical miles into the Chinese EEZ.

Already, the Chinese Foreign Ministry lodged a strong protest to the Japanese government for infringing upon China’s sovereign rights.³⁰ Moreover, the Chinese naval and air force units were put on alert against any encroachment by Japanese oil companies on Chinese sovereign rights.³¹ But, in both these instances, as before, the Chinese warnings were vague, as they merely repeated that China did not recognize the Japanese “median line,” but did not specify where an equitable line was or should be. Nor did they define what would amount to an infringement of Chinese sovereign rights, in terms of longitudinal and latitudinal coordinates.

The decision by the Japanese government to reverse the ban on exploration by Japanese oil companies in the East China Sea probably reflected an official unease fueled by reports that the Chinese Chunxiao mining field construction was nearing completion

cubic meters of natural gas annually to the Greater Shanghai area via undersea pipelines.³² The Japanese unease was explained in graphic, highly imaginative terms by Japan's trade minister, Shoichi Nakagawa. Confronting a Chinese negotiator face to face, Nakagawa dramatically dropped two straws in a glass of orange juice and, foregoing customary Japanese politeness, complained that China was about to "suck out Japan's resources with a straw." A recent seismic ship survey, he said, found that the two deposits under development by China, presumably including Chunxiao, "extend into Japanese economic waters."³³

Regardless of its validity, one thing is certain: the "sucking straw" problem flaunted by Nakagawa finds no solution in the law of the sea as codified in the voluminous 1982 Convention, which contains 320 Articles in 17 Parts, plus 9 Annexes. No wonder, as Jeffrey Kingston, an American scholar in Japan (quoted in the same *New York Times* report), put it, "[t]he exclusive economic zone is a microcosm of the Sino-Japanese rift," implying that much of it does not lend itself to legal solution or even rational reasoning. No wonder China's offer for joint development with Japan, shelving the sovereignty dispute, was promptly rejected by Tokyo. Likewise, Japan's demand for Chinese survey data regarding their East China Sea explorations and development were also rebuffed by Beijing.

Another equally intractable problem is the sovereignty issue over the disputed Diaoyutai/Senkaku islands, which defies any solution by reference to the law of the sea, but which has tremendous implications for the sea power duel, as we will note below.

Irredentism and Sea Power: Historical Rights, the Law, and Effective Control

Under this rubric, we are lumping together a number of issues, including the question of title to the Diaoyutai/Senkaku islands, the controversy over Okinotorishima, and the Taiwan factor in the delimitation of China mainland's exclusive economic zone. These issues share something in common, which is an implicit Sino-Japanese contest for control of the East China sea and its seabed resources of oil and natural gas.

< > The Diaoyutai/Senkaku issue. Much ink, and much mouth water (!), has been spent on who owns this patch of five uninhabited islands and three barren rocks, located at approximately 120 nautical miles northeast of Taiwan, under 200 nautical miles from the China mainland coast, and a little over 200 nautical miles southwest of Okinawa. The dispute between China and Japan over this island group has most often been cast in political and historical veins. Some have invoked international law. The easiest and most sensible way to approach it, as one source suggests, is to see the Diaoyutai as China's irrendenta, an area that historically belonged to China but is currently under Japanese control.³⁴ As is demonstrated in the periodic and widespread demonstrations by Chinese the world over in support of China's claim to Diaoyutai, there is a powerful current of irrendentism concerning this island group among the Chinese both in and outside the

China proper. To find an answer as to which country, China or Japan, has a superior claim to the island group, scholars and officials have invoked history and summoned legal arguments in what often are marathon but inconclusive debates.

Nor are the views monolithic in either camp. Respectable Japanese historians, such as Professor Kiyoshi Inoue (1972) of Kyoto University and Professor Murata Tadayoshi (2004) of Yokohama University, for example, citing years of research, offered drastically different, dissenting views from the Japanese government, and supported China's claim to the Senkaku. In Taiwan, however, former President Lee Teng-hui openly echoed the Japanese government's position that Diaoyutai belongs to Japan, to the dismay of many in Taiwan and on the China mainland. After stepping down from office in 2000, Lee publicly admitted that during his Presidency he had ordered Taiwan's navy not to intervene when elements from the Japanese Right built a nearby light tower and planted Japanese flags on Diaoyutai to assert Japanese sovereignty. Nor to offer help to private Chinese nationalists from Hong Kong, Taiwan, or mainland China who were forcibly driven off by Japanese naval vessels, to thwart their attempts to land on the islands in a counter-move to assert Chinese sovereignty.

From the standpoint of international law, the Sino-Japanese dispute really boils down to which country has the superior claim to title over the islands. The question has to be answered from both the standpoints of history and the law. The best documentation on the two nations' competitive claim based on history, to my knowledge, is provided by the two Japanese historians mentioned above. Prof. Inoue, for his part, compiled tons of evidence to show that (a) Diaoyutai (Senkaku) was not part of the Ryukyus, a Chinese protectorate before 1895 until Japan annexed it; (b) Diaoyutai was detached from Japan at the end of World War II as a U.S. occupied territory, used primarily as a shooting ground, until 1972, when it was returned to Japan; (c) It was part of Taiwan under the Manchu Dynasty of China until 1895; even the Ryukyuans recognized this fact; and (d) The earliest record of Chinese presence in Diaoyutai dated from 1532, or 363 years before Japan came upon the island, calling it Senkaku. Agreeing with Inoue, Prof. Murata went back even earlier, and found that Diaoyuta was included in the Chinese defense networks against the encroachments of Japanese pirates that frequented southern Chinese coasts in the Ming Dynasty (1368-1644).

The official Japanese position is that the Senkaku islands were returned as part of Okinawa (previously Ryukyu) in 1972 by the United States. If so, Japan would have to prove beyond reasonable doubt that the United States had sovereign title to Diaoyutai before turning it over to Japan. It is plain that Japan could not have gotten something that the United States did not have in the first place. This reasoning was inherent in the decision of the classic *Island of Palmas* case (U.S. v. Netherlands, 1928), in which the Permanent Court of Arbitration rejected a U.S. argument that it had inherited sovereignty over Palmas Island from Spain after the Spanish American War. After reviewing the long history of contention between Spain and the Netherlands, the Court ruled that the latter's claim to title to Palmas Island was superior, with the result that Spain never had acquired

valid sovereign title; and hence the United States could not possibly have inherited something that the Spanish never had (2 U.N. International Arbitral Awards 829). According to one authoritative source,³⁵ the U.S. government in answering inquiries from a Chinese-American civic group categorically stated that the United States had only exercised “administrative rights,” not “sovereign rights,” over Diaoyutai between 1951 and 1972, when it was turned over to Japan. Furthermore, in order to establish that Diaoyutai was “returned” to Japan (by the United States) as part of Okinawa, Japan would have to produce convincing evidence that it was part of Ryukyus (today’s Okinawa) in history, which it was not.

It is not my intention to rehash the debates or try to offer a more definitive answer here. I would like, however, to point out one crucial, but rarely articulated, consequence (for their respective maritime boundaries) that would ensue from a change in the answer to the question of who between the two claimants ultimately wields title to the Diaoyutai/Senkaku islands.

Sovereignty over Diaoyutai, if granted to China, would arguably³⁶ enable the Chinese to claim sovereign rights over the continental shelf plus the exclusive economic zone to the north and east of the islands. This would give China exclusive economic rights to the whole southern portion of the East China Sea (i.e., south of the 30th parallel), which would include the Xihu Trough in its entirety, not just the 80% of it, as noted earlier. In contrast, however, seen from the Japanese side, the Senkaku islands under Japanese sovereignty would likewise entitle Japan to an exclusive economic zone that would extend the country’s sovereign rights 200 nautical miles to the north and west, substantially encroaching on China’s continental shelf.³⁷ Keeping this in mind, we would have no difficulty coming to grips with the real but hidden reason why each side is so uptight in its own claim and why the dispute is extremely unlikely to be resolved by rational reasoning on the merits of the case.

Many studies of the Diaoyutai/Senkaku question were focused on the oil reserves in the region. But, like the Loch Ness monster that is so much heard about but rarely seen, the oil potentials of these uninhabited islands are really a red-herring, compared with what a change in the ownership of the islands could do in altering the boundaries of each side’s maritime territory. This point opens our eyes to a similar question, regarding the relevance of the Japanese claim to a few rocks, known as Okinotorishima, lying some 1,740 kilometers (940 nautical miles) southeast of Tokyo into the Pacific Ocean, to which we shall now turn.

< > Okinotorishima. Despite the vast distance (1,730 kilometers or 940 nautical miles from Tokyo in the Pacific Ocean) and the seeming insignificance of this group of uninhabited rocks that are submerged under water during high tides, Japan claims that the islet is its southernmost island, falling under the direct jurisdiction of the Tokyo prefecture. In doing so, Japan raises the possibility that the islet confers fishing and other economic rights in a surrounding exclusive economic zone. According to Article 121 (2)

economic life of their own shall have no exclusive economic zone or continental shelf.”

Unlike the case of Diaoyutai/Senkaku, which has potable water and tillable soil and, as records show, had at one time sustained human habitation and economic activity during Manchu China (in the 19th century), Okinotorishima is a patch of barren rocks that does not qualify for having its own EEZ or continental shelf. It is not clear, though, whether the rocks can claim to have a territorial sea. Nonetheless, the Tokyo Metropolitan Government has already decided to invest 500 million yen (US\$4.65 million) to subsidize fishing near the islet and has plans to set up an electric power plant. Japan’s central government is also stepping up measures to strengthen the nation’s claims, saying it plans to install a signpost and a heliport and to upgrade radar equipment there. While the islet is not known to have any rich resources, Tokyo Governor Ishihara Shintaro, following a recent visit to Okinotorishima, revealed the ulterior motive regarding Japan’s strategic stakes in stretching the law of the sea. The island, said the nationalistic Governor, “stands between Guam – America’s strategic base – the Taiwan Strait, China, and areas near Japan where there may be conflict in the future.”³⁸ Ishihara said China was more likely to have more submarines active in the region than the United States in the coming years. “Wouldn’t it be interesting if a Chinese submarine appeared,” joked Ishihara, who is openly known for his anti-China rhetoric.

But, Ishihara’s joke was no joke. Until he raised the hypothetical question, one could not but wonder what difference it would make whether Okinotorishima was a rock or an island. But his revelation of Japanese worries about the possible intrusion of Chinese submarines in this remote area reveals a shielded motive, that of hopefully creating an otherwise non-existent Japanese exclusive economic zone surrounding a fictitious island, in order to keep off Chinese influence.

China, for its part, does not challenge Japan’s sovereignty over Okinotorishima, but says it is a rock, not an island, which means that under the modern law of the sea it is not entitled to an EEZ surrounding it. The contrasting positions of both governments on this islet sheds light on how nations may choose to follow or flout (even torture) international law to suit their own needs. The lesson seems to confirm what is likewise happening in another area, in the Sino-Japanese dispute over the East China Sea oil and natural gas resources, as noted above.

< > The Taiwan factor in the delimitation of maritime boundaries in the East China Sea. Strictly speaking, Taiwan does not enter into the Sino-Japanese territorial dispute in the East China Sea. But, the discrete existence of Taiwan as a political entity beyond China mainland’s effective control does complicate, even substantially vitiate, the latter’s maritime territorial claims. For instance, there is a de facto “middle line” separating the two sides of the Taiwan Strait. And, Taiwan is ever vigilant against oil

explorations by mainland China in the Strait.³⁹ In observing this de facto division, mainland China’s claim of an exclusive economic zone seaward from the south China

relevant to this discussion is its implication for China's claim to Diaoyutai/Senkaku. In terms of geography, as noted above, Diaoyutai is a shorter distance from Taiwan (120 nautical miles) than from the China mainland (200 nautical miles). In terms of domestic jurisdiction, Diaoyutai is administratively part of Yilan county of Taiwan. Most important of all, Diaoyutai is within Taiwan's 200-nautical-mile exclusive economic zone. If Beijing's effective rule extended (as it does not) to Taiwan, then Diaoyutai would be within the PRC's EEZ. Not only that, the PRC's EEZ would move over 100 nautical miles further east, extending 200 nautical miles from Taiwan's eastern coast seaward toward the direction of Okinawa. The result would further weaken the legitimacy of the Japanese-drawn "median line" and push an "equitable" middle line further toward the Japanese side. The PRC's claim to the entire Xihu Trough would be decidedly strengthened, thus eliminating any Japanese claim to any part of the seabed resources in the Xihu Trough. There would be no "sucking straw" problem for the Japanese to speak of.

This is no wishful thinking. It shows how the legal mind turns (or should turn) in approaching a topic as complicated as the East China Sea dispute. The political mind would turn differently. For those with their political mind turning, the China-Japan rivalry in the East China Sea already augured ill for regional peace, and beyond. "The rivalry . . . is only likely to get worse and this could undermine Northeast Asian peace and stability as well as U.S. interests," predicted Peter Brookes, a former senior defense official in President George W. Bush's administration, who now directs the Asian studies center at the Heritage Foundation. Similar concerns were aired by Edward Lincoln, an East Asian expert at the Council on Foreign Relations, who saw U.S. strategic implications at stake if the conflict between the two Asian giants should deteriorate or even continue at its present level of hostility.⁴⁰ Noting the Bush government has worked to improve the tone of official U.S. relations with China, Dan Blumenthal, another former official, noted that its real relationship building has been focused on Japan. "A stronger alliance with Japan clearly benefits the United States in its long-term competition for influence with China," added Blumenthal, a former senior director for China, Taiwan, and Mongolia at the U.S. Defense Secretary's office.⁴¹ As if acting on cue, Japan seemed to be endeavoring to draw Taiwan into the equation of the security of Northeast Asia, with the apparent intent to drawing the United States into a common cause with Japan, which would steel the latter's spine in dealing with the Chinese. With this point in mind, one suddenly solved the myth why at a press conference following a meeting in Washington on February 29, 2005, Japanese Foreign Minister Nobutaka Machimura was so anxious in a solo articulation of an alleged consensus that would include Taiwan into the U.S.-Japan joint defense perimeter. By contrast, however, the official joint statement, issued at the end of the joint conference involving U.S. Secretaries of State and Defense

and their Japanese counterparts, did not substantiate the point made by Machimura. In the

unnamed parties that the Taiwan issue be resolved peacefully “through dialogue.”⁴²

Besides, another complicating feature in the Taiwan factor is that Taiwan (whose official name is Republic of China, or ROC) is not a party to the LOS Convention. This was the result of the ROC’s expulsion⁴³ from the United Nations in 1972, under G.A. Resolution 2758, when the PRC took over its seat in the U.N. Hence, it was precluded from all United Nations activities ever since, including the negotiations leading toward the conclusion of the LOS Convention. The punch line is: Is Taiwan bound by the LOS Convention? This is not just a tantalizing academic question. Its practical implication is: What law, if not the LOS Convention, should govern the maritime boundaries between Taiwan and Japan, such as over Diaoyutai/Senkaku. Although Taiwan (under the name of ROC) is a party to the 1958 Convention on the Continental Shelf, that Convention is not as comprehensive as the 1982 LOS Convention. For instance, it has nothing to say on issues like territorial sea and EEZ. By the same token, what law should govern the maritime boundaries between Taiwan and mainland China (other than ad hoc bilateral agreements or understandings as a “domestic” matter). Furthermore, as Beijing considers Taiwan a renegade province of China, is international law relevant in the event of maritime territorial bickerings between them? In any event, the mainland-Taiwan rivalry further complicates the PRC-Japan boundary disputes in the East China Sea, only making solutions more difficult.

Prospects for a Resolution of the Dispute?

As seen above, the stakes are high, the issues in contention are very much entangled, and the positions of the parties are widely apart and hopelessly entrenched. Under the circumstances, what are the chances of a peaceful resolution of the dispute? As member states of the United Nations, China and Japan are required to settle all their disputes by peaceful means under Art. 2(3) of the U.N. Charter. Likewise, Art.279 of the LOS Convention requires that all states parties to the Convention settle their disputes concerning the interpretation or application of the Convention by peaceful means. The same article makes a reference to the means of peaceful settlement suggested in Art. 33(1) of the U.N. Charter, which include negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, etc. Furthermore, under Art. 280, the parties may settle their disputes by “any peaceful means” they may choose. The modern history of peaceful settlement of disputes, since the Hague Conferences of 1898 and 1907, seems to suggest that direct negotiation is the most preferred mode chosen by states seeking a peaceful settlement of their disputes. The usual reason is that states feel they have more control of the situation on hand, when engaged in direct negotiation.

China and Japan, in their quarrels on how the law of the sea should be applied to the delimitation of their maritime boundaries in the East China Sea, south of the 30th parallel, are reasonably expected to prefer direct negotiations. However, a preliminary review of

above, seems to suggest many insurmountable obstacles. For example, as noted before, the first obstacle to overcome is to reconcile the two equally applicable principles enshrined in the LOS convention for delimiting maritime boundaries: the natural prolongation of the continental shelf and the extent of the exclusive economic zone. The geomorphology of the East China Sea region in contention is unique in that it encompasses two opposite states one of which is a continental mainland, the other being an island chain cut off by a number of water gaps. While China, following the natural-prolongation principle, can claim that its continental shelf continues through the 200-meter isobath all the way to the Sino-Ryukyu Trough (Okinawa Trough), where the gentle slope of the shelf drops to 2,300 meters deep, it is not clear how Japan can claim the Okinawa Trough as a natural prolongation of its coast. In other words, there is no compatibility between the two opposite coasts.

Japan may invoke the equidistance principle in order to establish a “median line” to divide up the continental shelf, as is often done by states with continental shelves opposite or adjacent to each other. A median line is a line every point of which is equidistant from the nearest points of the respective baseline from which the breadth of the territorial sea is measured on either side. A meticulous analyst, Ma Ying-jeou (1982), made a detailed survey of similar cases in the world and found that in order for the equidistance principle to apply, two physical circumstances must be present, namely: comparable coastal configurations and broad equality of coasts. In the absence of either (for instance, the length of China’s coast relative to Japan’s approximates a 64:36 ratio), he finds that the claim to equidistance “is not supported by either international law as intimated [sic] by international tribunals, state practice, or the changing norms of the law of the sea” (p. 193). More explicitly, Ma (p. 165) observed: the “sharply incomparable coast lengths of the Chinese mainland and Taiwan and the scattered Ryukyu Islands render a strict median-line solution *prima facie* inequitable.”

As to the usefulness of the EEZ principle as a guide for delimitation, the difficulty arises from the very fact that the expanse of the sea between the China coast and that of Okinawa, is under 400 nautical miles. The overlap problem is not something that can be negotiated away unless both sides can agree to accept an EEZ less than 200 nautical miles. Even if this abridged width of the EEZ is agreed to by both sides, the remaining unsettled state of ownership of Diaoyutai/Senkaku leaves open the question of what exact base points are to be used for the drawing up of each side’s EEZ, covering the area between Okinawa on the one side and Taiwan and China mainland on the other.

This list of the obstacles to an agreement can go on, but I hope it is enough to illustrate that voluntary direct negotiations may not be such an easy path to a settlement as it might seem. The intermediate option to suspend without prejudice each side’s claims in favor of joint development in the interim is a non-starter, either, because of Japanese rejection of the idea. Any settlement of the dispute would have to depend on, and begin with, the prior resolution of the disputants’ conflicting territorial claims.

Short of a negotiated agreement, however, a natural alternative would be for China

Art. 287 of the LOS Convention. These procedures entail submission of their dispute to any of the following: (a) the International Tribunal for the Law of the Sea, established in accordance with Annex VI of the Convention; (b) the International Court of Justice (ICJ); (c) an arbitral tribunal constituted in accordance with Annex VII; or (d) a special arbitral tribunal constituted in accordance with Annex VIII for one or more of the categories of disputes specified therein.

A lot can be said about resort to these third-party procedures. In the first place, proceedings before a third-party panel will be conducted in conditions of strict equality and impartiality, obviating the confrontational atmosphere that often plagues direct negotiations. Second, deliberations involving scientific and technical matters on a third-party panel-- be it an arbitral tribunal or the ICJ—can be aided by experts who are selected in consultation with the disputant parties but who participate without vote, but with a degree of impartiality not normally associated with national experts of the disputant states. Third, a third-party panel is not laden with partisan interests and is therefore in a position to interpret or apply the appropriate law purely on the basis of merit, without regard to any preconceived notions or ends. Hence, it speaks with a voice of authority carrying the weight of impartiality as no partisan can. Under the circumstances, even if a party should lose and end up with an unfavorable arbitral award or judicial decision, it would not look so bad before the constituency at home, in comparison with a defeat at the negotiation table. Full compliance with the terms of the unfavorable award or decision would even make the losing party look great in the eyes of the world not as a loser, but as a law-abiding nation.

By comparison, therefore, third-party procedures such as arbitration or judicial settlement may in reality be more fruitful than direct negotiations, if the disputants truly desire an equitable settlement. Needless to say, either alternative would be better than grand-standing or name-calling that has thus far dogged the running dispute between China and Japan.

Concluding Remarks

By way of closing, I wish to make two points. The first concerns the justiciability of international disputes. In international law, justiciability refers to the susceptibility of a dispute to peaceful settlement by legal means. As Sir Hirsh Lauterpacht (1933: 19-20) points out, the non-justiciability of international disputes is rarely due to a lacuna in international law. Even assuming there is a lack of appropriate norms directly relevant to the dispute on hand, he adds, the disputant parties are always free to submit their dispute to some tribunal to be decided *ex aequo et bono* (i.e., by equity and good sense). The China-Japan dispute over the East China Sea oil/gas rights offers another confirmation of this point, for both parties obviously lack the political will to agree to seek an arbitral or judicial settlement. The failure is not due to a lacuna of appropriate norms in international law. Even the “sucking straw” question raised by Shoichi Nakagawa, the Japanese Trade

when there is no appropriate norm in general international law or in treaty law (e.g., the LOS Convention) that addresses the question, as I noted above. And, the conflict between the two principles of maritime delimitation – i.e., the natural prolongation of continental shelf, and the EEZ – is likewise justiciable if the parties agree to submit their dispute to a third-party mode of settlement. The implicit duel on the sea-power front, which further complicates the issue, will prevent the dispute from any easy settlement, negotiated or judicial, however.

My second point concerns a disturbing challenge posed by the dispute to theory of international relations. Let me explain: In an attempt to avoid repeating the same mistakes committed by the victor powers following the First World War, the victor nations led by the United States at the end of World War II willfully built a new international economic order (principally the Bretton Woods system and the GATT) that was conceived in a liberal economic theory of peace. The theory consists of two arguments, namely: (a) that free trade substantially reduces the number of targets to which force might be applied in the pursuit of state interests (cf. Knorr 1973: 196; Keohane and Nye 1977: 28); and (b) that free trade increases the vulnerability of actors, because of their increased interdependence, making them disinclined to entertain the risks of resorting to force (Keohane and Nye 1977: 28-29; Tucker 1977: 174-175; and Gilpin 1976: 227).

Both arguments boil down to a belief in free trade -- hence a free, non-protectionist world market system -- because if values or natural resources can be freely exchanged or obtained from the international free market, nations have no reason to go to war to obtain the same at much higher costs. Besides, as an addendum to the theory, if the free world market contributes to the economic development of nations, then they become truly inter-dependent as a result, hence loathe to the use of force against each other. The theory, as such, has been borne out by developments in the international system in the decades since 1945, which other than the Cold War (and the proxy wars spawned in its shadow) has witnessed no major armed conflict between the world's major powers. In fact, since 1985, there have been no international wars, strictly speaking. All armed conflicts are the ones that took place within national boundaries, hence civil wars, including the so-called "non-international wars" fought by the components of the disintegrating Yugoslavia.

What we are witnessing in the conflict between China and Japan, in our study here, is a development that the liberal economic theory of peace purported to preclude. Both the Asian countries have benefited from the post-WWII free market system and both have attained spectacular economic success (development), as the theory foresaw. But, what was not foreseen was the aftermath of their success, creating an ever increasing, insatiable consumption system at home, including an ever-growing appetite for energy, which in turn led to their competitive bid for access to the nearby available natural energy resources, thus spawning a different kind of clash, a "resource war." The conflicting claims by China and Japan, each in its own way accommodating to the niceties of the law of the sea as regards maritime delimitation, cannot masquerade this very fact --that they

To reiterate, their dispute over the oil/gas rights in the East China Sea bespeaks of the two Asian countries' phenomenal economic success, owing to the free market system in place. But, the monster of success that the system has helped create cannot be contained by the system. This is an ironic commentary on the limits of the liberal economic theory of peace. That it is in need of renewal or moderation, to accommodate the offshoot "resource war" syndrome, is driven home by the unfolding of the Sino-Japanese conflict over the East China Sea resources.

The word "war" used in "resource war" here is not entirely figurative. Like the Cold War, the resource war has its hidden potential explosive side. If the disputant parties do not calibrate their moves and carefully maintain control of all actors, a hot war might be an unavoidable result. Thus far, the Chinese have confined their prospecting and exploitation activities on the Chinese side of the Japanese-drawn "median line," despite their rejection of the line as inequitable, as noted above. We have also noted, however, that in April 2005 the Japanese Government approved the license applications from two Japanese firms -- Japanese Exploration Co., and Teikoku Oil Co.—that wanted to dig for oil at least 43 nautical miles into the Chinese maritime territory. When their digging actually starts and breaches into the Chinese side of the Japanese "median line," and if Chinese PLA violent reaction is met by similarly violent, armed response by the Japanese SDF, then a hot war would ensue. On top of it, the likelihood of the present bickerings degenerating into a hot war, in the present case, is further enhanced by complications arising from strategic calculations by the parties to attain sea-power dominance in the emergent age of the sea.

In the final analysis, naval power and sea power, although separate and distinct by themselves, have a perverse way of converging in a resource war like the one involving China and Japan over the coveted seabed resources of oil. The ugliness of it is that the East China Sea conflict may be the harbinger for many a resource war yet to come, as 87% of the world's oil reserves are in the sea bed. A few possible sites of similar conflict come to mind. For example, the Timor Gap, between East Timor and Australia, is an area reputed to be one of the world's richest oil reserves. While East Timor was under Indonesian occupation in the 1990s, Australia signed a treaty with Indonesia for the bilateral division of the continental shelf in the Timor Gap, which allows Indonesia to appropriate (with Australia) the oil reserves of the Timorese indigenous people. Now that East Timor is independent, will the Timor Gap be the next site of a resource war, if the Timorese should assert their right against the Indonesian-Australian encroachments? Further away from the Asian region, the Caspian Sea is another example. Surrounded by Russia, Iran, and several of the former Soviet republics (but now independent), such as Khazakstan, Turkmenistan, Azerbaijan, and Armenia, the Caspian Sea is likewise known to have rich oil deposits in its seabed. Would it, too, be another site of a similar "resource war" such as the one unfolding between China and Japan? This fact confirms the unflinching rise of an age of sea power, punctuated by a neo-Manhanian return of naval power to be the final arbiter in the event a hot war develops from what begins as a

¹ James L. Brierly, *The Law of Nations: An Introduction to the International Law of Peace*, 6th ed., edited by Sir Humphrey Waldock (New York and London: Oxford University Press, 1963), 305

² George Modelski, "The Long Cycle of Global Politics and the Nation-State," *Comparative Studies of Society and History* 20:214-235 (1978), at 197; Karen A. Rasler and William R. Thompson, "Global Wars, Public Debts, and the Long Cycle," in Bruce Russett, Harvey Starr, and Richard Stoll, eds., *Choices in Politics: Sovereignty and Interdependence* (New York: W. H. Freeman, 1989), 45-47.

³ James C. Hsiung, *Anarchy and Order: The Interplay of Politics and Law in International Relations* (Boulder, CO: Lynne Rienner, 1997), 20.

⁴ Anthony D'Amato, *International Law, An Anthology* (New York: Anderson, 1994), 30.

⁵ International Institute of Strategic Studies (London), *The Military Balance 2002-2003* (London: Oxford University Press, 2002).

⁶ Eric Grove, *The Future of Sea Power* (Annapolis, MD: Naval Institute Press, 1990), 3 and 31ff.

⁷ "General Council of British Shipping, Statistical Brief, First Quarter 1987," Table 3; cited in Eric Grove, *The Future of Sea Power* (Annapolis, MD: Naval Institute Press, 1990), 3

⁸ Jean Labayle Couhat, ed., *Combat Fleets of the World, 1986-1987* (Annapolis, MD: Naval Institute Press, 1988), 283.

⁹ Geoffrey Till, *Seapower: A Guide for the Twenty-First Century* (Portland, OR: Frank Cass, 2003).

¹⁰ Grove (fn.6), 15.

¹¹ Governor of Tokyo, Ishihara Ishihara, justified Japan's extension of its defense line to the Okinorishima, a group of rocks submerged during high tides some 1,750 miles to the southeast of Tokyo well into the open waters of the Pacific, by the eventuality of the "appearance" of Chinese submarines. See below.

¹² Xinto Gao, "The Complex Implications of the Activities of Chinese Submarine in and out of the Pacific," *Zhongguo pinglun* [China Review] (Hong Kong), February 2005, 27-29, at 27.

¹³ Tan Wee Ngee, Major, "Maritime Strategy in the Post-Cold War Era," *Journal of the Singaporean Armed Forces*, vol. 26,1(2000):1-12, at 5.

¹⁴ Grove (fn. 6), at 15.

¹⁵ Yunpeng Qi "Sea Access and China's Rise," *Zhongguo pinglun* [China Review] (Hong Kong),

September 2004, 10-14, at 11.

¹⁶ This was interpreted by Pentagon as a sinister move by China for military gains in a report to Secretary of Defense Rumsfeld. See "China Builds up Strategic Sea Lanes," by Bill Gertz, *Washington Times*, sourced from: <<http://w.washtimes.com/national/205017-150-1929r.htm>>.

¹⁷ Guoxing Ji, "Maritime Jurisdiction in the Three China Seas: Options for Equitable Settlement," Working Papers (October 1995), University of California Institute of Global Conflict and Cooperation

¹⁸ For this information, I am indebted to Dr. Zhu Fenglan of the Institute of Asia Pacific Studies, Chinese Academy of Social Sciences, based on an authoritative study of the late Professor Zhao Lihai of Beijing University.

¹⁹ Guoxomg Ji (n. 17), p.6.

²⁰ "Statement by the Chinese Foreign Ministry, 13 June 1977," *Beijing Review*, 17 June 1977, p. 17.

²¹ Guoxing Ji (fn. 17), p. 5.

²² I owe this information to Dr. Fenglan Zhu of the Institute of Asia-Pacific Studies, Chinese Academy of Social Sciences.

²³ Report in the Chinese-language *World Journal* (New York), 4 April 2005, p. 3.

²⁴ This is the American oil company that CNOOC offered \$18 billion in an unsuccessful bid to acquire in the summer of 2005, due to Congressional objection

²⁵ Information based on "Xihu Trough," in Wikipedia, the free encyclopedia. On the withdrawal of Unocal and Royal Dutch/Shell, see "Oil Giants Depart Xihu Trough Gas Project," *China.org.cn*, available

²⁶ Based on the map produced by the Japanese Ministry of Economy, Trade, and Industry, at a 13 April 2005 news conference on Japan's disputes with China over the East China Sea natural-gas rights, held in Tokyo; as reported in a Tokyo dispatch carried by the *World Journal* (New York), 14 April 2005, p.

²⁷ According to a report sourced from
<http://news.xinhuanet.com/world/2005-04/25/content_2875771.htm>.

²⁸ The width between the Chinese and Japanese coastlines is no more than 400 nautical miles at the widest points. An equitable median line should be 200 nautical miles equidistant to both coastlines. Hence, 243 nautical miles from Okinawa would be 43 nautical miles beyond Japan's EEZ. The distance would vary, and would be over 43 nautical miles into the Chinese EEZ at points where the total width between the two coastlines is below 400 nautical miles and, hence, the EEZ on each side would be under 200 nautical miles.

²⁹ As reported in Qiaobao [China Press], 15 July 2005, p. 4.

³⁰ NCNA dispatch carried in Qiaobao (China Press), 16 July 2005, p. 2.

³¹ NCNA dispatch, carried in Qiaobao (China Press), 26 July 2005, p. B-1.

³² See NCNA report, dated 21 April 2005,

³³ New York Times online, <<http://www.nytimes.com>>, 29 May 2005.

³⁴ "The Sino-Japanese Dispute over Diaoyutai/Senkaku: What Price Sovereignty?"

The Ryukyuanist, No. 63 (Spring 2004), available from <www.iaros.org>.

³⁵ Hsueh-chun Sha, "Japan Fabricated Facts to Con the U.S. on Diaoyutai," *Ming-Pao Monthly* (Hong Kong), No. 99 (March 1974). Sha, formerly head of the Geography Department of the Normal University, Taiwan, was one of the persons speaking to a spokesman of the U.S. Department of State on the question.

³⁶ Unlike Okinotorishima (see below), Diaoyutai/Senkaku can "sustain human habitation," given its potable water and tillable soil, to overcome the exclusion, under Art. 121(3) of the Law of the Sea Convention, of rocks from having a continental shelf and EEZ

³⁷ *The Ryukyuanist*, p. 4.

³⁸ "Tokyo Governor Lands on Islet Disputed with China," Muzi News, dated 20 May 2005, sourced from: <<http://dailynews.muzi.com/english/1363615.shtml>>.

³⁹ For a report on Taiwan's patrols in the Taiwan Strait against possible encroachments by mainland China, see <chinesenewsnet.com>. I am indebted for this information to Professor Peter Yu, of Ming Chuan University, Taipei.

⁴⁰ "U.S. Interests at Stake as Japan-China Rivalry Set to Worsen," an AFP report, sourced from: <<http://us-politics.news.designerz.com>> (5/30/2005).⁴⁰

⁴¹ *Ibid.*

⁴² Joint Statement of the U.S.-Japan Security Consultative Committee, February 19, 2005, sourced from <<http://latelinenews.com/ll/english/1350121.shtml>>.

⁴³ Taiwan was expelled under the name of "ROC," not under the name of "Taiwan." Hence, I use "ROC" here instead of Taiwan.

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