「日本と中国との海洋安全保障ダイアローグ」

報告書

2007年8月27・28日

海洋政策研究財団

本書は、海洋政策研究財団が、平成19年8月27および28日の両日に東京で開催した、第2回日本と中国との海洋安全保障ダイアローグ（東京会議2007）「北東アジアの海洋安全保障－課題と展望－」の成果を要約するものである。

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1　実施の概要

（1）日時・場所

平成19年8月27および28の両日、東京の虎の門パストラルホテルの会議室において、第2回日本と中国との海洋安全保障ダイアローグ（東京会議2007）「北東アジアの海洋安全保障－課題と展望－」を、海洋政策研究財団の主催により実施した。

（2）趣　旨

ア　ダイアローグの目的

日本と中国と間で民間レベルの海洋安全保障対話を実施し、海洋安全保障協力の可能性を見出すと共に、協力のための具体的な方策を検討し、地域的あるいは地球規模の総合的海洋安全保障に資する日中関係構築と日本の海洋権益確保のための提言を得る。

イ　ダイアローグ企画の背景

中国は、ダイナミックな経済発展の中で、近年海洋への進出を活発化させている。その背景には、経済発展と生活の向上に伴う国内の資源・エネルギー需要の増大があり、原油輸入を始めとして海上輸送量を急増させ、また、漁獲高も増大している。そのような中国は、海洋権益の確保と防衛のために周辺海域における海洋調査を活発化させると共に、東・南シナ海では既に海底資源の試掘・採掘に着手し、一方において海軍力強化を図り、従来の近海防御に加えてシーレーン防衛を海軍の任務として位置付ける等、着実にシーパワーを増大させつつある。中国は、所謂「真珠の数珠繋ぎ」戦略に基づいてアラビア海にまで至る拠点作りを活発化させており、放置しておけば、いずれ既得権を有する海洋国家との軋轢が高まっていくことが考えられる。

日本と中国との間には、島嶼の領有権問題や排他的経済水域および大陸棚の境界画定に関する問題、東シナ海における海底資源の共同開発に係わる問題、国家管轄水域における調査活動に係わる問題、漁業問題、等々、海洋に係わる未解決の問題が山積しているにも拘らず、政府間の対話は必ずしも進展してはいない。この状況を放置すれば、日本と中国との間で海洋権益を巡って深刻な紛争が生じ、東アジアのみならず世界の安全保障環境を不安定化させる事態に至ることが危惧される。また、東シナ海の自然環境は中国大陸部からの汚染物質の流入等によって悪化の一途を辿っており、漁業や地球環境問題にも深刻な影響を与えることが危惧されている。

中国との間に存在する海洋権益を巡る紛争を深刻化させず、周辺海域の安全保障環境を安定化させることは、日本にとって海洋資源の安定的確保とシーレーンの安全利用において極めて重要である。このようなことに鑑み、日本と中国との間の海洋安全保障に係わる政府間協議を補完すべく、また、政府間協議への提案の策定を期して、民間レベルの対話としての「日本と中国との海洋安全保障ダイアローグ」を実施することとした。

（3）構　成

8月27日午前・午後と28日午前の1.5日間を対話会議に当てた。対話会議は、「日中関係と北東アジアの海洋安全保障」、「北東アジア海域の法的地位」および「東シナ海の共同開発と信頼醸成」の3つの議題を設定し、日中の参加者が予め提出したペーパーに沿って

主張の要旨を発表した後に参加者総員で議論する形をとって進行した。対話会議終了後、中国側参加者は中部方面の研修を実施した。対話会議のプログラムは別紙１に示す通りである。

（４）参加者

日中両国からの参加者リストは別紙２に示す通りである。

２　対話の概要

（１）オープニングセッション

秋山　昌廣　海洋政策研究財団会長開会挨拶要旨

日中海洋安全保障ダイアローグは、本メンバーで実施するのは昨年５月の上海での会議に続いて２回目だが、海洋政策研究財団としては2004年に別のメンバーで開催したことがあり、それを数えると今回が３回目である。この５年間、海洋政策研究財団は、日本と中国との間で海洋問題を話し合う機会を作りたいと計画してきたが、中国がいうところの所謂「敏感な問題」であるところから、実施が難しいこともあった。今回、上海のChen教授や北京から来られたZhou教授の尽力により実現できたことは喜ばしいことである。

事前に提出された論文を拝読した。中国側からのペーパーは、昨年に比してかなり詳しく具体的な内容となっていると思う。そのことから、議論がより深まることが期待できる。今回のダイアローグでは、北東アジアの法的地位について議論を十分につくしたいと考えている。時間が限られているので、残された議論はe-mailなどを使ってQ&A方式で実施したい。

今回のダイアローグは日本語と中国語の通訳を介して実施される。同じ漢字を使う国の間の会議では英語は不似合いだ。母国語を使って活発に議論して頂きたい。

Chen Qimao（陳　啓懋）上海交通大学国際公共学院教授開会挨拶要旨

海洋政策研究財団の招きによりダイアローグを実施できることを感謝している。昨年の第１回ダイアローグは大成功であった。今回も率直な意見の交換がなされることを期待している。

西太平洋・北東アジアの安全保障は相対的に良好である。しかし、海洋に関しては問題が多く、日中の間でも、海洋問題の解決に向けた取り組みには消極的である。日中は、首脳会談等により関係改善が図られているが、海洋問題、とりわけ管轄水域の境界画定問題が、状況によってはそのような日中関係に大きな影響を与えることが考えられる。

このようなダイアローグを通して、互いの考えを知り、歩み寄る努力が、必ずや海洋問題の解決につながることになる。一日半の短い会議であるが、意見を交換し合い、日中の海洋安全保障問題の解決に貢献したい。

（２）セッション１「日中関係と北東アジアの海洋安全保障」

発表１「海洋安全保障に係わる日中ダイアローグの意義」

秋山昌廣海洋政策研究財団会長

（要　旨）

日中間の海洋問題というセンシティブな問題を本ダイアローグのようなトラック２の場で討議する意義について触れたい。

昨年の安倍首相の訪中以降、日中関係は好転したとみることができる。経済関係は更に深まり、人的な交流や文化交流も進んでいる。しかし、日中における世論調査では両国の間に開きがある。中国における日本に対する感情は、50％が「かなり良くなっている」と回答しているのに対して、日本では、「日中関係が良くなっている」と答えた人は、以前に比べて若干増えてはいるが、18％に留まっている。日本における中国に対する感情には、1990 年代以降に生じた状況がかなり影響している。一つには反日感情の高まりであり、もう一つは中国経済の急成長である。

日中関係が劇的に改善されなくとも、それをあまり気に留めることもないだろう。日中は親密でなければならないと考える必要はないのではないか。要は、協力し合えれば良いのではないか。日中の間には多くの懸案があるが、武力紛争に至る危険性のあるものは殆どが海洋問題である。

日本では今年、海洋基本法が成立し施行されることになった。この海洋基本法は国連海洋法条約に則ったものであり、海洋の総合的管理と国際協調を図るものである。中国では、1960 年代に国家海洋局を設立し、海洋関連法を制定してきている。わが国の海洋基本法の成立により、日中両国は共に国連海洋法条約に従って海洋問題に対応していくことになったといえる。海洋問題は相互に密接に関連しており、総合的に対応しなければならない。また、海洋は国家の境界を越えた場であり、国際的な取り組みが必要である。日中両国は法制面でも共通の基準を持って話し合うことができるようになったといえる。

東シナ海には、大陸棚および排他的経済水域の境界画定と島嶼の領有権問題がある。そのような中で、中国の海軍活動と海洋調査が活発化している。東アジアは海洋地域であり、同じような問題が各所にあり、関係する国々は日中の対応を注視している。日中の間では政府間の協議が進められているが、このような問題に対しては、民間レベルの対話も含めた重層的な検討が必要である。政府間だけではなく、両国民が納得しなければ解決にはならないからである。政治には民意が反映されていなければならず、このようなダイアローグの場で両国の民意を具体的に示すことは極めて重要である。

発表２「北東アジアの安全保障の情況と中日関係」

Chen Qimao（陳　啓懋）上海交通大学国際公共学院教授

（要　旨）

北東アジアでは、日中米ロの関係が良好に推移し、北朝鮮問題が６カ国協議の枠組みの中で解決されつつあり、国家間の力のバランスが調和されつつあるなど、基本的には良い方向に向かっている。しかし、アメリカは、中国を stake holder としつつも、中国が覇権的となることを警戒してヘッジ作戦を展開しており、オーストラリアを取り込むなどして中国包囲政策をとっている面がある。台湾問題は未解決である。加えて、資源・エネルギー問題や環境問題と言った非伝統的な脅威もあって楽観はできない。そのような中で滞っている海洋問題は最も厄介なものである。

我々は、東シナ海問題解決の突破口を何としても見つけ出さなければならない。今春の

日中首脳会談は絶好の機会を我々に与えるものとなった。安倍首相は、個人的な心情を横に置いて日中関係改善に乗り出した。中国はこのことを高く評価している。東シナ海を平和と友好の海と位置づけようとする日中共同コミュニケは素晴らしいものであった。日中は共同してその実現を目指さなければならない。NGO レベルの貢献も必要である。トラック 2 としての本ダイアローグを意義あるものとしなければならない。

中国の海軍戦略について話してみたい。

中国は、18,000 キロメートルの海岸線と 40 万平方キロメートルの領海と 300 万平方キロメートルの管轄水域を有しており、これを考えれば中国海軍はあまりにも弱小である。中国海軍は近海防御を発展させているところであり、遠洋戦略は持っていない。空母を保有するという決定はない。台湾については、中国から分裂させるような重大な事変がない限り非平和的な行動はとらない。一国二制度が確立されれば、台湾に軍隊を派遣したり、基地を造るようなことはない。中国はアメリカと対抗することを望んではいない。シーレーン防衛に乗り出すのではないかといわれるが、それもない。アメリカのシーレーン防衛にただ乗りするつもりはないが、一国が単独でシーレーンを防衛できるものではないことを知っている。9 月に、日本はアメリカ、オーストラリア、シンガポールと共にインド洋での海軍演習に参加するが、これは中国封じ込めに受け止められる。

発表３「日中両国の海洋をめぐる国益問題と安全保障問題
―「競争と摩擦」から「協調と共存へ」」

茅原郁夫拓殖大学教授

（要　旨）

安倍総理の「氷を砕く旅」と温首相による「氷を溶かす旅」の後も、明るい兆しはない。東シナ海の問題は、単に海底資源の問題だけではなく台湾問題も絡む複雑なものである。問題の解決のためには、国家の主権や体面に過度に拘ってはならない。むしろ、東シナ海を日中交流のための空間と考えるべきである。海洋開発においては、両国に自制が求められる。日本は東シナ海の海底資源開発には自制的であり続けた。しかしこれが中国側に対して日本は消極的である、あるいは中国が開発を進めても黙認するとの誤解を与えた面がある。東シナ海については日本も管轄権を有している。現在の問題は中国が日本の主張を無視して開発を進めているところから発している。中国は自制的でなければならない。中国による海洋調査についても懸念が多い。中国の海洋調査船による沖ノ鳥島周辺海域の調査は何を目的としてなされているのだろうか。中国海軍の任務には、近海防御・沿岸経済中枢防衛、台湾防衛、シーレーン防衛の三つがあると考えられる。海軍力を増強しつつ近海防衛から外洋への進出を試みる中で、必要な海洋調査をしているのではないか。太平洋に進出する意図は何なのか。

中国は海洋問題を政治的問題と言うが、民主国家である日本では国民の理解が得られなければ政治問題は解決しない。日本国民は中国に対して大きな疑問を持っている。日本は、それを表明することを自制するのではなく意見として率直に出していくことが必要であろう。

日中における偶発的ホットポイントは海洋にある。互いに、相手に危惧を与えず透明性を高めることが求められる。中国には白書を出すなどして透明性を示すと共に説明責任を

果たして頂きたいが、特に、いかについて要求したい。

① 海洋領域拡大意図の疑念を払うために、海洋進出の意図を示して頂きたい。
② 過度に主権を主張することなく、真のステークホルダーになって頂きたい。
③ 軍事的透明性に努めて頂きたい。
④ 海洋利益を分かち合う姿勢を示して頂きたい。

発表４「中国の台頭と中日関係」

Wang Shaopu（王　少普）上海社会科学院アジア太平洋研究所研究員

（要　旨）

北東アジアの安全保障環境を概観すると、

① 9.11 以降、地域におけるグローバル経済の拡大に加えて多国間安保の安定性が増してきた。
② 中日が共に発展する時代に入っている。
③ アメリカは中東に軍事力を集中しており、東アジアについては安定を望んでいる。
④ 北朝鮮の核武装と核拡散への懸念については、多国間枠組により対応が進展している。
⑤ 複雑で未解決の海洋問題が存在する。

状況にある。

そのような中で、中国の経済成長は東アジアの国々に大きな発展の機会を与えている。中でも、日本については、中国が日本の経済改革・産業構造変革のための場を与えている面がある。現在、世界は第三次産業構造変革の時代にあると言える。それは中国の経済発展に伴って進行しており、東アジア共同体構想の可能性が見えてきた。

前述したように、「テロとの戦い」に取り組むアメリカは、東アジアに安定した枠組みが構築されることを望んでいる。経済活動で密接な関係を構築した東アジアにおいて、安全保障環境安定化の枠組みを作ることも可能であろう。アーミテージはアジアの安全保障を中日米の三角関係によって構築しようとしている面がある。中国と日本が衝突することは、東アジアを不安定化するだけである。中日の間の最大の問題といえる東シナ海問題は、両国が自制的になって解決を図らなければならない。

コメント１　神谷万丈　防衛大学校教授

（要　旨）

これまで、日中の間では経済以外で協力のための目標を達成したことがない。日韓においても同じことが言えたが、ワールドカップの日韓共催によって改善されつつある。日中は、経済以外の分野で協力する努力が必要である。

日本から見た日中関係を阻害する要因としては、

① 中国が信頼できるパートナーとなれるのか疑問を持っている。
② 中国の行動に自己抑制が足りないように思える。
③ 日本が国連の安保常任理事国入りを目指したのに対して中国が反対したことに不信感を持っている。

などが挙げられる。これらのことが解消されない限り、経済以外で関係改善は進展しな

いであろう。

コメント２　Ji Guoxing（季　国興）上海交通大学国際公共事務学院教授

（要　旨）

アメリカは、尖閣諸島が日米安保の範疇に入ると述べたが、その根拠として 1971 年の沖縄返還文書を上げている。ところが、文書は行政権を返還するとしており、主権とは言っていない。アメリカは日本に尖閣諸島の主権があるとは言っていない。日本には冷戦思考が残っている。安倍総理の提唱する「価値の外交」には、中国を自由経済圏から排除したい感情が読み取れるが、日本にそれが可能なのか。

日本では海洋基本法が制定された。海洋管理を促進するものとしているが、自国の海洋権益を擁護するためのものであろう。周辺諸国との関係を更に複雑にするものとなるのではないか。排他的経済水域の管理を強化し、海洋構造物の安全を確保し、尖閣諸島の防衛を強化するための意図が感じられる。そもそも、境界が画定していない海域における構造物の安全を確保する法律が作れるのか。一方的な国内法の制定は何の解決にもならない。

かつて日本で、中国の潜水艦が日本の領海を通過したことをマスコミが挙って非難した。しかし、日本の領海を通らなければ中国の船舶は外洋に出ることができない。加えて日本は領海線を定めるに直線基線を採用しており、領海幅が不自然に大きくなっている。国際的に使用される海峡は潜水艦といえども通過が可能なはずである。

また日本は、先日、ヘリコプター搭載護衛艦と称して 11 機ものヘリコプターを搭載できる艦艇を進水させた。中国海軍の増強を非難しているが、これは何の用途として建造したものなのか。

以上、回答願いたい。

質疑・応答

A（坂元教授）：尖閣諸島の行政権について回答する。返還前から、日本は尖閣諸島に対して残存主権（Residual Sovereignty）を有しており、返還によって主権を回復したことになっている。日本は海洋構造物等に係わる安全水域の設定等に関する法律を制定したが、境界が未画定の水域に適用するのであればおかしいとの指摘があったが、中国も領海法で同じような規定をしているし、尖閣諸島を中国領としている。石垣島付近の領海を中国潜水艦が通過した事件について質問があったが、当該海峡は国際海峡ではなく、かつ全て領海となっているので、無害通航が適用され、潜水艦は浮上して航行しなければならない。

A（茅原教授）：海上自衛隊の増強を指摘する発言があったが、日本は防衛力を白書等で透明性を示しつつ整備している。艦船の隻数についてはむしろ減少している。9 月のインド洋での５カ国海上演習はインドが主催するものへの参加であり、中国を封じ込める意図でないことはインド側の発表などで明らかである。むしろ、上海協力機構の演習のほうが、日本から見た場合地域ブロックの形成と受け取れる。

Q（Wang（王）教授）：中日関係が良好であった 1980 年代が懐かしい。今、中日米のバランスは良くなっている。日本は、安全保障安全保面で中国とどのような関係にありたいのか？

C（金田理事）：太平洋に出る中国海軍艦艇は通常は大隈海峡を通る。2004 年の中国海軍

原潜による領海通過には意図的なものを感じる。DDH「ひゅうが」を空母ではないかとの非難があるが、空母をどのように定義するのか。大連に係留されている「ワリヤーグ」が空母であれば、「ひゅうが」はヘリコプター搭載護衛艦であり空母ではない。日米豪による安全保障対話や安倍首相による訪印、そして海上自衛隊によるインド主催の演習への参加を中国封じ込めのメカニズム構築とする非難もあるが、安倍首相の訪印と海上自衛隊によるマラドール参加は関係ない。マラドールはメカニズムではなく親善と人道を目的とする演習である。アジア版NATOの形成との考えは無用の危惧である。反して、上海協力機構（以降、SCOと表記）はメカニズムではないか。SCOはアジア版のワルシャワ条約機構（以降、WTOと表記）か？台湾が独立を宣言した場合の武力行使は国内問題として許されると考えているのか？現在、台湾は国家の形をとる特殊な地域である。国際社会の常識から考えた場合、その様な地域に国内問題と称して軍事介入することは受容されないのではないか。

C（Chen（陳）教授）：中国による海底資源開発は日本が主張するEEZ中間線の西側で実施している。中国海軍の目標は、近海の防衛、台湾の独立阻止、国益の擁護である。中国海軍のインド洋への進出を危惧する向きがあるが、パキスタンの港湾は中国とパキスタン両国が協議に基づいて整備しているものであり、軍用ではない。入札により、港湾管理はシンガポールの会社が受け持つことになった。インド洋からの資源輸送にナショナリズムを感じるとの危惧もあると聞く。パキスタンで共同開発中の港湾から中国国内に通じるパイプライン建設はパキスタン側から提案されたものである。これについては、経済的にみて利益を生む可能性が見出せず、中国は受け入れないはずだ。ミャンマーから雲南省へのパイプライン設置もミャンマー側から提案されたものである。これも経済的に見合わないとの考えが強い。バングラディッシュの港湾建設についても誤解が多い。中国は、日本の国連安保理入りに反対したわけではない。そこには複雑な問題があったのだ。

C（秋山会長）：日中関係2000年の歴史を振り返れば、その大半は友好的であった。安倍訪中について、中国では「日本側の是正」との印象があるようだが、中国にも妥協したと思える印象がある。中国は安倍首相の靖国参拝に関する曖昧政策を受け入れたからだ。日中共に危険な妥協をしている面がある。Chen教授は、中国海軍は外洋展開を意図しておらず、シーレーンを単独で防衛できるとも思っていない、と述べられたが、外洋海軍になってシーレーンに乗り出してもおかしくないのではないか。仮にそうしても、国家としての当然の行動であり、非難されることはないのではないか。ココ島の通信施設やセーシェル諸島への進出、アフリカへの武器輸出も、中国の世界戦略ではないのか。隠すことはない。

Wang教授から、日中米のバランスが良くなったとの発言があり、また、日中関係を良くする提案はないのかとの質問があった。それに対するお答えとして、日米中による公的な安全保障対話は如何であろうか。

A（Chen（陳）教授）：中国海軍がインド洋へ進出するのは当然ではないかとの御意見があったが、現在の中国海軍にはその能力はない。シーレーン防衛はアメリカが担っている。

（3）セッション2「北東アジア海域の法的地位」

発表1「係争海域における暫定措置―共同開発をめぐる法的諸問題」

神戸大学大学院教授　坂元茂樹

（要　旨）

2003 年 8 月、中国が白樺（中国名：春暁）油ガス田の開発に着手し、日中両国で東シナ海海底資源開発を巡る激しい対立が生じることになった。日本は、係争海域は東シナ海全体における EEZ の重複する海域であるとし、日本の国内法で設定した中間線については、「中間線の設定は暫定的であり、境界が設定されるまでは国際法上の権原として日本の EEZ もしくは大陸棚が日本の基線から 200 カイリまで及んでいることは不変である」としている。中国は、問題を大陸棚の境界画定と捉え、係争海域は中間線と沖縄トラフの間であるとの認識の下、中間線以西（中国側）で海底資源の探査・開発を進めている。これに対して日本は、中国が開発している一部のガス田は中間線以東（日本側）まで連続しており、日本の資源が吸い取られるとして油ガス田の情報提供及び開発中止を要求し、中国はこれに応じていない。2005 年 7 月、日本は帝国石油会社の試掘権設定申請に許可を与えた。

2007 年 4 月 20 日、日本で「海洋基本法」と「海洋構築物等に係る安全水域の設定等に関する法律」（以降、安全水域設定法と表記）が制定された。海洋基本法第 19 条は、「排他的経済水域等における主権的権利に対する侵害の防止等のために必要な措置を講ずる」旨を規定している。なお、衆議院では海上保安庁の組織体制の充実を図ることが決議された。安全水域設定法 2 条は、資源の開発等に係る工作物等について海洋法条約 60 条 4 項の安全水域を設定することを規定している。これにより、日本の民間会社による試掘権設定の際にも、当該試掘船舶や海洋構築物の周囲に安全水域を設定し、他国による妨害行為等を防ぐことが可能となった。

国連海洋法条約は EEZ と大陸棚について単一の境界線を義務づけているわけではない。しかし、EEZ が設定されている水域では、大陸棚は距岸 200 カイリまでは EEZ に包摂され、自然延長は 200 カイリを超える部分にのみ関係するとの考えが一般的となる趨勢の中で、境界画定にあたっては単一の境界線を引くのが一般的であろう。中国は自然延長論に従う大陸棚境界画定を主張しているが、200 マイル制度が確立された今日、EEZ を棚上げにして大陸棚のみの境界画定を行うことが現実的であるか否かは疑問である。EEZ 及び大陸棚の境界画定については、等距離原則と衡平原則という二つの考え方がある。国際司法裁判所には 13 件の大陸棚境界画定紛争が付託されている。1969 年の北海大陸棚事件判決においては、等距離原則を排し衡平原則に従って自然延長を構成する大陸棚の部分をその国に帰属させるよう判示したが、EEZ の概念が認められるようになって以降はこの判例に大きな変化がみられる。1982 年のチュニジア・リビア大陸棚事件判決においては大陸棚延長を否定している。1985 年のリビア・マルタ大陸棚事件判決においては排他的経済水域と同様に大陸棚には距離基準が適用されなければならないとしている。1993 年のヤンマイエン海洋境界画定事件判決では、大陸棚の境界画定においては暫定的に中間線を引いた後に関連事情により調整するのは先例と一致しているとした。2001 年のカタール・バーレーン間の海洋境界画定及び領土問題事件判決では、等距離中間線を暫定的に引いた上で考慮すべき特別の事情の存在を検討しつつ若干修正する判断を示した。こうした判例の動向から、

大陸棚境界画定において自然延長論は比重を低下しつつあり、大陸棚はEEZの200マイル距離基準に包摂されると考えることが妥当であると思われる。

東シナ海で議論の対象となっているのは流体資源であり、一方の側からの一方的採取は他方の側の権利を侵す結果になる。これに関しては、1999年のデンマークとイギリスが海洋境界画定条約を結び、一方の当事国の大陸棚における石油その他の鉱物資源が他方の当事国の大陸棚に延びていることが発見された場合には、当該当事国に他方の当事国に対する情報提供義務を課した。同様の情報提供義務は、1997年のタイ・ベトナム間やデンマーク・アイスランド間の大陸棚及び漁業水域境界画定条約にも規定されている。利害関係国の協力、調整は不可欠である。

共同開発には、大きく分けて、海洋境界が画定した海域で行われる共同開発と海洋境界が画定しない海域での共同開発がある。後者の例としては1979年のタイ・マレーシアのタイ湾南部の共同開発区域設定の了解覚書や、1989年のオーストラリアとインドネシア間の所謂チモール・ギャップ協定がある。日中の東シナ海における共同開発は後者の類型となる。共同開発は万能薬ではないが、境界画定の困難な海域で成功を収めた例もあり、十分検討に値する。共同開発区域設定のための交渉は容易ではないが、日中両国が日中友好という大きな枠組みの中でこれに取り組むことは大きな意義があると思われる。

発表2「東シナ海の法的問題」

Zhou Zhonghai（周　忠海）中国政法大学教授

（要　旨）

海底資源が有望で未開発の海域である東シナ海には、中日の間の主権および管轄権に絡む問題が存在する。東シナ海における中日の主権と管轄権に絡む問題は、大別して二つあり、尖閣諸島の帰属と管轄水域の境界画定である。中国は日本が一方的に主張するEEZの中間線の東側(中国側)で石油・ガス田の開発を始めたが、それが日本に無用の危惧を生んでいる。日本政府による中国に対する海底資源に係わるデーターの日本への提供要求と日本民間企業に対する開発許可は、中国にとって許容できるものではない。

日本は中国に対して東シナ海での情報収集を非難するが、国連海洋法条約はEEZでの情報収集を禁止してはいない。国連海洋法条約では、EEZにおいて沿岸国は利用国に妥当な配慮を払わなければならないとも規定しており、日本は同条約の遵法の義務があるはずだ。

境界画定について国連海洋法条約は地形学的考慮を規定しており、これに従ってみれば、東シナ海の海底は明らかに大陸棚が自然延長したものである。日本側参加者は国際司法裁判所の判例等を引いて大陸棚自然延長理論を否定するが、判例はその事例に応じた特有の状況があって決まるものであり、それを普遍的なものとして東シナ海に適用するのは無理がある。国際司法裁判所の判決には納得のいかないものもあるし、判事には海洋法の専門家とは思えない人もいる。各国は国際法よりも国益を守ろうとする。海洋法は最も古い国際法であり、慣習法が明文化されたものである。海洋法は進化し続けており、国連海洋法条約成立後、世界は資源・環境問題から持続可能な開発レジームを取り入れてきたが、国連海洋法条約にはそのことは規定されていない。我々は、その時々において、海洋法を適切に解釈していかなければならない。東シナ海の問題にも当てはまる。一部の判例を持ち

出して中間線を押し付けるべきではない。

日本は先に海洋基本法を制定したが、これは明らかに東シナ海の権益を護る根拠を定めたものであり、法案作成過程において海洋法の専門家は参加していなかった。この法律には政治的意図を感じる。日中両国は法治国家であり、法律に則った理性ある対応が求められる。

発表３「北東アジア海域の状況と法的諸問題」

Ji Guoxing（季　国興）上海交通大学国際公共事務学院教授

（要　旨）

日本は1951年に連合国と平和条約を締結し、沖縄に対するアメリカの統治権を認めた。当時中国は内戦状態にあり、日本は台湾政府と「日華平和条約」を結んだ。その後、1972年に日本と中国は国交を正常化させ、田中首相と周恩来首相によって日中共同声明が発表され、その中で日本はポツダム宣言第 8 条、すなわち日本の領土縮小の遵守を約束した。これにより中国は尖閣諸島の主権を有しているが、これに対して日本が異議を唱えているのが現状だ。

日本は大陸棚制度が EEZ に包摂されるとの立場をとっているが、中国は二つの制度があるとし、春暁油ガス田は大陸棚制度の下にあると主張している。EEZ は国連海洋法条約第 56 条で規定されているように海底の上部水域、つまり主として漁業に関するものであり、海底の権利は大陸棚に属するものである。これらの制度の違いを日本のマスコミは言及せず、日本国民を混乱させている。春暁の油ガス田開発は中国固有の権利である。前回の上海での会議でも日本側は、大陸棚が EEZ に包摂されるとし、大陸棚制度は消えつつあると述べたが、今回の会議ではこの点について再度議論をしたい。

大陸棚と EEZ は法的性格が異なる。大陸棚制度が消えつつある、あるいは大陸棚が EEZ に包摂されるといった考えは存在しない。実際、オーストラリアと東チモール間では 2002 年に共同石油開発海域の境界画定が合意され、そこでは上部水域と海底部分とで異なる 2 本の境界線が引かれている。EEZ と大陸棚が異なるものと位置づけられた事例である。

大陸棚の自然延長原則と等距離原則は平等ではない。前者が主であり、後者は従である。東シナ海の大陸棚は科学的にも中国大陸の地殻と関係があり沖縄トラフまで続いている。200 海里の距離基準は自然延長原則にとって代わるものではない。春暁油ガス田について、中国は日本の主張する中間線案を認めていないものの、その西側で採掘をしており、合法的行為である。

コメント１　山本草二　海洋政策研究財団特別顧問

（要　旨）

非難の応酬は紛争を解決することにはならない。自然延長論は大陸棚の範囲に係わるものであり境界画定のための原則ではない。境界画定は国連海洋法条約 83 条に基づく。同条文では、向かい合っている国同士の大陸棚の画定は国際司法裁判所規程 38 条に規定する国際法に基づいて合意により行うとなっている。つまり、両当事国の合意で決定されるのであり、国際司法裁判所の判例の変遷を追う必要がある。判例は、1969 年までと 1985 年以降とでは変化が見られる。1985 年以降では、とりあえず中間線を設定して、そこから

細部をつめていくというのが一般的原則となっている。これについては慣習法化されているとの見方もある。慣習法を拒むこともできるが、その場合、拒む国（ここでは中国）は、国際社会にそのことを弁明しなければならない。海底資源を国内法に基づいて開発することはできるが、国際的に執行（enforce）することはできない。

海域の係争については幾つかの解決方法がある。

①あくまで画定にこだわる

②画定を棚上げにして、共同開発を行う

である。どちらを選択するかによって、結果は大きく異なってくる。

海洋基本法は外国の権益を害するものではなく、日本がこれまでに実施してきた海洋政策を明らかにしたにすぎない。沖ノ鳥島は、日本が国内法で定めた島であり、他国がその合法性を問うことはできない。

コメント２　Yu Zhirong（郁　志榮）中国東海監東海総隊副総隊長、教授

（要　旨）

今日の会議は、午前が広範的で、午後は専門的である。午前はリラックスして討議したが、午後重い雰囲気の中進められている。本ダイアローグでの意見等は、日中の公式の話し合いにおいても参考として取り入れられており、建設的な意見の交換を望んでいる。

日中海上衝突の可能性は大きく、衝突すると非常に危険である。解決の可能性を議論することは非常に重要である。東シナ海の境界問題は、国連海洋法条約の理解の違いで生じた問題であるが、日本が主張する中間線は実際には存在しない。1982 年に日本が中間線を宣言したが中国は承認しておらず、法的地位がないからである。日本は日本が引いた中間線を越えて航行する中国の調査船等を追い出しているが、それは日本の一方的主張を中国に強制するものであり、国際法上で成立しない。2005 年 7 月日本政府は民間企業の東シナ海資源開発を許可したが報復的な開発は許されるものではない。大陸棚の利権は宣言で得るものではなく、制度のよって得られるものだ。春暁油ガス田は大陸棚に属するものでありEEZとは関係ない。東シナ海大陸棚は「共棚」ではないので中間線は公平ではない。日本側の求める情報提供に応じる必要はない。

質疑・応答

C（Zhou（周）教授）：東シナ海には法律問題と政治問題と関連しあって存在する。海洋法は技術性が強い国際法で、日本側は幾つの判例はすでに法律となっていると主張しているが、法理上まだ成立していない。判例は当事国のみに効力があり、当事国以外には効力がない。判決はその事案のみのものである。国際司法裁判所に海洋法の専門家は多くない。今、海洋に関する裁判は、国際司法裁判所では受理せず、国際海洋法裁判所に移している。

C（坂元教授）：大陸棚は海底、EEZ は上部水域という説明は誤っている。国連海洋法条約 56 条は、水体、下部海底、鉱物などすべてEEZに属すると規定している。

Q（秋山会長）：中国側は二つの制度があると主張している。東シナ海の大陸棚境界についての考え方は分かったが、東シナ海のEEZ境界についてはどのように考えているのか。

A（Ji（季）教授）：私は、中国は比例を原則としていると考える。中国は大陸で、日本は島である。北緯 30 度以南の海岸線は、中国が 900 キロに対して日本は 380 キロであり、

中日の東シナ海の所有比は64.3対35.7になる。これをEEZ区分の要素として考慮すべきだ。我々は大陸棚とEEZの二本の線を主張する。大陸棚について、沖縄トラフを如何に認識するかの問題は地質学者に期待したい。EEZについては、比例原則に基づいて引き、二本の線の間を共同で管理することについて議論すべきだ。討議が複雑化することを避けるため、尖閣諸島周辺領海12海里域を隔離することを提案する。

Q（秋山会長）：国連海洋法条約の規定としてEEZに海岸線の長さを持ち込むことはできるのか。国際判例はあるのか。検討の可能性はあるのか。

A（Ji（季）教授）：北海大陸棚は比例原則を引いている。リビアーマルタ紛争では、国際司法裁判所が海岸線を計測した結果、24対192の比例となり差が大き過ぎるとの考えから合理比例の要素を取り入れて調整して相対的大きな大陸棚をリビアに与えた。境界画定には海岸線の長さを考慮しなければならない。

Q（秋山会長）：大陸棚は分かったがEEZは例があるのか。

A（Ji（季）教授）：北海大陸棚判決時にはEEZの概念はなかった。但し、原則は利用できる。

C（坂元教授）：1993年のヤンマイエン境界画定事件判決は大陸棚の問題であるが、暫定的に中間線を引き、その後に関連事情を調査して修正する方法をとった。自然延長が境界画定の基準とならないことは、1985年のリビアーマルタ紛争以後の国際司法裁判所の判決で明確である。

Q（金田理事）：確認のため質問したい。温と安部両首相の共同声明で、東シナ海を平和の海として共同開発することに合意し、共同開発のための具体策を出すとしているが、今回中国側から出されている、EEZと大陸棚の線を引いた後に共同開発に移るとする意見は共同声明に矛盾するのではないか。未来のため、主権・領土問題を棚上げして共同開発をし、そこで信頼関係を築いて問題解決に繋ぐという方法は考えられないのか。

A（Ji（季）教授）：私の意見は共同宣言の精神に反するものではない。如何にその精神を実現するかが問題なのだ。個人の案だが、次頁図のように、二本の線、つまり①沖縄トラフの線、②日本が引いた中間線から尖閣海域を除き比例原則に則って東に移した線、この二本の線を決めて、その日本の線の間を共同開発することが適切と考える。国連海洋法条約の規定からEEZは海底を管理できるが、春暁は大陸棚資源と考えるべきである。日本のマスメディアはEEZだけを強調し大陸棚を言っておらず、誤解を与えている。第三者の見解として、中日国が東シナ海を半々に分けることは不衡平と考える欧米の学者もいる。

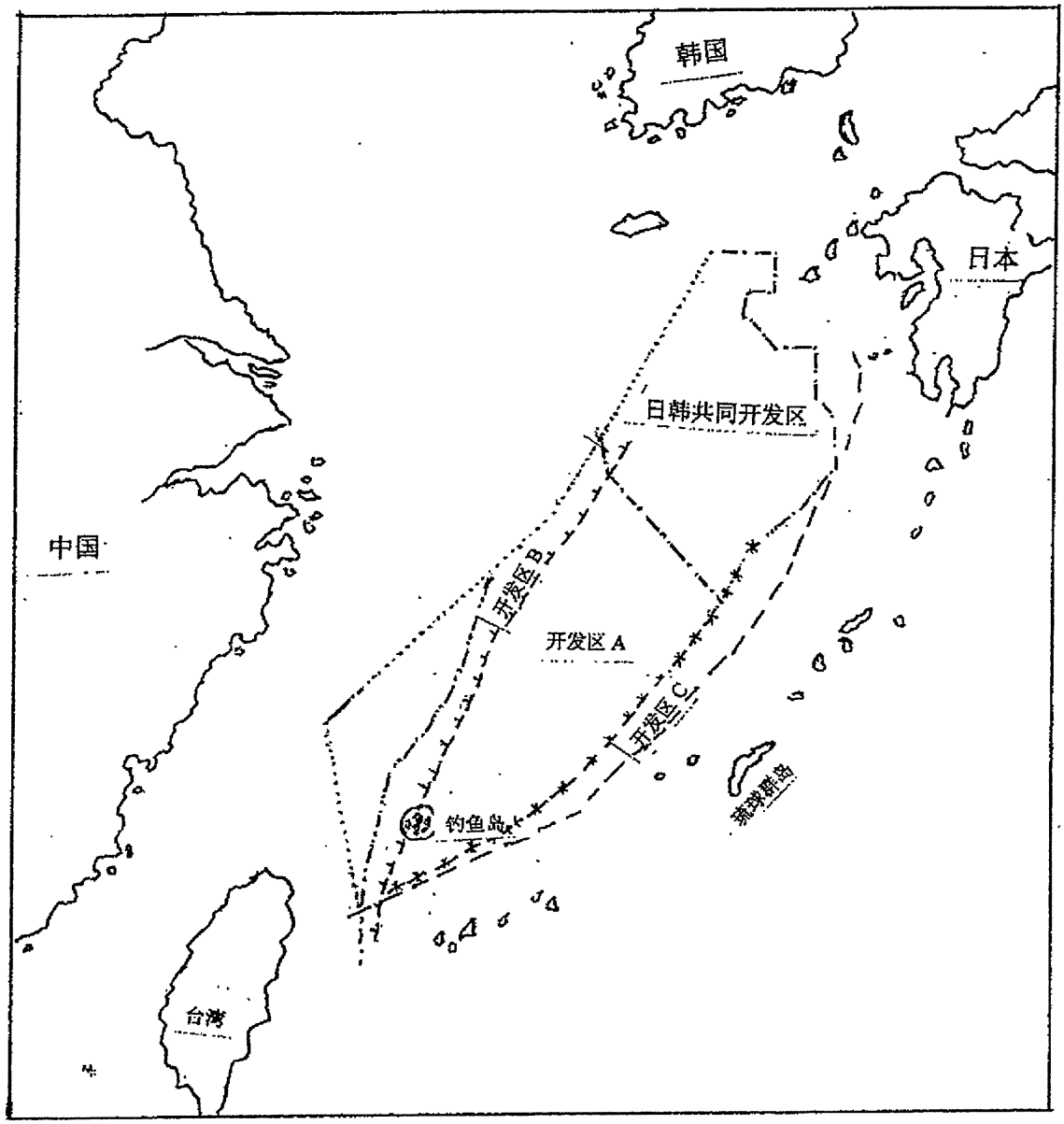
C（Zhou（周）教授）：中日両国の間で1973年から大陸棚の議論が開始されたが、いつの間にかEEZの議論になった。国際裁判所の判例が紹介されるが、条約の解釈権は加入国だけが持っている。判例が全てではなく、1985年から判決における考えが変わったとも思えない。

C（秋山会長）：周教授の論文に、日本の防衛計画に中国が脅威だとの記述があると記してあるが、そのような記述はない。アメリカでは、1990年代から中国脅威論を唱える向きがあるが、日本は中国を国際社会に取り込んでいくべきであるとの姿勢を通している。

また、日本の海洋基本法が東シナ海に不安定をもたらすとの意見があったが、その考えの根拠を示していただきたい。海洋基本法に政治家の意図が読み取れるとの指摘があったが、海洋基本法は当財団の寺島常務や秋山と、何人かの国際法学者などが練り上げ国会議

中日在东海设立共同开发区ABC三区的示意图

（季国兴建议并绘制）



中国大陆架主张线的最远点线

日本提出的中间线

东海海区中间线

钓鱼岛及其周围12海里领海作为“隔离区”

中方可提出的专属经济区线

中方根据中间线调整线对日方的补偿线

韩国提出的大陆架线

中日拟建立的共同开发区ABC

員（政治家）に提出し議員立法として成立したものである。国連海洋法条約に則った国内法であり中国に影響を与えるものではない。中国にも海洋法に関する複数の国内法がある。無人島管理条例もある。海洋基本法は海洋の総合的管理と国際協調を目指すものであって、東シナ海の権益確保を目的としたものではない。

A（Zhou（周）教授）：日本の「中国脅威論」はアメリカの学者の見解を引用したものである。海洋基本法は海上構築物安全水域設定法と一緒に制定されたものである。私が言いたいのは、海洋基本法が厳密な法律体系によって作られたものでないということだ。中国においては、基本法のようなレベルの法律は4、5年間がないと作れない。個人的意見だが、東シナ海に関する会談が停滞する際に作られた法律には何らかの意味があるはずではないか。法学専門家として異議を持っている。紛争の種になるだろし、問題解決に不利な要素となるだろう。

Q（坂元教授）：日本の飛行機が春暁開発現場上空を通過したことを非難する意見があったが、領空ではないので問題にならないと考える。他に何らかの考えがあるか。

A（Zhou（周）教授）：島や人口構造物は占有管理権がある。その上空を、非常に低く、機関銃で撃てる範囲を飛行したことが問題である。アメリカはEEZ上空が共有だと考えているが、国連海洋法条約では管轄権を規定している。条約に参加していないアメリカの意見は参考にならない。

C（秋山会長）：周教授は春暁が中国の大陸棚にあるとの前提に立っている。日本は中間線を規定しているが暫定的なものであり、中国にそれを強制してはいない。日本は沿岸から200マイルまでのEEZを主張することもできるが、そうすれば当然日中の間にオーバーラップするエリアが生じる。大陸棚は日本列島を越えて太平洋にまで延びているとすれば、東シナ海の大陸棚は日本の大陸棚でもある。係争中の海域に航空機が飛ぶのはけしからんとの中国の意見は言い掛かりである。

Q（神谷教授）：季教授の論文に、長期的アプローチとして境界画定問題を国際司法裁判所に提訴すると書いてあるが、中国で同じ意見を持つ人はどのぐらいか。

A（Ji（季）教授）：調べてはいない。長期的に解決できないままだと両国共に不利となるとの考えである。鄧小平は次の世代の叡智に託すと提唱したが、われわれは解決しないまま次の世代に託すのではなく会談で解決することを望んでいる。解決できないのであれば、国際裁判の方法も考えなければならないだろう。

C（神谷教授）：日本側としては歓迎する。日本は法律を尊重しており、国際機関を尊重している。国際司法裁判所がきちんと裁定するのであれば日本人は了承するはずである。日韓の問題についても、日本側は国際司法裁判所への提訴を提唱している。

（4）セッション3「東シナ海の共同開発と信頼醸成」

発表1「東シナ海の紛争海域における石油・天然ガスの日中共同開発」

國見昌宏　海洋政策研究財団特別顧問

（要　旨）

東シナ海は日中両国の平和の海でなければならないが、EEZと大陸棚の境界についての両国の主張が異なっている。日中両国は、双方が主張する範囲の重複部分、即ち紛争海域については日中で共同開発する総論で一致しているが、共同開発の具体的な区域や要領、

条件などについての協議において成果は上がっていない。

日本は境界線を、「わが国の沿岸から 200 海里の線又はそれが向かい側の国との中間線を超える場合は、対岸国と別の境界線に合意しない限り、中間線である」と規定している。中国は大陸棚の自然延長論に立ち、沖縄列島西方の沖縄トラフの最深部までを中国の大陸棚であると主張している。日中間の紛争海域は、日本から 200 海里の線と沖縄トラフ最深部に囲まれた海域と解される。以下、共同開発海域について私見を述べる。

日中が東シナ海で共同開発を行う場合、隣接する韓国や台湾から異論のない海域を設定する必要がある。日本は、尖閣諸島は日本が実効支配する領土であり尖閣諸島を巡る領有権争いは存在しないと考えているが、中国も自国領と主張しており、協議を複雑化させないためには共同区域から除外すること望ましい。東シナ海北部では 1974 年に日韓南部大陸棚共同開発協定が締結されており、日中の共同開発区域の北限はこの地域以南とすべきである。共同開発区域として検討する地理的範囲は、西側は日本から 200 マイル、東側は沖縄トラフ最深部であるが、この範囲は広大でかつ東西が自国領土に近接しており共同開発区域として合意を得ることは困難であろう。東西の線から双方とも平等な面積を削除する必要があり、東西の範囲は日本が主張する 200 マイル及び中国が主張する沖縄トラフ最深部からそれぞれ平等に 100 マイルを減じた線に囲まれた範囲とすることが望ましい。共同開発区域の北側は日韓南部大陸棚共同開発協定で規定された区域の南端、南側は尖閣諸島を基点に（200 マイルから 100 マイルを減じた）100 マイルの線とし、これらの線に囲まれた範囲とすることが適切である。（次図参照）

共同開発区域が決まったところで、次に共同開発を行うための日中協議機関の設立とその権限について検討する必要がある。日中両国は、国連海洋法条約第 74 条 3 項に基づき、東シナ海の共同開発区域における石油･天然ガスを対象とした資源開発に関する事項を定めた協定（又は条約）を締結する必要がある。この協定に基づき、両国の関係閣僚で構成する共同閣僚協議会と共同開発機関を設立し、政策事項を決定すると共に開発企業等を指導監督しつつ相互に調整して資源開発を行う態勢を構築すべきであろう。

共同開発区域の開発に当たっては、先ず日中の合弁企業を設立して行う可能性を追求し、困難な場合は日中が個別に開発を行うこととすべきであろう。また、安全の確保と自然環境の保全に係わる取極も必要となる。

東シナ海は日中両国の平和の海であり、実際にそうあらなければならない。東シナ海の日中共同開発は、世界の大国として経済発展を続ける両国の共通利益である。東シナ海を平和の海にするためには、両国の相互理解と共通認識が必要であり、そのためには両国の指導者間の相互信頼が最も大切である。

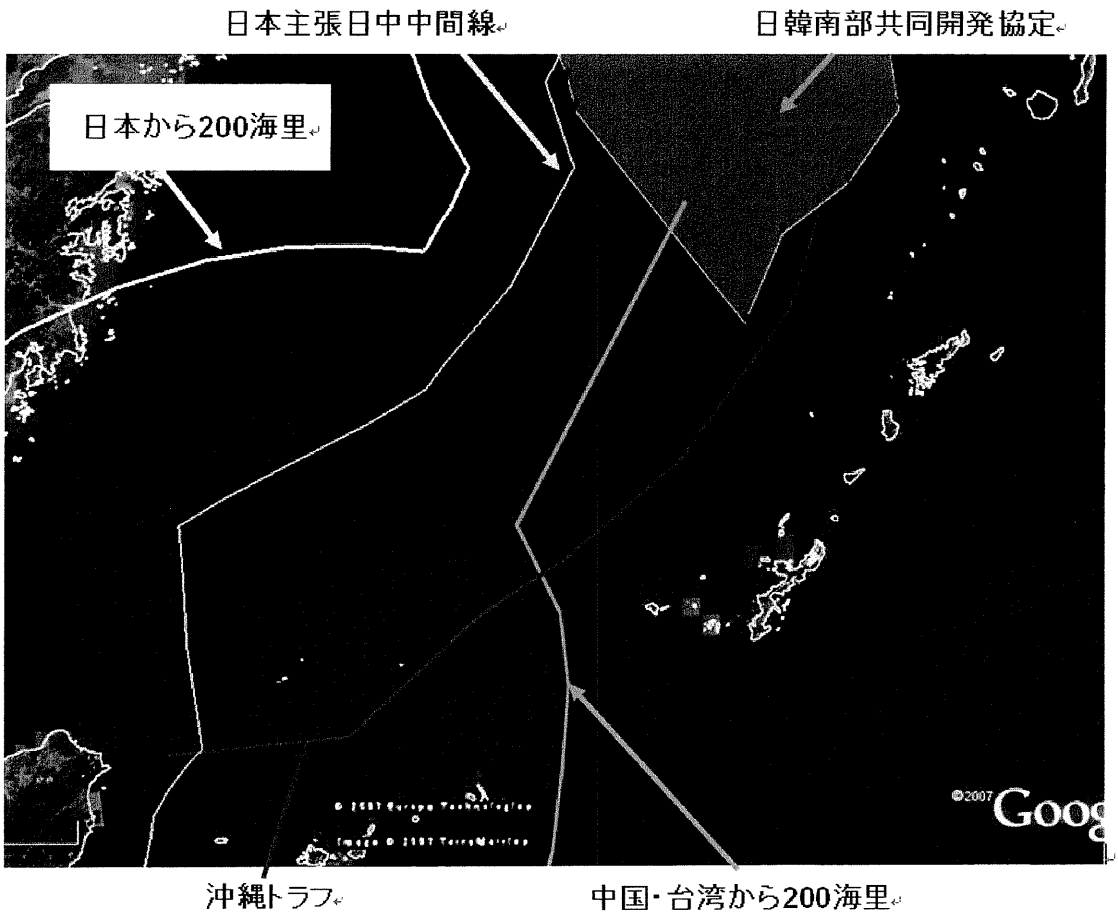


図　共同開発案概念図（國見特別顧問資料）

発表２「東シナ海の共同開発と信頼醸成措置について」

金田秀昭　岡崎研究所理事

（要　旨）

本年４月の日中首脳会談における共同コミュニケで、東シナ海海底資源に係わる共同開発の推進が謳われた。しかし、八回目、九回目の会議においても両者の主張には依然隔たりがあり進展していない。日中協議の先行きに関心を寄せているのは日中両国のみではない。米国防大学国家戦略研究所は、今年４月、日中首脳協議の時期にタイミングを合わせ「日中対立：米国政策へのインプリケーション」と題する報告書をまとめ、東シナ海のガス田をめぐる日中摩擦が軍事的紛争に発展する可能性があると警告し、「東シナ海で発生し得る危機に備えるべきだ」と米政府に提言した。温首相の来日日程に合わせて作成されたこの報告書は、米国の軍事・外交専門家が、海洋主権や海洋権益問題での日中摩擦を深刻に受け止め注視していることを示している。

中国海軍の動向について今春、米国のランド研究所が発表した「龍の巣窟への侵入」と題した論文では、中国の対米阻止戦略を、電撃・持久を基本とする「接近阻止戦略」と名づけている。この「接近阻止戦略」を裏付ける中国の最近の顕著な動きとして、原子力潜水艦を含む各種近代化艦艇や第４世代と称される新型戦闘機などの導入が報道されている。

また、台湾有事をにらんで米空母攻撃用の対艦弾道ミサイルの開発に着手するとともに、ロシアから超音速長距離爆撃機を導入し対米軍戦術を修正していることが明らかになったとしている。

本年7月に発表された「日本の防衛（防衛白書）」では、中国の置かれた地理的条件や、グローバル化する経済などの諸条件を一般的に考慮すれば、中国海軍などの海洋における活動には、次のような目標があると考えられると論及している。

① 中国の領域を防衛するため可能な限り遠方の海域で敵の作戦を阻止する。
② 台湾の独立を抑止・阻止するための軍事能力を整備する。
③ 海洋権益を獲得し、維持および保護する。
④ 経済活動の生命線である自国の海上輸送路を保護する。

上記のような目標を有すると考えられる中国海軍などの海洋における活動の動向に加え、わが国周辺における海軍艦艇や国家海洋局などの政府船舶による海洋調査活動の過去の経緯を考慮すれば、今後、日中による東シナ海のガス田での共同開発に関連し、日本側として、その動向には特別に注目しているところである。

日中両政府は、外交文書「海洋調査活動の相互事前通報の枠組みの実施のための口上書の交換について」により事前通報を制定しているが、依然として中国艦船による未通報の調査活動が頻発している。中国軍の透明性には大いに疑問がある。中国の軍事態勢の透明性向上については各国が申し入れているところであり、今後は、国防白書の更なる透明性の向上や、国家や海上法執行機関・軍の意図についての透明性を促進するよう期待する。

信頼醸成のための具体的な行動としては、艦艇相互訪問や親善訓練、ホットチャンネルの設定、現場における通信手段の確保等が望まれる。そうした中で、海上事故防止協定の締結に結び付けていくことが重要である。その上で、より高度な2国間の信頼醸成を推進するため、可能な範囲で各種の2国間、又は多国間の共同訓練を進める傍ら、人道的な立場からする海上捜索・救難（SAR）協定などを締結し、同協定に基づく訓練や演習の定期的実施にまで高めていくという流れが期待されよう。

発表3「東シナ海における日中間最終境界画定前の暫定協定について」

Yu Zhirong（郁　志榮）中国海監東海総隊副総隊長、教授

（要　旨）

東シナ海の問題は1982年の国連海洋法条約が採択されて以降のものであり、海洋主権と管轄権の問題、さらには法に対する理解と認識の違いが存在している。東シナ海の問題解決にあたっては、共同開発だけではなく、問題の原因となる法的、政治的、科学的な事項を検討し衡平の立場から対応しなければならないだろう。そのためには、先ず東シナ海大陸棚の地質調査から実施すべきであろう。また法的側面から、日中は国連海洋法条約について共同研究を行っていく必要がある。日本は1982年以降、東シナ海の境界画定について中国に対して中間線による解決を主張し、大陸棚制度の主張を排他的経済水域にとって替わるようにし、2004年からは春暁油ガス田について、その海底資源が日本側主張中間線下の海底資源までをも吸い取っていると吹聴し中止を求めている。

日本は2004年からノルウェー船を利用し周辺海域を調査、日本民間企業に試掘権を付与する対抗措置をとった。しかし海洋法条約に則った各国の実践によって意見の対立が起

きるのは当然である。条約の基本精神を大切にしつつ、中間線一本での解決が難しいのであれば、異なるような線引きについても考慮し、第三者も交えた討議もすべきである。

中国では通常、中間線といえば地理的等距離線のことを指すが、日本側はこれについて詳細を明確にしていない。また沖縄などの島嶼と中国大陸とでは海域画定に対して影響力が異なるのは当然であり、また長江が生物資源の育成に多いに貢献していることも忘れてはならない。日本はその名を「東シナ海」と呼んでいるように、元々は中国の海であったと認識しており、中日は法律的、科学的、歴史的な事項を考慮し、正比例の原則を東シナ海境界画定にあてはめるべきである。

中国は東シナ海の大陸棚について1958年に既にその権利を取得していると考えている。中国は大国の風格を持って、広い大陸棚を主張しつつも、日本側にも開発の余地を認めようと配慮しているところである。共同開発に当たっては中日関係当局間で信頼醸成措置を十分に構築していく必要がある。2002年北朝鮮不審船が東シナ海海底に沈没したときに、中日両国は協力し海上保安庁と中国国家海洋局とが事務協議を行った。今後は係争海域での当局関係航空機の高度や飛行範囲などで合意を目指していくべきである。中日双方は東シナ海の資源開発問題についてメディアも規制すべきである。

発表４「東シナ海の共同開発」

Ji Guoxing（季　国興）上海交通大学国際公共事務学院教授

（要　旨）

中日共同開発に関して、係争海域及び今後の開発海域をどのように画定していくのかはまだ決まっていない。日本側は中間線を主張し、その東西の比較的狭い範囲を開発海域とするよう主張しているが、問題解決に向けてその認識を変化させるべきだ。昨日の会議でもオーストラリアと東チモールの大陸棚と EEZ の境界画定が別個に行われた件を紹介したが、この事例は中日間の東シナ係争海域問題に極めてよく似ているように思える。なぜなら、大陸国家と島嶼国間の境界画定判例だからである。東シナ海は距離が 160～290 マイルしかなく極めて狭い。もし日本が領海基線から 200 マイルの EEZ と大陸棚を主張すると、その線は中国の領海に達してしまう。

東シナ海の南側、すなわち尖閣諸島周辺海域は海底資源が豊富であるが、日本は共同開発海域からこの部分を除外しようとしており、中国は既に抗議をしている。中日両国が東シナ海における大陸棚と EEZ の境界線をそれぞれ画定したならば、その間にある海域で共同開発区の協定が結ばれるはずである。海床と海底に対する管轄権は中国に属し、海床上部海水に覆われている水域の管轄権は日本に属することになる。

日本と中国が東シナ海の共同開発区で ABC という三つの区域を設立することを提案したい。①開発区の限界画定について、その東側の境界線は中国の大陸棚主張線の最遠部まで、西側は日本主張中間線とする。北部と南部についてはこれから検討する。②B、C 区域は１より調整された日中双方の EEZ とし、③中心の A 区域を共同開発範囲とする。

コメント１　秋元一峰　海洋政策研究財団主任研究員

（要　旨）

東シナ海の共同開発についての実務者協議は進展をみていないが、話し合いが開始され

たことは安全保障の観点から大きな前進である。東シナ海の海底資源を採掘するのであれば共同開発以外に方策はなく、また放置しておけば大きな紛争へと繋がる危険性があるからである。

今、国際社会が直面しようとしている最も大きな危険は、将来絶対的に不足する資源を巡っての紛争の生起である。イデオロギーの対立は、対立のままで終わらせることができるが、食料・エネルギー資源を巡る対立は、それが生死に直接係わる事態を招くことから、武力を伴う熾烈な国家間の紛争を惹起する危険性を孕んでいる。東シナ海の海底資源も例外ではない。今のところ、中国と違って日本は東シナ海の海底資源がなくとも国家の資源が不足することはないだろうが、そこに資源エネルギーがあるということ、それが即ち紛争要因となり得るのであって、なるべく早い時期から共同利用について協議をしておくことが重要である。

そこで考慮しなければならないのが、共同開発に先立つ両国間の透明性の促進と信頼の醸成であり、そのための具体的な措置の構築である。東シナ海での両国間における軍の偶発的な衝突は、共同開発が実施されている場合の方が、実施されていない場合よりも発生の確率は高いと認識する必要がある。共同開発の合意がなく、対立状態の海域であれば、両国の海軍艦艇や開発に携わる船舶等は一定の距離を置いて行動するだろうが、共同開発となれば、両国から採掘に当たる船舶、監視艦艇、調査船などが集中するからである。

共同開発を安全なものとする信頼醸成措置としては、事前通報協定、海上事故防止協定、監視時における行動規約、オープン・スカイ協定といったものが必要となるだろう。更に、仮に信頼醸成に疑問が生じた場合には、共同開発海域を非武装海域とする協定も必要になるかもしれない。

信頼醸成構築における気掛かりとして、中国中央と地方・個別行政組織の方針の一貫性、中国の軍事に関する透明性の不足、中国軍の行動の国際スタンダードとの乖離等があり、これらについて中国は改善を図る必要がある。

<u>コメント２　Wang Shaopu（王　少普）上海社会科学院亜洲太平洋研究所日本研究中心研究員</u>

（要　旨）

日中双方の発表者の提案は受容可能と思われる。このような前向きな姿勢を続けていけば共同開発にも道が開けるだろう。日中の信頼醸成の必要性には同意する。それにしても、日本が促進しようとする米、豪、印との価値観外交には違和感があり、中国の信頼を損ねている。

温家宝首相の演説や近縁の市場経済の進展をみれば、中国で民主化が進んでいることは明らかだ。しかし、中国は日本と社会構造が違うのだから、民主化のプロセスが異なるのも当然である。そこを理解してほしい。中国の民主化は確実に進んでいるのだから、多元化した文化を受け入れて頂きたい。多元世界の中からお互いの共通点を探して、そこから信頼醸成を進めていってはどうか。

<u>コメント３　神谷万丈　防衛大学校教授</u>

（要　旨）

一般的に、コメントは発表に対して建設的な批判を加えることだと理解している。その上で、以下のコメントを申し上げる。

① 日中コミュニケを歓迎しているが、本会議における中国のペーパーや発表を見ると、中国の考えからでは、東シナ海を平和の海とすることは難しいのではないか。東シナ海における立場の違いの根拠は、国際社会のルールの捉え方の違いではないのか。つまり中国はパワーポリティックスを重視し、日本は国際ルールと法を尊重するという違いだ。

② 中国には日本の国内世論に対する誤解があるのではないか。日本は言論の自由が保障されており、政治が世論をコントロールすることはできない。従って、東シナ海の問題についても、政府が世論を煽るなどということができるはずがない。日本の世論は、1990年代には日中友好を重視していたが、現在は中国は傲慢だという反中感情が起こっている。また、東シナ海における中国の姿勢は、日本に対する態度の象徴的なものだと日本国民はみなしている。

③ 中国側にも譲歩がなければ、日中の信頼醸成は進まない。

コメント４　Zhou Zhonghai（周　忠海）中国政法大学教授

（要　旨）

① 東シナ海の共同開発については国際法に従って行うべきであろう。まず必要なことは、係争海域の範囲を確定することだ。

②その上で、海域の共同開発の方法論を討議すれば良い。方法については、日中は既に日中漁業協定で合意を得た経験がある。それを参考とすべきである。

③ 共同開発において中国が問題としているのは、中間線の内側か外側かといった海域の範囲ではなく、石油及び天然ガスがいずれの国に属するものであるか、ということだ。

④ 台湾は、中国の内政問題であり、日本はそれを理解していると考えている。台湾を独立国として扱うことはやめて頂きたい。

質疑・応答

C（坂元教授）：８月に中国の活動家が尖閣諸島に上陸しようとしたところ、中国政府が出港を抑えた。中国国内は、このように中国は譲歩しているのに、日本は頑なだとの感情があるのではないか。そうであれば信頼醸成は進まない。尖閣への上陸は譲歩の問題ではなく主権の問題である。

中国による尖閣諸島周辺における海洋の科学的調査について、事前通報しないのは領土だからと考えているのであれば、それは間違いだ。日本は竹島周辺での海洋の科学的調査に関して事前通報しているが、これは、韓国の竹島領有権を認めているわけではない。

日本が東シナ海に主張する中間線は、あくまで最終的解決にいたるまでの暫定的な提案にすぎない。

C（Wang（王）教授）：信頼醸成措置の構築のためには、コミュニケーション、理解、お互いの意見を聞くことが大事である。安倍政権発足以来、日本の中国に対する姿勢は良くなっている。選挙の時、安倍首相は政治と経済を分ける考えを示し、その後、中国の意見を受け入れるようになった。中国も同じく歴史問題について相手の意見を聞くようになった。謙虚な態度をとり、相手の意見を聞くことは重要だ。

神谷教授は、日本は自由社会であって政府が世論をコントロールできないと述べたが、中国も同じである。海外メディアが中国で自由取材できるようになったし、インターネットの役割は大きく、世論を操作などできない。

中国の状況を理解しようとしない限り、中国に対する正確な判断は難しい。学者が民衆をリードして民衆感情を激化させるべきではないだろう。

C（國見特別顧問）：共同開発において先ず必要なことは係争水域を決定することだ。中国が沖縄トラフまで大陸棚を主張しているのは日本の意見を聞いていないためだ。中国が日本による海洋の科学的調査等に抗議を行うのは日中の相互理解に誤解が存在しているためだ。

境界画定の方法について、中国側から沿岸線の長さに比例して決める案があったが、これを中国政府に提案されたら如何か。境界画定については、日中だけでなく、日中台韓で多角的に議論していくことが有意義だろう。

A（金田理事）：価値観外交への批判についてお答えする。冷戦後の世界の趨勢は、グローバル化と民主化である。時代によって国益は変化している。冷戦期には、生存と安全であったが、現代では価値だろう。中国も以前に比べて民主化されたのであるから、日中間で共通点を模索できるはずだ。

台湾問題は内政だと言われたが、台湾に対して武力行使を想定することは国際法上の問題ではないか。平和的解決を求める姿勢を示すべきである。

C（秋山会長）：世論操作は中国にもできないとの話があった。中国でも世論を政治に反映させざるを得ないのが現状であると理解している。中国側に、日本政府は正常な報道をするようリードすべきとの意見もあった。確かに、東シナ海問題の最初の東京新聞の報道には世論を煽るような内容があった。しかし、それは決して政府がリードしたものではなかった。最初のうちは、東シナ海問題に関する新聞報道には誤解があったが、その後は改善されていった。新聞報道を正しく、という問題には大変難しいものがある。

日本が東シナ海に一方的に中間性を引いてコントロールしている、との意見があったが、中国は一方的に春暁油田を開発しているではないか。そこが係争海域ではないと挙証できるのか。春暁油田も係争海域にあることを認識してもらいたい。中国の意見には、中国は正しく、日本は間違っているとの姿勢が強すぎる。

日本は国内法で暫定的に中間線を引いたが、戦略的に失敗したと思う。中国に、中間線の西側を放棄したとの間違った認識を与えてしまった。現実的に考えると、中間線は日本側に移動させることができると思う。季教授の海岸線比例原則は無視できない。中越による境界画定協議のおり、ベトナムが大陸棚自然延長論を主張したのに対し、中国は中間線を主張した。このとき、比例配分論はあったのか。

A（Ji（季）教授）：秋山会長の言われるように、中間線を東側に移動できるようだと解決の突破口を見つけられるだろう。

トンキン湾におけるベトナムとの境界画定問題には、地理的問題に加えて歴史的経緯がある。1950年代にホーチミンがトンキン湾の小島を中国から租借した。ベトナムはその島を使い続けた。中国の漁民は大変な不利益を被ることになるが、中国はベトナムにこの島を譲渡することとした。そのような政治的解決の事案が背景としてあったので、境界画定においては中間線を主張した。

（5）クロージング・セッション

Chen Qimao（陳　啓懋）上海交通大学国際公共学院教授閉会挨拶要旨

今回の会議で討議した事項は、日中の最も敏感な問題であり、判断を間違うと、国家間の衝突を招くものである。対話を通じ以下の収穫があった。

① 率直に意見を交換できた
② 熱心に議論し、相手の意見を聞けた
③ 内容も実りあり、共同開発に関して具体的な提案がなされた。

お互いに意見を尊重し、譲歩することが重要である。これからもこの試みを続けていきたい。海洋政策研究財団とスタッフの協力に感謝したい。

秋山昌廣　海洋政策研究財団会長閉会挨拶要旨

率直な意見の交換ができた。本ダイアローグの三回目を実施するのであれば、次の二つのことをお願いしたい。

① 繰り返しの議論をしても意味がない。相手側の説明・主張に対する評価が必要である。相手の主張に対して反対するのであれば、その理由等を示すようにしてほしい。
② 共同開発と境界画定については、更に具体的な議論が必要である。議論においては、原則を確認しあう必要がある。その際、国際法の精神(衡平な解決)に基づくことが必要との認識が求められる。
③ 日中関係についても議論しもらいたい。

さて、日本のマスコミがこの会議に関心を持っている。発表・発言の個人名を出さない形で議論の概要等を公開して宜しいか。

Chen Qimao（陳　啓懋）教授：

会議の名称に「中日専門家」を入れ、政府レベルでの対話ではないことを強調して頂ければ構わない。

別紙 1

第２回「日本と中国との海洋安全保障ダイアローグ」
(The 2nd China-Japan Dialogue on Ocean Security)

北東アジアの海洋安全保障－課題と展望－
(Ocean Security in Northeast Asia: Issues and Prospects)

第１日目（8 月 27 日（月））

09：00－09：20　開会挨拶（Opening Remarks）

日本側：秋山　昌廣

中国側：Chen Qimao (陳　啓懋)

09:20－12：15　セッション１　日中関係と北東アジアの海洋安全保障
（SS1: The Sino-Japanese Relation and Ocean Security in Northeast Asia）

ねらい：日中両国の海洋に係わる国益、防衛・資源・環境政策等に関する意見交換
(Discussion on national maritime interests, and national policies on defense, marine resources, marine environment conservation, etc.)

09：20－10：40　発　表 (Presentations)（各 20 分）

日本側：秋山　昌廣、茅原　郁生

中国側：Chen Qimao（陳　啓懋)、Wang Shaopu（王　少普）

10：40－10：55　休　憩 (Coffee break)

10：55－11：15　コメント (Comments)（各 10 分）

日本側：神谷　万丈

中国側：JI Guoxing（季　国興）

11：15－12：15　討　議 (Discussion)（１時間）

12：30－13：30　昼　食 (Lunch)

13：45－16：30　セッション２　北東アジア海域の法的地位
（SS2: Northeast Asian Seas: Status and Legal Issues）

ねらい：EEZ、大陸棚、境界画定、国連海洋法条約関連条項等に関する意見交換
(Discussion on the EEZ and continental shelf regimes, maritime delimitation, related UNCLOS stipulations, etc.)

13：45－14：55　発　表 (Presentations)

日本側（30 分）：坂元　茂樹
中国側（各 20 分）：Zhou Zhonghai（周　忠海）、Ji Guoxing（季　国興）
14：55－15：15　コメント(Comments)（各 10 分）
日本側：山本　草二
中国側：Yu Zhirong（郁　志榮）

15：15－15：30　休　憩 (Coffee break)

15：30－16：30　討　議 (Discussion)（1 時間）

17：30-19：00　OPRF 主催夕食会（新館　5F「オーク」）
(Dinner hosted by OPRF at the "Oak" room on the 5th floor)

第 2 日目（8 月 28 日（火））
09：00－12：15　セッション 3　東シナ海の共同開発と信頼醸成
（SS3: Joint Development and Confidence-Building in East China Sea）
ねらい：共同開発の可能性と透明性促進・信頼醸成のための具体策の検討
(Discussion on the possibility of joint development, and concrete measures for improving transparency and promoting confidence building.)

09：00－10：20　発　表 (Presentations)（各 20 分）
日本側：金田　秀昭、國見　昌宏
中国側：Yu Zhirong（郁　志榮）、Ji Guoxing（季　国興）

10：20－10：35　休　憩 (Coffee break)

10：35－11：15　コメント (Comments)（各 10 分）
日本側：秋元　一峰、神谷　万丈
中国側：Wang Shaopu（王　少普）、Zhou Zhonghai（周　忠海）
11：15－12：15　討　議 (Discussion)（1 時間）

12：15－12：25　閉会挨拶（Closing Remarks）
Chen Qimao (陳　啓懋)
秋山　昌廣

別紙 2

会議メンバー (Bilateral Dialogue Members)

（日本側—Japanese side）

金田　秀昭　　岡崎研究所理事

Vice Admiral (Ret'd) Hideaki Kaneda, Okazaki Institute (Ex-Commander, Escort Fleet, MSDF)

茅原　郁生　　拓殖大学教授

Major General (Ret'd) Ikuo Kayahara, Professor, Takushoku University

坂元　茂樹　　神戸大学教授

Prof. Shigeki Sakamoto, Graduate School of Law, Kobe University

神谷　万丈　　防衛大学校教授

Prof. Matake Kamiya, National Defense Academy

秋山　昌廣　　海洋政策研究財団会長

Prof. Masahiro Akiyama, OPRF chairman

山本　草二　　海洋政策研究財団特別顧問

Dr. Soji Yamamoto, OPRF special advisor (ex-Judge, International Tribunal for the Law of the Sea)

國見　昌宏　　海洋政策研究財団特別顧問

Lieutenant General (Ret'd) Masahiro Kunimi, OPRF special advisor

秋元　一峰　　海洋政策研究財団主任研究員

Rear Admiral (Ret'd) Kazumine Akimoto, Senior Research Fellow, OPRF

（中国側—Chinese side）

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添付資料

第２回日本と中国との海洋安全保障ダイアローグ

（東京会議 2007）

発表資料

2007.8.27

第２回「日本と中国との海洋安全保障ダイアローグ」
(The 2nd China-Japan Dialogue on Ocean Security)

北東アジアの海洋安全保障－課題と展望－
(Ocean Security in Northeast Asia: Issues and Prospects)

第１日目（8 月 27 日（月））

09：00－09：20　開会挨拶（Opening Remarks）

日本側：秋山　昌廣

中国側：Chen Qimao (陳　啓懋)

09:20－12：15　セッション１　日中関係と北東アジアの海洋安全保障

（SS1: The Sino-Japanese Relation and Ocean Security in Northeast Asia）

ねらい：日中両国の海洋に係わる国益、防衛・資源・環境政策等に関する意見交換

(Discussion on national maritime interests, and national policies on defense, marine resources, marine environment conservation, etc.)

09：20－10：40　発表（各 20 分）

日本側：秋山　昌廣、茅原　郁生

中国側：Chen Qimao（陳　啓懋)、Wang Shaopu（王　少普）

10：40－10：55　休　憩

10：55－11：15　コメント（各 10 分）

日本側：神谷　万丈

中国側：JI Guoxing（季　国興）

11：15－12：15　　討　議　（１時間）

12：30－13：30　昼　食

13：45－16：30　セッション２　北東アジア海域の法的地位

（SS2: Northeast Asian Seas: Status and Legal Issues）

ねらい：EEZ、大陸棚、境界画定、国連海洋法条約関連条項等に関する意見交換

(Discussion on the EEZ and continental shelf regimes, maritime delimitation, related UNCLOS stipulations, etc.)

13：45－14：55　発　表
日本側（30 分）：坂元　茂樹
中国側（各 20 分）：Zhou Zhonghai（周　忠海）、Ji Guoxing（季　国興）
14：55－15：15　コメント（各 10 分）
日本側：山本　草二
中国側：Yu Zhirong（郁　志榮）

15：15－15：30　休　憩

15：30－16：30　討　議　（1 時間）

第 2 日目（8 月 28 日（火））
09：00－12：15　セッション３　東シナ海の共同開発と信頼醸成
（SS3: Joint Development and Confidence-Building in East China Sea）
ねらい：共同開発の可能性と透明性促進・信頼醸成のための具体策の検討
(Discussion on the possibility of joint development, and concrete measures for improving transparency and promoting confidence building.)

09：00－10：20　発　表（各 20 分）
日本側：金田　秀昭、國見　昌宏
中国側：Yu Zhirong（郁　志榮）、Ji Guoxing（季　国興）

10：20－10：35　休　憩

10：35－11：15　コメント（各 10 分）
日本側：秋元　一峰、神谷　万丈
中国側：Wang Shaopu（王　少普）、Zhou Zhonghai（周　忠海）
11：15－12：15　討　議（1 時間）

12：15－12：25　閉会挨拶　（Closing Remarks）
Chen Qimao (陳　啓懋)
秋山　昌廣

会議メンバー (Bilateral Dialogue Members)

（日本側、敬称略—Japanese side）

金田　秀昭　　岡崎研究所理事

Vice Admiral (Ret'd) Hideaki Kaneda, Okazaki Institute (Ex-Commander, Escort Fleet, MSDF)

茅原　郁生　　拓殖大学教授

Major General (Ret'd) Ikuo Kayahara, Professor, Takushoku University

坂元　茂樹　　神戸大学教授

Prof. Shigeki Sakamoto, Graduate School of Law, Kobe University

神谷　万丈　　防衛大学校教授

Prof. Matake Kamiya, National Defense Academy

秋山　昌廣　　海洋政策研究財団会長

Prof. Masahiro Akiyama, OPRF chairman

山本　草二　　海洋政策研究財団特別顧問

Dr. Soji Yamamoto, OPRF special advisor (ex-Judge, International Tribunal for the Law of the Sea)

國見　昌宏　　海洋政策研究財団特別顧問

Lieutenant General (Ret'd) Masahiro Kunimi, OPRF special advisor

秋元　一峰　　海洋政策研究財団主任研究員

Rear Admiral (Ret'd) Kazumine Akimoto, Senior Research Fellow, OPRF

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Session 1 "The Sino-Japanese Relation and Ocean Security in Northeast Asia"

Session1-① Implication of China-Japan Dialogue on Ocean Security

Prof. Masahiro Akiyama

Session1-② Maritime Interests and Security Issues Surrounding China and Japan "Competition and Friction" to "Coordination and Co-existence"

Major General (Ret'd) Ikuo Kayahara

Session1-③ Northeast Asia Security Situation and China-Japan Relations

Prof. Chen Qimao

Session1-④ China's Rise and Sino-Japanese Relations

Prof. Wang Shaopu

IMPLICATION OF CHINA-JAPAN DIALOGUE ON OCEAN SECURITY

Masahiro Akiyama

The China-Japan Dialogue on Ocean Security
-Ocean Security in Northeast Asia: Issues and Prospects-
August 27-28, Tokyo Japan

I would like to explain in this paper my analyses on the implication that both Japan and China should discuss maritime security issues at this moment.
The backdrops of the discussion are as follows.

First, we have to see carefully the recent situation of relationships between the two countries.
Many people refer to the improvement of the relationships since Japan's Prime Minister Shinzo Abe visited China soon after he took office last year. It is true from political view points and welcome by both countries. Then, I would like to add that economic relationships between Japan and China have strengthened as China rises toward a huge economic entity. And also Social relationships such as exchange of both countries' people and different cultures are so much deepened.
It was made public recently in a Japan-China joint investigation on public opinion[1] that Japanese people have still less friendly emotion against China while Chinese people have improved their emotion on Japan. I should say that Japanese people had changed their attitude to China into a severe one through both the rising of anti-Japan movement in China in 1990's and the rising of China in economy and politics since after the end of the Cold War. Even if the former element becomes small and cool down, the latter one becomes bigger and bigger. In particular Japanese people are concerned about China's rapid buildup of military capability without transparency and the international expansion actions which have been taken under the political dictatorship. The situation does not so easily change in China because I think she is now on a historical process to a big power directly from a developing country by using all kinds of means and tools.
Many of Japanese hope as idea the improvement and friendly of Sino-Japan relationships recognizing that it is important for Asia Pacific region as well as for both countries. But I would say a reality is that the idea and the emotion of Japanese over China are different. I think it is not a crucial problem and it is rather natural as Japan is facing a high possibility of China being a big power following the US. I hope China also recognize the reality and not be so concerned about it.

I would say that Japanese people's emotion may change and may not change in near future.

Second, Japan and China have many disputes in various fields.
Political ones are: i) rivalry relations between two powers of Japan and China which they are confronting for the first time in the long history, ii) the history problem (incl. Yasukuni Shrine visit problem), iii) alliance vis-à-vis non alliance, iv) competition of how to take initiative over Asian countries, v) Taiwan problem, vi) the territorial and delimitation issues, and vii) Japan's taking a seat of the Permanent Security Council in United Nations.
In economic field there are also so many issues such as copy goods problem, resource securing competition, poison products, buy-cheap-labor with providing no technology, fishery problem and competitive engagement actions toward the Asian market.
To the respective society of Japan and China, crimes executed by other country's persons, fanatic nationalism and extremely different culture and manners may bring a crucial damage.
The problem is that some of these issues are critical for both countries because there might be a military (incl. coast guard force) conflict. They are problems related to Taiwan, Senkaku Island, delimitation over continental shelf and exclusive economic zone, environment and fishery. All these are strongly related to seas.
In other words they are all maritime security issues.

Third, Japan introduced the Ocean Basic Law[ii] recently. The Cabinet Council on Comprehensive Ocean Policy led by Prime Minister was established and a new Minister responsible for Ocean Policy was assigned. Japanese government is going to make an ocean basic plan soon and will develop the ocean policies in a comprehensive and integrated manner which the UNCLOS[iii] and the Agenda 21 [iv]advocate.
On the other hand China has tackled ocean problems since 1964 with establishing the State Oceanic Administration (SOA) and introduced some important laws related to oceans mainly in 1990's. I understand that China has already developed her ocean policies comprehensively.
The fact should be confirmed that both China and Japan have ratified the UNCLOS.
This means that now both Japan and China see oceans as indispensable national interests while they are developing the ocean policies due to the principles of UNCLOS.

Forth, elements of ocean problems are interacted and they have a transnational

character as seas have not any border as its nature. All of borders and zones in seas have been artificially designed by human being. The problems cannot be but solved in an international cooperation. As far as the delimitation UNCLOS requires states to reach the agreement on the basis of international law in order to achieve an equitable solution[v].

There are many maritime related issues between Japan and China. It is true that the delimitation for continental shelf and EEZ is the biggest one at this moment. But we have to see maritime environment problems, fishery, maritime safety and any type of use of seas as well as Taiwan problem. They are mutually interacted and we cannot find solutions without comprehensive approach and international cooperation. Particularly the maritime environment problems should be tackled internationally. Pollution in East China Sea is a big concern not only for Japan but also for China herself. Both countries should recognize the situations. Possible negotiation between the two countries on the ocean environment will trigger the other issues related negotiations.

Fifth, Japan-China relationships bring a big influence on Asia Pacific region. Countries in the region are facing same maritime security issues as ones between Japan and China. They are also interested in Sino-Japan relationships in maritime fields as well as their security relations. It means that Japan and China are responsible for peace and stability of seas in this region although the two countries are mutually competitors politically and economically toward Asia as I referred to above.

If Japan and China solve their maritime relationships appropriately I think it would become somewhat an international public good.

The implication for our dialogue is as follows.

There are many maritime security issues between Japan and China which are so critical as they might bring a military conflict. The relationship between the two countries is difficult as it becomes a rivalry one historically for the first time. At the same time Japan and China has already ratified UNCLOS and have intention to develop ocean policies due to the principles of the Convention. Key points of the Convention are comprehensive management of seas and international cooperation. When the two countries solve these issues according to the principles through diplomatic negotiations, it brings a big interest not only to Japan and China but also to countries in Asia region.

In the negotiation the biggest point is how both countries find an appropriately compromised solution to achieve equitable results.

Exchange of opinion and negotiation are essential at a very time when relative countries' relationships are critical. And they can be, or should be conducted also in multiple layer manner so that a frank discussion in a truck two style like this is helpful to the process.

In other words, this process between Japan and China on maritime security problems is a symbol of a process to peaceful resolutions for this region, Asia as well as both countries.

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[i] Genron NPO, "Japan-China Joint Public Opinion Poll in 2007", announced August 17, 2007, accessed to http://www.genron-npo.net/forum_pekintokyo3/002757.html

[ii] The Basic Ocean Law (2007 Law No. 33)

[iii] United Nations Convention on the Law of the Sea

[iv] Agenda 21, the Rio Declaration on Environment and Development and the Statement of principles for the Sustainable Management of Forests, in June 1992

[v] UNCLOS Article 83.

Maritime Interests and Security Issues Surrounding China and Japan
— "Competition and Friction" to "Coordination and Co-existence" —

Prepared by Major General (Ret'd) Ikuo Kayahara
Professor of Takushoku University

Introduction

Bilateral dialogues and confidential building for the purpose of avoiding confrontation over maritime problems between China and Japan are the important tasks to tackle without a moment's delay. I would like to express my sincere appreciation to Ocean Policy Research Foundation sponsoring this dialogue, as well as to our Chinese colleagues from Shanghai and Beijing.

Japanese Prime Minister Shinzo Abe who visited China last autumn emphatically advocated "a strategic, mutually beneficial relationship" during his "ice breaking visit," which was followed by an "ice melting visit" to Japan in spring this year of Chinese Premier Wen Jiabao, who dexterously developed a smile diplomacy during his stay. Thus, the China-Japan relationship is now facing a turning point amidst the mood of friendship. Although, however, a bright, forward-looking joint press statement ensued after both premiers' visits, the problem of resources exploitation in the East China Sea was shelved. The seriousness of the problem was demonstrated afresh, all the more so because of the recent festive mood.

For Japan, a maritime nation, the ocean is, in a sense, the source of national wealth. At the same time, we should understand China is also in dire need of marine resources to feed its vast population of 1.3 billion. For China, the ocean is of vital importance from the viewpoint of security alike — sea-borne transportation of energy resources from overseas, U.S. naval presence in the way of the unification of Taiwan, etc. Even if China intends to become a maritime great power under these circumstances, it should not be fervent to expand its state prestige or sea control, but make efforts to prosper harmoniously with neighboring maritime nations.

To develop the China-Japan relationship into "a strategic, mutually beneficial relationship," both parties ought to address maritime problems under a long-term, broader perspective. At the same time, both countries should deal with such issues as concerned with national interests, sovereignty, and national pride, in the spirit of "mutual concessions" and "mutual respect." Hence it is important in this context to materialize strategic reciprocity in the sphere of maritime activities.

In this paper that consists of three parts — the first part to take up general themes, and the second and third to discuss individual topics —, I will strive after a desirable China-Japan relationship that will help stabilize the security environment in Northeast Asia, developing a description from a conceptual point of view.

First, I will give a broad picture of the history of the bilateral relationship, thereby clarifying Japan's national interests as a maritime nation; and then proceed to discuss the aims and possible influences of China's maritime advance, mainly focusing on energy resources issues and China's Offshore Active Defense Strategy, and finally conclude by discussing the transformation of the waters spreading between the two countries to the Sea of Peace and Reciprocity, and the materialization of a strategic, mutually beneficial relationship.

1. The China-Japan Relationship and Maritime Issues

1-1 Historical Background and Issues to Address

First, a general overview of the China-Japan relationship in the past. The pre-modern Japan had

been embedded in the order where China as the Middle Kingdom wielded sovereignty over neighboring tributaries, keeping an overwhelming dominance in terms of culture, economy and techniques. However, the Opium War gave a turning point to this historical situation: China suffered the humiliation of being semi-colonized by the Western powers, while Japan was quick to modernize the nation through the Meiji Restoration and advanced to the Chinese Mainland. The power balance between the two nations was reversed. And then there came vicissitudes of modern history — the Pacific War ended in 1945, and China established itself as a socialist state in 1949. The two reborn nations were isolated from each other by the Bamboo Curtain during the Cold War era. The bilateral relationship remained in an irregular state where political and economic relations proceeded along different courses. The normalization of China-Japan diplomatic relation was achieved in 1972. Yet, there were still many restrictions in developing the bilateral relationship under the Cold War regime.

By the termination of the Cold War, China had already become a political great power, while Japan an economic great power. The bilateral relationship was an unsymmetrical one. Since the turn of the 21st century, Japan has sought for a permanent seat on the U.N. Security Council to undertake a greater role in the international community. On the other hand, China is emerging as a great military power backed by economic expansion. China and Japan, now as regional great powers, face a challenge on how to recognize each other's positions and to "compartmentalize" in the region. Both of them have a psychological reluctance to recognize each other as a great power. China and Japan seem to be embarrassed to face a historically unprecedented challenge of creating a bilateral relationship between neighboring great powers. Maritime problems between China and Japan should be addressed based on the recognition that an optimum course of China-Japan relationship is being groped for through trials and errors.

Japan is apprehensive about the opaque future of China — what kind of power will the emerging China grow into? China's self-righteous foreign policy strategies can be said an uncertain factor for the regional order, a greater part of which seems to originate from China's domestic problems. In China, rapid economic growth embracing a population of 1.3 billion has aggravated distortions in the society. On the other hand, China's domestically accumulated "energy" has recently been directed to the exploration of space and ocean. China overtly strives to achieve "the Great Revival of Chinese Race" by the middle of the 21st century. This is the reason why apprehensions increase among its neighbors about the possibility of Chinese hegemony, in spite of its pleading "peaceful rise." Actually, China, which used to be called a world factory, has over the last quarter century registered an annual economic growth of 9%, and has now emerged as a large center of growth. Japan seems to be embarrassed as to how to deal with the rising neighbor.

Similarly, China is suspiciously watching Japan seek for a permanent seat on the U.N. Security Council and become increasingly committed to PKO activities overseas, to expand the spheres of its activities in the international community. China is apprehensive about the possibility of Japan's removing its long-standing self-restriction in terms of security. China is watching Japan's efforts of transforming into an ordinary country, with the deep-rooted persistent suspicion that it aims at becoming a political superpower. In addition, China is at odds as to how to interpret the intention of the self-assertion of Japan as perceived in ongoing debates in Japan on the revision of the Constitution and the adoption of a new basic defense program. Furthermore, China is alarmed by interpreting the U.S.-Japan strategic talks on the U.S. force transformation and the Japanese government's decision to adopt a missile defense system, as omens of Japan's military expansion. Thus, China elevates suspicion against Japan, overlapping these recent movements with unfortunate memories of the Pacific War years.

Against this background, today, it is of urgent necessity to build a new China-Japan relationship. The new relationship should be a matured normal relation that enables each party to say outright what should be said based on each other's national interests, neither with hostility nor compromise.

To this end, China is required to mature to be a great power with responsibility that should behave collaboratively in the international community, taking into account influence it wields over the region. Likewise, China is requested to comprehend the roles of Japan as another great power in Asia. Japan, too, with a self-recognition and confidence as a great power, must communicate its national intentions explicitly and understandably to the international community. Japan should also accept the reality of China's position of a great power, and take a flexible approach based on its national interests.

1-2 A Future-oriented "Strategic Reciprocal Relation"

The premiers of China and Japan, through mutual visits that took place in and after autumn last year, agreed upon the establishment of a "Strategic Reciprocal Relation." Their official visits seem to have opened the way to a brighter, forward-looking bilateral relationship. But the reality is far from being what the "Strategic Reciprocal Relation" suggests, and there are still many problems to address. The bilateral relationship should transform from a special relation in the past prioritizing amity over anything else into a normal relation that permits each party to say what should be said based on each other's national interests.

Japan regards the China-Japan relationship as one of its most important diplomatic agenda for the early 21st century — relationship represented by two sets of contradictory concepts, "Coordination and Co-existence" and "Competition and Conflict." What Japan' should take into account in dealing with China may as well be recapped as follow:

1) Avoid to take in too much of politics in the world of economy;
2) Take in the vigor of China's rapid economic growth;
3) Become an attractive nation with high value-added production activities, and
4) Recognize Chinese military buildup as a serious potential threat, and expect a certain change to take place in the Taiwan-Japan relationship."

(Task Force for External Affairs, "Japan's Basic Diplomatic Strategy in 21st Century — New Era, New Vision, New Diplomacy" 2002.11.28)

In shifting to a new China-Japan relationship, the creation of multi-strata political dialogues and channels, and the creation in particular of reliable channels to discuss maritime defense and security will be an urgent task of the two parties. It is essential in this connection to establish a bilateral relationship with a resilient structure of the kind that will avoid military conflicts even in case that a tension between the two countries heightens alarmingly. As far as maritime issues are concerned, since they are related to national interests, confidence building in the defense sphere will become critically important. To promote a wider mutual understanding on the level of citizens as the basis of confidence building, it will be similarly important for each party to prevent from nationalism from falling into a vicious emotional cycle of rampage and deterioration.

To promote a sound China-Japan relationship, confidence building should be activated by using not only a bilateral but a multilateral framework. For example, China and Japan should collaborate at ASEAN+3, among others, without competing for leadership, and support the other nations' initiative for the formation of East Asia Community, for example. Cooperation of the two countries at regional security dialogues and diplomatic talks will also be vitally important.

In such a strategic reciprocal relationship between China and Japan, the two countries should pursue the common interests in the multiple areas of regional security, economic issues, environment amelioration, energy problems, etc., — which, however, will depend upon whether or not the two nations can collaborate in the spirit of concession. Unfortunately, the present status does not allow for any optimism.

As regards the regional security, Japan is being threatened by the continuing Chinese military expansion. The regional security is affected by changes in the regional military balance that such a

problem as China-Taiwan confrontation would alter, while missile defense and the U.S. force transformation undertaken as part of the Japan-U.S. Security Arrangements help complicate the regional situation.

The economic climate of China has recently become obscurer. Cheap labor force provision in the country is now uncertain to last for years to come, and anxiety about an economic bubble is mounting because of over-heated economic growth. Intellectual property right problems such as patent and copy right violation has exposed a recognition gap between China and the rest of the world. As for environment protection, China gives preference to solving domestic environmental problems and tends to be slow in addressing problems of Chinese origin such as air pollution, yellow sand, acid rain that are detrimental to the neighboring countries. Energy problems include natural gas field exploitation near the Japanese-claimed EEZ in the East China Sea, and a competition for natural resources possessed by Russia.

Under these circumstances, it is not easy to transform "the sea of competition and distrust" into "the sea of peace and coexistence."

1-3 The Ocean Space — From "Barrier Against Intercourse" to "Public Property for Co-prosperity"

In olden times, Japan and China were separated from each other by the great expanse of water of the East China Sea. First, an ancient female ruler of Yamataikoku, Himiko, sent the first envoy to the court of the Wei dynasty that then ruled Northern China, which was followed by Prince Shotoku, who sent a delegation to the Sui dynasty. Thus, the dispatch of delegations to the Chinese courts continued until a statesman Michizane Sugawara stopped sending delegations to the mainland China in the 9th century. The voyage to China in those days was undertaken literally at the risk of life. During the period of some two hundred years from the Nara Era (710-794) through the Heian Era (794-1185), more than 40 vessels were sent to the mainland China under the reign of the Tang dynasty. Twelve out of the 40 ships wrecked. An aristocrat scholar Kibi no Makibi participated in one of such delegations and went to the Tang China in 717 A.D. In 735, he went on a homeward voyage on a ship of the fleet that was sent to China first in the 18-year interval after Makibi came to China. Three out the four homeward ships wrecked and the only one ship that carried Makibi managed to return to the Tanegashima Island. The most symbolic episode, however, is the voyages of a Chinese monk Jianzhen, who tried repeatedly to come over to Japan to propagate the Buddhist canons here. After five times of failure, the bonze finally reached the shore of Kyushu and imparted the Buddhism precepts to the Emperor Koken and fellow Japanese priests.

Today, the East China Sea that spreads between Japan and the mainland China can be traversed, thanks to modern means of traffic, in three hours by air or two days by ferry boat. Time distance has been dramatically reduced to such an extent as to give credit to the old expression "一衣帯水" that describes the geographical nearness between China and Japan, as well as the spiritual kinship of the two peoples by likening the East China Sea to a narrow band of waters that is far from posing a barrier to the intercourse of the two nations. Although traffic between Japan and China has thus become safer and easier, and shorter in terms of traveling time, yet, mutual understanding and feeling of trust between the two nations have not necessarily been improved.

The ocean provides not only abundant natural resources to both countries, but serves as traffic routes linking them to the international markets, as globalization of economy proceeds. Especially, both nations depend heavily on crude oil import by sea from the Middle East, and the ocean serving as sea lanes is, for them, an vital international public property.

The urgent task we should take up at this moment is to transform the oceanic space from "Barrier Against Intercourse" to "Public Property for Co-prosperity." But in reality, physical barriers were overcome by dint of technology, but psychological barriers seemingly stand in the way of mutual understanding and heart-to-heart exchange of the two peoples.

2. Features of Japan as a Maritime Nation and Its National Interests

2-1 The Ocean for Japan — Maritime Territories Essential for Its Survival

According to the Task Force for External Affairs mentioned earlier, the Japanese estimate that the international environment surrounding Japan is exposed to great changes represented by 1) globalization of economy and social structures, 2) conspicuous military expansion and buildup, and 3) rapid development of Chinese economy. The Japanese regard our primary national interests as depending on 1) maintenance of peace and safety, for which Japanese PKO, among others, should be adapted to international standards; 2) maintenance of free trade regime, for which a network of bilateral FTA should be expanded to complement WTO regime; 3) the safeguarding and promotion of freedom, democracy and human rights, for which we should support these values unequivocally, and 4) the activation of national exchanges in science, culture, and education, and capacity building. Furthermore, the proposal of the taskforce suggests that our introversive attitude in the past should be changed, and we should face the realities in the world and engage positively with world affairs.

The national interests of maritime Japan are in greater part related with geopolitical features of our country. A comparison between China and Japan in terms of several statistic data shows how much Japanese national interests depend on the sea:

Items	Japan	China
Land area	380 thousand km^2	9.6 million km^2
EEZ	4.5 million km^2	3 million km^2
Population	120 million	1.3 billion
Land area population density (per 1km^2)	342	137
Sea area population density (per 1km^2)	275	433
Agricultural self-sufficiency ratio	24%	101%
Fish catches (per capita)	17.03 million tons (142kg)	47.10 million tons (36kg)
Primary energy self-sufficiency ratio	19%	99%
Shipping containers (TEU)	14,567	61,622
Shipping tonnage	18.35 million tons	20.37 million tons
Trade value (per capita)	USD3,700	USD340
Export	USD3,003	USD321
Import		

(Source: "World Countries Data Graphic 2005-2006")

From the viewpoint of geopolitics, Japan is a maritime nation with a coastal line of 35 thousand km and some 6,800 territorial islands — an arc-shaped archipelago stretching in the Pacific from northeast to southwest, 3,000 km off the Eurasian Continent. Its population is 1.2 billion (world 10th), one tenth of China's. Its land area ranks the 68th in the world, one 26th of China's. Japan's population density (342 people per 1km^2) is three times higher than that of China. On the other hand, Japan's EEZ is 4.470 million km^2 (world's 6th) and population density in sea area is 275 people per 1km^2. Compared with China, the Japanese are utilizing much greater sea areas. The sea is an indispensable living space of Japanese people who occupy a small land area.

Owing to its small arable land area, Japan's self-sufficiency ratio of agricultural produce is as low as 24%, less than one fourth of China's. Marine produce is a different story. The total amount of Japan's fish catches in 2003 was slightly less than China's, but our people's per capita consumption is more than four times larger than that of Chinese people.

Moreover, Japan is short of natural resources. Japan's primary energy self-sufficiency rate is 19%, much lower than the figure (99%) for China — a world's major coal producing country. Japan

has to import natural resources from overseas, most of which is carried by sea. Sea lanes for transportation of crude oil of Middle Eastern origin is important in particular. With high dependency on foreign trades, shipping containers handled by the Japanese shipping industry is 14,567 TEU in total, which accounts for slightly less than one fourth of the volume handled by China. However, Japan's per capita dependency upon shipping for transportation of goods is 2.4 times higher than that of China. As another concrete index, Japan's shipping tonnage is 18.35 million tons, which is smaller than China's; yet, the figure seen from per capita basis is nine times higher than that of China. Therefore, as for trade volume per capita, Japan's export is USD3,700, nearly eleven times higher that that of China, while its import USD3,003, nine times higher than China's.

2-2 Maritime Strategies of Trading Nation and Peaceful, Stable Trade Environment

The ocean has been serving as traffic routes linking all the corners of the world. At the same time, the ocean is a reservoir of abundant resources, sustaining the livelihood of mankind. As mentioned earlier, Japan relies a great deal upon marine resources to sustain itself. The prosperity of Japan depends upon its economic structure of importing resources by trade, and exporting value-added goods manufactured by use of advanced technology. Therefore, the ocean always serves as an important traffic route and a channel connecting the country with international markets, as well as a storage space to extract resources. The ocean is closely connected with our national interests.

"Proposal for the 21st Century Ocean Policy" (The Nippon Foundation 020315) includes the following proposals:

1) Establishment of national concept and action plans on the implementation of rights and obligations concerning the entire ocean areas including high seas, and on international cooperation.
2) Improvement of legal systems deserving a maritime nation responsible for development, utilization, and conservation of coastal areas.
3) Promotion of talks on demarcation of EEZ and continental shelf.

(From "Ship & Ocean Newsletter" 020420)

As far as EEZ issues are concerned, we should immediately conduct a comprehensive investigation into the ocean floors around Japan to collect detailed data, with which the Japanese government should take necessary actions in accordance with UNCLOS. For this purpose, it is quite natural for Japan as a resources-short country to conduct an exploration of seabed resources and exploit valuable resources. These actions are certain to serve our national interests. Japan should argue EEZ demarcation problem with China, in compliance with UNCLOS, and, if necessary, conduct a joint research with it to solve the problem squarely. As for illegal investigations by China, the Japanese government should stop them, based on UNCLOS (Article 253); approve no additional investigation by China (Article 246), and watch Chinese investigations by going on board a Chinese research vessel (Article 249) — exercise the rights of a coastal state determinedly.

Parenthetically, the Japanese traders had, until the Tokugawa shogunate adopted its isolation policy in the 17th century, been to the Chinese coasts and the Philippines, and as far as Thailand, Burma, and other Asian countries. Japan has its own history of maritime activities overseas.

Poor as it was in natural resources, Japan built wealth and grew into the world's No. 2 economy. It owes much of the development to the utilization of marine resources and sea-borne trade. Consequently, Japan's maritime interests consist of:

1) securing constant supply of resources, and safety of sea lanes for transport;
2) securing markets and safety of sea lanes for transport, and
3) exploitation and extraction of marine resources, and the stabilization of resourceful waters.

In view of these, peace and safety of the ocean is above all important. As a maritime nation, Japan is making strenuous efforts to maintain the international maritime order. Japan Coast

Guard is responsible for daily maritime risk management work, while Japan Maritime Self-Defense Force for the safeguarding of sea lanes and other missions directly concerned with national interests.

At the same time, Japan is committed to marine environment conservation, prevention of marine pollution, and creation of fish reefs. Japan has for long restrained itself from all-out marine resources exploitation due to considerations to neighboring countries. But unfortunately, Japan's restrained behaviors in resources exploration in the East China Sea have unexpectedly encouraged China to misunderstand its position.

3. The Goals of China's Maritime Advance and Its Influences — Japan's Understanding and Apprehension

3-1 History of China's Maritime Advance

China has started its maritime advance since as late as 1970s. China's maritime advance was deterred by not only a host of domestic problems such as economic frustration caused by the failure of the Great Leap Forward in the years succeeding to the establishment of PRC, and domestic turmoil invited by Great Cultural Revolution, but also the involuntary improvement of diplomatic relation with the United States.

In recent decades, along with efforts of reviewing economic construction by introducing a reform and liberalization policy, China has come to turn its eyes to the utilization of the sea. It was in 1992 that China instituted its territorial sea law, and in 1996 ratified UNCLOS.

A chronological review of China's advance to the South China. In 1974, China advanced to Yongxing Dao of Paracel Islands, among other places, backed by naval force. This was followed in 1988 by the occupation of six islands including Chizhao Jiao of Spratly Islands by expelling Vietnamese garrisons by military force. Afterward, China constructed military facilities on the Mischief Reef of the Philippines, making the occupation a fait accompli.

It was also as late as mid-1990s that Chinese marine research ships appeared in the waters close to Japan in the East China Sea. In due course, China started with marine exploration in the waters around the Senkaku islands. China's assertions regarding the East China Sea have come since 1969 and later, when explorations undertaken by ECAF suggested the potential existence ofseabed oil fields there.

China's maritime advance that presses hard on Japan's EEZ started in the form of marine survey, increasing in number from 16 in 1996 to 33 in 1999. In 2000, it culminated in 24. More than a dozen surveys have been conducted since then every year.

3-2 Motivation of China's Maritime Advance and Its Present State

Chinese people cherish the memory of a great navigation in the Ming Era. A fleet commanded by a famous mariner Zheng He circumnavigated the world, to boost national prestige and widen trade blocs. China boasts "sea areas of 3 million km^2," always eager to strengthen naval power and to expand maritime interests under the slogan of "a great maritime power."

Pursuing the dream of a great maritime power, the Chinese State Council in May 2003 released "National Marine Economy Development Plan," stating that Chinese territorial waters, rimmed by coastal line as long as 18 thousand km stretching from tropical zone to temperate zone, are abundant with 3,000 species of sea fish, marine oil resources of 24 billion tons, natural gases of 14 trillion m^3, and mineral resources deposit of 3.1 billion tons. The code indicates the guideline of China's marine development strategy.

In 2005 China achieved a marine industrial output equal to 4% of GDP. Yet, once a "comfortably-off society" had been realized, China would need annual crude oil imports as much as to carry by some 2,500 tankers of 100 thousand tons. Then, the question of sea lane safety will come to the fore.

The exploitation of the ocean is accompanied by problems involving a sovereign state's diplomatic,

policing, and military rights. China's activated maritime advance gave rise to disputes with neighboring states claiming sovereignty over islands in the East and South China Seas. It has also amplified frictions and tensions over EEZ demarcation, and the controversy on EEZ in the East China Sea is underway between China and Japan, focusing on the validity of the UNCLOS articles on median line and continental shelf. Furthermore, China claims territorial rights over the Senkaku islands. Recently, China's maritime advance has stretched to the waters around Okinotori coral reefs, and actually in 2006, Liu Jianchao, deputy-head of News Bureau of Chinese Foreign Ministry, issued a provocative remark to the effect that Okinotori coral reefs is a "rock," and is not a territory around which to set EEZ. Maritime disputes between China and Japan seems to be entering a new stage.

3-3 China's Assertion as Maritime Great Power and Claims for Maritime Interests

China's maritime strategy consists of "Maritime Defense Strategy" and "Sustainable Marine Development Strategy." The latter is designed to pursue marine resources development within the framework of national strategy "Overall Construction of a Comfortably-off Society."

China conceives of the United States as the greatest threat synonymous with "hegemony and authoritarian politics." China identifies the preemptive attacks by U.S.-U.K. coalition forces against Iraq without U.N. resolution as "a new hegemonism," and elevates sense of vigilance. China recognizes that the possibility is rising of U.S. military force's intervention in the affairs in the South China Sea and the Taiwan Strait. China faces a dilemma that if China proceeds with naval buildup, an encounter with U.S. naval force controlling the Pacific will not be avoided. (More details will appear later.)

There is no doubt that China regards the United States as the only nation capable of inflicting military menace on it. But contradictorily, it looks upon the United States simultaneously as a nation that afford to it great chances for trade and technology development. China's maritime advance aims at not just security but economic benefits such as acquisition of marine resources. In addition, crude oil import from overseas, now vital to sustain its burgeoning economy, necessitates sea lane safety as part of its maritime interests. On the other, China's self-righteous development of marine resources, overfishing, marine pollution, among others, have to date posed serious problems, raising apprehension of neighboring countries.

4. The Energy Situation in China and Maritime Advance — The reason for China's Marine Resources Development in the East China Sea

4-1 Tightened Demand and Supply of Petroleum Energy and Domestic Measures at Impasse

"Sustainable Marine Development Strategy" is economy-oriented and so far considered to be aimed at 1) exploration of marine resources and 2) the securing of sea lanes. In fact, China is increasing its attention to sea lanes, as it grows to be the world's third largest trading nation. China's increasing dependency upon the ocean can be testified to by such factual data as its being the third in the world in terms of foreign trade value, the world's second in ship construction, while its fish catches are nearly three times larger than those of Japan.

In the background of China's "Sustainable Marine Development Strategy" lies a serious shortage of energy for use of its large population. Thanks to its rich coal deposits, China has sustaining its economic development by lavish consumption of coal. Yet, as environment pollution poses serious problems, China is shifting to the use of oil and clean energy like natural gas. In fact, China turned to a 100% importer of oil in 1993, and in 2005, it imported some 130 million tons of oil from overseas. In reality, China is the world's sixth largest oil producing country and still producing 160 million tons of oil annually. But its domestic oil consumption increases so rapidly as to exceed the volume of domestic production, amidst rapid economic growth.

Because of its rapid economic growth, China puts a priority on the realization of "a comfortably-off society." Its realization will be inevitably accompanied by a sharp rise in petroleum energy consumption in the country. Since China is entering the age of motorization, it is estimated that it will need oil import amounting to 250 million tons in 2020. China's ultra-high speed economic growth has invited a sharp rise in oil price, pressing hard the international oil markets. As a countermeasure, China eyes the estimated 25 billion tons of oil deposit in the waters around the Senkaku islands.

With its land-based oil production hitting a peak, China is facing a dilemma in tackling the question of securing oil energy. 1) As part of self-help efforts, China has begun to promote the development of seabed energy resources, which, however, has involved China in territorial disputes and EEZ issues with neighboring countries. 2) On the other hand, import of oil is constantly affected by production increase capacity of the Middle Eastern oil fields and price fluctuations at the international markets. International politics is also another factor that will influence oil import from overseas. Furthermore, transportation of oil is inseparable from the safety of sea lanes through the Indian Ocean, as well as from the securing of ship space. 3) Also important is a shift to the use of natural gas as an alternative energy. To develop domestic gas fields located in the western inland areas, infrastructure like pipelines must be constructed. These additional investments would question the profitability of domestic gas production under the regime of China's market economy.

With these problems at hand, China will have no choice but to go ahead with sea-bead resources development, braving the potential risk of territorial disputes with neighboring countries.

At present, although diplomatic talks with Japan are underway regarding "Shirakaba" (Chun Xiao) gas field in the East China Sea, China is constructing drilling facilities in the Chinese territorial waters 5 km distant from the median line. On the other hand, Pinghu gas field has already begun providing gas to Shanghai by means of seabed pipelines. China has so far failed to respond to Japan's request for providing their investigation data — request which is based on expert analysis suggesting that the drilling by China at those sites may encroach on the Japanese rights. Japan has swiftly embarked on a marine resources survey in the nearby Japanese waters, without obtaining investigation data from China.

4-2 Vigilance Against China's Resources Exploration and Exploitation in the East China Sea

China and Japan have yet to implement EEZ demarcation in the East China Sea. While Japan refrained from executing ocean surveys out of regard for China, China pushed forward with ocean surveys and marine exploitation. What is worse, China repeatedly enforced such a survey in the Japanese-claimed EEZ, without Japan's consent. UNCLOS stipulates that a signatory country must submit to another signatory country a specified document no later than six months before the former will conduct a scientific research in the latter's EEZ or continental shelf. China failed to abide by the stipulations faithfully, but accelerated ocean surveys, and, in 2000, went so far as to increase naval ship operations, exemplified by a navigation of a Yanbing class intelligence collector/icebreaker in the waters surrounding Japan.

Since 2001 when Chinese marine survey began to show signs of expanding its research areas to the Ogasawara Islands, Yanbing class intelligence collection ships have taken the place of scientific research ships such as Dongfang Hong 2 and Xiangyang Hong 14, and made frequent appearances. It is estimated that the purpose of China's ocean survey in the waters beyond the First Island Chain is shifting to gathering military data, such as seabed topography, ocean currents, and sound waves, — useful to naval vessels operations and mining.

In March 2002, China and Japan exchanged an oral statement that stipulates a rule to follow by both countries that either of the parties should give an advance notification to the other of the execution of a scientific research at the time of two months before the date of the research.

Nonetheless, China has so far repeated illegal research in Japan's EEZ in defiance of the agreed rule. The Japanese Ministry of Foreign Affairs mounted a protest against China every time such a research was undertaken by China. Yet, China neglected the Japanese protests, stating emphatically that the EEZ borders between the two countries have not yet been fixed, and expanded research areas surreptitiously, trying to create a fait accompli. These Chinese behaviors have fanned a sense of distrust against China among many Japanese, who elevate wariness over China's intention of monopolizing marine resources by force in the East China Sea.

The event that alarmed the Japanese public most was the Chinese Maritime Bureau's announcement in February 2006 on its web site that foreign ships' access (except Chinese workboats) would be banned to the waters around Pinghu gas field in the East China Sea during the period March 1 through the end of September 2006. The reason alleged by China was that expansion work of the gas field would be undertaken. The problem was that the announced area stretched over the median line into the Japanese waters. Japan Coast Guard immediately inquired at the Chinese Maritime Bureau about the announcement, but no response was returned. Another inquiry was made through the diplomatic channel. It was as late as April 18 that China corrected the coverage of the inaccessible area, alleging that "a technical mistake" was found.

An interpretation by the Japanese side is that China ventured to wait to see what actions Japan would take. The backhanded reaction to JCG inquiry, the irregular way of web site announcement, instead of a formal notification to neighboring countries, and no convincing explanation about the technical mistake — all of these were combined to result in greater mistrust against China among the Japanese public. Expert opinion is that the restriction made by China violated freedom of passage at the high seas.

4-3 Maritime Advance for Safeguarding Sea Lanes

As China is promoting in earnest "Overall Construction of a Comfortably-off Society," oil consumption is expected to rise rapidly in the country. Oil import of as much as 250 million tons is estimated to take place in 2020. In that case, China would need the employment of some 2,500 tankers of 100 thousand tons for transportation of oil, and sea lanes traffic through the Indian Ocean would become essential to China.

China depends upon sea-borne transportation to carry some 90% of crude oil imports, and 80% of which is transported via the Malacca Straits. In the Straits, narrow in width, wreckages are prone to occur even in peace time. Maritime terrorism there is expected to amplify damages. In fact, piracy takes place once a three to six day interval, although the number of piracy cases has recently been on the decrease.

The United States look upon the Malacca Straits as the most vital of the 16 important channels in the world. But the Straits has such a vulnerability as likened to "a log bridge." For this reason, the U.S. navy secures naval and air bases rights in Singapore, and littoral states' support for military base construction on the adjacent coastal areas. Chinese reaction to the leadership of the U.S. navy in charge of safeguarding this area will deserve attention. In 2004, China depended upon foreign flag tankers to transport over 90% of its crude oil import of 123 million tons. As the Chinese flag tanker fleet will upsize in the future, China will be directly involved with security issues in the Malacca Straits.

China's southward oil routes from the Middle East and Africa are always subject to potential dangers that await in the Indian Ocean and the Malacca Straits. To avoid these, China is currently constructing land-based pipelines connected to sea lanes at some points on the coast of the Indian Ocean. One of them is a pipeline that reaches the sea at the northern part of the Bengal Bay — pipeline which will be laid out along "Chiang Kai-Shek's route" built during the Pacific War period. The pipeline will start from Sittway Port of Myanmar and reach Duanli in Yunnan Province via Mandalay. The part of this pipeline route as far as Guangzhou is 3,370 km shorter than the

conventional sea route via the Malacca Straits. Myanmar supports the project actively. The three leading Chinese oil companies — China National Petroleum Corporation, China National Offshore Oil Corp., and China Petroleum & Chemical Corp. — are involved in the pipeline construction. Construction costs worth 2 billion dollars are reported to have been earmarked.

The second is a pipeline that reaches the sea at Gwadar Port of Pakistan, starting from Gilgit of Pakistan to reach Xinjiang and Kashgar along the Karakoram highway. China Port and Harbor Construction (Group) Company launched on a repair work of Gwadar Port in May 2002 to expand the port areas. The port is the first stop in the Indian Ocean for a ship that loads crude oil in the Middle East. A land route by road and rail is now in service to link Gwadar Port and Xinjiang.

As part of its strategic operations targeting the Indian Ocean, China helps Pakistan and Myanmar to construct ports and harbors and communication facilities. These serial movements of China are capable of destabilizing the maritime order in the Indian Ocean, kindling antagonism with Indian and U.S. navies.

5. China's Offshore Active Defense Strategy and Maritime Advance — Reasons for China's Advance into the West Pacific

5-1 China's Offshore Active Defense Strategy and its Background

China has hot points on its Pacific front such as North Korea and the Taiwan Strait. China interprets the strengthening of Japan-U.S. Security Arrangements as the allies' efforts to mount further pressure on it. For China, littoral areas where economic centers like Shanghai are gathered are the source of national wealth, comparable to giant China's huge "ribs" protruding to the Pacific front. Therefore, China is apprehensive about the areas' exposure to the danger of Tomahawk cruise missile attacks.

Since the Gulf War, China has witnessed the achievements of recent Revolution in Military Affairs or state-of-the-art warfare capabilities demonstrated during Kosovo bombardment or attacks against Iraq. China is forced to safeguard politico-economic centers in the littoral areas against potential attacks by cruise missiles with a longer firing range and an improved precision guiding capability. In view of the change of threats due to RMA, the safety of littoral areas has become the central agenda of China's defense program. As a possible countermeasure, China is considering to build a defense belt with a great depth on the sea front. China is engaged in naval buildup as manifested by the prospective introduction of aircraft carrier and the increasing production of new model fighter jets. These are considered to be in accordance with Offshore Active Defense Strategy as will be described later.

China has become increasingly frustrated by the fact the U.S. military force is projected into Central Asia under the pretext of conducting anti-terrorism warfare in Afghanistan, and that its presence is predicted to stretch over a long period.

Meanwhile, China embraces a domestic problem of national integration. Its greatest theme is the unification of Taiwan, which is the banner China must continue to hoist for vindication of Communist Party dictatorship. Here lies the reason why China shows itself ready to go so far as to resort to military force to realize the unification of Taiwan. But employment of armed forces against Taiwan would mean hostility against the United States that would not allow the change of status quo — a great dilemma. As a matter of fact, China considers the U.S. military presence in Asia as a stabilizing factor; but missile defense expansions — a closer Japan-U.S. relations — a bigger deployment at Guam — China regards all of these in connection with the U.S. military transformation as a security threat aiming at containing it.

5-2 Offshore Active Defense Strategy

For these reasons, China has come to conceive the formation of a deep defense belt to address its

vulnerability on the sea front, and has developed Offshore Active Defense Strategy. Its scope and contents are not clear at this moment. Since the Japanese waters around the Ryukyu Islands constitute a barrier to China's advance to the Pacific, bilateral problems, therefore, are likely to take place in this area.

China's Maritime Defense Strategy consists of two parts. Its first stage is the sea control of the waters from the First Island Chain (ranging from the Japanese archipelago, the Ryukyu Islands, Taiwan through the Philippines) and to the west, in order to secure the control of 3 million km^2 of EEZ that China claims. To be more specific, this part of the strategy deploys main Chinese naval force on the hither side of the First Island Chain for sea control, thereby degrading the functions of the U.S. military bases in the Far East and increasing distances to be covered by U.S. combat aircraft and cruise missiles launched from outside the First Island Chain to reach the Chinese littoral areas.

The second stage aims at sea denial in the waters as far as the Second Island Chain, in addition to sea control on the hither side of the First Island Chain. To be more specific, this stage is designed to deploy submarines in the waters east of Taiwan by denying the U.S. navy free operations in the West Pacific, and keep the littoral areas out of missile attack ranges by restricting free movements of U.S. aircraft carriers by means of mining. Such a sea denial as far as the Second Island Chain would enable China to prevent the U.S. military support or intervention when China attacks Taiwan. It would eventually lead to disempowerment of the U.S. base at Guam.

As seen above, China-Taiwan tensions across the Taiwan Strait are profoundly concerned with China's maritime strategy. If geopolitically important Taiwan were brought under the rule of China, the former would provide the latter with a critical strategic foothold for its advance to the Pacific. The unification of Taiwan by China would dramatically change security environment in the west Pacific.

The military aims of China's Offshore Active Defense Strategy may be summarized as follows:

1) Keep littoral economic cities out of U.S. missile attack ranges by restricting attacks from the Pacific front.
2) Prevent the U.S. military support and intervention when China attacks Taiwan.
3) Maintain diversion capability over the southwest sea lanes critically important to Japan, including Bashi Channel.
4) Contribute to sea lane defense that will guarantee China's war-sustaining capability.

The 2006 United States Department of Defense Report points out Taiwan's strategic importance for the United States, making an assessment that Taiwan is a foothold for securing a frontal area for maritime defense and for power projection, as well as a spring board for expanding influence over the regional sea lanes and for helping access to China's economic centers.

5-3 China's Defense Capability Buildup and Maritime Advance

China's military buildup, based on Offshore Active Defense Strategy, is designed to create deterrence against the United States and win local conflicts around the Taiwan Strait. To this end, China is adding to deterrence by upgrading nuclear capability and space warfare capability, while strengthening missile deployment at Nanjing military district and boosting sea-air power against Taiwan. The Chinese navy has so far increased the number of domestically built submarines (Sung class) and oceangoing vessels (Harbin class and Shenchuan class) and introduced Russia-made state-of-the-art vessels (four "kilo class" submarines and two Sovremenny class destroyers). Furthermore, among warships under construction are Yuan class conventional submarines in Wuhan, modeled on kilo class submarines; a new type nuclear submarine mounted with submarine-launched ballistic missile "Juelang 2," and nuclear-powered attack submarines mounted with cruise missiles. The Chinese air force is going on with domestic production of a new type bomber J-10, while importing from Russia Su-27・Su-35MK fighter jets.

In order to introduce high-tech military technology in which China is weak, China is working on France and EU to relax the ban on weaponry export to China that has been imposed since Tiananmen Square incident. The modernization of the navy is also promoted as means of tending to "Sustainable Marine Development Strategy."

In addition, military exercises practiced by China including China-Russia joint drills in Shandong peninsular in summer 2005, coupled with related active naval operations, have given rise to "China Threat" which is much in vogue. Regarding China's maritime advance with diverse strategic goals, the 2006 United States Department of Defense Report predicts that in the near future, China's interests will compete with those of the United States in the west Pacific.

In the light of Chinese security, defense of politico-economic centers in the littoral areas is especially important, but the extension of Chinese defense line as far as the Second Island Chain would cause frictions with the United States. On the other, China cannot make any concession with regard to the unification of Taiwan. Beijing's show of military power like military exercises in the Taiwan Strait is a regional problem that will create tension across not only the Taiwan Strait but Asia. It is no wonder that Taiwan is also pushing forward with military buildup, and executing drills. The Hanguang 23 exercise that took place in May 2007, one of the largest scale military exercises Taiwan has ever practiced, resulted from amid such a rising tension. A military exercise undertaken by a party concerned is responded with the other's — such a vicious cycle of successive military expansion adds to the instability of the region.

6. Tasks Toward Maritime Reciprocity — Approach to Maritime Problems in the 21st Century

As described above, China's maritime advance will bring more tension to the region, if it goes the way it went. *First, China's maritime advance for economic purposes like the securing of energy resources.* Japan should develop and adopt a comprehensive ocean policy as a maritime state. Frictions and tensions between China and Japan will rise in the East China Sea over joint development and EEZ demarcation. But such a situation may not be preferable to the Hu Jintao leadership, for which it is mandatory to keep high economic growth, as China finds itself more and more involved in the global economy. Therefore, there may be much room for discussion with Beijing. For China that, adopting a policy of multilateral approach, must make a success of the Beijing Olympic Games (2008) and the Shanghai Expo (2010), it is highly necessary to ease maritime tensions with Japan. There is possibility that both countries can coordinate over the exploitation of finite marine resources by employing long-term measures like joint development.

In such case, reciprocal treatment of maritime interests will be realized by recognizing each other's positions with due respect and honoring the spirit of reciprocal concession. It is of vital importance to share benefits from marine resources development and to care for conservation of the finite resources.

Second, China's maritime advance related to security. It is necessary to ease the sense of menace held by China against potential threats from the Pacific. For this purpose, we should make avail of the conventional frame of security dialogue to advance confidence building process among China, Japan, and the United States. At the same time, China's expansion of buffer areas beyond the First Island Chain, even for defense purposes, should be held back, because the expansion would beget new tension in Asia. China is required to clarify the goals of its Offshore Active Defense Strategy and naval buildup, and to improve transparency not to incite suspicion of neighboring countries. In such case, it is essential for China not to link security issues with nationalism and sovereignty issues.

The Hu Jintao administration should establish supreme command over the military to restrain provocative military exercises against the background of surging nationalism in China. China is required of such self-restraint as not giving threat to or invite misunderstanding from other countries by its activities backed by military power. In addition to these, what is to be done in this connection

in peace time to further confidence building is to create multiple channels to address contingency, as well as hotlines.

Third, China's maritime advance related to territorial disputes such as the Senkaku islands. China and Japan should avoid disputes in any form. As regards Japan's ownership of the Senkaku islands, U.S. State Department deputy-spokesman Mr. Adam Ereli remarked that the Senkaku islands are under the administrative jurisdiction of the Japanese government; therefore, the article 5 of Japan-U.S. Security Treaty is applied to the islands (040324). The Bush administration supports Japan's claim on the territory. But, in general, maritime issues involving sovereignty of islands are difficult to solve due to their complex nature. Since the China-Japan relationship is still vulnerable and unstable, sovereignty issues should be postponed, and preventive measures be taken against contingency. In addressing issues concerned with sovereignty and territories, it is necessary to cope with equanimity and self-restraint, and adopt the posture of respecting each other's positions.

Maritime questions between China and Japan are so complicated as to make coordination of their conflicting interests quite difficult. As solid foundations of mutual trust, both counties should establish a multitiered and multifaceted framework of dialogue having the resilience to restore equanimity, even if opinions clash. Proper consideration will be required of both countries to separate issues of maritime interests and territorial disputes from a flammable cycle of emotional repulsion.

Establishing such a framework, the parties concerned should take into account their respective national interests and proceed to a frank dialogue by presenting their own assertions. It seems to be high time to break out of the posture of postponing difficulties and adopting soft approach under the banner of peace and friendship. To this end,

1) China should respond to the suspicion that China's maritime advance may represent its ambition of territorial expansion, by clarifying the intention of its maritime advance and making transparent its naval buidup.
2) At the fora of maritime talks, China should give up excessive sense of national sovereignty and too much national pride, and behave as a great power with consciousness of stakeholder.
3) China should improve military transparency in terms of actual capacity and modernization goals, while sea-air power buildup, with the introduction of aircraft carrier in view, is underway. .

The ocean is an international public property. As far as joint development of finite marine resources is concerned, China should be poised to distribute maritime benefits fairly, and to cooperate in efforts of comprehensive ocean governance such as resources conservation and marine pollution prevention.

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第２回日中海洋安保ダイアローグ　１７０００　　2007.8.5
第１セッション：「日中関係と北東アジアの海洋安全保障」
狙い：日中両国の海洋に関わる国益、防衛、資源、環境政策等に関する意見交換

テーマ：「日中両国の海洋をめぐる国益問題と安全保障問題―「競争と摩擦」から「協調と共存」へ」

拓殖大学　茅原郁生

はじめに（序：本稿の主旨）

日中間の海洋をめぐる対立の回避とそのための対話、信頼醸成はまさに今日求められている重要課題であって、本ダイアローグ開催を実現された主催者に感謝し、また中国から参加された研究者に敬意を表します。

昨秋に訪中した安倍総理の「氷を砕く旅」で「戦略的互恵関係」が謳い上げられ、今春に来日した温家宝総理の「氷を溶かす旅」で微笑外交が展開された。その友好ムードで日中関係は転機を迎えている。しかし未来志向の明るい共同声明は出されたものの、東シナ海での資源開発問題は棚上げされたままであった。日中関係が好転し、両国首脳の相互訪問が実現したにもかかわらず海洋問題の解決は先送りされたように、東シナ海における海洋資源をめぐる問題の根深さが浮き彫りにされている。

海洋国家である日本にとって海洋は国富そのものである。同時に中国もまた１３億人の胃袋満たすためには海洋資源が必要とされていることも理解する必要があろう。とりわけ中国にとっての海洋は、エネルギー資源の外国からの取得、中台統一問題に絡む米軍事力への対応など安全保障問題にも絡む重要性を持っていると推測できる。しかし中国が海洋大国を志向し始めるとしても、国家の威信や海洋支配領域の拡大などに指向するのではなく、隣接する海洋国家との共存、共栄を図るものでなければならないことは言うまでもない。

ともあれ、日中関係を「戦略的な互恵関係」に発展させるためには、海洋をめぐる問題は長期的な大局観に立って処理されることが必要である。同時に国益や国家主権・体面などを「相互に譲り合う（互譲）」「相互に尊重する（互尊）」をキーワードとして対応することも必要であり、海洋での戦略的互恵をどのように具体化するかが重要になる。

本稿は、第１セッションが包括的テーマを取り上げ、第２・３セッションでの各論の討議の前提となるという位置付けに鑑み、日中関係の発展と北東アジアの安全保障環境の安定を目指してあるべき日中関係を追求する姿勢でまとめ、理念的な観点から記述することとしたい。

このため本稿では、まず日中関係の経緯をまとめ、海洋国家日本の国益を整理したい。その上で、中国の海洋進出の狙いや及ぼされる影響について、特にエネルギー資源問題と近海防御戦略に関わる問題の２つを主として検討し、日中間の海を平和の海、互恵の海とし、戦略的な互恵関係を具体化することを考察したい。

１．日中関係と海洋問題

①日中関係の経緯と今後の課題

これまでの日中間の相対関係を大観すれば、近代を迎えるまでは日本は文化、経済、技術など圧倒的な中国優位の華夷秩序の中にあった。しかしアヘン戦争を契機に、中国は列強から半植民地化された屈辱を体験したが、日本は明治維新でいち早く近代化を達成して逆に大陸に進出したように、近代史における両国の力関係は逆転した。やがて 1945 年に日本は終戦を迎え、中国は４９年に社会主義国家として建国したが、新生両国は冷戦下で竹のカーテンで遮られ、政経分離のいびつな関係であった。72 年に国交正常化されたが、なお冷戦構造の中で日中関係構築には制約が多かった。

冷戦が終焉した時、中国は既に政治大国化し、日本は経済大国化するという非対称的な関係にあった。21 世紀を迎えて、日本が国際社会でより大きな役割を担うべく国連常任理事国入りを求め、他方で中国は経済発展に伴う軍事大国化が進む中で、日中両国は相互に地域大国としてどのように認識しあい、位置づけ、棲み分けるかという課題に直面している。しかし両国は相互に大国として受け入れるに当たって心理的な抵抗感が残っている。まさに日中両国は、隣接する大国同士の関係をどのように構築するかという、史上モデルのない局面に遭遇し、当惑しているのが現状であろう。今日の日中関係はその試行錯誤の段階で模索されているという認識に立って海洋問題などへの対応が求められることになる。

日本にとっては、急台頭する中国がどのような大国になるのか、その不透明な将来像に不安を抱いている。自国中心的な対外戦略を展開する中国は、地域秩序にとって余りに大きい不確定要因であるが、その多くは中国内の問題に起因するものであろう。中国は、１３億人の膨大な人口を抱えた経済の高度成長が社会に歪みを

生じさせている。一方で、中国内に蓄積されたパワーが宇宙、海洋に指向され始め、今や 21 世紀中葉までに「中華民族の偉大な復興」を目指している。「平和的台頭論」を唱えながらも覇権大国になるのではないかという警戒心が浮上している所以である。実際、過去四半世紀に年率９％の経済成長を続けて世界の工場から世界の成長センターへと発展するなど、頭角を顕す中国に対して日本はその対応に戸惑っている。

同様に中国側も、日本が国連常任理事国入りを求め、PKO 活動に積極的に取り組むなど、国際社会における活動領域を拡大し、そのために安全保障に関わるこれまでの自己規制を取り除こうとすることに疑念を抱いている。中国は普通の国家に脱皮しようとする日本の努力を政治大国化を目指すのではないかと猜疑の目で見ている。さらに最近の憲法改定論議、新防衛大綱の決定など、自己主張し始めた日本の意図にも不安を感じている。また米軍のトランスフォーメーションを巡る日米戦略協議やミサイル防衛システム導入の決定などを日本の軍事大国化の兆しだと警戒し、かつての歴史の悪夢と重ねて、中国もまた対日不信感を強めている。

このような現状を踏まえて、今日、新しい日中関係の構築が迫られている。あるべき日中関係については、国益を踏まえて率直に言うべきことが言える、敵対しないし迎合もしない、普通の国家関係に成熟されるべきであると思量する。このためには中国に対しては、大国の自覚の上に地域への影響を考慮する国際社会で協調的な責任大国に成熟することが求められる。さらに中国は、日本がアジアの大国として果たすべき役割について理解することが求められる。同時に日本に対しては、大国としての自覚と自信を持って明確に国家の意図を国際社会に分かり易く発信する必要がある。そして日本もまた中国の大国化の現実を容認することが必要で、その上で中国に対して国益を踏まえた是々非々の対応をすることが求められいる。

②「戦略的互恵関係」を未来志向で具体的な形に

日中関係は、昨秋以降の首脳による相互訪問によって「戦略的互恵関係」の構築が確認されている。このようにトップの相互訪問で明るい未来志向の両国関係が幕を開けたが、なお現実は「戦略的なパートナーシップ」の水準とは遠く、調整すべき課題を多く抱えている。そのために今、日中両国が従来の友好至上の特殊な関係から国益を踏まえて相互に言いたいことを主張できる普通の国家関係に脱皮することが求められている。

日本は、中国との関係を２１世紀初頭の日本外交政策の中で最も重要なテーマとし、両国は「協調と共存」「競争と摩擦」が織りなす関係と見ている。したがって対応としては、「経済の世界に過度の政治を持ち込まないこと、中国の高度成長の元気を取り込むこと、高付加価値の生産活動で魅力的な国になること、中国の軍事力増強が深刻な脅威となり得ると受け止めること、日台関係に一定の変化が生じること」などを踏まえて中国に対応しようとしている。（総理官邸から委嘱された「対外関係タスクフォース」による「２１世紀日本外交の基本戦略―あらたな時代、新たなビジョン、新たな外交」2002.11.28 から）

そして新しい日中関係に脱皮するに当たって、多重な政治対話の場やルートの構築、とりわけ海洋に関わる防衛、安全保障面での太いパイプの構築が急務となっている。そして両国間に緊張が高まっても衝突しない復元力のある関係構築が重要になってくる。特に海洋問題では、国家主権が絡み合う問題だけに、防衛分野の信頼醸成が特に重要になってこよう。そしてその基盤となる幅広い国民レベルでの相互理解を促進すべく、相互に感情的なナショナリズムの暴走と悪化の連鎖を断つことが重要になってくる。

また日中関係の進め方は、２国間での対応だけでなく、多国間の枠組みで信頼醸成を深化させる着意が必要である。例えば ASEAN+3 で進められる東アジア共同体の構築に向けて話し合う場で日中両国が主導権を競うことなく協働して支援する、さらに地域の安全保障対話や協議の場における協力などが重要になってこよう。

このような上に戦略的互恵関係については、地域安全保障、経済問題、環境改善、エネルギー問題など幅広い分野で日中両国の共通利益を追求するということが必要である。但し、そのためには利害が異なる両国が譲り合って、相互に協調できるかにかかっており、まだ状況は楽観を許さないものがある。

地域の安全保障に関しては、中国の軍事力増強が続く中で、日本は脅かされる立場にある。それはまた台湾海峡を挟む軍事バランスの変化とも関わり、日米安保体制とその中で進められるミサイル防衛や米トランスフォーメーションへと傾斜して問題を複雑化している。

経済問題でも中国の安価の労働力の供給に陰りが見え始め、過熱気味の高度成長でバブルの不安があり、特許や著作権などの知的所有権問題でのギャップなどの背景がある。環境問題でも中国は、国内問題への対応を優先し、大気汚染、黄砂や酸性雨の飛来など近隣諸国に及ぼす悪影響などへの対応が遅れるなどの問題がある。さらにエネルギー問題は、まさに東シナ海での排他的経済水域（EEZ）付近での天然ガス田開発の問題があり、またロシア資源の取得をめぐる競合などもある。

そのような中にあって、海洋を「「競合不信の海」から「平和・共栄の海」に変えるのは大変なことである。

③日中間の海洋を「交流の障壁」から「日中共栄の公共財」に

かつて日中両国は東シナ海という大海原によって隔てられていた。卑弥呼の時代に魏に使者を送って以来、聖徳太子は遣隋使を派遣し、その延長での遣唐使を菅原道真が中止するまで使節派遣は続けられた。その間の船旅はまさに命がけで進められたのであった。例えば、奈良時代から平安時代までの200年間に４０隻以上の遣唐使船が出されたが、１２隻は難破している。717年の第８次遣唐使に参加した吉備真備は、１８年後の第９次船で帰国の途についたが、４隻の帰国船の内３隻が難破し、吉備が乗った船１隻だけが種子島に漂着したという記録もある。象徴的な唐の高僧・鑑真和上は日本に仏教の戒律を伝えるべく何度も渡航を試みながら、６度目の第１０次帰国船でやっと九州に上陸でき、孝謙天皇はじめ多くの仏教僧に戒律を授けてきた。

今日、日中間に横たわる東シナ海は交通手段の発達によって、航空機であれば３時間、フェリーでも２日間で安全に渡航できる時間距離に縮まった。まさに一またぎできる「一衣帯水」の関係になったわけである。しかし両国間の往来が、時間的に縮まり、安全で手軽になりながらも両国間の相互理解や信頼感などが強まっているわけではない。

海洋は両国にとって豊かな資源の供給源であるだけでなく、経済のグローバル化が進む中で国際社会への通路であり、交通路である。特に両国とも中東産油国からのエネルギーの輸送路に依存しており、シーレーンの安定も含めて海洋はまさに国際公共財となっている。

その海洋を「交流の障壁」から「日中共栄の公共財」に変えるのが、今日のテーマである。しかし現実は科学技術の進歩のお陰で、障壁を克服することはできても、両国民の相互理解や心の交流の面ではなお障壁として立ちはだかる側面が残っている。

２．日本の海洋国家としての特性と国益

①日本にとっての海洋・・・・・生存に不可欠な海洋国土

先出の「対外関係タスクフォース」によれば、日本は自国を取り巻く国際環境を、①経済と社会構造のグローバル化、②軍事力の著しい発展と強化、③中国経済の急激な膨張、という大きな変化の最中にあると認識している。その上で基本的な日本の国益について，①日本の平和と安全を維持し続けること、このために国際平和維持活動などを国際標準に適合させる、②自由貿易体制の維持、このためにWTO態勢を補完するものとして、２国間の自由貿易協定（FTA）のネットワークを広げる、③自由、民主主義、人権の擁護を守り、広げる、このためこれら価値を一貫して擁護する、④学術、文化、教育をはじめとする国民間の交流の積極かと人材育成を進める、としている。さらにこれまで十分に国外に目を向けなかったことを改善し、世界の現実を直視し、世界と積極的に関わっていくこと、などと盛り込んでいる。

このような海洋国家・日本の国益は、その多くが国家の地政学的な特性に関わっているが、その特色を中国と対比して見ると表のようになり、如何にわが国の国益が海洋に多く依存しているか、が分かる。

項　　目	日　　本	中　　国
国土面積	38万平方ｋｍ	960万平方ｋｍ
排他的経済水域	450万平方ｋｍ	300平方ｋｍ
人　　口	1.2億人	13億人
国土人口密度（１平方ｋｍ当）	342人	137人
海洋人口密度（１平方ｋｍ当）	275人	433人
農産物自給率	24%	101%
漁獲高（国民１人当）	1703万トン（142ｋｇ）	4710万トン(36ｋｇ)
１次エネルギー自給率	19%	99%
海運コンテナ(TEU)	14567個	61622個
船腹量	1835万トン	2037万トン
貿易額（国民一人当）輸出	3700$	340$
輸入	3003$	321$

（資料：『世界国勢図絵2005/06』より抜粋、筆者作成）

地政学的な特色から日本は、海岸線3.5万km、附属島嶼6800余、ユーラシア大陸から太平洋への3000

ｋｍの弧状の防波堤のような形状の列島群で、海洋国家ある。人口は12億人（世界10位）で、中国の世界第１位の人口に比べれば10分の１に過ぎない。さらに日本の土面積は世界第68位で、中国の26分の１に過ぎず、従って日本の人口密度 342 人は中国の３倍近い窮屈さの中にある。しかし日本の排他的経済水域は 447 万平方ｋｍ（6位）で、海洋国土の人口密度は逆に27.5人と中国に比べ遙かに多くの海洋を利用領域としている。まさに海洋は陸地国土の代わる生存空間として不可欠なものとなっている。

それはさらに国土が狭いこともあって日本の農産物の自給率が24%と低く、中国の４分の１以下となっている。他方で水産物では2003年の漁獲高で見れば、総量は中国の４分の１弱であるが、国民一人当たりでは逆に中国の４倍強の魚を食用としている。

さらに日本の狭い国土では資源が少なく、産業構造にもよるが１次エネルギーの自給率は日本は19%に過ぎず、石炭の生産量が多い中国の99%に比べれば極端に低い。このため海外の資源の導入が重要になり中東原油の油送路の問題がクローズアップされる。また対外的な交易への依存度も高く、日本の海運コンテナは14567 TEUと総量では中国の４分の１弱であるが、国民一人当たりでは物資の海運依存は中国の2.4倍近いものになっている。また具体的な指標としては、船腹量も日本は1835万トンで中国より少ないものの国民一人当たりでは中国の約９倍となっている。従って貿易額も国民一人当たりの額は輸出で日本が3700＄で中国の11倍近く、輸入でも日本が3003ドルで中国の９倍強となっている。

②貿易立国としての海洋戦略と平和で安定した通商環境は必要

そもそも海洋は、世界をつなぐ交通路として、豊かな資源の宝庫として人類に潤いを与えてきた。先に見たように海洋国家としての性格を持つ日本は多くを海洋資源に依存することになる。日本の繁栄は通商国家として資源を輸入し、技術で付加価値を付けて輸出するという経済構造になっている。したがって海洋は日本にとって死活的に重要な交通路であり、国際経済とのパイプであり、資源を獲得する海洋国土として、日本の国益に直結している。

この件に関して「21世紀におけるわが国の海洋政策に関する提言」（日本財団海洋管理研究会：020315）が政策提言しているように、①公海を含む全海洋に関わる権利義務の行使と国際協力に関する国家の理念と行動計画の確立する、②沿岸域の開発と利用、保全の当事国としての法制整備、③EEZや大陸棚に関する境界画定について協議を進める、などが提言されている。（シップ&オーシャン・ニュースレター020420）

このためにはEEZを巡る問題では、まず早急に大陸棚の調査を全面的に展開し、詳細なデータを持って国連海洋法条約に基づく措置をとることが必要である。そのために海底資源の探査を進めて貴重な資源開発を進めることは資源小国としては国益上取るべき当然の対策である。そして中国とのEEZをめぐる境界線の問題は国連海洋法条約に基づき主張すると共に必要に応じて共同調査などにより解決に正面から取り組む必要がある。中国の不法な調査活動に対しては国連海洋法条約に基づいて、違法であれば中止させる（253条）、次回からの調査を認めない（246条）、調査船に乗り組み活動を見守る（249条）などの沿岸国の権利を断固たる行使をしないと国民の不満は収まらない。

歴史的にも日本は江戸時代の鎖国政策が採られるまで、広く海外に進出して、一部は和寇という形を取りながらも、中国沿岸やフィリッピンから遠くタイやビルマなどアジア各国に海外進出をし、海洋で活動してきた史実がある。

今日も少資源国であるわが国が国富を築き、世界第２位の経済大国の地位にたどり着いた多くの部分は海洋国家として海洋資源の活用と海洋通商路に依存する交易にあったことは疑いを入れない。したがって日本の海洋に関わる国益は、①安定的な資源確保と輸送シーレーンの安全、②市場販路の確保と輸送シーレーンの安全、③海洋資源の開発、採取とその海域の安定、というように整理できよう。

そのために日本にとっては海洋の平和と安全が重要となり、海洋国家にとして国際海洋秩序の維持のために日本は努力している。そして日常的な海洋の危機管理は海上保安庁に主管させ、シーレーンの安全確保などは国益に直結する役割を海上自衛隊に担わせている。

同時に、海洋の環境保護や汚染防止、魚礁の構築などの投資に努めており、また海洋資源の開発にも隣接国への配慮から自制してきたが、東シナ海での日本の資源探査などの抑制した対応が逆に中国側に誤解を与えてきた嫌いは免れない。

３．中国の海洋進出の狙いとその影響・・・日本側の理解と懸念

①海洋進出の経緯：

中国の海洋進出は遅く、1970年代以降に着手されてきた。建国初期の大躍進政策の失敗による経済面での挫折やその後の文化大革命などの国内混乱があり、その収拾と米中関係の改善などの条件が整った後に中国は海洋進出してきた。

そして中国では改革・開放政策の導入など経済建設が見直される中で海洋が注目されるようになってきた。実際に中国が「領海法」を制定したのは92年のことであり、国連海洋法条約を批准したのは96年であった。

中国の南シナ海への進出の状況を振り返ってみると、1974年にパラセル(西沙)諸島の永興島などへの海軍力をバックとして進出があった。さらに88年にスプラトリー(南沙)諸島の赤瓜礁など6島嶼を、それぞれ占守中のベトナム軍を軍事力で撃退するという形で進出した。中国はその後もフィリッピンのミスチーフ礁に軍事施設を建設して、それを既成事実化している。

東シナ海など日本近海に中国の調査船が現れたのも意外と遅く1990年代半ばからであり、尖閣諸島付近の海洋調査活動から着手されてきた。中国の東シナ海での各種の主張は、時期的に国連アジア極東経済委員会（ECAF）の海洋調査で東シナ海に海底油田の可能性が指摘された1969年以降のこともあった。

わが排他的経済水域（EEZ）に迫る中国の海洋進出の状況は海洋調査の形から始まり、1996年の16件から始まり99年には33件を記録している。2000年は24件であったが、その後毎年10数件の事例が続いている。

②中国の海洋進出の動機と実態：

中国には、かつて明朝時代に鄭和が率いた大艦隊が世界中を遊弋して国威を発揚すると共に通商圏を拡大した記憶が残っている。この歴史体験の上に今日でも中国は「300万平方キロメートルの海洋国土」を誇り、海軍力の強化と共に「海洋強国」を掲げて海洋権益の拡大を追求している。

海洋大国の夢を追う中国は、国務院が003年5月に「全国海洋経済発展計画要綱」を公布して、1,8万キロメートルの海岸線が熱帯から温帯までに広がる中国の海域には海洋魚3000種、海洋石油資源240億トン、天然ガス資源14兆立方メートル、鉱物資源31億トンの埋蔵があるとして、海洋開発戦略の指針を示している。

実際、中国は海洋産業から2005年でGDP4%の成果を得ているが、「小康（生活にゆとりのある）社会」実現の暁には急増する石油輸入量で年間10万トンタンカー換算・2500隻もの運航を必要とし、インド洋を含むシーレーンの問題もまた浮上してくる。

しかし海洋の利用には主権国家の外交権、警察権、軍事権が厳しく関わる問題が多い。中国の海洋進出の活発化は東シナ海や南シナ海で近隣諸国と島嶼の領有問題を惹起している。またEEZの境界を巡る摩擦や緊張も増大させており、東シナ海での日中間のEEZは国連海洋法条約の中間線論と大陸棚論の2つの条項の正当性をめぐってまだ決着を見ていない。さらに中国は尖閣諸島の領有を主張するなど、日中間には東シナ海で二重の課題を抱えることになる。また近年、中国の海洋進出は沖ノ鳥島海にまで拡大し、現に06年に中国外務省劉健超報道副局長が「沖ノ鳥島は岩であり、EEZを設定できる領土にならない」と挑戦的な発言をしているように、日中間の海洋を巡る係争は新たな段階に入ろうとしている。

③海洋大国の主張と海洋権益の必要性

中国の海洋戦略は海洋防衛戦略と海洋開発戦略から成っており、海洋開発戦略は、「小康社会の全面的な建設」という中国の国家戦略があり、その中で海洋資源開発として位置づけられている。

前者では、中国は、米国をこれまで「覇権主義、強権政治」として最大の脅威に位置づけてきたが、米英軍による国連決議抜きのイラクに対する先制攻撃を「新しい覇権主義」として、警戒感をさらに強めている。そして「南シナ海や台湾海峡への米軍事力の介入の可能性は高まっている」と見て、中国が海軍力を強化するのに伴い太平洋を支配する米海軍との対決が避けられないジレンマに遭遇している（詳細は後述）。

同時に中国は、米国を中国に軍事的脅威を及ぼす唯一の国と見るだけでなく「貿易・科学技術で最大のチャンスを与えてくれる国」とも認識している。従って中国の海洋進出は、単に安全保障の観点だけでなく海洋資源の獲得など経済的な狙いも大きい。さらに中国にとって重要な課題として浮上した海外からの石油取得に当たって、そのシーレーンの安全も海洋権益に加えられてきた。また中国の海洋資源の独善的な開発、漁業での乱獲、海洋汚染、なども重要になるが、付随して関係国に懸念を抱かせることにもなっている。

4．中国のエネルギー事情と海洋進出・・・・何故、中国は東シナ海での資源開発に取り組むのか？

①石油エネルギーの需給逼迫と国土内の対策に限界

海洋開発戦略は経済的側面が強く、これまで①海洋資源の探査、②シーレーンの確保などが狙いと見られてきた。実際、中国は世界第3位の対外貿易国となってシーレーンへの関心が高まり、対外貿易額で世界第3位、造船量も同第2位、漁獲量も日本の3倍弱、など海洋への依存度を高めている。

特に中国の海洋開発戦略の背景には深刻なエネルギー不足の実態がある。中国は石炭産出国として、石炭の多用で経済成長を支えてきた。しかし環境汚染の問題が浮上する中で、石油や天然ガスなどのクリーンエネルギー利用へと転換している。実際、中国は1993年から石油の純輸入国化し、2005年では1.3億トンを越える石油を海外から輸入している。中国は世界第6位の産油国で、今日でも年産1.6億トンを生産しているが、高度経済成長の中で石油消費量はそれを上回るが急増ぶりである。

中国は経済の高度成長によって「小康社会」の実現を最優先しているが、それは同時に石油エネルギー消費量の急増を伴うことになる。特に自動車時代を迎えて2020年には2.5億トンの石油輸入が必要になると予測さている。国際石油価格の高騰など、中国の急成長は石油市場を圧迫することになり、その対策として250億トンとも言われる埋蔵量の尖閣諸島海域の開発が焦点となってくる。

中国としては、既存の陸地油田の生産が頭打ちになる中で、石油取得ではジレンマに満ちた対応が迫られている。まず第1に自助努力として海底エネルギー資源の開発に力を入れ始めているが、関係国との領有権問題やEEZに関わる問題に直面している。第2に海外からの輸入による取得は中東油田の増産余力や市場価格の問題があり、さらに米国などメジャーが参入する国際政治が関わってくる。さらに油送に関してインド洋を含むシーレーンの安全や必要船腹の確保の問題が加わってくる。第3に、代替エネルギーとしての天然ガスへの切り替えがあるが、国内ガスの埋蔵地は西域内陸部でありパイプラインの建設などのインフラを要し、市場経済の中での採算性も問題となってくる。

このような問題を抱える中国は結局、関係国との間で領有権問題が生起するリスクを犯しながらも、近海で海底資源開発を強行することになる。

現在、日中間で外交協議が進められている東シナ海の白樺（春暁）ガス出は日中中間線から5キロ離れた中国側海域で採掘施設を建設しており、平湖ガス出からは既に海底パイプラインによって消費地・上海へ供給されている。日本側の権利を侵す可能性が指摘されるなかで中国側から調査資料の提供を得られないまま急ぎ日本側海域の資源調査に着手している。

②東シナ海での資源探査・開発動向への警戒

東シナ海は日中間のEEZ境界が未画定であり、日本側が中国に配慮して海洋調査を控える状態が続く中で、中国側は海洋調査や開発を活発に進めてきた。それも日本が主張するEEZ内で同意なしで強行する事例が多発してきた。国連海洋法条約は他国のEEZや大陸棚で科学的調査を実施する場合は6ヶ月前までに相手国に計画書を提出する義務を課している。その実行も不十分な中で中国は海洋調査を活発に展開し、2000年には海軍所属のヤンビン級砕氷艦兼情報艦によってわが国を1週する情報収集活動のように海軍艦艇の行動が目立ってきた。

さらに調査海域が小笠原諸島に拡大の兆しを見せ始めた2001年頃から調査活動が「東方紅2号」や「向陽紅14号」など科学調査船からヤンビン級の情報収集艦などに代わり、その行動が目立つようになった。第1列島線を越えた海域での中国の調査活動が、艦艇や潜水艦の作戦行動や機雷敷設などための海底地形、海流、音波など、軍事データの収集が主になってきたからだと見られている。

日中両国は、02年3月に科学調査に当たっては2ヶ月前に相手国に連絡するというルールを定めた口上書を交わしている。にもかかわらずこれまで中国はわがEEZ内での不法な調査活動を反復している。これに対して外務省はその都度抗議をしているが、中国側は境界が画定していない理由で抗議を受け入れようとせず、ずるずると海洋調査の海域を拡大し、徐々に既成事実化を図っているという問題がある。このような中国の姿勢が日本側に対中不信を抱かせ、中国は実力で東シナ海の資源独占をねらっているのではないかとの警戒感を強めさせている。

特に日本側が警戒する具体的な事例では、06年2月に中国海事局がホームページ上で、東シナ海の「平湖」ガス出の拡張工事のため、3月1日から9月末まで、中国の作業船を除く船舶に同ガス出付近の海域への立ち入り禁止を公示したが、その指定海域が日中中間線から日本側へまたいでいたという問題があった。この公示に対して日本海上保安庁から問い合わせたが中国側からの回答はなく、外交ルートを通じた問い合わせで4月18日にいたって中国側は「技術的な誤り」があったとして立入禁止海域を修正した。

日本としては、中国が見せた海上保安庁の問い合わせに対する誠意のない対応、公示を近隣諸国に正式通告をせずホームページで流したこと、技術的なミスの説明がないなどから、日本の出方を試したのではないかという疑惑が抱かれ、中国への不信感を強めている。さらに公海航行の自由を規制することは国際ルールに違反するのではないかとの疑いも対中警戒感を強めさせている。

③シーレーン防護上の海洋進出

中国で「小康社会の全面建設」が進展するのに伴い石油需要の急増が予測され、2020年には海外から2.5億トンの取得が推測されている。その場合、中国は油送の面だけでも年間で10万トンタンカーに換算して2500隻もの運航が必要となり、インド洋を含むシーレーン海洋交通の問題もまた重要性を増してくる。

中国の原油輸入ルートは90%が海上油送に依存し、その80%がマラッカ海峡を経由している。特にマラッカ海峡は、狭い海峡での海難事故や海上テロによる大被害が予想され、また現実に海賊被害は、表のように減少傾向にあるものの、なお3－6日に一回の割で生起している。

またマラッカ海峡は、米国にとっても世界の重要水路１６の中でも最も重視する海峡で「丸木橋」といわれるほどの脆弱性を有している。このため米海軍はシンガポールに海・空軍基地の使用権、マラッカ沿岸での軍事基地建設支援を得ている。この海域の防護に任じる米海軍の主導権に対して中国がどのように対応するか、が注目される。タンカー油送に関して中国は、04年の輸入原油1.23億トンの90%以上を外国籍船舶に依存しているが、将来、自前タンカーの航行が増えるに従ってマラッカ海峡などでの安全保障問題に直接関わってくることになる。

中国の中東やアフリカからの南方油送ルートは、インド洋やマラッカ海峡に内在する危機を受けている。これを回避しようと中国はインド洋沿岸で海路に連接するパイプラインの建設も進めている。その第1ルートが、ベンガル湾北部から陸揚げするパイプラインで、かつて太平洋戦争時の援蒋ルートに沿うものである。ミャンマーのシットウエ港からマンダレーを経て雲南省の瑞麗に至るパイプラインである。このルートは広州までの比較でマラッカ海峡経由より3370km短縮でき、ミャンマーも積極的に対応をしている。中国の３大石油企業（中国石油天然ガス、中国海洋石油、中国石油化工、）も絡んでおり２０億ドル建設費の計上が報道されている。

第2ルートが、パキスタンのグワダル港からから陸揚げするパイプラインで、パキスタン・ギルギットからコラムハイウエイに沿って新疆・カシュガルーに至る経路である。グワダル港の改修は02年5月から中国港湾建設集団総公司によって拡張工事に着手されている。同港は中東産油国から積み出してインド洋で最初に泊まれる港であり、既にグワダル港から道路、鉄道で中国新疆までのルートがある。

このようなインド洋への対策として、パキスタンやミャンマーに港湾や通信施設を建設する形で各種の戦略的な働きかけがなされているが、これら一連の動向もインドや米海軍との確執などインド洋の海洋秩序に懸念を与えることになる。

５．中国の近海防御戦略と海洋進出・・・・何故、中国は西太平洋まで張り出そうとするのか？

①中国の近海防御戦略とその背景

中国は太平洋正面に、北朝鮮や台湾海峡などのホットポイントを抱える中で、日米安全保障体制の強化による対中圧迫が続いていると見ている。中国は、上海など経済中枢都市が連なる沿海地域は国富の源泉であって、まさに太平洋正面に張り出した中国の柔らかなわき腹にも例えられ、太平洋正面からのトマホークなど巡航ミサイルの攻撃に晒されていると見ている。

加えて中国は、湾岸戦争以来、コソボ空爆からイラク攻撃までの一連の戦争様相が示した軍事革命（RMA）の成果を、先進国・米軍事力の威力として見せつけられた。中国は、射程が延伸され精密誘導能力が向上した巡航ミサイルなどの攻撃に対して政経中枢である沿海地域の安全を確保する必要に迫られてきた。軍事革命による脅威の変質を踏まえて、経済中枢の沿海地域の安全が防御の中心課題となってくる。対策として中国は海上正面に縦深性を持った防衛帯の形成を追求している。また中国は空母保有や新型戦闘機の増産などに見られる海軍力強化も進めており、それは後述するような近海防御戦略の追求と見られている。

さらに中国は現実にアフガニスタンにおける反テロ戦争を名目に米軍事力が中央アジアに進出し、そのプレゼンスは長期化の様相を強めていることにも苛立を強めている。

その上に、中国には内なる問題として国家統合の課題を抱えている。台湾統一を最大のテーマとする国家統合は共産党独裁体制の正統性のためにも降ろすことのできない旗印である。中国が台湾統一のためには武力解

放を辞せずという強い姿勢を貫いているゆえんである。しかし台湾への武力行使は海峡の現状変革を認めない米国との敵対を意味するというジレンマに繋がっている。実際、中国はアジア地域における米軍事プレゼンスを地域安定要因と見ると同時に展開される MD の拡大、日米関係の強化、グワム基地への配備強化などを米トランスフォーメーションと重ね合わせて中国の国力伸張を封じ込めようとする脅威と見立てている。

②中国の近海防御戦略

このため中国は海洋正面に晒した中国の弱点に対して縦深性を持った防衛帯の形成を追求することになり、近海防禦戦略を展開している。その実態はなお不透明であるが、我が南西諸島周辺海域が、中国にとって太平洋進出に蓋をするような障壁となっており、この海域で問題が多発することになる。

海洋防衛戦略は、具体的な構想は端的には第１段階で、日本列島から琉球列島、台湾、ﾌｨﾘｯﾋﾟﾝ諸島を結ぶ第１列島線以西のシーコントロールであり、中国が主張する300万平方ｋｍのEEZ内の制海権を追及している。具体的には第１列島線内に主力艦艇を展開して支配することにより、極東米軍基地の機能を低下させ、第１列島線外の米空母などから発進される作戦機や巡航ミサイルの中国の沿海地方に対する射程を延ばすことを追求するものである。

第２段階としては、第１列島線内のシーコントロールに加えて第２列島線に至る海域のシーデナイアル（敵の自由使用を牽制する）を追及することである。具体的には西太平洋海域での米海軍の自由行動を拒否することで、台湾東方海域に潜水艦を展開し、機雷を敷設するなど米空母の自由な行動の制約することで沿海地方をミサイルの射程外に置こうとするものである。このような第２列島線までのシーデナイアルは、将来中国が台湾を攻撃するとしても米軍の来援や介入を阻止できることになり、最終的にはグワム島の米軍基地の無効化を目指すことにまで発展しよう。

このように台湾海峡をはさむ中台関係は中国の海洋戦略とも深くかかわっている。特に台湾の地政学的な意義から、台湾が中国の支配下に入れば、中国が太平洋に進出する上で極めて重要な戦略的拠点となり、中国の台湾統一は西太平洋の安全保障環境を激変させることになろう。

近海防御戦略の具体的な軍事目的は第１に、中国の沿海経済都市に対する太平洋正面からの攻撃を制限することで米空母などからのミサイル攻撃の射程内に入れないことが考えられる。第２が将来台湾攻撃をする場合、米軍の来援・介入を阻止する狙いであり、第３がバシー海を含む日本の死活的な南西シーレーンへの牽制力保持の狙いで、第４に中国自らの継戦能力を保証するシーレーン防衛に資することも入っていると見て良かろう。実際、米国も06年の国防総省のレポートで、台湾は戦略地政学上の要衝であるとして、「海上防衛の前方地域の確保、戦力展開の足がかり、域内シーレーンへの影響力拡大、米国などの中国経済拠点への戦略的足掛り」と評価をしている。

③中国の国防力強化と海洋進出

中国が近海防御戦略を踏まえて、進めている軍備強化は一般的には対米抑止力と台湾海峡における局地戦の勝利を目標にしている。このため核戦力の強化や宇宙の戦力化が進めて対米抑止力としながら、台湾に対しては南京軍区にミサイル配備を強化すると共に海・空軍の強化を推進している。実際に海軍では国産の潜水艦（宋級）や外洋艦艇（ハルビン級、深釧級）の強化に加えてロシアからの新鋭艦を導入（キロ級潜水艦４、ソブレメンヌイ級駆逐艦２）している。さらに「キロ級」をモデルに武漢で建造中の「元級」通常型潜水艦や潜水艦発射弾道ﾐｻｲﾙ「巨浪２号」（SLBM）搭載の新型原潜、巡航ミサイル搭載の攻撃型原潜の建造などが進められている。空軍では新型戦爆機J-10の国産やロシアからのSu-27・Su-35MK戦闘機の導入などを進めている。

また中国が弱点とするﾊｲﾃｸ軍事技術の導入のため、フランスをはじめEU諸国が天安門事件以来続けている対中武器輸出禁止措置を緩和させようよう働きかけている。そして海洋開発戦略に寄与する観点から海軍の近代化が重点とされている。

加えて中国の動向は、05年夏の山東半島における中ロ共同演習など各種の軍事演習とこれに関連した中国の海洋での活発な軍事行動が懸念され、「中国脅威論」につながっている。中国の多様な戦略目的が絡む海洋進出に対して06年の「米国防総省レポート」は近い将来、西太平洋において米国益と競合することまで予測している。

中国の安全保障からすれば、沿海地域の政経中枢の防衛は死活的に重要であり、このため第２列島線まで防波堤を伸張すれば、米国との摩擦を生むというジレンマがある。また台湾統一も譲れず、台湾海峡における軍

事演習など中国軍事力の誇示は単に台湾海峡だけでなくアジア地域に緊張をもたらしてくる地域問題でもある。当然ながら、台湾もまた軍事力の強化と対抗上の演習を進めており、本年５月の「漢光２３号演習のような台湾史上最大規模の軍事演習を誘発しており、このような中台両軍部による演習の応酬は相互の軍備拡張の連鎖となり、地域の不安定につながっている。

６．日中両国の海洋互恵への課題・・・２１世紀の日中両国の海洋への取り組み姿勢

見てきたように中国の海洋進出はこれまでのような行動では地域に緊張を招くことになる。

第１のエネルギー資源など経済的な目的での海洋進出であるが、わが国としては海洋国家として総合的な海洋政策を展開する必要があろう。東シナ海では共同開発や EEZ 境界問題などで摩擦が増え、緊張が高まろうが、それはグローバル経済とリンクする中で、高度経済成長の持続を使命とする胡錦濤指導部にとっても好ましいことではなく、協議の余地は残ると見て良かろう。中国は、現実的に国際協調路線をとりながら、08 年の北京オリンピックや 2010 年の上海万博を成功させる必要性は高く、海洋を巡る緊張を緩和させる必要性は高いと見られるからである。これらから海洋の有限資源の開発に当たっては共同開発など長期的な視点で調整できる可能性はあろう。

その際、海洋国益の互恵に当たっては相互の立場を尊敬の念をもって認め合い、国益をお互いに譲り合う精神「互譲」が大事になってくる。また海洋資源の開発利益は分かち合うとともに資源の保存に留意することが重要である。

第２に、中国の安全保障に関わる海洋進出に対しては、まず中国が抱く太平洋からの脅威感を緩和させる必要がある。そのため、これまでの既存の安保対話の枠組みを活用して日中米の間の信頼醸成措置を進めることである。同時に中国の第１列島線を越えた海洋緩衝帯の拡大は、例えそれが防勢的なものであるにせよ、アジア地域に緊張を生み出すことになり、抑制される必要がある。このため中国は、近海防御戦略や海軍強化の実態を明らかにし、関係国に疑念を抱かせないよう透明性の向上に努めることが求められる。この際、安全保障問題にナショナリズムや国家主権を巡る問題をリンクさせないことが重要である。

また中国内には盛り上がるナショナリズムを背景として挑戦的な演習の強行なども抑制するように胡政権の軍に対する統帥権が確立されることが重要になる。少なくとも中国の軍事力をバックとする活動が他国に脅威感や誤解を与えないように自制することが必要である。さらに不測事態への応急対応のために多重なパイプによる信頼醸成の枠組み作りとか、ホットライン構築など平素から具体的な措置をとることが課題である。

第３に中国の海洋進出が、尖閣諸島などの領有権問題に関わってくることもあろうが、当面はこれを回避することが賢明である。尖閣諸島の日本領有については、米国務省副報道官エレリ氏の「尖閣諸島は日本の施政管理下にあり、したがって安保条約第５条の対象となる」発言(040324)のようにブッシュ政権は支持している。しかし島嶼の領有権が絡む海洋問題は世界的にも解決の難しい複雑な問題であって、日中関係はまだもろく不安定な段階にある現状から、領有権の絡む問題は先送りするとともに不測事態に備えた予防措置が大事である。その際、主権、領土に関わる問題への取り組みに当たっては、冷静で自制的対応が求められ、相互に相手の立場を尊重する「互尊」の姿勢が必要になる。

いずれにしても海洋を巡る両国間の問題は、簡単に国益が調整できるものではないが、多様で重層的な意見交換の場が設定され、例え話し合いが激突しても復元力が機能するような信頼基盤の建設が急がれる。そして相互の協議の中で、感情的な反発の連鎖とその拡大を海洋権益や領有権問題と結び付けさせない着意も必要になってくる。

そのような基盤の上で、冷静に自国の国益を踏まえた主張をぶっつけて話し合う段階に入るべきで、従来の平和友好を大前提とした穏便な解決、問題の先送りの姿勢から脱皮する時期に来ている。そのために中国側に要望することは、以下の諸点である。

① 中国の海洋進出は領域拡大の野望か、という疑惑に対して海洋進出の意図や海軍力強化の透明性を向上させるなどで、答えるべきである。

② 海洋問題の協議に当たっては、過度の主権や国家威信へのこだわりを捨てて、ステークホールダーとしての自覚を持って大国らしい振る舞いをすることが望まれる。

③ 海洋進出に関連して、空母保有も含めた海軍、空軍の強化が進んでいるが、軍事力の実態、近代化の目標など軍事的な透明性の向上を図ることが望まれる。

海洋は国際公共財であり、有限の海洋資源の共同開発などでは海洋利益を公正に配分すると共に資源保護や

海洋汚染の防止など、総合的な海洋管理で協力する姿勢を見せることが必要がある。　了

Northeast Asia Security Situation and China-Japan Relations

By Prof. Chen Qimao

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I. Currently Northeast Asia security situation is fine in general, but maritime security problems in the region have become prominent these years.

The characteristics of the current Northeast Asia security situation are: both positive and negative factors are growing, and opportunities and challenges coexist. However, the positives are stronger than the negatives, and opportunities are larger than challenges, which we can see clearly over the past year.

(1) The major power relations are undergoing a new round of benign interactions. Sino-U.S. relations are maturing and stabilizing. In his successful visit to the US in April 2006, President Hu Jintao reached new, important consensus with President Bush on pushing Sino-U.S. relations in an all-round way and on defining the bilateral relationship as constructive, cooperative relationship of 'stakeholders'. At the same time, China and the U.S. have established a fairly systematic mechanism of dialogue and exchanges, of which the most important are: (a) Summits of heads of the two states. President Hu Jintao and President Bush have met for three times last year and exchanged views for several times on important issues through telephone; (b) Two high level strategic dialogues, i.e., the political-strategic dialogue and the economic-strategic dialogue. One dialogue was held recently between a Chinese economic delegation headed by Vice Premier Wu Yi and a U.S. delegation headed by U.S. Treasury Secretary Henry Paulson in Washington, which was participated by a dozen Chinese minister-level officials and seven U.S. ministers, indicating the big importance of the dialogue attached by both sides; (c) The foreign ministers of the two countries keep in close touch. Before his resignation a while ago, the Chinese Foreign Minister Li Zhaoxin, was reported to have met and communicated through phones with Secretary Rice for 16 times last year. In recent years, China and the U.S. have made new progresses of exchanges and cooperation in counter-terrorism, law enforcement, environment, energy, hygiene, science and technology, culture, etc. They have also conducted effective dialogues and consultations on the issues of Korean nukes, Iran nukes, Sudan's Darfur, and UN affairs. The military exchanges between the two countries are also growing as well. Last but not least, in recent years, the two countries have cooperated well in maintaining peace and stability in Taiwan Strait and in checking the Taiwan independent forces.

Sino-Russian strategic cooperative partnership has further developed. The heads of the two states met for four times in 2006. President Hu Jintao made a successful visit to Russia in March, 2007, which has pushed the political trust and friendly cooperation between the two countries to a new high. "Russia Year" was successfully held in China in 2006 and "China Year" is being held in Russia at this moment. They certainly contributes to push Sino-Russian friendship to a new climax.

China and Japan finally reached consensus on "overcoming the political obstacle to the relations of the two countries" thanks to their joint efforts made in last October, which opened the way for Prime Minister Shinzo Abe to make his "ice-breaking journey" to China. Abe's successful visit to China has not only broken the political deadlock in China-Japan relations, but has also started the process of establishing mutual confidence through reaching the consensus of building "strategic relationship of mutual benefit" and making clear the general direction of the relationship. Premier Wen Jiabao made a fruitful "ice-melting visit" to Japan in April 2007, during which both sides reiterated their commitment to follow the principles embodied in "Sino-Japanese Joint Statement", "Sino-Japanese Treaty of Peace and Friendship" and "Sino-Japanese Joint Declaration", and their determination to "face up to history and open up good, forward-looking relations toward a beautiful future". In addition, they have defined the basic spirit and intension of "strategic relationship of mutual benefit", and agreed on a range of arrangements and measures in detail for building "strategic relationship of mutual benefit". The successful visits of Abe to China and of Wen to Japan constitute a turning-point to China-Japan relations, and a remarkable sign of formation of a new round of benign interactions between major powers in Northeast Asia.

(2) The hotspots in Northeast Asia have cooled down, marked by the easing of the North Korean nukes, the most explosive, hot issue in the region. The Korean peninsula is an area that Cold War remnants still remain. Especially since the Korean nukes occurred in 1990s, the peninsula has been in a tension that seriously threatens the security of Northeast Asia in particular and the whole Asia-Pacific in general. It even came to the brink of war around the year of 1994 and for a couple of times in the early 21st centuries. The six-party talks have undergone ups and downs, and for several times have been close to failures. Especially in last October, the six-party talks came to the verge of broken-down when North Korea conducted a nuclear test in opposition to the rest of the parties. An important turning point emerged in the Korean nuke issue in February 13, 2007 when the third session of the fifth round of the six-party talks passed a document named "the Initial Actions for the Implementation of the Joint Statement", thanks to the strenuous effort made by China and the positive support and collaboration rendered by ROK, the U.S., Russia and Japan, and also the positive response of DPRK leaders. The first step to solve the nuclear

issue came true when DPRK shut down its nuclear facilities at Yongbyon in July, 2007 after the North Koreans' dollar deposit frozen in an Macau bank was released. Notwithstanding, the final solution to the nuclear issue and the realization of nuclear-free Korean Peninsula will still take a long way to go and with a tortuous course, the first step has eased the situation anyway in Northeast Asia and offered a ray of hope to the final solution of the issue.

Taiwan Strait is another hotspot in Northeast Asia. Since 2005 the Chinese government has taken a range of policy measures to improve the relationship across the Strait and has relaxed the situation to some extent. However, as the "presidential election" and the election of the "Legislative Yuan" in Taiwan are coming up, the DPP leader Chen Shui-bian, aware of his party's weakness through the poll, has been vigorously calling to hold a referendum on whether agree or not to apply the island's membership to the United Nations under the name of Taiwan, which is a de facto referendum on Taiwan independence. This will directly violate the "Anti-Secession Law of the People's Republic of China" adopted by the Tenth People's National Congress in 2005, hence constituting a critically potential crisis. The Chinese government has issued a stern warning on Chen Shui-bian authorities' activities, and the United States has also imposed pressure on Chen. The situation has not yet been out of control up till now.

(3) The strategic forces of Northeast Asian region are developing towards a relative balance, and the conditions for building a regional security mechanism are increasingly maturing. Right now the power structure of the world as a whole remains unchanged, that is, one superpower with several major powers. The multipolarization is developing, and the U. S. superpower status is weakening; however, the US will still maintain its sole superpower status for quite a long time to come. Nevertheless, the U.S. is now trapped in Iraq, a dilemma hard to be extricated in a short time. The Iranian nuke issue and the Palestinian-Israeli contradiction also pose great challenge to the U.S. strategic interests. Though there are no important terrorist actions taken place in homeland America since 9/11, the international terrorism threats based on Islamic extremism remain and are expanding to Europe and Southeast Asia. Under the situation, the U.S. could not but still regard the Middle East as its top strategic priority, albeit the neo-conservatism strategists have been planning to shift the strategic priority to the Asia-Pacific. Although the Pacific Command is the largest U.S. combatant command, and the U.S. has built up its naval and air forces based in Guam in recent years, in the face of the vast Pacific and Indian Oceans, evidently its military forces have too many difficulties to cope with and are far from enough. This is one reason that the U.S. pays attention to more consultation and coordination and less arbitrary and unilateral approaches with Northeast Asian countries. In recent years, China's comprehensive national strength has remarkably increased thanks to its continuous fast economic growth. Japan has got rid of its economic predicament it had suffered since 1990s and

has entered into a new stage of development. Russia is recovering with a strong momentum. These developments have led to a relative balance of the strategic forces in the region. In addition, the six-party talk of Korean nukes provides a framework for the establishment of regional security mechanism. At present, each of the six parties has its idea and vision on the building of Northeast Asian security mechanism based on the six parties talk, and a relevant consensus is being formed.

Of course, on the other side, we should not underestimate the negative factors in regional security, let alone neglect them. Major powers in the region remain to be mutually suspicious and lack of confidence with each other, which poses a great challenge to their relations. The U.S. wants to forge "stakeholder" relations with China on the one hand, but on the other hand, it still worries about the possibility that China will challenge the U.S. hegemony in the future. Therefore, America always spreads the so-called "China threat" rhetoric, and adopts a "hedging policy" towards China, roping in Japan, Australia and India to contain China. China-Japan relations have yet to be fully stabilized. The ultimate solution to the Korean nukes will still take a long, uneven way. The Taiwan independence movement is rampant right now, and is very possible to trigger a serious crisis. In addition, the non-traditional security issues, such as environmental pollution, ecological deterioration, energy shortage, and terrorist actions are looming large in the region.

It is particularly notable that the maritime security in Northeast Asia allows no optimism and the unstable factors are growing. The first is the sovereignty disputes between regional countries over islands, such as disputes between Japan and Russia over the four Northern Islands, disputes between Japan and ROK over Dokdo (Takeshima), disputes between China and Japan over Diaoyu (Senkaku) islands, which see no hope of solution at present. The second is the disputes over the delimitation of maritime jurisdiction areas and offshore oil and gas resources, including the disputes between China and Japan and between China and ROK over the delimitation of maritime jurisdiction areas in East China Sea, the disputes between China and ROK and between China and DPRK over the delimitation of maritime jurisdiction areas in Yellow Sea. All these are also acute, complicated and hard to be solved. The third is the rise of non-traditional security threats in the region, including piracy, maritime terrorism, drug-trafficking, arms smuggling, money laundering, illegal immigration, etc. It is reported that the pirates in the East Asian waters account for one third of the world total. Finally, given that countries in the region are building up naval and air forces, an arms race might emerge. It is estimated that within 10 years from now to 2016, the Northeast Asian countries will spend a total of 80-100 billon US dollars to develop navy forces, of which 30% will be on producing submarines. Hence, just as a South Korean expert points out, though on the whole positive factors take the lead in Northeast Asia security equation, in

respect of regional maritime security, negative factors seem to take the lead. In sum, maritime security is becoming increasingly salient in Northeast Asia security.

II. Cherish the new phase of China-Japan Relations and try first to make a breakthrough in the joint development in the East China Sea.

Having undergone 5 years of distortions and rifts, the formation of the new phase of China-Japan relations is not easy. Both the two countries should cherish this precious achievement and make efforts to stabilize and develop it.

China has consistently attached great importance to China-Japan relations. In accordance with the principles stipulated in the three documents "Sino-Japanese Joint Statement", "Sino-Japanese Treaty of Peace and Friendship" and "Sino-Japanese Joint Declaration", the development of long-term, friendly cooperation relations with Japan is the national policy of China and the unswerving guideline of Chinese government. "To carry on friendship of the two peoples from generations to generations" is a slogan initiated by China's late-leaders Mao Zedong, Zhou Enlai and Deng Xiaoping, and it is widely and pervasively known to the Chinese people. Its influence, therefore, will not disappear in time of transient difficulties in the bilateral relations. The Taiwan issue relates to the core national interests of China. To recognize one China principle and Taiwan as one part of China is the precondition of diplomatic ties between China and Japan. The history problem relates to the national feelings of 1.3 billion Chinese people. Only "Taking history as a mirror and facing up to the future" could lay profound political and ideological foundation for the development of bilateral relations, and make the "generations to generations" friendship win the support of the broad masses of the peoples. All these are stipulated in the above-mentioned three documents, which must be followed if China-Japan relations are to be consolidated and developed.

China highly evaluates Prime Minister Abe's political resolution and endeavor in breaking the deadlock of China-Japan relations. Firstly, despite his pre-office political stance that is known to all, Prime Minister Abe, upon taking office, approaches the China-Japan relationship from a strategic height, put the national interests as his first priority, rather than his personal passions and personal perspectives, and properly addresses the historical issue. This has made great contribution to the overcoming of the political obstacle to bilateral ties. Secondly, unlike the previous new PMs of Japan who usually visited the United States at first after taking office, PM Abe has made his first foreign trip to China just 13 days after his inauguration, showing his style as a politician who dares to break with routines. Thirdly, the previous governments of Japan did not accept the definition of the China-Japan relations as "strategic", for the reason that

only countries with shared values are eligible to "strategic relations". In his first visit to China as Prime Minister, however, Abe initiatively put forward the idea to develop the strategic relationship of mutual benefit with China. And in the light of the previous situation of "cold in politics and warm in economics", he proposed that political and economic relations should move forward jointly like two wheels, fully showing his political courage and innovational spirit. Fourthly, upon his successful "ice-breaking journey", Prime Minister Abe timely invited and received Premier Wen Jiabao to make an "ice-melting journey", and the two prime ministers have reached consensus on a lot of issues in bilateral ties. It is so eye-catching that, as a leader of a post-war born, new generation, he is so adroit in tackling the complicated diplomatic affairs in great success.

The Chinese leaders sharply noticed the changes of Abe's postures on Japan's war history around his inauguration. And, after making serious analysis by linking these changes with the prevalent political and social thoughts in Japan, and after receiving commitment of "removing the political obstacles affecting the China-Japan ties" from the Japanese side, they boldly decided to invite Prime Minister Abe to visit China. This demonstrates that the Chinese leaders are keen to improve the China-Japan relations and that the stand of principle in conformity with flexibility exists in Chinese policy toward Japan.

For certain we should see clearly that the improvement of China-Japan bilateral relations is just preliminary. Besides the history problem, there are other contradictions between the two countries such as the Taiwan issue, disputes on territorial sovereignty and delimitation of maritime jurisdiction, geopolitics and geo-economic affairs, and the confronting nationalist emotions among the peoples emerged in recent years. Therefore, the bilateral ties have not yet been fully stabilized. From China's stand, one key problem is that the commitment "removing the political obstacles affecting the China-Japan ties" made by Japan is not clear enough. The bilateral ties will very likely fall back again if Prime Minister Abe cannot abide by his commitment due to domestic politics. The Chinese of all walks of life are closely watching the political tendency in Japan after the upper house election, and hope that it will not bring about negative effect on bilateral ties.

It is most advisable for both China and Japan to seize the precious opportunity at present in consolidating and advancing the bilateral ties. The China-Japan Joint Press Communiqué issued in Tokyo during Premier Wen Jiabao's visit to Japan is an excellent document in the history of China-Japan relations. It not only reiterates the cardinal principles of bilateral relations and outlines the spirit and connotation of the strategic relationship of mutual benefit, but also makes detailed stipulations on the dialogue and exchange mechanisms needed to build the strategic relationship of mutual benefits, the contents and measures in developing cooperation of mutual benefits, and the contents and

measures of bilateral cooperation in regional and international affairs. The Communiqué also declares that the two sides will jointly carry out a program of visits by 20,000 Japanese visitors to 19 Chinese cities as part of the commemorative activities marking the 35th anniversary of the normalization of diplomatic ties between China and Japan, and that the Japanese side will invite large groups of Chinese high school students to visit Japan in the next five years, which is particularly helpful for the two peoples and especially for the youths of the two countries in carrying on the spirit of developing friendship of the two peoples from generations to generations. Now, the problem is to carry them out step by step through common efforts of both sides.

At present, the contradictions between China and Japan over the delimitation of maritime jurisdiction in East China Sea and over the exploitation of offshore oil and gas resources are fairly acute. It is most urgent for the two countries to reach an agreement on joint development in order to dissolve the contradiction, increase cooperation and advance the overall China-Japan relations. The Communiqué explicitly states that both sides are committed to make the East China Sea "a sea of peace, cooperation and friendship", and that they will speed up consultations and hope to submit a detailed plan on joint development to the leaders of the two countries in autumn this year. Prime Minister Abe has expressed his hope to visit China again within this year. If an agreement of joint development could be reached by both sides in time, and signed during his trip to China, it will be the best gift presented to the 35th anniversary of the normalization of diplomatic ties between China and Japan, and will greatly advance the bilateral relations of friendship.

Discrepancies between the two sides remain in their consultation on East China Sea joint development. How to make a break-through on the conundrums in the consultation? There are three guiding principles stated in the Communiqué that merit attention. The first is the premise "without prejudice to the positions of either side on matters concerning the law of the sea", i.e., the scope of joint development is just temporary arrangement, without involving the islands' sovereignty disputes and the final delimitation of maritime jurisdiction. The second is the principle of mutual benefit, which means that both sides should make compromise and try to harvest mutual benefits and win-win situation. No one should expect a unilateral concession from another. The third is to carry out joint development in larger sea areas acceptable to both. This will make both sides a larger room for manoeuvre and will be easier for both to find the compromise point.

Now the governmental consultation has entered into its toughest stage. Our institution, the Center of RimPac Studies in Shanghai, a non-governmental "track two" institution, would like to make humble efforts. One of our goals to participate in the seminar this time is to listen to the suggestions of Japanese

specialists. We hope that our Japanese friends will not be stinting with comments or criticism.

III. To increase exchanges, enhance understanding, dispel suspicions, and build mutual trust.

Mutual understanding and mutual trust is the political and ideological base for establishing a long-term friendship. China and Japan are close neighbors facing each other across a narrow strip of water. It is quite evident that they will both benefit from cooperation and hurt from split. China is now highlighting the scientific development. Environment issue and energy saving issue come to affect the overall national situation as well as the entire world. Japan is strong in environment protection and energy efficiency. The booming of China-Japan cooperation in these areas will bring about big benefits to China and a vast market to Japan as well. The problem now is that there are considerable suspicions and misunderstandings between the two countries, not only between the governments but also the publics, which hinder better cooperation of the two countries.

Here, the author would like to elaborate on China's naval strategy. It is reported on the Wall Street Journal on July 16 that China is building up its naval force, and the United States and Japan are on a high alert to regard it as a sign that China seeks mastery of the seas. In addition, quite a number of Western media and institutions of defense studies are recently cooking up "aircraft carrier" in China. Some claim that China has already produced an aircraft carrier. Others say that China is going to produce four aircraft carriers. Given those seemingly genuine reports, the world public including experts have paid much attention to China's naval strategy. In the seminar on the Asia-Pacific situation held earlier in Shanghai, some Japanese and South Korean experts raised a range of questions on this issue. For examples, will China continue to accept the U.S. military presence in East Asian seas? Is China going to compete with Japan for dominance over East Asian seas? Will China build a military base on Taiwan so as to control the second chain of islands of the East Asian waters if the Taiwan issue be solved? Will the Chinese navy head for the Indian Ocean and the Persian Gulf to protect the security of its SLOC (sea lines of communication)? Will China shoulder the responsibility by itself to protect its SLOC security once the US navy withdraws from East Asia or reduce its presence in East Asia? Will China prepare to defend SLOC by itself if the cooperation between China and U.S. in protecting the SLOC security fails? As the US intends to make the Caribbean Sea its internal sea, does China intend to make the Yellow Sea, the East China Sea and the South China Sea its internal seas? Etc.

The author would like to share his own perspectives and understandings on these questions with Japanese friends for your reference.

1, China's naval strategy is formulated in accordance with its national defense policy. China defense policy is defensive in nature and it implements a military strategy of active defense. In the words of former Defense Minister Chi Haotian, "The basic goal of China's defense policy is to consolidate national defense, resist foreign aggression, defend the national territory, territorial air and waters and maritime rights, and maintain the national integrity and security." China is not only a land power, but also a maritime power. China has a coastline of 18,000 km long, and has an area of 400,000 sq km for internal waters and territorial sea, and an area of 3 million sq km for jurisdictional areas. The Chinese navy is fairly weak at present. It is in no way to match the U.S. navy. It is far behind the navies of UK and Japan, and is even behind India. China has every reason to strengthen its naval force.

2, According to the military strategy of active defense, the Chinese Navy pursues an off-shore defense strategy. The term off-shore here undoubtedly includes China's territorial sea, exclusive economic zone and continental shelf. The development of China's navy is in line with this strategy. So far, China has not yet planned to build a 'blue-water' navy. Nor has China made a decision to build an aircraft carrier, though China is able to do so. It seems that there still exist disputes among Chinese strategists on whether China should build aircraft carriers or not.

3, Containing Taiwan independence is undoubtedly one of the important reasons to build up the Chinese navy. China has defined the policy of solving the Taiwan issue through peaceful means. As indicated in the Anti-Secession Law adopted in 2005, China will not employ non-peaceful means to solve the Taiwan issue unless the three bottom lines are violated, i.e., the "Taiwan independence" secessionist forces should act under any name or by any means to cause the fact of Taiwan's secession from China, or that major incidents entailing Taiwan's secession from China should occur, or that possibilities for a peaceful reunification should be completely exhausted. The mainland can wait and will not make a timetable of reunification since the Taiwan people don't want reunification at present. Right now the mainland mainly hopes to establish a stable, peaceful, cooperative relationship with the Taiwan side on the principle of one China. However, the Chen Shuibian-led secessionists are continuously challenging the bottom line of the Anti-Secession Law. Therefore, the mainland has no way but to prepare to use non-peaceful means if necessary, though China will not easily give up the peaceful means to solve the Taiwan issue. The preparation of "non-peaceful means" certainly includes the preparation in response to foreign intervention. China by no means wants to go to confrontation with the U.S., but China has no room to retreat on the Taiwan issue, a core interest of China. The Chinese navy has to make every preparation for this determinedly. In fact, the Taiwan independence will be effectively contained so long as the U.S. explicitly tells the Taiwan authority that the U.S. will not provide any aids and protection if the

Taiwan authority takes the initiative to go to Taiwan independence and to separate Taiwan from China.

4, China does not oppose the US military presence in East Asia. President Jiang Zemin told President Bush explicitly on the APEC summit held in Shanghai in 2001 that China welcomes the United States playing a constructive role in the Asia-Pacific region. American military presence in East Asia is a historical legacy of World War II. Any change of historical products needs a historical process, which will take a long time. To look back to the post-war history, American military presence in East Asia has played a positive role in keeping regional peace and stability, but it has also played a negative role. We wonder whether Japan will seek a dominant position in East Asian waters after the U.S. withdraws its presence from East Asia in the future. China has no such intention anyway. Both the "Sino-Japanese Joint Statement" (1972) and the "Sino-Japanese Treaty of Peace and Friendship" (1978) have stipulated that "neither of the two parties should seek hegemony in the Asia-Pacific region or in any other regions and that each is opposed to efforts by any other country or group of countries to establish such hegemony." We hope that the two countries will observe this stipulation and seek no dominant position whatsoever. Instead, they should adopt a new-style of cooperative relations and mechanisms to maintain maritime security and stability.

5, China has neither capability nor intention to send its navy to the Indian Ocean and the Gulf region to safeguard the SLOC security, which is now safeguarded mainly by the U.S. and littoral states. For sure China will not always have the free ride. Chinese navy is fully responsible for maintaining the SLOC security along the coastlines of Chinese provinces such as Guangdong, Fujian, Zhejiang and so on. China is willing to cooperate with the U.S., Japan, Indonesia, Malaysia and other countries by sending its navy to safeguard the SLOC security when needed, but it is impossible for China to safeguard the SLOC independently. In preparation for the blockade of the energy transportation lines, China is now taking measures to set up strategic energy reserves, to diversify energy imports, to reduce energy dependence on the Middle East, and to develop energy efficiencies and new energies, etc.

6, China will not "control the second chain of islands in East Asian seas". In early 1980s when Deng Xiaoping iniatiated the principle "one country, two systems" for a peaceful solution of the Taiwan problem, he made very clear that if the Taiwan side accepts the principle and reunifies with the mainland peacefully, Taiwan could retain its own military forces, and the mainland will not send troops to Taiwan. Under that situation, surely it is impossible for China to build up military bases in Taiwan.

7, Except Bo Hai Bay which is China's internal waters s well as China's historic

bay, China embraces no intention at all to make East China Sea, South China Sea and Yellow Sea its internal seas. China has disputes with Japan over the sovereignty of Diaoyu islands and disputes over the delimitation of maritime jurisdiction in East China Sea; China has disputes with Vietnam, Malaysia, Philippines, Brunei over the sovereignty of Nansha (Spratly) Islands and disputes over the delimitation of maritime jurisdiction in South China Sea; China has disputes with South Korea and North Korea over the delimitation of maritime jurisdiction in Yellow Sea. Although China adheres to the sovereignty claims and positions, China at the same time explicitly expresses its willingness to solve those disputes through negotiation, to maintain the status quo and to have joint development of the resources before the disputes are ultimately solved. Now China has signed with ASEAN nations the Declaration on the Code of Conduct of Parties in the South China Sea for maintaining peace and stability in that area, which has been hitherto implemented basically well by all sides. China and Vietnam have solved the delimitation of maritime jurisdiction in the Beibu Gulf. The Chinese policy of peaceful solution to the disputes over territory and maritime jurisdiction with neighboring countries is based on profound conceptions. In recent years China has put forward the idea of constructing a harmonious world and a harmonious Asia as a lofty goal of its foreign policy. This is a fundamental change of political conception worked out by the Chinese leaders and the ruling CCP, rather than a make-shift tactics.

Let me repeat again, the above elaboration is just my personal reading on the Chinese naval strategy. Hopefully it will be helpful to my Japanese friends' understanding about China.

Here, the author would also like to raise some questions about the defense policies of Japan to the experts present.

1, The Abe cabinet is actively pushing for the revision of constitution, especially Article 9 of the Japanese Constitution. The Japanese government has already elevated the Defense Agency to Defense Ministry and taken overseas cooperation as one of SDF's basic missions. The Chief of Staff of the Japanese MSDF has recently stated that MSDF will carry out missions world-wide. Does that mean Japan intends to turn its maritime force into a blue-water navy that will cruise the oceans across the world?

2, Japan and Australia have recently issued a joint security declaration, and it is reported that Japan is actively promoting the establishment of a "Quadrilateral (namely, Japan, the U.S., Australia and India) Strategic Alliance". What's Japan's intention? Is Japan planning to collaborate with the U.S. to forge an "Asian NATO" to contain China?

3, In spite of the fact that Japan's sea and air forces have far outstripped East

Asian countries (including China), Japan keeps on building up its sea and air armaments Japan is recently attempting to purchase the most advanced F22 fighters from U.S., (not yet agreed by the U.S.). Does Japan want to become not only a political power, but also a military power?

4, Japan is actively taking part in a US-led regional missile defense system, while everyone knows what the system is aimed at. Given that Japan has been opposing EU on removing its arms embargo on China, how do Japanese strategists estimate China after all?

5, These days, the news comes that Japan is domestically talking about abolishing the three non-nuclear principles. What is its background? Is it a test balloon? Is there any government background?

The author believes that candid exchange of views and communication will help to strengthen mutual understanding, build trust, dispel suspicions and make contributions to the development of China-Japan friendly relations.

China's Rise and Sino-Japanese Relations

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Since the "911" terrorists attack, there have been some major changes in the security situation in Northeast Asia, which are mainly as follows:

Firstly, with the economic globalization and the development of regional economic cooperation, the interdependence among the countries of Northeast Asia(especially among China, Japan and South Korea), as well as between countries of Northeast Asia and the US has become ever closer, which enhances the stability of the current security situation.

Secondly, as China and Japan have equal comprehensive national strength in Northeast Asia for the first time, the original framework of strategic understanding and cooperation between them was undermined, and the mutual trust between them was weakened. However, due to the new changes, both sides are making endeavors to work out a new framework.

Thirdly, the priority for America is to solve the disturbances in the Middle East. Meanwhile, in view of the new security changes in East Asia, a new framework needs to be constructed to promote the stability of East Asia.

Fourthly, because of UN Convention on the Law of the Sea coming into force, the increase of energy demand, etc., the conflicts on maritime interests and rights between the countries of Northeast Asia become more intense.

Fifthly, in light of the nuclear test in North Korea, the nuclear non-proliferation has been a significant issue for the security of Northeast Asia.

All of the above new characteristics show that the security situation of Northeast Asia is undergoing a critical transitional period. If handled appropriately, the security situation of Northeast Asia, East Asia and the Asia Pacific will move towards a positive direction. Otherwise, new disturbance will arise in Northeast Asia, which will constrain the development of the economic cooperation and make economic potential in Northeast Asia difficult to bring into full play, or even possibly plunge Northeast Asia into new chaos.

Thus, we are confronted with important tasks, namely, to study the new features of the security situation, to seek ways to prevent the potential chaos in line with the future reasonable order in Northeast Asia, and to establish the multilateral security cooperation mechanism in Northeast Asia with a view to ensure peace, stability and prosperity in the region.

Sino-Japanese relationship is the important bilateral relationship in Northeast Asia, which will not only affect the relations among the countries in Northeast Asia, but also have an impact on the US's existence and degree of its influences in this area. Therefore, Sino-Japanese relationship is an unavoidable issue for the study of Northeast Asia security.

Since the 1980s, due to the successful reform and opening-up policy, China's economy has been increasing at a high speed and China's comprehensive strength has been enhanced apparently. In order to properly deal with Sino-Japanese relations, it is inevitable to objectively understand and revaluate the influence of China's development on Sino-Japanese relations.

I

China's development increases the competition in the economic field between China and Japan, but creates more opportunities for Japanese economy as well as the economic cooperation among countries in Northeast Asia.

It is widely agreed that China's economy will keep a sustainable and fast development. *Japanese Economics Weekly* predicts that China's GDP will account for 20 percent of the total value of the whole world after fifty years, even if China's per capita GDP is only one fourth of that of the developed countries[①]. This vision has aroused considerable fears among some Japanese people, and affected their attitudes towards China.

However, if one objectively and calmly analyzes the influence of China's economic development on Japan, it will be found that though China's development increases the competition in the economic field between China and Japan, it creates more opportunities for Japanese economy as well as the economic cooperation among countries in Northeast Asia.

日下部英纪以及森藤裕, who are from Economic and Society Research Institute of Cabinet Office, Government of Japan, point out, "China's comparative advantage lies in its rich labor resources, which differs greatly from Japan, whose advantages is its advanced technique. Consequently, Sino-Japanese relations are more complementary than competitive currently. Take the US import from Japan and China for example, the products from China which compete with those from Japan only account for 16 percent, while those which complement with Japanese products account for 84 percent[②]." This analysis is objective.

Let us first examine the opportunities for Japan's economy generated from China's economic development.

The fast increase of Sino-Japanese trade provides Japan's economy with new platforms.

According to statistics, Sino-Japanese bilateral trade volume rose from 1.1 billion US dollars in 1972 to 207.36 billion US dollars in 2006. Thus, China has replaced the US as Japan's first trading partner.

In 2002, Japan's import from China exceeded that from the US, amounting to 16.1 percent of the total import volume. A large quantity of food, clothes, household electric appliances from China, which are not expensive, but with high quality, have been an integrate part of the daily life of common Japanese people.

Meanwhile, China's import from Japan in 2002 increased markedly, and China has become the important *demand absorber* of Japanese commodities. 向山英彦, senior researcher From Japan Comprehensive Institute holds that the further increase

of China's import is highly possible because of the following reasons: i. the further inflow of foreign capital will cause the further international division of labor; ii. The rise of income will create more demand for overseas products; iii. The Development of import will increase with the resources field as the center.[3]".

China's improved capability of absorbing foreign capital will provide a good intermediate base for the adjustment and upgrading of Japanese industrial structure.

During more than 20 years of reform and opening-up, China has greatly improved its investment environment, which may come out top in the world at present. During this period, the adjustment and upgrading of the industrial structure in Japan has experienced a critical period. Since the 1990s, high-tech industries represented by electronic technique, biological technique and new material technique have been replacing the traditional industries such as light industry, textile industry, iron and steel industry, ship-building industry, mechanic industry, etc. Such an extensive adjustment and upgrading of industrial structure requires great capital, and the proper arrangement for those traditional industries will offer the necessary capital and the place for the establishment of the new industries. It is the fast-developing China which has absorbed lots of direct investment from Japan, and has provided the intermediate base for the adjustment and upgrading of the industrial structure of Japan. Thus, as a Japanese economist Ohmaekenichi points out, "Japan has no choice but to invest in China if it wants to survive④."

Secondly, we would like to examine the opportunities resulted from China's economic development for the regional economic cooperation in Northeast Asia.

The direct result of the globalization after Cold War is the rise of regional economic cooperation. This is because that the competition is more severe due to the globalization, and therefore, the preferable flow and distribution of production elements across borders will be an inevitable precondition in order to win out in the competition.

It is under this circumstance that the European and American regional economic blocs have been experiencing a rapid development, which has created a great pressure for Asia, especially for Japan, as Japan equals Europe and America in terms of economic development.

In the view of the famous Japanese economist and honorary professor of Hitotsubashi University, Professor Kojima, facing the development of European and American regional economic blocs, Japan has to think about such a question: What new currency order in the post Cold War era will be created by EU and FTAA? He contends that "Japan's best choice is to establish a open AEC(Asian Economic Circle)), which may develop into one pillar based on which a equal consultation can be held between Asia on the one hand, and Europe or the West on the other.⑤"

China's development greatly boosts the regional economic cooperation in East Asia. Statistics shows that as the *Demand Absorber*, China has been playing a more and more important role among the neighboring countries, including Japan. 向山英彦, senior researcher From Japan Comprehensive Institute points out, "During the 1990s, the economic interdependence in Asia was deepened, but meanwhile, Asian dependence on America increased too. In order to reduce America's influence, the

expansion of regional market in Asia is critical. Therefore, the following subjects should be handled: i. the reviving of Japanese economy; ii. The strengthening of China's role as *Demand absorber*; iii. Promotion of the economic integration of East Asia and Establishment of free trade area.[6]"

The 2002 Japanese White Paper on International Trade first emphasized the guideline of strengthening the economic cooperation with the countries in East Asia. It points out that transportation, telecommunication and trade structure all depend on the coordination between countries, and as a result of that, East Asia should also make necessary adjustments in line with the new economic pattern: industry congregation. The White Paper also holds that Japan is undergoing the third industrial structure reform. The first industrial structure reform took place within Japan, while in the second reform Japan began to walk out, with its focus on the cooperation with the four Asian Dragons, that is, the four newly industrializing economies in Asia. During this third reform, Japan must face the whole world, with China as its priority[7].

Ito Kenichi, president and CEO of Japan Forum on International Relations and other specialists submitted a policy recommendation *Japan's Initiative for Economic Community in East Asia*, calling on concerted action of East Asian countries to establish the economic community in East Asia. It points out that while Europe is expanding and deepening its integration and the American Free Trade Zone has come into being, the trend of regionalization in the world is strengthened. In East Asia, various free trade agreements have also been concluded, and it is time to incorporate all these agreement into one framework or one objective, which conforms to economic reasonableness. It also emphasizes that in light of both political (especially security) and economic perspectives, the Economic Community in East Asia without China is unworkable, and the participation of China is the precondition for the establishment of ECEA[8].

It is obvious that only relying on the regional economic cooperation in East Asia, Japan can withstand the pressure from the economic integration in Europe and America and obtain new opportunities for its economic development. And it is because of China's development that makes possible the regional economic cooperation in East Asia.

China's development intensifies the security competition between China and Japan, but meanwhile provides more opportunities for the formation of a relatively balanced and benign relationship between China and Japan, and also among China, Japan and America.

II

Though China's development intensifies the security competition between China and Japan, it provides more opportunities for the formation of a relatively balanced and benign relationship between China and Japan, and also among China, Japan and the US.

China's development enables China to invest more money into its military modernization with a view to protect its extensive territory, which has aroused the

uneasiness among some Japanese people.

In fact, considering China's vast territory, its military building-up is rather moderate. Also, China adopts the strategic guideline of *Active Defense*, in other words, *We will not attack unless we are attacked*. Therefore, China has become the stabilizing force in East Asia, or even in the Asia Pacific. Though China's development intensifies the security competition between China and Japan, it provides more opportunities for the formation of a relatively balanced and benign relationship between China and Japan, and also among China, Japan and the US.

The triangular relationship among China, Japan and the US is the most important triangular relationship in East Asia. During the later period of Cold War, this triangular relationship prevented the former Soviet Union from expanding its influence to the Pacific area. At that time, China's expressed its understanding towards the existence of the Japan-US militant alliance. However, after the Cold War, Japan and the US issued the new Joint Declaration of Security Cooperation in April 1996, saying that containment of China was one of the important objectives of Japan-US militant alliance, which resulted in a great rift for the triangular relationship among China, Japan and the US. And China expressed great concern towards the existence and development of the Japan-US Security Cooperation.

However, with China's development, some conditions and possibilities for the transformations of the triangular relationship towards a relatively balanced and benign one have emerged.

Firstly, China's entry of WTO has further integrated China into the global economy, which also conforms to China's national interests to maintain and perfect the principle of free trade. This has made the foundation of China and US common interests become more solid. Even Wolfowitz, the neoconservative *Hawk* and former US vice defense minister, expressed his appreciation of China's reform and all the changes resulted from the reform. He said, "China has found out its way of reform. And the North Korean should also follow China's way if it does not want to collapse[9]."

Secondly, due to the profound changes in East Asia and in the world from the "911" terrorists' attack to the Iraqi War, the priority of US security strategy in the foreseeable future is to combat terrorism and to prevent the proliferation of mass-destruction weapons, although the US has not given up the strategy of containing China totally. The Asia-Pacific Center for Security Studies affiliated to the US Pacific Command points out, "Although China and the US hold different opinions with regards to the Iraqi War, there are opportunities of limited cooperation between China and the US because of the anti-terrorists war[10]."

Thirdly, since the pressing task for the US now is the Middle East issue, a stable East Asia meets the US requirements. Therefore, the US is more motivated to cooperate with China.

The US East Asia policy at present is to reconstruct an international relation framework in East Asia, and then to stabilize East Asia under this framework.

In the report *the Midterm Evaluation of Bush's Asian Policy* publicized by the Asian Program, Woodrow Wilson Center for International Scholars, it is pointed out

that the "911" terrorist attack and the subsequent anti-terrorism war have overshadowed all the aspects of US Asian Policy. Wolfowitz also emphasized that the security and stability in East Asia is of great significance to the US[11]. Richard Amitage, the ex-deputy Secretary of State, said recently, for more than fifty or sixty years, US-Japan Alliance has been the actual security framework in East Asia, which has benefited Japan, the US and the whole area. However, the stability of Asia also depends on the triangular relationship among the US, Japan and China. Consequently, although US and Japan are close allies, US also should encourage a friendly relationship among three countries. The best structure in Asia is US enduring power, responsibility and leadership, combined with active participation of other successful regional countries[12].

It is under this circumstance that the relations between China and the US have been improved. The *Midterm Evaluation of Bush's Asian Policy* points out that the "911" terrorist attack put an end to the meaningless debate on whether China is a *Strategic Partner* or a *Strategic Competitor*. Now people can seldom hear those criticisms about China, which once constituted the main contents in the speeches of some officials of the Bush Administration before they came into office[13]. While keeping a wary eye on the rapid development of China, Robert Zoellick, the ex-US Deputy Secretary of State, said in 2005 that China should become the *responsible stakeholder*. He explained, the 1972 Sino-US relationship was based on the affairs the two countries both opposed, while the 2007 Sino-US relationship should lay the emphasis on the affairs that both countries support[14].

Japan is also very alert about the rapid development of China. The report *Japan's Basic Diplomatic Strategy in the 21st Century* submitted by Junichiro Koizumi' s consultative institution holds that the enhancement of China's militant strength will possibly become a serious threat to Japan and the neighboring countries. However, because East Asia is of primary significance to Japan in terms of economy and security, and peace and stability of East Asia is one important part of Japan's strategic interests, the confrontation and conflict with China will only cause the disturbance and chaos in East Asia. Thus, as long as no great setback occurs to China's rise, Japan has to enhance its exchange and cooperation with China, while building up its own military strength and improving its capability of coordinating military operation with the US, so as to prevent the intensification and conflict in the Sino-Japanese relationship.

After Abe Cabinet came into office, Chinese and Japanese leaders have reached the consensus on the establishment of Sino-Japanese strategic relationship of mutual benefit and on the implication of the relationship. The Sino-Japan strategic relationship of mutual benefit has five features: Firstly, constructiveness. It is clearly stated that the starting point for Sino-Japan strategic relationship of mutual benefit is to contribute constructively to peace, stability and development of Asia and the world. The second feature is continuity. In the new stage of Sino-Japan relationship, China and Japan will continue to abide by various principles in *Sino-Japan Joint Statement, Treaty of Peace and Friendship between Japan* and *China, and Sino-Japan Joint Declaration*. Both countries will face the history straightly and be

orientated to the future. On the Taiwan Issue, Japan will continue its stand stated in *Sino-Japan Joint Declaration*. The third feature is comprehensiveness. Both countries agree to conduct reciprocal cooperation in the area of economy, politics, security, society, humanness, etc. bilaterally, regionally as well as internationally. The fourth one is reciprocity. In the cooperation, both sides will reap benefits and meanwhile enlarge the area of common interest in order to further develop Sino-Japan relationship. The final feature is practicality. Concrete cooperation will be carried out under the framework of the strategic relationship of mutual benefit, and the contents, measures and mechanism of cooperation in the regional and international affairs are defined. The establishment of Sino-Japan strategic relationship of mutual benefit and the definition of its intension set a solid foundation for the smooth transition to a new stage of Sino-Japan relationship.

Under this background, Sino-Japanese disputes over the East China Sea have been handled rationally and are oriented to the direction of cooperation. 谷内正太郎, the undersecretary at the Foreign Ministry points out recently, "We do not beg the other side to exploit less so we can get one more drop or one more handful of oil in the East China Sea. We would like to put it in another way, that is, the joint development in the East China Sea between China and Japan is of great significance and constitutes the common strategic interest."[15]

In sum, the circumstance under which US and Japan unite to deal with China has changed. This means that the triangular relationship among China, Japan and the US may be transformed into a relatively balanced one. David Lampton, director of the Institute of Chinese Studies in John Hopkins University, asserts that "The US should encourage the trilateral security dialogue among the US, Japan and China so as to promote the stability of the triangular relationship to the largest extent[16]" . Professor Kugler of US National Defense University holds that "The US needs to construct a mature and balanced system, which is especially important for China and Asia as a whole[17]" . Richard Armitage, the ex-Deputy Secretary of State emphasizes that "The stability of East Asia depends on the triangular relationship among the US, Japan and China, and the US should boost this relationship apart from its solid alliance with Japan[18]". Iokibe Makoto, president of National Defense Academy of Japan also points out, "Japan's diplomatic strategy in the 21st century should be Japan-US Alliance plus Japan-China consultation. The US and China are of great significance to Japan.... Only by keeping a good relationship with both US and China, can Japan realize its stability and development[19]."

III

China's development intensifies the cultural competition between China and Japan, but offers opportunities for enhancing exchange, deepening of mutual understanding and absorbing more cultural nutrients.

In the early history of Japan, China's Tang Dynasty had a great impact on the society of Japan. However, in modern times, due to various complicated reasons, China lagged behind, while Japan rose rapidly after Meiji Reform. By absorbing the

western advanced culture, Japanese culture played a dominant role in East Asia at that time. After World War Two, Japan's economy caught up with and even surpassed the economies of the advanced countries on the ruins of World War Two. With this miracle, Japanese culture drew the attention once again. Therefore, Japanese people have a sense of sub-conscious superiority over Chinese people.

However, during the 1980s, Japanese economic bubble burst, and its economy was plunged into the depression characterized as deflation. This has motivated some politicians to think about how to prevent the descending of Japanese culture status. Yasuhiro Nakasone, the former Japanese Prime Minister once pointed out, "We should not be restricted to the economic internationalization alone. I keenly feel that without playing an active political and cultural role worldwide, Japan will not become a truly internationalized country."

It is out of this sense of crisis that Japan's capability of properly facing various cultures has revived. Japan has begun to recognize the potential and influence of China's culture. Yasuhiro Nakasone pointed out, "In the 21st century, some Asian countries, led by China and India, will become powerful countries even in terms of science and technology. They will rank before Japan. Among Japan's neighboring countries, special attention should be given to China, and then Russia in the 21st century.[20]"

During the early period of China's Reform and Opening-up, it was China that learned from Japan and the cultural exchange was mainly one-way. However, the current cultural exchange is more and more transformed into a two-way exchange, with its impetus not only from the officials but also from the second track, and its exchange scope more and more extensive. Statistics shows that the total number of Japanese people who visited China during the 30 years from 1950 to 1979 was only 200,000, while during the 1990s, this number amounted to 1,000,000 annually.[21].

As China continues to develop, the two-way cultural exchange between China and Japan will be more and more apparent, which will definitely supply China and Japan with more cultural nutrients. The long history of cultural exchange between China and Japan will further blossom due to China's rise.

To sum up, it can be concluded that although China's rise intensifies the competition between China and Japan, it also offers more opportunities and conditions for Japan's development, Sino-Japan cooperation, as well as the peace, stability and prosperity in East Asia and the Asia Pacific as a whole.

Japan is the first among the advanced countries to express its support to China's Reform and Opening-up, and also has offered practical support by means of Yen loans, etc., Chinese people will never forget the help from Japanese people. At present and in the future, Japan will keep the advantage over China in the field of economy, science and technology, etc.. Learning from Japan is still one of the important requirements in the process of China's modernization.

The experiences of war in modern history and the experiences of friendship and cooperation between China and Japan since 1972 have brought entirely different results to the two countries. History is the best teacher. In order to prevent the

catastrophe in the bilateral relationship in the future, the impending task is to put into effect the *Sino-Japan Strategic Relationship of Mutual Benefit* which represents the new strategic understanding and cooperation framework.

The *Sino-Japan Strategic Relationship of Mutual Benefit* should be carried out step by step. And arriving at a consensus on the scope of joint development is an important step. If a breakthrough can be achieved on this matter, the potential trouble which may cause the armed conflicts on the seas between China and Japan will be eliminated, and the mutual confidence will be enhanced markedly. This will contribute positively to Sino-Japanese relationship and the security in Northeast Asia. It is from this angle that we should consider the definition issue of the scope of joint development in the East China Sea.

Notes:

① *Japanese Economic Weekly*, July 5th, 2003.

② *Tokyo News*, October 10th, 2003.

③ *Japan Industry News*, December 11th, 2002.

④ *Japan Industry News*, June 30th, 2003.

⑤ Kojima, *The Formation of Pacific Economic Circle*, Abstract II.

⑥ *Japan Industry News*, June 30th, 2003.

⑦ The 2002 Japanese White Paper on International Trade.

⑧ *World Weekly*, July 8th, 2003.

⑨ Speech in Asian Security Conference in Singapore, May 31st, 2003, also see The Strait Times of Singapore, June, 2nd, 2003.

⑩ Asian P*acific Countries' response to American Security Policy*, March, 2003.

[11] Speech in Asian Security Conference in Singapore, May 31st, 2003.

[12] See Richard Amitage, *American-Japanese Alliance*, publicized by Strategic and International Research Center, Georgetown University, February, 17th, 2007.

[13] Publicized by the Asian Program, Woodrow Wilson Center for International Scholars, March, 2003.

[14] (England)*Financial Times*, April 17th, 2007.

[15] "On Japanese Diplomatic Subjects in 2007 ", in *World Economic Review*, May, 2007.

[16] Testimony by Committee of East Asian and Pacific Affairs before Senate Foreign Relation Committee on The Influence of China's Rise, May, 19th, 2003.

[17] See "Deterrence: A Strategic Concept", in *Strategic Forum*, 196, December, 2002, American National Defense University Press.

[18] See Richard Amitage, *American-Japanese Alliance*, publicized by Strategic and International Research Center, Georgetown University, February, 17th, 2007.

[19] See "Keeping a Good Relationship with the US and China—Japan's Diplomatic Strategy in the 21st Century", in Daily News, April 29th, 2007.

[20] *Japan's Diplomatic Strategy in the 21st Century*, p.226, September, 2000, publicized by PHP Institute.

[21] *The four and a Half Decades of Exchange Between Japan and China*, p.106.

Session 2 "Northeast Asian Seas: Status and Legal Issues"

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Provisional Arrangements in the Disputed Sea Area

Legal Issues Surrounding Joint Development of Natural Resources in the East China Sea

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1. Introduction

The East China Sea, the breadth of which is less than 400 nautical miles, lies between Japan and China. In 1968, the United Nations Economic Commission for Asia and the Far East (ECAFE) conducted a marine exploration in the East China Sea, revealing the possibility that its continental shelf is abundant with oil resources and natural gas deposits. The exploitation of "Shirakaba" (Chunxiao in Chinese) gas field started by China in August 2003 gave rise to an intensive dispute between Japan and China over resources development. The focal point of this issue is concerned with the location of disputed sea area.

Japan argues that the disputed sea area is all the waters in the East China Sea wherever both countries' claims of 200 nautical miles are overlapped. At a Diet discussion in 2004, the Koizumi administration explained the significance of the median line instituted by a Japanese domestic law, and stated that "the median line drawn by Japan is only provisional. Until the two countries concerned agree to draw a common line, the Japanese title over the EEZ and the continental shelf under international law, which extends to 200 nautical miles from our baseline, continues to be valid." According to an interpretation of Professor Naoya Okuwaki of Keio Gijuku University, "Law on the Exclusive Economic Zone and the Continental Shelf," which stipulates the median line, "unilaterally institutes a limit on the application of domestic laws and regulations, and by no means restricts the Japanese government from alleging its claims externally."(1) Against the Japanese argument, China interprets the question as continental shelf delimitation, and is proceeding with exploration and exploitation of seabed resources in the area west of the median line (Chinese side), claiming that the disputed sea area stretches from the median line to the Okinawa Trough (boat-shaped basin). Noteworthy is the fact that China has put a sea-based platform into operation in the waters 4.5 km west of the Japanese-claimed median line, launching on a

full-fledged development of Chunxiao gas field, among others. Meanwhile, the exploration started by the Ministry of Economy, Trade and Industry of Japan in July 2004 with a three-dimensional probe ship chartered from Norway clarified that part of the oil-gas fields developed by China either extends to or is very likely to extend to, the east side of the median line (Japanese side). Therefore, the Japanese government requested China to provide explanatory information on the oil-gas fields and to suspend drilling,[2] but to no avail. Although Japan had withheld a decision on the application of a Japanese private company for an experimental drilling in the neighboring area,[3] yet in July 2005, the Ministry of Economy, Trade and Industry granted an approved of a test drilling to Teikoku Oil Co., Ltd. On the other, China started oil production at "Kashi " (Tianwaitian in Chinese) gas field in September 2005, while starting test operation of a natural gas treatment facilities in Ningbo of Zhejiang Province, facilities which are connected by seabed pipeline to "Shirakaba" (Chunxiao in Chinese) gas field. Against the backdrop of this confrontational situation, there took place a remarkable change that is certain to affect Japan's Ocean Policy in the future.

On April 20, 2007, two important ocean-related laws passed the Japanese Diet. One is the Basic Ocean Law, and the other is the Law on Establishing Safety Areas for Maritime Structures. They went into effect as on July 20, 2007. Noteworthy is the enactment of the Basic Ocean Law whose chief provisions cover the basic principles of ocean policy, fundamental measures, and the establishment of a government body that is to be integrally responsible for Japan's ocean policy. As many as 27 years elapsed since the necessity of enacting the "Basic Ocean Law" was enunciated in a report of the Council for Ocean Development in 1980. The Basic Ocean Law is a lawmaker-initiated legislation deliberated by the Basic Ocean Law Study Group, consisting of members of the Liberal Democratic Party (LDP), New Komeito Party and Democratic Party of Japan (DPJ). The Communist Party and The People's New Party also supported it at the Diet discussion. The "Outline for a Basic Ocean Law" which was compiled in 2006 by this bipartisan group showed the recognition that "the government is slow in developing policies and systems for comprehensive management of the ocean," and "as a consequence, it fails to properly address the problem of oil and gas field development which is underway in the surrounding sea areas, damaging national interests." The importance of efforts for protecting and expanding "maritime interests" came to be politically highlighted. In sharp contrast with China, a continental state, Japan is an island nation surrounded by the seas on all sides. As a maritime state, Japan has under its control a vast sea area, 12 times larger than its land area, including territorial waters, contiguous zones, and EEZ. It is dependent upon sea-borne traffic for 99% of

its import and export activities. This law should be considered as the manifestation of Japan that aspires a "new ocean state."

2. The "Basic Ocean Law" and the "Law on Establishing Safety Areas for Maritime Structures"

(1) What is the Basic Ocean Law?

The Basic Ocean Law aims at realizing a new ocean state that will harmonize peaceful, active development and use of the ocean with marine environment conservation, in accordance with the United Nations Convention on the Law of the Sea (hereinafter referred to as "UNCLOS") and other international agreements. The law stipulates the establishment of the Headquarters for Comprehensive Ocean Policy should be established, with the Prime Minister as director general, and with Chief Cabinet Secretary and newly instituted Minister for Ocean Policy — the post is occupied by Minister of Land, Infrastructure and Transport — as deputy director general (Articles 1, 32 and 33). The law describes that the ocean is essential in sustaining human life, and that it is of vital importance to develop our country into a new ocean state, living up to the spirit of international coordination advocated by UNCLOS and other international agreements. To this end, the law sets up the following six basic principles:

① Harmonize the development / use of the ocean with marine environment conservation;
② Secure safety of the ocean;
③ Promote scientific knowledge;
④ Promote the sound development of marine industries;
⑤ Promote comprehensive management of the ocean, and
⑥ Promote international cooperation.

The government is required to set up a Basic Ocean Plan for comprehensive, well-planned implementation of necessary measures. The following twelve items are identified as primary measures to be taken:

① Promote the development and use of marine resources;
② Promote marine environment conservation;
③ Promote the development of EEZ and other sea areas;
④ Secure maritime transportation;
⑤ Secure safety and security of the ocean;
⑥ Promote marine science surveys;

⑦ Promote marine science research and development;
⑧ Promote the sound development of marine industries;
⑨ Promote comprehensive management of coastal areas;
⑩ Improve isolated island conditions;
⑪ Promote international cooperation, and
⑫ Enhance public understanding of the ocean.

The promotion of development of EEZ and other sea areas is related to resources exploitation in the East China Sea. Article 17 of the law on the promotion of ocean resources development and utilization specifies "the government shall take necessary measures for development and utilization of mineral resources in seabed and subsoil, such as oil, combustible natural gas, manganese ore, and cobalt ore, as well as measures for developing a necessary supporting system, among others, to achieve these ends," while Article 19 specifies "considering the importance to enhance efforts toward development, utilization and conservation of EEZ and other sea areas, the government shall take necessary measures to develop EEZ and other sea areas according to their properties, and to prevent such activities as may infringe our sovereign rights in EEZ and other sea areas, among other measures to promote development of EEZ and other sea areas." The law stipulates as well that necessary domestic measures should be taken, taking into account resources development in the East China Sea. As mentioned later, the Law on Establishing Safety Areas for Maritime Structures was enacted as part of such domestic measures. On April 3, 2007, after passing the bill of the Basic Ocean Law, the House of Representatives submitted a "Resolution on the Promotion of a New Ocean State," and it was resolved that "it is essential to secure the safety of exploitation and utilization of marine resources; and in this context, the safety and security at sea and a reliable crisis management system are extremely important; consequently, Japan Coast Guard should review comprehensively its organizational setup and improve it, along with the promotion of coordination with other government administrative organs in terms of crisis management (Resolution No. 4)." Japan Coast Guard belongs to Ministry of Land, Infrastructure and Transport, under whose Minister, the application of the Law on Establishing Safety Areas for Maritime Structures is implemented.

(2) What is the Law on Establishing Safety Areas for Maritime Structures?

Article 2 of this newly enacted law stipulates the establishment of safety areas, in accordance with Paragraph 4 of Article 60 of UNCLOS, for maritime structures engaged

in "specific activities," such as ①survey, exploitation, reservation, and management of natural resources; the establishment, installment, construction, operation, and utilization of artificial islands, installations and structures; the protection and preservation of marine environment, as well as marine scientific research; ②activities related to research and exploitation for economic purposes, and ③drilling in the continental shelf. The same UNCLOS paragraph describes "The coastal State may, where necessary, establish reasonable safety zones around such artificial islands, installations and structures in which it may take appropriate measures to ensure the safety both of navigation and of the artificial islands, installations and, structures."

"Maritime structures" mentioned in the Law on Establishing Safety Areas for Maritime Structures indicate structures to install in relation to specific activities prescribed in Article 2 of the law and ships engaging in continental shelf drilling in EEZ (Paragraph 1 of Article 1 of the Japanese "Law on the Exclusive Economic Zone and the Continental Shelf") and continental shelf (Article 2 of the same law). Paragraph 2 of Article 3 of the Law on the Exclusive Economic Zone and the Continental Shelf prescribes that "Japanese domestic laws shall be applied" to "activities undertaken in EEZ in relation to research and exploitation for economic purposes", whilst Paragraph 3 of the same article prescribes that "Japanese domestic laws shall be applied" to "drilling in continental shelf." Besides, Paragraph 2 of the same article stipulates that "Japanese domestic laws shall be applied to artificial islands, installations and structures which are regarded as located in the Japanese territory."

The Law on Establishing Safety Areas for Maritime Structures stipulates that ships engaged in continental shelf drilling shall become "maritime structures" when they stop navigation and stay for drilling work (Paragraph 1 of Article 2)." The law presupposes that ships engaged in drilling are Japanese flag ships. Therefore, there will be no serious problem in regarding stopping ships as maritime structures, because if stopping ships are interpreted as maritime structures, the ships themselves are still under the regulation of Japanese laws since they are Japanese flag ships. In line with the UNCLOS stipulations, safety areas will neither exceed 500m in width nor be established in the waters, occupation of which will impede the use of sea lanes necessary for international navigation. Establishment of safety areas is stipulated by the new law to be undertaken by the Minister of Land, Infrastructure and Transport (Article 3). Furthermore, the Minister has the obligation of notifying the location and coverage of the safety area once it has been established (Article 4); and after the safety area has been established, access to the area without permission of the Minister will be prohibited in principle. Exceptional cases include ①when ships have lost steering

control; ②lifesaving or the rescue of ships jeopardized by imminent dangers; ③when central and local government authorities conduct necessary activity to secure safety and order at sea, and ④when central and local government authorities conduct necessary activity related to maritime structures in the safety area (Article 5). Ships subject to the application of the above exceptional circumstances clauses do not include small craft like small-sized coastal fishing boats and pleasure boats. If small boats that aim at sabotaging Japanese drilling vessels in protest against Japan's continental shelf drilling enter the safety area without permission, they will become the object of punishment from the standpoint of the Law on Establishing Safety Areas for Maritime Structures. According to the law, those who enter the safety area without permission or those who enter the area with permission but violate conditions attached to the permission by the Minister of Land, Infrastructure and Transport will be sentenced to up to 1 year in prison or fined up to 500 thousands yen (Article 7).

To protect Japan's maritime interests in the East China Sea, this law purposes to prevent China from making its way to the sea area on the Japanese side of the Japanese-claimed continental shelf boundary (the Japanese waters west of the Japan-China median line). The enactment of the law has enabled Japan to set up a safety area around drilling ships and maritime structures, and to prevent disturbance by a foreign country, when the Japanese private sector is granted concessions for test drilling at the East China Sea. Paragraph 4 Article 3 of the Law on the Exclusive Economic Zone and the Continental Shelf prescribes that domestic laws will be applied to the crime of obstructing official duties.

3. Resources Development in the East China Sea and UNCLOS

Two coastal states, Japan and China, are the parties to UNCLOS.

UNCLOS does not require any specific party concerned to draw a common line for the delimitation of EEZ and that of continental shelf: the title of EEZ is based on the breadth of 200 nautical miles, while that of continental shelf is based on natural prolongation or the fact that the land of a coastal state extends to subsoil of the submarine areas (Arts. 57 and 76). As for the sea area where a coastal state claims sovereign rights over EEZ, the theory of EEZ is applied to continental shelf up to 200 nautical miles alike. In such a case, therefore, natural prolongation theory can only be applied to a continental shelf beyond 200 nautical miles. Consequently, it is a common practice to draw a single line for maritime boundary delimitation. International Court of Justice (hereinafter referred to as "ICJ") ruled as follows in the judgment of March 16, 2001 on the Case of Qatar-Bahrain Maritime Delimitation and Territorial Questions:

"the concept of a single maritime boundary ..... finds its explanation in the wish of States to establish one uninterrupted boundary line delimiting the various — partially coincident — zones of maritime jurisdiction appertaining to them."(4)

However, it is not clear that Japan and China are inclined to draw a single boundary line. At least, China, committed to natural prolongation theory, seems to prefer continental shelf delimitation alone. Yet, now that 200 nautical mile regime has been established, the practicability of continental shelf delimitation, shelving that of EEZ issue, is questionable. Incidentally, some experts refer to the stipulation in Paragraph 3 of Article 56 of UNCLOS on EEZ, "The rights set out in this article with respect to the sea-bed and subsoil shall be exercised in accordance with Part VI (*regarding continental shelf*)," and argued that continental shelf system should be applied preferentially to seabed and subsoil, and likewise natural prolongation theory should be applied preferentially to maritime delimitation. But what the paragraph presupposes is the so-called method and formula of development, not the method of delimitation. Otherwise, the significance that UNCLOS adopts the identified text for delimitation of EEZ and continental shelf (Arts. 74 and 83) cannot be understood. Anyway, apart from the conclusion of the Agreement on Fisheries between Japan and China in November 1997, the two countries have not concluded any agreement regarding the delimitation of EEZ and continental shelf.

Needless to say, this issue must be answered by UNCLOS. As regards the delimitation of EEZ and continental shelf, Paragraph 1 of Articles 74 and 83 provides as follows:

"The delimitation of the exclusive economic zone [continental shelf] between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable result."

Articles 74 and 83 confirm the general obligation of the States concerned to behave in good faith in order to reach an agreement on the delimitation. Incidentally, there are two ideas on the delimitation of continental shelf and EEZ — equidistance principle and equitable principle.(5) But the articles cited above failed to refer either to equidistance principle or to equitable principle. According to the expressions of R. R. Churchill and A. V. Lowe, the articles in question signify no more than delimitation by mutual agreement.(6) Unfortunately, there is no such agreement between Japan and China as suggested by the UNCLOS articles. The difficulty of giving a definitive answer to the sovereignty claims over the Senkaku Islands also precludes any definite answer with respect to who owns the surrounding maritime zone. This situation made

Japan enact the 1996 Law on the Exclusive Economic Zone and the Continental Shelf, under which the provisional median line for the delimitation of EEZ and continental shelf was drawn (Arts. 1.2 and 2). On the other hand, China also enacted the law regarding the Exclusive Economic Zone and the Continental Shelf in 1998, which provides: if our claim to the EEZ and the continental shelf overlaps with that of a country with opposite or adjacent coasts, the delimitation shall be made through consultations between both countries, on the basis of the equitable principle and in accordance with international law (Art. 2). Although Japan and China continue negotiations with each other, they still remain divided over this issue. Japan insists that for the delimitation of both EEZ and continental shelf, the median line should be drawn, referring to the latest international precedents. China, however, argues that the median line should not be adopted for maritime boundary delimitation, and claims sovereign rights over continental shelf as far as the Okinawa Trough, depending on the theory of natural prolongation. China has so far failed to identify its position regarding EEZ, but it seems that they rely on the equitable principle. As seen above, the fundamental points of dispute between Japan and China regarding boundary delimitation in the East China Sea hinges upon which should be accepted as the general rule or the legal principle defining delimitation criteria, "equidistance criteria/special circumstances" or "equitable principle/relevant circumstance." Both countries have been pursuing negotiations, but their assertions are still opposed to each other.

As generally known, some 13 cases of continental shelf delimitation disputes have so far been referred to ICJ. In its judgment on the North Sea continental shelf delimitation case in 1969, ICJ put aside equidistance principle stipulated in Paragraph 2 of Article 6 of Continental Shelf Agreement, and ruled that boundary delimitation should be implemented in accordance with equitable principle, seeing to it that the parts of a continental shelf that form a natural prolongation come under the jurisdiction of the interested state, and based on the agreement between the states concerned. However, since 200 nautical mile EEZ concept came to be recognized by UNCLOS, ICJ judgments have undergone significant changes.

In the 1982 judgment on Tunisia-Libya continental shelf delimitation case, ICJ remarked, "the idea of the natural prolongation of the land....would not necessarily be sufficient, or even appropriate, in itself to determine the precise extent of the rights of one State in relation to those of a neighboring State" and ruled "The principle that the natural prolongation of the coastal State is a basis of its legal title to continental shelf rights does not in the present case, as explained above, necessarily provide criteria applicable to the delimitation of the areas appertaining to adjacent States."(7) These

indicate that although the area of continental shelf can be identified by use of natural prolongation criteria, yet, the criteria cannot be adopted as they are to serve as boundary delimitation criteria.

Furthermore, ICJ, in the 1985 judgment on Libya-Marta continental shelf delimitation case, referred to the relation of EEZ and continental shelf, stating "the distance criterion must now apply to the continental shelf as well as to the exclusive economic zone" and "This is especially clear where verification of the validity of title is concerned, since, at least in so far as those areas are situated at a distance of under 200 miles from the coasts in question, title depends solely on the distance from the coasts of the claimant States of any areas of sea-bed claimed by way of continental shelf, and the geological or geomorphological characteristics of those areas are completely immaterial." The ICJ judgment reads "The Court for its part has no doubt about the importance of State practice in this matter. Yet that practice, however interpreted, falls short of proving the existence of a rule prescribing the use of equidistance, or indeed of any method, as obligatory. Even the existence of such a rule as is contended for by Malta, requiring equidistance simply to be used as a first stage in any delimitation, but subject to correction, cannot be supported solely by the production of numerous examples of delimitations using equidistance or modified equidistance, though it is impressive evidence that the equidistance method can in many different situations yield an equitable result."(8) In this case, the median line of the two countries was modified, thereby to decide a border line, taking into equitable consideration the number of uninhibited islands and their length of coastal lines.

The ICJ judgment on the 1993 Jan Majen maritime delimitation case pointed out that if "equidistance/special circumstances rule" in Article 6 of Continental Shelf Agreement represents the general rule based on equitable principle, as there is virtually no difference between "equidistance/special circumstances rule" and "equitability/relevant circumstances rule" in customary international law; and if, in case of continental shelf delimitation, customary law instead of Article 6 of Continental Shelf Agreement is applied, it will conform to the precedents of drawing a median line provisionally, and then modifying it as the circumstances require. ICJ actually posited the equidistance median line as a provisional line, and then, to achieve an equitable result, the court modified the median line, taking into account the length of coastal lines and the distribution of fishery resources, among others, and finally suggested a border line common to both continental shelf and EEZ.

In the 2001 Case of Qatar-Bahrain Maritime Delimitations and Territorial Questions, ICJ ruled that an equidistance line should be drawn provisionally, and then

be adjusted, taking into account special circumstances worth consideration. [9]

From the viewpoint of Japanese researchers, these cases are certain to suggest that although continental shelf delimitation criteria are not specified in advance, yet, in case of the sates with opposite coasts, the median line is adopted as a criterion. In other words, natural prolongation theory is no longer decisive as a continental shelf delimitation criterion, but it is reducing its gravity in international legal precedents. Furthermore, as EEZ concept has been widely accepted, the concept of continental shelf contained in the distance criterion of 200 nautical miles is now internalized in EEZ system, and in the delimitation of sea area less than 400 nautical miles in width between oppositely located states, the method tends to be adopted of drawing the median line provisionally, and then modifying it by taking into account individual circumstances, in order to reach an equitable result.[10]

China asserts natural prolongation theory as the criterion of continental shelf delimitation, and has not yet reached any agreement with Japan on continental shelf delimitation, setting aside whether or not China is inclined to draw a single border line common to continental shelf and EEZ. Under the current circumstances that it is considered difficult for both countries to reach a swift agreement on boundary delimitation, "joint development" is inviting attention. Incidentally, there is no set definition of "joint development" in the eye of international law. In this present report, "joint development" will signify a method of inter-state co-operative exploration and development of non-biological resources such as oil and natural gas in a specific sea area.

4. Legal Issues Surrounding Joint Development

(1) Deposits across the borderline

In the 1969 North Sea continental shelf case, regarding a single deposit existing across the continental shelf boundary line, ICJ ruled, "it frequently occurs that the same deposit lies on both sides of the line dividing a continental shelf between two States, and since it is possible to exploit such a deposit from either side, a problem immediately arises on account of the risk of prejudicial or wasteful exploitation by one or other of the States concerned"[11] and pointed out the fact the state practice sought for a solution through a bilateral agreement. The judgment on that occasion cited two continental shelf boundary agreements in 1965, between the United Kingdom and Norway, and between the Netherlands and the United Kingdom, respectively, as examples of agreement on efficient development and profits distribution, in case that a single deposit stretches across the continental shelf boundary line.

The object of joint development here is liquid substances like oil and natural gas. When common resources are liquid substances, as it is likely that a unilateral exploitation by a party concerned may infringe on the other party's right, the "unitization" of the deposit is required — Article 4 of the 1965 United Kingdom-Norway Continental Shelf Boundary Agreement first adopted the unitization. In this sense, cooperation between both parties concerned is essential.(12) Moreover, as seen in Paragraph 1 of Article 2 of the 1999 agreement between Denmark and the United Kingdom on the delimitation of sea area between Faroe Islands and U.K., in case that a continental shelf deposit of oil or other mineral resources belonging to a party concerned is found to extend as far as the other party's continental shelf, the former has a duty to provide the latter with information thereof.(13) A similar obligation of providing relevant information is set forth in Article 4 of the 1997 Thailand-Vietnam agreement on delimitation of Gulf of Thailand, as well as in Article 2 of the Denmark-Iceland agreement on delimitation of continental shelf and fishery zone between Greenland and Iceland concluded in the same year.(14) Once William T. Onorato made a proposal that if the stakeholder states are unable to settle the border of an identified oil deposit, they should treat the deposit as a single entity. He argued that a law to apply to the assignment of such a deposit should be fair and equitable as well as practicable, and that such a law alone as based on cooperation, coordination and agreement between the stakeholder states claiming interests in the common oil resources would satisfy those requirements.(15) In the implementation of joint development, cooperation and coordination among the stakeholder states are essential.

(2) Models and methods of joint development

Joint development falls into two categories: one is conducted in the delimited area, and the other in the sea area yet to be delimited.(16) Examples of the former category include the 1974 Bay of Biscay continental shelf delimitation agreement between France and Spain, the 1974 Saudi Arabia-Sudan Red Sea common zone and natural resources joint development agreement, and the 1981 Iceland-Norway agreement on delimitation of continental shelf between Iceland and Jan Mayen. Among the examples of the latter category are the 1979 Thailand-Malaysia memorandum of understanding on settlement of joint development zone in the southern part of Gulf of Thailand, and the 1989 Treaty between Australia and the Republic of Indonesia on the Zone of Cooperation in an Area between the Indonesian Province of East Timor and Northern Australia (Timor Gap Treaty). These agreements are identical as far as they settled joint development zones by laws, whereas shelving continental shelf

delimitation. The sole exception is the Thailand-Malaysia MOU agreeing that both parties should pursue delimitation negotiations, while concluding a 50 year long joint development agreement.(17)

Joint development in the East China Sea between Japan and China will belong to the latter category, i.e., joint development with delimitation shelved. Japan has a record of joint development of this kind — the 1974 Agreement between Japan and the Republic of Korea Concerning Joint Development of the Southern Part of the Continental Shelf Adjacent to the Two Countries (Southern Agreement). The agreement in question was designed to solve disputes over the sea area where the two countries' claims for continental shelf overlap, by means of joint development efforts, while shelving delimitation for 50 years. Each of the parties employed the method of deciding a developer and enacting a law to be applied to the joint development zones. Whether or not Japan and China will, after having agreed on joint development, pursue negotiations on delimitation as in the case of the Thailand-Malaysia MOU will depend on both governments' political judgment, with the Senkaku Islands problem in view. What is certain is that the aforementioned agreements and MOU identified joint development as provisional arrangements in the disputed sea area.

There is no small number of examples of joint development of seabed oil resource, and the international community reportedly witnessed 24 agreements on joint development. There are various methods for joint development, which are said to be categorized into three: a) an agreement stipulating that oil field development be permitted by different licenses issued by the two interested states; b) an agreement stipulating that oil field development be permitted by a joint license issued by the two interested states, and c) an agreement stipulating that oil field development be permitted by a license issued by one of the two interested states alone, and that the licenser state share profits or products with the other party.(18) The Japan-Korea continental shelf agreement mentioned above falls under the category a).

Although joint development is not a panacea, yet, it is worth adequate consideration, because we witness successful examples of joint development in sea areas where delimitation is difficult.(19) When it comes to the Japan-China bilateral relation, negotiations for settlement of joint development zones are expected to encounter difficulties, but will be worthwhile efforts made in the grand framework of friendship and amity. The 1989 Timor-Gap Treaty was the result of political decisions made by the two interested states to secure practical, economic benefits, by shelving their stalemated claims based respectively on natural prolongation theory and median line theory for the disputed sea area. To take this Treaty for example, the parties

concerned agreed on joint development zones in the text of the agreement, but they had yet to work out annexes to guarantee concrete implementation of joint development. Parenthetically, the annexes to the Timor Gap Treaty seem to be too much detailed, compared with those of other joint development agreements. The document consist of Annex A. Maps coordinates of sections that form zones of cooperation; Annex B. Oil drilling code regarding Zone of Cooperation A; Annex C. Model agreement on production-sharing system between the Joint Authority and Contractors; Annex D. Taxation code for prevention of double taxation for activities related to Zone of Cooperation A, etc. The annexes are designed to function as detailed model regulations. Among administrative machines deriving from the Treaty are the Ministerial Board of Directors sit by specially appointed cabinet ministers bearing general responsibilities, and the Joint Authority that has, as a legal entity, legal abilities necessary to exercise its authority and fulfill its duties under the laws of the two states, and is capable of entering into contracts; acquiring and disposing of immovable and movable properties, and acting as party in a lawsuit.[20] Thus, there are possibly many problems to address in order to implement joint development.

5. Towards the Settlement of Dispute — From "the Sea of Conflict" to "the Sea of Peace, Cooperation, and Friendship"

(1) Difficulty of legal settlement

Paragraph 2 of Article 74 and Paragraph 2 of Article 83 of UNCLOS on EEZ and continental shelf specify, "If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV (Settlement of Disputes)." But China declared one-sidedly to U.N. Secretary General that it would exclude the dispute specified in Paragraphs 1 (a), (b) and (c) of Article 298 from Section 2 of Part XV (Compulsory Procedures Entailing Binding Decisions) on August 2006, just before it launched on unilateral development at "Kashi (Tianwaitian in Chinese) gas field and "Shirakaba (Chunxiao in Chinese)" gas field in the East China Sea.[21] This means that as read in Paragraph (a)-(i), this action of China has closed the way for solution of "disputes concerning the interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitations" at the arbitration court specified in Annex VIII. Yet, Paragraph (i) stipulates as well, "a State having made such a declaration shall, when such a dispute arises subsequent to the entry into force of this Convention and where no agreement within a reasonable period of time is reached in negotiations between the parties, at the request of any party to the dispute, accept submission of the matter to conciliation under Annex V, section 2." In this sense,

UNCLOS does not necessarily exclude the possibility that this case be submitted to the arbitration specified in Section 2 of Annex V. In the meanwhile, Japan and China dispute with each other over the sovereignty of Senkaku Islands. And since the last sentence of Paragraph (i) mentioned above reads, "any dispute that necessarily involves the concurrent consideration of any unsettled dispute concerning sovereignty or other rights over continental or insular land territory shall be excluded from such submission," this case, consequently, is unlikely to be submitted to the arbitration.[22] At least, the Chinese government does not seem inclined to solve the issue of the delimitation in the East China Sea in accordance with dispute settlement procedures stipulated by UNCLOS.

Then, is there any possibility of settling the dispute by use of ICJ? The answer is negative. As ICJ is not endowed with compulsory jurisdiction, one of the disputing parties cannot submit the case of dispute to it without consent of the other party. As for the optional provision on the acceptance of ICJ's compulsory jurisdiction, Japan declared the acceptance of the provision, whereas China did not. There is no alternative for Japan but to resort to a special agreement in order to submit this issue to ICJ. It is hard to imagine, however, that China will agree to the conclusion of a special agreement, because the country is trying to evade mandatory procedures for settlement of disputes of UNCLOS. Under the current circumstances, now that there is no prospectus for the possible settlement of the dispute by the third party judicial institution, this dispute must be settled through diplomatic negotiations.

(2) Expectations for political settlement

The East China Sea delimitation dispute between Japan and China originates from the existence of oil and natural gas resources on seabed. Both countries wish to secure the resources as advantageously as possible. To overcome the stalemated dispute, both countries have come up with a proposal of joint development, but there still remain a confrontation betwixt them over a sea area where joint development is to be implemented. Furthermore, there are differences between the two countries on the understanding of delimitation criteria. Japan opines that the disputed area is all the waters in the East China Sea wherever each others' 200 nautical mile claims overlap, and that joint development should be undertaken in the very area across the median line. But China insists that the disputed sea area stretches between the median line and the Okinawa Trough, and that joint development should be executed in the waters east of the median line. According to China, the waters west of the median line are the area where China can conduct an independent exploitation, instead of joint

development. The recent enactment of "the Law on Establishing Safety Areas for Maritime Structures" has enabled Japan to cope with sabotage against Japanese test-drilling ships that operate in the waters east of the median line. However, as long as China claims sovereign rights over the continental shelf as far as the Okinawa Trough, if Japan launches exploration activity, the bilateral confrontation will accelerate. As for continental shelf delimitation criteria, the two countries are diametrically opposite in terms of their assertions. It would be far from easy to bridge the gap. On the occasion of its ratification of UNCLOS on June 7, 1996, China went so far as to declare an interpretation to the effect that if the claims of two states with opposite or adjacent coasts over continental shelf and EEZ overlap with each other, the interested states should delimit the maritime boundary, in accordance with international law, and based on equitable principle.(23) Needless to repeat, the two countries' claims of sovereignty over the Senkaku Islands are confronting with each other, and without the settlement of this problem, an agreement on boundary delimitation would be difficult. Conversely, since the prolongation of negotiations for border delimitation is deemed to be inevitable, preference is given to talks on joint development, instead.

Unfortunately, the East China Sea of today is a sea of confrontation. Nevertheless, hope is not missing. On October 8, 2006, the Japanese premier Shinzo Abe paid a visit to China. Then the two governments "reaffirmed that, in order to make the East China Sea a 'Sea of Peace, Cooperation and Friendship', both sides should firmly maintain dialogue and consultation, and resolve appropriately difference of opinions. Both sides confirmed that they would accelerate the process of consultation on the issue of the East China Sea, adhere to the broad direction of joint development and seek for a resolution acceptable for the both sides." Furthermore, during the visit here of the premier of State Council Wen Jiabao from April 11-13, 2007, the Japanese and Chinese premiers issued a joint press statement that elaborates the results of concrete cooperation toward the establishment of "a strategic, mutually beneficial relationship." According to the joint statement, both sides agreed to "conduct joint development based on principles of mutual benefit principles," and "at relatively large waters which is acceptable for both sides," and "accelerate the process of consultation and aim to report concrete measures on joint development to the leaders in this (2007) fall."(24) Both Japanese and Chinese researchers must continue strenuous efforts to help reach a compromise between the two governments in this autumn. But the reality is that both sides are not ready to go beyond the present stage of "agree in general, not on details" to go down to specifics as to how to implement joint development.

The foreign ministries of the two countries will be responsible for the identification of sea area for joint development purpose, but after that is where researchers come in to study about the method of joint development, acceptable to policy decision makers of both governments.

The result of the Upper House election in July 2007 is casting a shadow on the road ahead of the Abe administration. Even if the present administration steps down, the Japanese diplomatic policy on the gas field problem in the East China Sea will not change a great deal, since Basic Ocean Law was enacted by bipartisan efforts. Leaders of China and Japan are expected to help settle maritime delimitation in the East China Sea through dialogues, in the grand framework of Japan-China friendship in the 21st century. To this end, both sides should be committed to the spirit of "mutual good" and "mutual concession," and as world leaders, seek for the way for a model solution. More determination is required of both sides to transform the East China Sea from "the Sea of Conflict" to "the Sea of Peace, Cooperation, and Friendship." The success of maritime delimitation or joint development as provisional arrangements will depend upon the wills of the two nations.(25) It is high time for us, researchers, to start a study on possible methods of joint development, informative to policy decision makers of both countries.

Notes

(1) Naoya Okuwaki, "Kyokai mikakutei kaiiki ni okeru shigen no tansa, kaihatsu [Exploration and exploitation of resources in the undelimited sea area]," p. 62
(2) Ministry of Economy, Trade and Industry, "Energy White Paper 2005," Gyosei Corporation, 2005, p.8
(3) A statement at Lower House Committee on Economy, Trade and Industry (Oct. 27, 2004)
(4) *ICJ Reports*, 2001, p. 93, para. 173.
(5) Tadao Kuribayashi, "Haitateki keizai suiiki, tairikudana no kyokaimen kakutei ni kansuru kokusai hori—Higashi shina kai ni okeru nicchukan no tairitsu wo megutte [International Legal Theory on Delimitation of EEZ and Continental Shelf—Over Japan-China Dispute in the East China Sea]," *Proceedings of Toyo Eiwa Women's University Graduate School*, No.2, 2006, p. 3
(6) R.R. Churchill and A.V. Lowe, *The Law of the Sea*, 3rd ed., Manchester University Press, 1999, p. 191.
(7) *ICJ Reports*, 1982, pp. 46-49, paras. 43-48.
(8) *ICJ Reports*, pp. 33-38, paras. 34-44.
(9) Norio Tanaka, "Kokusai ho kara mita syungyo gasuden kaihatu mondai [The Issue of Chunxian gas field development viewed form International Law]," *Sekai*, Iwanami Shoten, August, 2005, p. 23-24
(10) *T. Kuribayashi, op. cit., note (6), p. 11*
(11) *ICJ Reports*, 1969, p. .
(12) Masahiro Miyoshi, "Nicchukan no haitateki keizai suiiki to tairikudana no mondai

[The Issue of EEZ and Continental shelf between Japan and China]," T. Kuribayashi and Masahiro Akiyama (ed.), *Umi no kokusai chitsujo to kaiyo seisaku [International Oder of the Ocean and Ocean Policy]*, Toshindo, 2006, p. 271

(13) The original reads as follows: "If an accumulation of petroleum or any other mineral deposit is found in or on the continental shelf of one of the Parties and the other Party is of the opinion that the accumulation or deposit extends onto its continental shelf, the latter Party may, by presenting the evidence upon which the opinion is based, submit this to the first mentioned Party." (Art.2.1) Cf. Jonathan I. Charney and Robert W. Smith (eds.), *International Maritime Boundaries*, Vol. IV, Martinus Nijhoff, 2002, p. 2,971.

(14) *Ibid.*, pp. 2,694 and 2,952.

(15) William T. Onorato, "Apportionment of an International Common Petroleum Deposit," *International and Comparative Law Quarterly*, Vol.26, Part 2, pp. 336-337.

(16) Masahiro Miyoshi, "Tairikudana no tankasuiso shigen no kyodo kaihatsu—Tozai senta no kenshukai no rongi wo chushin toshite [Joint Development of Hydrocarbon Resources in Continental Shelf—With a Focus on Discussion at East-West Center workshop]," Soji Yamamoto and Takamine Sugihara (ed.), *Kaiyoho no rekishi to tenbo [History and Prospectus of Law of the Sea]*, Yuhikaku, 1986, p. 184

(17) Choon-Ho Park, "Joint Development of Mineral resources in Disputed Waters: The Case of Japan and South Korea in the East China Sea", in Mark J. Valencia (ed.), *The South China Sea: Hydrocarbon Potential and Possibilities of Joint Development*, Pergamon Press, 1981, pp. 1,335-1,341.

(18) Kazuhiro Nakatani, "Kokusaiho ni okeru 'Kyokai' no iso [The Phase of 'Border' in International Law]," Nobuaki Shiokawa and Kazuhiro Nakatani (ed.), *Ho no saikochiku [II] Kokusaika to ho [Restructuring of Law [II] Internationalization and Law]*, University of Tokyo Press, 2007, p. 69

(19) *M. Miyoshi, op. cit., note (11), p. 187*

(20) *M. Miyoshi, op. cit., note (30), pp. 187-192*

(21) http://www.un.org/Depts/los/convention_agreements/convention_declarations.htm, p.19.

(22) Kyoko Hamakawa, "Higashi shina kai ni okeru nicchu kyokai kakutei mondai—Kokusaiho kara mita gasuden kaihatsu mondai [Maritime Delimitation in the East China Sea—Gas Field Development viewed from International Law]," *Chosa to joho [Issue Brief]*, No. 547, 2006, p. 10

(23) http://www.un.org/Depts/los/convention_agreements/convention_declarations.htm, p.19.

(24) Ministry of Foreign Affairs web site, "Japan-China Joint Press Statement," http://www.mofa.go.jp/mofaj/area/china/visit/0704_kh.html.

(25) *M. Miyoshi, op. cit., note 30, p. 199*

係争海域における暫定措置—共同開発をめぐる法的諸問題

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1　はじめに

日中両国の間に横たわる東シナ海は、400カイリに満たない海域である。1968年の国連アジア極東経済委員会（ECAFE）によって、東シナ海一帯の海域調査がなされ、東シナ海の大陸棚には、豊富な石油資源や天然ガスが埋蔵されている可能性が指摘された。2003年8月、中国が白樺（中国名：春暁）油ガス田の開発に着手したことによって、日中両国の間で、この資源開発をめぐって、激しい対立が生じている。対立の主要な点は、まず係争海域をめぐる問題である。

日本は、係争海域は東シナ海全体におけるお互いの200カイリ主張の重複する海域であると主張している。国会での答弁において、政府は、日本の国内法で設定した中間線の意義について、「中間線の設定はあくまで暫定的である。境界が合意によって設定されるまでは、国際法上の権原として日本のＥＥＺもしくは大陸棚が日本の基線から200カイリまで及んでいることは不変である」と説明する。奥脇教授の解釈によれば、中間線を定めた「排他的経済水域及び大陸棚に関する法律」は、あくまで「日本の法令適用上の限界を一方的に設定したものである。対外的に日本の主張を制約するものではない[1]」ということになる。これに対し、中国は、問題を大陸棚の境界画定と捉え、係争海域は中間線と沖縄トラフ（船状海盆）の間であるとする認識の下、中間線以西（中国側）で海底資源の探査・開発を進めている。とりわけ、日本が主張している中間線の中国側4.5キロメートルの地点で海上プラットフォームを稼働させ油ガス田の開発を本格化させている（いわゆる春暁ガス田問題）。日本は、2004年7月より、経済産業省によるノルウェーからチャーターした三次元探査船を使った探査結果により、中国が開発している一部の油ガス田については、その構造が中間線以東（日本側）まで連続していることが明らか又はその可能性を否定できないとして、日本の資源が吸い取られるおそれがあるとして、これらの油ガス田の情報提供及び開発中止を要求している[2]。しかし、中国はこれに応じていない。これまで民間会社の鉱業権の出願の許可または不許可の処分を留保してきた日本も[3]、これに対抗して、2005年7月、日本の民間会社である帝国石油会社から出されていた試掘権設定申請に対し、経済産業省が許可を与えた。他方、中国は2005年9月には樫（中国名：天外天）での生産を開始し、白樺（中国名：春暁）についても、海底パイプラインでつながった折江省寧波市の天然ガス処理施設が試運転を始めた。こうした両国の対立の構造の中で、日本国内の海洋政策において大きな変化が生じた。

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1 奥脇直也「境界未画定海域における資源の探査・開発」62頁

2 2005年4月、白樺ガス田と楠（中国名：断橋）ガス田が中間線の日本側までつながっていることを確認したと発表した。経済産業省『エネルギー白書2005年版』ぎょうせい（2005年）8頁。

3 衆議院経済産業委員会平成16年10月27日小平政府参考人答弁

2007年4月20日、日本の国会において海洋に関する2つの重要な法律が成立した。1つは海洋基本法であり、もう1つは海洋構築物等に係る安全水域の設定等に関する法律である。これらの法律は7月20日より施行された。特に、海洋政策の基本理念や基本的施策、海洋政策を一元的に担う組織の設置などを骨子とする海洋基本法の制定は注目に値する。1980年、当時の海洋開発審議会の答申で初めて「海洋基本法」制定の必要性が言及されてから27年が経過していた。海洋基本法は自民、公明、民主から成る超党派による海洋基本法研究会での審議を経た議員立法であり、共産党も国民新党も賛成した法律である。同研究会が2006年にまとめた「海洋政策大綱」では、「海洋の総合的管理のための政策・体制の整備が進まず」、「わが国周辺海域で起こっている、隣接国による石油・ガス田開発の問題に適切な対応ができず、国益を損なっている」との認識が示されていた。日本でも「海洋権益」への取り組みの重要性が、政治の場でもクローズアップされるようになったといえよう。大陸国家である中国と異なり、日本は四方海に囲まれた島国であり、領海、接続水域、ＥＥＺを含めると国土の12倍の広さの海域を管理し、貿易の99%ほどを海上輸送に頼る海洋国家である。本法は、「新たな海洋立国」をめざす日本の態度表明ともいうべき内容になっている。

2　「海洋基本法」と「海洋構築物等に係る安全水域設定法」の意義

（1）海洋基本法とは何か

海洋基本法は、国連海洋法条約（以下、海洋法条約）やその他の国際約束に基づき、海洋の平和的かつ積極的な開発及び利用と海洋環境の保全との調和を図る新たな海洋立国を実現することをめざすとともに、海洋を総合的にかつ一元的に管理するために内閣に総理大臣を本部長とする総合海洋政策本部を設置し、内閣官房長官と新たに創設された海洋政策大臣（国土交通大臣が就任）を副本部長に充てるとしている（1条、32条及び33条）。海洋が人類等の生命を維持する上で不可欠な要素であるとし、海洋法条約等に基づく国際的協調の下、新たな海洋立国を実現することが重要であるとして、海洋に関し、次の6つの基本理念を定めた。すなわち、①海洋の開発及び利用と海洋環境の保全との調和、②海洋の安全の確保、③科学的知見の充実、④海洋産業の健全な発展、⑤海洋の総合的管理、⑥国際的協調である。そして、政府は、海洋に関する施策の総合的かつ計画的な推進を図るため、海洋基本計画を定めなければならないとした。海洋に関する国の基本的施策として、次の12項目が挙げられた。①海洋資源の開発及び利用の推進、②海洋環境の保全、③排他的経済水域等の開発等の推進、④海上輸送の確保、⑤海洋の安全（safety and security）の確保、⑥海洋調査の推進、⑦研究開発の推進、⑧海洋産業の推進、⑨沿岸域の総合的管理、⑩離島の保全等、⑪国際協力の推進、⑫海洋に関する国民の理解増進である。

このうちの排他的経済水域等の開発の推進が、東シナ海の資源開発に関係している。まず、海洋資源の開発及び利用の推進に関する第17条で、「国は、…海底又はその下に存在する石油、可燃性天然ガス、マンガン鉱、コバルト鉱等の鉱物資源の開発及び利用の推進並

びにそのための体制の整備その他の必要な措置を講ずるものとする」とし、第19条で「国は、…排他的経済水域等の開発、利用、保全等に関する取組の強化を図ることの重要性にかんがみ、海域の特性に応じた排他的経済水域等の開発等の推進、排他的経済水域等における我が国の主権的権利を侵害する行為の防止その他の排他的経済水域等の開発等の推進のために必要な措置を講ずるものとする」と規定した。東シナ海の資源開発問題をにらんで、日本として必要な国内措置をとることを規定しており、後でご紹介する安全水域設定法もこうした国内措置の一環である。なお、本法律を審議した日本の衆議院は、2007年4月3日に「新たな海洋立国の推進に関する件」と題する決議により、「海洋資源の開発及び利用等の安全の確保は不可欠であり、そのため、海上の安全及び治安の確保とともに、危機管理について万全の体制を整備することが極めて重要であることにかんがみ、海上保安庁について、危機管理に関する関係行政機関との連携を含め組織体制の総合的な検討・充実を図ること」（4号）を決議した。この海上保安庁が所属している役所が国土交通省であり、安全水域設定法は国土交通大臣をその長として運用される。

（2）安全水域設定法とは何か

海洋構築物等に係る安全水域の設定等に関する法律は、その第2条で、①天然資源の探査、開発、保存及び管理、人工島、施設及び構築物の設置、建設、運用及び利用、海洋環境の保護及び保全並びに海洋の科学的調査、②経済的な目的で行われる探査及び開発のための活動、③大陸棚の掘削、という「特定行為」に係る工作物等について、海洋法条約第60条4項にいう安全水域を設定することを規定した。同条約第60条4項は、「沿岸国は、必要な場合には、人工島、施設及び構築物の周囲に適当な安全水域を設定することができる」と規定する。

安全水域設定法にいう「海洋構築物」とは、日本の「排他的経済水域及び大陸棚に関する法律」が定める日本の排他的経済水域（第1条1項）及び大陸棚（第2条）において、第2条に規定する「特定行為」に関連して設置される工作物及び大陸棚の掘削に従事する船舶をいうとされる。「排他的経済水域及び大陸棚に関する法律」第3条2号は、「排他的経済水域における経済的な目的で行われる探査及び開発のための活動」につき、また同条3号は「大陸棚の掘削」につき、「我が国の法令を適用する」と規定している。また、同条2項は、「人工島、施設及び構築物については、国内に在るものとみなして、我が国の法令を適用する」と規定している。

安全水域設定法では、特定行為に係る工作物のみならず、大陸棚の掘削に従事する船舶が「掘削をするために進行を停止している」段階で、「海洋構築物」になると規定している（第2条1項）。同法では、船舶として日本船舶を前提としており、停船した段階で構築物とみなすことにさほどの問題は生じない。なぜなら、安全水域の設定との関係で掘削船が船から海洋構築物に変わるとしても、船舶としてなお日本法の規制の下にあることに変わりはないからである。そして、海洋法条約の規定に従って、安全水域は500メートルを超えないものとし、また、国際航行に不可欠と認められた航行帯の使用の妨げとなるような

海域に設定してはならず、かかる安全水域の設定は、国土交通大臣が行うと定めた（第 3 条）。さらに国土交通大臣は、安全水域を設定したときは、遅滞なく当該水域の位置及びその範囲を告示するとし（第 4 条）、安全水域の設定後は、国土交通大臣の許可なく安全水域に入域することを原則として禁止した。例外は、①船舶の自由を失った場合、②人命又は急迫した危険のある船舶の救助に従事する場合、③国又は都道府県の機関が海上の安全及び治安の確保のための業務を実施する場合、④当該安全水域に係る海洋構築物等の業務に従事する場合である（第 5 条）。安全水域への立ち入り禁止の例外に、沿岸小型漁船やプレジャーボートなどの小型船舶は含められていない。日本の大陸棚掘削に反対して掘削船に侵害行為を行うことを意図する小型漁船が無許可で安全水域に立ち入れば、安全水域設定法上は処罰の対象となる。このように国土交通大臣の許可なく安全水域に入域した者及び国土交通大臣が入域の許可に付した条件に違反した者は、1 年以下の懲役又は 50 万円以下の罰金に処せられる（第 7 条）、と安全水域設定法は規定している。

本法は、東シナ海における日本の海洋権益を保護する必要上、日中間で未画定の東シナ海における日本の主張する大陸棚境界の日本側（日中中間線の日本側海域）に中国が進出してくることを防止することをねらいとしている。これにより、日本の民間会社による試掘権設定の際にも、当該試掘船舶や海洋構築物の周囲に安全水域を設定し、他国による妨害行為等を防ぐことが可能となった。なお、排他的経済水域及び大陸棚に関する法律第 3 条 4 号では、公務執行妨害について国内法を適用するとしている。

3　東シナ海における資源開発と国連海洋法条約

日中両国は、ともに海洋法条約の当事国である。海洋法条約は、原則として、ＥＥＺと大陸棚について単一の境界線を義務づけているわけではない。ＥＥＺの権原の根拠は 200 カイリの距離基準であるのに対し、大陸棚のそれは沿岸陸地との海底地質構造との連続性という自然延長だからである（57 条、76 条）。しかし、ＥＥＺが設定されている水域では、大陸棚は距岸 200 カイリまではＥＥＺに包摂されるのであり、自然延長は 200 カイリを超える部分にのみ関係する。その意味で、境界画定にあたっては、単一の境界線を引くのが一般的である。カタール・バーレーン海洋境界及び領土問題事件の 2001 年 3 月 16 日判決で、国際司法裁判所（以下、ＩＣＪ）は、次のように判示した。

> 「単一境界線の概念は…自らに属する海洋管轄権をもつ様々な水域を確定する 1 本の連続した境界線を確立したいという国々の願望にその説明を見出すことができる[4]」

しかし、日中が単一の境界線を引きたいと考えているかどうかは明らかではない。少なくとも、自然延長論にこだわる中国は大陸棚の境界画定のみを希望しているように思われる。しかし、200 カイリ制度が確立された今日、ＥＥＺを棚上げにして、大陸棚のみの境界画定を行うことがどれほど現実的であるか疑問なしとしない。なお、排他的経済水域に関する海洋法条約第 56 条 3 項の「この条に定める海底及びその下についての権利は、第六部

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[4] *ICJ Reports*, 2001, p.93, para.173.

〔大陸棚に関する部〕の規定により行使する」との規定を捉えて、海底及びその下については、大陸棚制度が優越し、境界画定についても自然延長論が優越するとの議論を行う論者がいる。しかし、同項が想定しているのは、いわゆる開発方法や方式の問題であって、境界画定方法ではない。そう理解しなければ、境界画定方法につき、海洋法条約が、ＥＥＺと大陸棚について同一の条文（第 74 条・第 83 条）を置いた意味がでてこない。いずれにしろ、日中の間には、1997 年 11 月に締結された日中漁業協定が存在するのみで、ＥＥＺ及び大陸棚に関する境界画定条約は存在しない[5]。

いうまでもなく、この問題に対して適用される法は、海洋法条約である。同条約は、ＥＥＺ及び大陸棚の境界画定について次のように規定している。

「向かい合っているか又は隣接している海岸を有する国の間における排他的経済水域（大陸棚）の境界画定は、衡平な解決を達するために、国際司法裁判所規程第 38 条に規定する国際法に基づいて合意により行う[6]」（74 条・83 条）。

海洋法条約第 74 条及び第 83 条は、境界画定の合意に達するために関係国が誠実に行動する一般的な義務を確認している[7]。ところで、大陸棚又はＥＥＺの境界画定に関しては、等距離原則と衡平原則という二つの考え方がある[8]。しかし、先の両条文は、等距離原則にも、また衡平原則にも何ら言及していない。チャーチル（R.R. Churchill）やロウ(A.V. Lowe)の表現を借りれば、単に合意による境界画定を言っているにすぎない[9]。しかし、残念のことに未だに日中両国の間に合意は存在しない。両国による尖閣列島に対する領有権の争いが、その周辺海域をどちらが主張できるかという問題とあいまって、この問題をいっそう複雑にしている。そこで日本は、1996 年に「排他的経済水域及び大陸棚法」を制定し、ＥＥＺ及び大陸棚のいずれについても暫定的に中間線を引いている（1 条 2 項、2 条）。他方、中国は、1998 年に「排他的経済水域及び大陸棚法」を制定し、「海岸が隣接し又は向かい合っている国家と排他的経済水域及び大陸棚に関する主張が重なり合う場合、国際法を基本として衡平原則に基づき協議により境界画定を行う」（2 条）と規定している。すなわち、日本は、境界画定に関する最近の国際判例にかんがみ、ＥＥＺ及び大陸棚ともに中間線に基づき境界を画定すべきだと主張している。他方、中国は、境界画定の際に中間線を用いることは適当ではないと主張する。特に、大陸棚については大陸棚の自然延長として沖縄トラフまでの主権的権利を主張している。ＥＥＺについては、その立場を明らかにしてい

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5 日中漁業協定第 12 条は、「この協定のいかなる規定も、海洋法に関する諸問題についての両締約国のそれぞれの立場を害するものとみなしてはならない」と規定している。

6 国際司法裁判所規程第 38 条への言及は、具体的な問題の解決方法につき明確な指針を与えるものではない。この点については、Cf. Tullio Scovazzi, "The Evolution of International Law of the Sea : New Issues, New Challenges", *Recueil des Cours*, Vol.286, 2000, p.195.

7 *Ibid.*, p.196.

8 栗林忠男「排他的経済水域・大陸棚の境界画定に関する国際法理－東シナ海における日中間の対立をめぐって－」『東洋英和女学院大学大学院紀要』第 2 号（2006 年）3 頁。

9 R.R. Churchill and A.V. Lowe, *The Law of the Sea*, 3rd ed., Manchester University Press, 1999, p.191.

ないが、衡平原則に依拠しているように思われる。このように、両国の東シナ海における境界画定に関する基本的争点は、画定基準を定める法原則について、「等距離基準・特別事情」と「衡平原則・関連事情」のいずれを一般規則として認めるかという点にある。日中両国はこの問題で交渉を重ねているが、双方の主張は未だ対立している。

周知のように、ＩＣＪには、これまで13件に及ぶ大陸棚の境界画定紛争が付託されている[10]。ＩＣＪは、1969年の北海大陸棚事件判決において、大陸棚条約第6条2項の等距離原則を排除し、境界画定は衡平の原則に従い、自然の延長を構成する大陸棚の部分をその国に帰属させるように考慮して、関係国間の合意に基づいて行わなければならないと判示した[11]。しかし、海洋法条約で200カイリ排他的経済水域の概念が認められるようになった以降、ＩＣＪの判例には大きな変化がみられる。

ＩＣＪは、1982年のチュニジア・リビア大陸棚事件判決において、「領土の自然な延長という観念は、…それ自体、近隣国の権利に対する関係で一国の権利の及ぶ正確な範囲を決定するのに必ずしも十分ではなく、また適当でさえないであろう」とし、「沿岸国の自然な延長が大陸棚に対するその法的権原の基礎であるという原則は、本件において、隣接する国に属する区域の境界画定に適用される基準を必ずしも提供するものではない」と判示した[12]。自然延長の基準によって大陸棚の範囲を定めることはできても、境界画定の基準としてはそのまま用いることはできないというのである[13]。

また、同裁判所は、1985年のリビア・マルタ大陸棚事件判決において、ＥＥＺと大陸棚との関係について、「排他的経済水域と同様に、大陸棚にはいまや距離基準が適用されなければならない」とし、「とりわけ、権原の証明のときはそうであって、200カイリ以内では沿岸からの距離に依存し、地質学的特性はまったく無関係である」とした上で、「裁判所と

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10 北海大陸棚事件（西ドイツ/デンマーク、西ドイツ/オランダ）、エーゲ海大陸棚事件（ギリシア対トルコ）、チュニジア・リビア大陸棚事件（チュニジア/リビア）、メイン湾海洋境界画定事件（カナダ/米国）、リビア・マルタ大陸棚事件（リビア/マルタ）、陸・島及び海洋境界紛争事件（エルサルバドル/ホンジュラス）、ヤンマイエン海洋境界画定事件（デンマーク対ノルウェー）、カタール・バーレーン海洋境界画定及び領土問題事件（カタール対バーレーン）、カメルーン・ナイジェリア領土及び海洋境界事件（カメルーン対ナイジェリア）、カリブ海における海洋画定事件（ニカラグア対ホンジュラス）、領域及び海洋紛争事件（ニカラグア対コロンビア）、黒海における海洋境界画定事件（ルーマニア対ウクライナ）である。なお、1991年に提訴されたギニアビサオとセネガルの海洋境界画定事件は、1989年の仲裁裁判判決事件判決（1991年）後に、両国が1993年に協定を締結し、国際開発機構を設立し共同開発を行うことで合意し、訴訟が取り下げられた。

11 三好正弘教授によれば、北海大陸棚事件判決では自然の延長論が境界画定に直結するかのごとき論調が展開されたが、早くも1977年の英仏大陸棚事件判決でこれが微妙に修正され、自然延長が境界画定に絶対的な基準とならないことが示されたとされる（18 *RIAA* 91, para.191.）三好正弘「海洋の境界画定」国際法学会編『日本と国際法の100年第3巻海』三省堂（2001年）167頁。

12 *ICJ Reports*, 1982, pp.46-49, paras.43-48.

13 同裁判所は、衡平原則を「衡平な結果を達成するために適切な原則」とし、衡平及び善と区別されなければならない。

しては、国家実行は等距離方法又は他のいかなるものも義務的にしていないと考える。ただ『印象的な証拠』として、等距離方法はさまざまな場合に衡平な結果を生み出すことが考えられる」と判示した[14]。本件では、両国間の中間線を基礎に、無人の島の存在や海岸線の長さなど衡平の考慮により、その線を修正して境界線を決定した。

1993年のヤンマイエン海洋境界画定事件判決は、大陸棚条約第6条にいう「等距離＝特別事情規則」が衡平原則に基づく一般規則を表すものであれば、これと慣習国際法上の「衡平＝関連事情規則」との間に実質的な差異はないとし、大陸棚の境界画定においては、大陸棚第6条ではなく慣習法を適用するとしても、暫定的に中間線を引いて、それを関連事情により調整するのは先例と一致しているとした。実際、等距離中間線を暫定線とした上で、衡平な解決を達成するために、海岸線の長さや漁業資源の分布状況などの関連事情を考慮に入れて、中間線を修正し、大陸棚とＥＥＺに共通する境界線を示した。

2001年のカタール・バーレーン間の海洋境界画定及び領土問題事件判決では、ＩＣＪは、等距離中間線を暫定的に引いた上で、考慮すべき特別の事情の存在を検討しつつ、その線を若干修正する判断を示したのである[15]。

こうした国際判例の動向を、日本の研究者の立場からみれば、たしかに大陸棚の境界画定の基準はあらかじめ特定されているわけではないが、向かい合っている国同士の間では、中間線が一つの基準とされているといえよう。換言すれば、大陸棚の境界画定基準としての自然延長論は決定的なものではなく国際判例の中では次第にその比重を低下しつつあること、また、ＥＥＺの概念が定着するにつれ、200カイリの距離基準に包摂される大陸棚の概念がＥＥＺの制度の中に吸収されて[16]、向かい合う国の間における400カイリ未満の海域の境界画定にあたっては、衡平な解決を図るために、中間線を暫定的に引いた上で個々の関連事情を具体的に考慮してその暫定線を修正するという方式が採用される傾向にあることを指摘できる[17]。

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14 *ICJ Reports*, pp.33-38, paras.34-44.

15 田中則夫「国際法からみた春暁ガス田開発問題」『世界』岩波書店（2005年8月号）23－24頁。英仏大陸棚事件判決が、大陸棚条約にいう「等距離基準」と「特別事情」は、別個の法規ではなく、また前者に有利な推定を与えたものでもなく、両者が結合して単一の法規を構成しているのである。特別事情は、等距離基準の適用を制限し衡平な境界画定を確保するための要件であり、これらの両基準が結合すれば、実際には、国際慣習法上の衡平原則により境界画定を行うのと同一の結果になると判示していたことを想起すれば、ＩＣＪが基本的にこの仲裁判決の考え方に近づいていることがわかる。英仏大陸棚事件判決の評価については、山本草二『海洋法』三省堂（1992年）206頁参照。

16 もっとも、国際司法裁判所は、「大陸棚の概念がＥＥＺに吸収されたというのではなく、沿岸からの距離というような、二つの概念に共通な要素に、より大きな重要性が付与されなければならないということである」（33項）と判示している。

17 栗林「前掲論文」注(6)11頁。また、チャーニー（J.I. Charney）は、136の二国間海洋境界画定協定を分析し、これらの協定においては等距離原則が主要な役割を果たしているとする。J. I. Charney and L.M. Alexander(eds), *International Maritime Boundaries*, Vol. I (1993),Nijhoff, p.xlii

しかし、中国は大陸棚の境界画定の基準として自然延長論を主張しており、ＥＥＺとの単一の境界線を引くことを希望しているかどうかはともかく、大陸棚の境界画定について日本との間に合意は存在しない。現在、早期の境界画定への合意が困難と考えられる状況の中で、「共同開発（joint development）」の議論が生じている。なお、「共同開発」について、国際法上、明確な定義があるわけではない。本報告では、特定の海域における非生物資源（石油・天然ガス等）の国家間による共同の探査・開発方式を指すものとして用いることとする。

4　共同開発をめぐる法的諸問題

（1）同一鉱床をめぐる問題

周知のように、1969 年の北海大陸棚事件において、同一の鉱床が大陸棚の境界線の双方にまたがって存在している場合について、ＩＣＪは、「しばしば同一の鉱床が二国間の大陸棚を分ける線の両方にまたがっていることがある。そして、どちらの側からもその資源を開発することが可能であるから、関係国のいずれか一方による…開発の危険のために、すぐにも問題が生じることになる[18]」と判示して、国家実行が、二国間の協定を通じて解決をはかってきたことを指摘する[19]。このとき判決は、大陸棚の境界にまたがって延びている単一の鉱床がある場合、効率的な開発と得られる収益の配分について合意された条約として、1965 年のイギリス・ノルウェー間の大陸棚境界画定条約や同年のオランダ・イギリス間の大陸棚境界画定条約を挙げた。

ここで共同開発の議論の対象となっているのは、石油なり天然ガスなりの流体物である。このように共通資源が流体物の場合、一方の側からの一方的採取は他方の側の権利を侵す結果になりかねず、鉱床を一体なものとして扱う（unitization という）必要があり（1965 年のイギリス・ノルウェー大陸棚境界画定条約第 4 条が最初に採用）、その意味でも双方の協力は不可欠といえよう[20]。さらに、最近の条約、たとえば、1999 年のデンマーク・英国のフェロー諸島及び英国間の海洋境界画定条約第 2 条 1 項では、一方の当事国の大陸棚における石油その他の鉱物資源が他方の当事国の大陸棚に延びていることが発見された場合に、当該当事国に他方の当事国に対する情報提供義務を課している[21]。同様の情報提供義務

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18 *ICJ Reports*, 1969, p.　.

19 最初の例といわれるのは、1960 年のオランダとドイツ連邦共和国間のエムス河口協力条約（エムス・ドラルト条約）及び 1962 年のその補足協定である。これらの条約は、条約適用区域の境界線を棚上げにして、「固体、液体、気体」の地下資源の共同開発制度を発足させた。*ICJ Reports*, 1969, pp.51-52, para.92.

20 三好正弘「日中間の排他的経済水域と大陸棚の問題」栗林忠男・秋山昌廣編『海の国際秩序と海洋政策』東信堂（2006 年）271－271 頁。

21 原文は次の通りである。"If an accumulation of petroleum or any other mineral deposit is found in or on the continental shelf of one of the Parties and the other Party is of the opinion that the accumulation or deposit extends onto its continental shelf, the latter Party may, by presenting the evidence upon which the opinion is based, submit this to the first mentioned Party."(Art.2.1) Cf. Jonathan I. Charney and Robert W. Smith(eds.),

は、1997年のタイ・ベトナム間のタイ湾の海域境界画定条約第4条や同年のデンマーク・アイスランドのグリーンランドとアイスランド間の大陸棚及び漁業水域境界画定条約第2条にも規定されている[22]。かつてオノラト（William T. Onorato）は、国家間で共通の石油鉱床の境界画定ができない場合は、その鉱床を一体なものとして扱うべきであると提言した。そして、かかる鉱床の割り当てに適用されるべき法は、公正で、衡平で、実施可能なものでなければならず、共通の石油資源に利害関係を有する国の協力、調整及び合意に基づく法のみがこの要件を満たすと主張した[23]。共同開発にあたっては、このように利害関係国の協力、調整が不可欠である。

（2）共同開発の類型と方式

なお共同開発には、大きく分けて、海洋境界が画定した海域で行われる共同開発と海洋境界が画定しない海域での共同開発がある[24]。前者の例としては、1974年のフランス・スペイン間のビスケー湾大陸棚境界画定条約[25]、同年のサウジアラビア・スーダン間の紅海共同区域・天然資源共同開発協定[26]、1981年のアイスランド・ノルウェーのアイスランドとヤンマイエン間の大陸棚協定がある。後者の例としては1979年のタイ・マレーシアのタイ湾南部の共同開発区域設定の了解覚書や、1989年のオーストラリアとインドネシア間の「インドネシアの東チモール州と北部オーストラリア間の区域における協力区域に関する条約」（いわゆる、チモール・ギャップ協定）がある[27]。これらの条約では、大陸棚の境界画定を棚上げにして、共同開発区域を条約で定めている。もっとも、タイ・マレーシアの覚書では50年間の共同開発に合意しながらも、なお引き続き境界画定交渉を行うとされた[28]。

International Maritime Boundaries, Vol. IV, Martinus Nijhoff, 2002, p.2971.

22 *Ibid.*, pp.2694 and 2952.

23 William T. Onorato, "Apportionment of an International Common Petroleum Deposit", *International and Comparative Law Quarterly*, Vol.26, Part 2, pp.336-337.

24 三好正弘「大陸棚の炭化水素資源の共同開発―東西センターの研究集会の論議を中心として―」山本草二・杉原高嶺編『海洋法の歴史と展望』有斐閣（1986年）184頁。

25 大陸棚境界画定を行うとともに、一部に境界線をまたぐ長方形の共同開発区域を設けた。三好「同上」183頁。

26 一定の等深線によって境界線を設けるとともに、それよりも深い部分を共同区域（Common Zone）とした。三好「同上」183頁。

27 なお、タイとマレーシアは後に、「1990年マレーシア・タイ合同機関の構成及び設立に関する他の問題に関するマレーシア政府とタイ王国政府の間の協定」を締結した。水上千之『日本と海洋法』有信堂（1995年）138頁参照。また、チモール・ギャップ協定は、2001年にUNTAET（国連東チモール暫定行政機構）がオーストラリアとの間に了解覚書を締結し、2000年の交換公文（インドネシアが行使していた権利義務をUNTAETが引き継ぐという内容）に代わり、共同石油開発区域（Joint Petroleum Development Area）においては、従来の50:50の取り分に代わり、90%が東チモールに、10%がオーストラリアに配分される合意（第4条）が締結された。、Yoshifumi Tanaka, *Predictability and Flexibility in the Law of Maritime Delimitation*, Hart Publishing, 2006, p.285.

28 Choon-Ho Park, "Joint Development of Mineral resources in Disputed Waters: The Case of Japan and South Korea in the East China Sea", in Mark J. Valencia(ed.), *The South China Sea: Hydrocarbon Potential and Possibilities of Joint Development*,

日中の東シナ海における共同開発は後者の類型、すなわち境界画定を棚上げにして共同開発を行うという類型になるであろう。日本はすでにこの種の共同開発の実績を持っている。日本が韓国との間に締結した、1974年の「日本国と大韓民国との間の両国に隣接する大陸棚の南部の共同開発に関する協定」（南部協定）である。本協定は、境界画定を50年間棚上げして[29]、両国の大陸棚の主張が重複する海域を共同開発によって解決しようというものである。ここでは、両国がそれぞれ開発権者を決め、共同開発区域に適用すべき法を定める方式を採用した[30]。なお、日中が共同開発に合意しながらも、タイ・マレーシア覚書のように引き続き境界画定交渉を行うかどうかは、尖閣列島の領有権の問題を睨みながらの政治的判断になろうが、前述した協定及び覚書が係争海域における暫定措置として共同開発を位置づけていることはたしかであろう。

なお、これまで海底の石油資源等の共同開発の実例は少なからず存在し、国際社会には24の共同開発の合意があるといわれている[31]。ひとくちに共同開発といっても、その方式はさまざまであり、大きく分けて、次の3つのカテゴリーがあるとされる。①石油開発が両国の別々のライセンスによって許可されることを規定する協定、②石油開発が両国の共同のライセンスによって許可されることを規定する協定、③石油開発が当事国の一方のライセンスのみによって許可され、収入または生産物を他方の当事国と分配することを規定する協定、である[32]。前述した日韓大陸棚協定は、①の方式に該当する。

Pergamon Press, 1981, pp.1335-1341.

29 なお本協定は、その第28条で、「この協定のいかなる規定も、共同開発区域の全部若しくは一部に対する主権的問題の権利を決定し又は大陸棚の境界画定に関する各締約国の立場を害するものとはみなしてはならない」という without prejudice clause を設けている。

30 有望な鉱区もなく実際に機能することはなかったが、機能したとしても、日韓大陸棚協定はあまりにも複雑な方式であったように思われる。同協定では、共同開発区域を9つの小区域に分け、各小区域について日韓両国がそれぞれ1開発権者を指定し、1小区域につき2開発権者が指定される体制をとっている（後に6小区域に改定）。その2開発権者のうちいずれかが操業権者となり、その操業権者を開発権者として許可した国の法を当該小区域に適用する方式がとられた。しかも、活動が探査段階と開発段階で2開発権者が交代する制度になっている。探査段階では、ある小区域の操業権者が日本の許可した会社の場合は日本法が適用されるが、開発段階では韓国が許可した会社に交代し、韓国法が適用されることになる。三好正弘「オーストラリア・インドネシア海底共同開発協定について」李國卿『アジア・太平洋地域の国際関係―政治・経済・文化の研究―』文眞堂（1993年）204頁注(27)参照。

31 田中氏の研究によれば、本文で触れた共同開発の例のほかに、1982年のカンボジア・ベトナム間の協定（Joint Development Historical Water Zone と呼称された）、1988年の南北イエメン間の協定（Joint Development Area と呼称）、1992年のマレーシア・ベトナム間の協定（Joint Exploration and Exploitation of Petroleum と呼称）、1993年のギニア・ビサオとセネガル間の協定（Joint Development Zone と呼称）及びナイジェリアとサントメ・プリンシペ間の協定（Joint Development of Petroleum and other Resources と呼称）などがある。Cf. Tanaka, *supra note* 27, p.379.

32 中谷和弘「国際法における『境界』の位相」塩川伸明・中谷和弘編『法の再構築〔Ⅱ〕国際化と法』東京大学出版会（2007年）69頁。

たしかに、共同開発は万能薬ではないが、境界画定の困難な海域で成功を収めた例もあり、十分検討に値する[33]。もちろん、共同開発区域設定のための交渉は容易ではないが、日中両国が日中友好という大きな枠組みの中でこれに取り組むことは大きな意義があると思われる。1989 年のチモール・ギャップ協定は、対象海域をめぐる自然延長論の立場と中間線の立場の膠着状態を棚上げにすることによって、実際的な経済的利益を確保する途を両国が選んだ政治的成果である。もちろん、同協定の例をみてもわかるように、本文で共同開発区域について合意したとしても、そこでの共同開発を具体的に実施するための附属文書（他の共同開発協定と比較してやや詳細に過ぎる感もあるが）をまとめる必要がある。例えば、同協定の附属文書には、A.協定ゾーンを構成する区域の地図及び座標、B.協力ゾーンのうちのＡ区域に関する石油採掘コード、C.共同機関と契約者との間の生産分与に関するモデル契約書、D.協力ゾーンのＡ区域に関連する活動について二重課税を防止するための租税コードなどがあり、詳細なモデル規則として機能するよう意図され締結されている。また、管理機構として、総括的責任を負う両国の特任閣僚から成る閣僚理事会の設置や法人として両国の法の下でその権限行使及び任務遂行に必要な法律行為能力を有し、契約、動産及び不動産の取得及び処分、訴訟当事者の能力をもつ共同機関の設置なども行われている[34]。ひとくちに共同開発というが、具体的実施のためには詰めるべき課題も多い。

5　解決に向けて―「対立の海」から「平和・協力・友好の海」へ

（１）司法的解決の困難性

排他的経済水域及び大陸棚に関する海洋法条約第 74 条 2 項及び第 83 条 2 項では、「関係国は、合理的な期間内に合意に達することができない場合には、第 15 部に定める手続〔紛争解決手続〕」に付すると規定している。しかし、中国は東シナ海の樫（中国名：天外天）や白樺（中国名：春暁）で一方的開発に踏み切る直前の 2006 年 8 月 25 日に、国連事務総長に対して、第 298 条 1 項(a)、(b)及び(c)に定める紛争につき、第 15 部第 2 節（拘束力を有する決定を伴う義務的手続）から除外する旨の宣言を行った[35]。ということは、(a)項(i)にあるように、「海洋の境界画定に関する第 15 条、第 74 条及び第 83 条の規定の解釈若しくは適用に関する紛争」について、附属書Ⅶに定める仲裁裁判所において紛争を解決する途は閉ざされていることになる。もっとも、同項(i)には、続けて、「ただし、宣言を行った国は、このような紛争がこの条約の効力発生の後に生じ、かつ、紛争当事者間の交渉によって合理的な期間内に合意が得られない場合には、いずれかの紛争当事者の要請により、この問題を附属書Ｖ第二節に定める調停に付することを受け入れる」と規定する。その意味で、海洋法条約上は、本件が附属書Ｖ第２節に定める調停に付されることを必ずしも排除していない。しかし、両国には尖閣列島の帰属に関する領有権の争いがあり、同項(i)の末

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33 三好「前掲論文」注(11)187 頁。
34 三好「前掲論文」（注(30)）187－192 頁参照。
35 http://www.un.org/Depts/los/convention_agreements/convention_declarations.htm, p.19.

文の「島の領土に対する主権その他の権利に関する未解決の紛争についての検討が必要となる紛争については、当該調停に付されない」と規定されているので、本件は調停にも付されないことになる[36]。少なくとも、中国政府には、東シナ海の境界画定問題を海洋法条約が定める紛争解決手続で解決しようとする姿勢はみられない。

それでは、ＩＣＪを利用して紛争解決する可能性があるかといえば、これも否定的に解するほかない。周知のように、ＩＣＪは強制管轄権がなく、紛争当事国の一方が紛争を相手国の同意なしに付託することはできない。ＩＣＪの管轄権を認める選択条項についても、日本は選択条項の受諾宣言を行っているものの、中国はこれを行っておらず、ＩＣＪにこの問題を付託するには特別合意以外に方法はない[37]。日本はともかく、海洋法条約上の義務的紛争解決手続きを回避しようとする中国が特別合意の締結に同意するとは考えにくい。現在の状況で、こうした第３者の司法機関による紛争解決のめどがない以上、この問題は両国の外交交渉による解決に委ねるほかない。

（２）政治的解決への期待

東シナ海における日中の境界画定をめぐる紛争の本質は、東シナ海の海底資源、すなわち石油や天然ガスなどの資源の存在である。両国は、これらの資源をできるだけ有利に自国に確保したいと考えている。対立の膠着状態を打破するために、双方から共同開発の議論が持ち出されている。しかし、それでも、両者の間には対立が残っている。それは、共同開発の対象となる海域をめぐる対立である。さらに、境界画定の基準の理解にも両国の間に相違がある。日本は、係争海域は東シナ海全体におけるお互いの 200 カイリ主張の重複する海域であると考え、共同開発はこの海域、日中中間線をはさんで行われるべきだと考える。中国は、係争海域は中間線と沖縄トラフの間であり、共同開発は日中中間線の東側水域で行われるべきだと考える。中間線の西側は中国が単独で開発できる水域であり、共同開発の対象にはならないというのである。日本は、安全水域設定法の制定により、日中中間線の東側での日本の試掘船に対する妨害活動に対処できる法律を制定した。しかし、中国が沖縄トラフまでの大陸棚に対する主権的権利を主張する以上、日本が実際に探査活動に入った場合、日中はさらに対立を深めることになろう。また、大陸棚の境界画定の基準についても、両国の主張は真っ向から対立しており、その溝を埋めることは容易ではない。中国は、海洋法条約を批准した 1996 年 6 月 7 日に、「海岸が隣接し又は向かい合っている国家と排他的経済水域及び大陸棚に関する主張が重なり合う場合、国際法を基本とし

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36 濱川今日子「東シナ海における日中境界画定問題―国際法から見たガス田開発問題」『調査と情報』第 547 号（2006 年）10 頁。

37 なお、日本は、2007 年 7 月 9 日、国連事務総長に書簡を送り、1958 年 9 月 15 日に行った選択条項受諾宣言に、「この宣言は、紛争の他のいずれかの当事国が当該紛争との関係においてのみ若しくは当該紛争を目的としてのみ国際司法裁判所の義務的管轄を受諾した紛争、又は紛争の他のいずれかの当事国による国際司法裁判所の義務的管轄の受諾についての寄託若しくは批准が当該紛争を国際司法裁判所に付託する請求の提出に先立つ十二箇月未満の期間内に行われる場合の紛争には、適用がないものとします」の一文を加えた。『官報』（平成 19 年 7 月 9 日）外務省告示第 394 号。

て衡平原則に基づき協議により境界画定を行う[38]」との解釈宣言を行っているほどである。もちろん、尖閣列島の領有権をめぐり両国の主張は対立しており、この問題の解決なしに境界画定の合意は容易ではないと推察される。逆にいえば、境界画定交渉の長期化が確実であるために、共同開発に関する協議を優先させているといえる。

まさしく、現在の東シナ海は両国の主張が対立する海である。しかし、希望の芽がないわけではない。2006 年 10 月 8 日安部総理大臣が中国を訪問した際、日中両国は「東シナ海を平和・協力・友好の海とするため、双方が対話と協議を堅持し、意見の相違を適切に解決すべきであることを確認」するとともに、「共同開発という大きな方向を堅持」することで一致した。さらに温家宝国務院総理の 2007 年 4 月 11 日から 13 日の来日において、日中両国首脳は、戦略的互恵関係の構築に向けた具体的協力の成果を「日中共同プレス発表」として明らかにした。その中で、東シナ海の問題につき、「互恵の原則に基づき共同開発を行うこと」とし、共同開発については「双方が受入れ可能な比較的広い海域で共同開発を行う」ことに合意した。そして、「2007 年秋に共同開発の具体的方策につき首脳に報告することを目指す」とした[39]。日中両国の研究者も、秋に両国の間で妥協が生まれるように相互に努力を重ねる必要がある。もっとも、現在の状況は共同開発という「総論賛成」の段階に止まっており、共同開発をどのように進めるかという各論の議論に至っていないというのが現状である。共同開発の対象水域の確定は外交当局者の仕事であろうが、その後の開発方式の検討については、両国の政策決定者が受け入れることができるような案を研究者の側で創出する必要がある。

2007 年 7 月の日本の参議院選挙の結果は安部政権の前途に暗い影を投げかけているが、仮に政権交代があろうとも、海洋基本法が超党派で成立した法律であることからすれば、東シナ海のガス田問題について日本の外交政策に大きな変化が生ずることはない。次期の日本の総理が誰であろうと、21 世紀における日中友好という大きな枠組みの中で日中両国の首脳同士の話し合いによる解決が期待される。そのためにはお互いに互恵・互譲の精神が必要となる。日中が世界のリーダーとして、またアジアのリーダーとして、他の国の模範となるような解決の道を模索すべきであろう。東シナ海を「対立の海」から「平和・協力・友好の海」へ変えるためにもその決断が必要である。境界画定にせよ、暫定措置としての共同開発にせよ、要は関係国の意思決定にかかっている[40]。われわれ研究者は、日中両国の政策決定者にとって参考となるような共同開発方式の研究に着手する必要がある。

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38 http://www.un.org/Depts/los/convention_agreements/convention_declarations.htm, p.19.

39 日本外務省ホームページ「日中共同プレス発表」
http://www.mofa.go.jp/mofaj/area/china/visit/0704_kh.html.

40 三好「前掲論文」（注（30））199 頁。

Legal issues in the East China Sea

By Zhou Zhonghai, Professor of international law*

Abstract: The world has changed dramatically over the years, and the two countries and peoples of China-Japan, should remain in close touch on issues concerning the legal issues in East China Sea. The East China Sea is one of the last unexplored high-potential resource areas located near large markets. But the development of oil and gas in much of the area has been prevented for decades by conflicting claims to boundaries and islets in the area by China and Japan. Today's challenges to delimitation of the East China Sea and competition for scarce petroleum resources, such issues may become the tail that wags the dog of international relations. It is therefore important to intensify cooperation at all levels to address the conflicts in a comprehensive manner through bilateral and multilateral instruments and mechanisms aimed at seeking an opportunity to cap rising tension and harvest the resources in the disputed area.

Keywords: Law of the Sea, legal issues, East China Sea, EEZ, continental shelves, equitable principle;

China and Japan are cordial neighbors opposite the East China Sea and the East China Sea is one of the last unexplored high-potential resource areas located near large markets. But the development of oil and gas in much of the area has been prevented for decades by conflicting claims to boundaries and islets in the area by China and Japan. Just as what the post vice-premier Deng said, "It is not that there are not any problems between China and Japan, for example, the problem of Diaoyudao Islets and the problem of the continental shelf. These problems should not get involved at present, they can be set aside and discussed calmly in the future, a method acceptable to both sides can be discussed slowly."[1] In recent years, there are conflicting claims over the East China Sea between China and Japan, and the disputes still unsettled now. However, the Chinese government adheres that the disputes and conflicts should be concluded through negotiations and the demarcation lines be settled by agreement. But the Japanese government holds their position and insists different principles of international law to support their claims. And indeed, in its "Security and Guarding Plan," the Japanese

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[1] Deng said while meeting with Japanese Foreign Minister Tadashi Sonoda on August 10, 1978.

Self-Defense Forces for the first time identified China as a threat and suggested several threat scenarios including a brigade size invasion of the Diaoyudao (Senkakus in Japanese).[2] Nowadays, the Japanese government adopted "the basic law of ocean" and some other rules and regulations concerned to support their sea claims. So that it makes the problem complicated and accelerate the new tensions in the East China Sea.

1. Introduction to the East China Sea

The East China Sea is a marginal sea east of China and a part of the Pacific Ocean which covers a total area of 750,000 square kilometers. It is a semi-enclosed sea lying between the eastern coast of China's mainland and the Pacific Ocean, bounded on the west by China, on the east by the Kyushu and the Ryukyu Islands of Japan, and on the north by Cheju Island of the Republic of Korea and the Yellow Sea, and connected with the South China Sea by the Taiwan Strait on the south. The breath of the East China Sea is about 380nm.

The United nations Convention on the Law of the Sea (UNCLOS) was *Opened for signature* on December 10,1982,and *entered into force* on November 16, 1994.The People's Republic of China signed the Convention in 1982 and ratified the Convention in 1996. UNCLOS grants coastal states the right to declare sovereign rights and resource control over an Exclusive Economic Zone (EEZ) up to 200 nautical miles off its coastlines. The coastal states of the East China Sea: China, Japan, and South Korea all quickly ratified UNCLOS and declared their respective EEZ. In the case of countries bordering semi-enclosed seas such as the East China Sea where EEZ claims overlap, UNCLOS calls for establishing joint resource management areas and provides guidelines for doing so, even where conflicting territorial claims are unresolved. With collective action imperative to avoid a collapse of regional fisheries, UNCLOS provides a framework for pursuing collective action among coastal states. The EEZ were introduced to halt the increasingly heated clashes over fishing rights, although oil was also becoming important. The exclusive economic zone of the People's Republic of China is an area beyond and adjacent to the territorial sea of the People's Republic of China extending to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured. China signed an agreement with Japan in 1997 for cooperative fisheries management in the East China Sea; it took effect in 2000. China and Japan agreed to establish three different zones where different fisheries regimes apply. The China-Japan joint fisheries commission will make recommendations on matters relating to catch quotas and other terms and conditions of fishing operations for the nationals and fishing vessels of each signatory state in the other's EEZ, on matters regarding the maintenance of the fisheries order, and on matters relating to fisheries

[2] Ways forward East China Sea dispute, Commentary by Mark J Valencia (22/09/06 PacNet #47A)

cooperation between the two states. Japan also initially agreed to allow a total of 600 PRC fishing boats annually into its EEZ east of the "free" fisheries zone, while the PRC agreed to allow 317 Japanese vessels into its EEZ to the west of the zone. These numbers are to be renegotiated each year.[3]

As to the continental shelf of the East China Sea, so far as it is reported and has been proved ,it is the natural prolongations of China's main land territory and be edged by the Chongsheng (Okinawa) Trough That is to say the East China Sea continental shelf is the natural extension of the Chinese continental territory. The People's Republic of China has inviolable sovereignty over the East China Sea continental shelf. The Chongsheng (Okinawa) Trough delineates the edge of the continental margin and that the axis of the Trough thus serves as the boundary between the continental shelves of China and Japan. UNCLOS provides that the continental shelf of a coastal State comprises the sea-bed 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 where the outer edge of the continental margin does not extend up to that distance. [4] And at the same time, it is reported that the Outer continental shelf delimitation are becoming a emerging challenge to the coast states in the East China Sea.

With regard to the delimitation of the continental shelf of the East China Sea, because of specific natural geographic situations, countries and regions around the Sea took what they needed from the Law of the Sea to build up legal basis for their own claim for rights. In 1978 China and Japan began consultations on the delimitation of the continental shelf of the East China Sea. But as the two countries have serious divergence of views on the claims to the East China Sea area and on the principles of delimitation, the negotiations failed to make any progress.[5]

2, **Recent Developments in the International Law of the Sea**[6]

After the entry into force of the Convention, the new ocean order and the systems for the law of the sea have been established, such as territorial sea and contiguous zone, EEZ, continental shelves, the Area, marine environment conservation and protection, marine living resources conservation etc.. State practice with respect to maritime zones has shown a strong adherence to the principles and rules established by its provisions. To a large extent, the 25

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[3] Regime Building in the East China Sea,MARK J. VALENCIA,YOSHIHISA AMAE,East-West Center,Honolulu, Hawaii, USA, 2005,p,5

[4] Article 76. Definition of the continental shelf, Part vi, UNCLOS.

[5] "The Delimitation of East China Sea Continental Shelf: Sino-Japanese Disputes from the Perspective of International Law", by Zhu Fenglan, CHINA INTERNATIONAL STUDIES Fall 2006.

[6] Recent Developments in the International Law of the Sea, By: Houston Putnam Lowry, The International Lawyer, summer, 2001 issue, 35 Int'l Law. 787 (2001).

coastal States non-parties to UNCLOS also accept the Convention as the source of international customary law.[7]

Current information drawn from domestic legislation and statements shows that fewer than 10 States — mostly non-parties to UNCLOS — maintain a claim to the territorial sea that would extend over 12 nautical miles. This is in stark contrast to more than 140 coastal States with a territorial sea of 12 nautical miles or less, as provided for by UNCLOS, and more than 70 States that now claim a 24-nautical miles contiguous zone in conformity with the Convention. In addition, more than 110 coastal States have proclaimed an exclusive economic zone and, for the most part, apply their sovereign rights and jurisdiction in conformity with UNCLOS. The process of harmonization of national legislation with UNCLOS started soon after its adoption in 1982. [8]

The number of parties to the United Nations Convention on the Law of the Sea continued to increase. As at 28 February 2007, this number, which includes the European Community, rose to 151.In recent years, there has been increasing international recognition of the need to effectively manage human activities that have an effect on the marine environment and its ecosystems in order to promote the sustainable development of oceans and seas and their resources. The protection of marine ecosystems is essential for sustainable development. A number of ecosystem approaches have been developed to achieve this goal. One of the outcomes of UNCED was the 1992 United Nations Convention on Biological Diversity (CBD), which describes the ecosystem approach as a strategy for the integrated management of land, water and living resources that promotes conservation and sustainable use in an equitable way. This approach is based on the application of appropriate scientific methodologies focused on levels of biological organization, which encompass the essential processes, functions and interactions among organisms and their environment.[9]

Technological progress is nowadays so rapid that the process of forming rules of the law of the sea does not always keep space with the occurring changes. The legal rules, however, should not set back the development of social or scientific and technological relations, but on the contrary, promote it as much as possible or even get ahead of it. Hence we should do our best to study their interplay and see the technology accelerate the development of law, and what is the important impact of the advances of technology on the law of the sea. All nations, both developed and developing, want to share the profits gained from the ocean by the technology and that of course, is the basis for new international law of the sea and the international economic order.[10]

Aside from its provisions defining ocean boundaries, the convention establishes general obligations for safeguarding the marine environment and

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[7] Fifty-ninth session Item 51 (a) of the preliminary list* Oceans and the law of the sea, A/59/62.

[8] Ibid.

[9] Sixty-first session Item 69 (a) of the preliminary list* Oceans and the law of the sea A/61/63.

[10] Zhou Zhonghai: <Technological Progress and development of the Law of the Sea>, Taishan press, 1998, at page 198.

protecting freedom of scientific research on the high seas, and also creates an innovative legal regime for controlling mineral resource exploitation in deep seabed areas beyond national jurisdiction, through an International Seabed Authority.

3、The disputes and legal issues in the East China Sea

Since rich oil resources were founded in the continental shelf of the East China Sea and the surrounding area of the Diaoyudao Islets in the late 1960s, the question of the delimitation of the East China Sea area between China and Japan began to surface. After the United Nations Convention on the Law of the Sea came into force in 1994, divergence between China and Japan in the delimitation of the continental shelf of the East China Sea became sharper and disputes over it increasingly intense.

The Sino-Japanese maritime conflict has two fundamental dimensions: the sovereignty dispute over the Diaoyudao (Senkaku) islets and the delimitation of a boundary for the vast EEZ and continental shelf of the East China Sea.[11] There are also disputes between the People's Republic of China and neighboring countries South Korea and Japan over the extent of their respective exclusive economic zones.

The dispute between China and Japan concerns natural gas. In recent years, China has successively founded several oil and gas fields in the East China Sea area and exploited the Chinese area along the so-called "median line" proposed by Japan one-sidedly, arousing Japan's unusual concern. Japan requested China to provide the data of exploration and at the same time delegated authority to private companies including the Empire Oil Company to exploit the continental shelf of the East China Sea, which is certainly unacceptable to China. Endless arguments between the governments and peoples of the two countries caused by the question of the delimitation of the East China Sea area have become one of the important factors hampering bilateral relations.

There is a cluster of submerged reefs in the northern East China Sea. The Socotra Rock, also called Suyan Rock is a subject of jurisdictional dispute. China has objected to Korean activities there as a breach of its sovereign rights.

China and Japan have led the way in developing a "conflict avoidance" regime for the East China Sea where the two states have extensive overlapping claims. The current regime includes a joint regulation and fishing zone and a prior notification regime for scientific research. The next step should be a regime regarding the use of force and military and intelligence-gathering activities in the EEZ. This article reviews the progress made in building this conflict avoidance regime and examines the need for and ways to expand it to cover military activities in the EEZ.[12]

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[11] Ways forward East China Sea dispute, Commentary by Mark J Valencia (22/09/06 PacNet #47A)

[12] Regime Building in the East China Sea, MARK J. VALENCIA,YOSHIHISA AMAE, East-West Center, Honolulu, Hawaii,

The Law of the Sea Convention does not address this issue directly. One view is that what is not explicitly prohibited by the Convention is permitted. Because the Law of the Sea Convention expressly prohibits intelligence-gathering activities in the territorial sea in Article 19(2) but not in the EEZ, such activities are arguably legal. However, it could be also argued that what is not specified is not authorized. In judging the issue, two principles need to be kept in mind. One is the Convention's basic principle of maintaining the use of the sea for peaceful purposes. Article 301states that in exercising their rights and performing their duties under this Convention, State Parties shall refrain from any threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with principles of international law embodied in the Charter of the United Nations. Article 88 states specifically that "the high seas shall be reserved for peaceful purposes." The other principle is contained in Article 58(3), which states that In exercising their rights and performing their duties under this Convention in the exclusive economic zone, States shall have due regard to the rights and duties of the coastal state and shall comply with the laws and regulations adopted by the coastal State in accordance with the provisions of this Convention and other rules of international law in so far as they are not incompatible with this Part.[13]

Explicitly, the legal issues in the East China Sea mainly are as follows:

1) The territorial sovereignty of diaoyu islets conflict. Generally speaking, the territorial sovereignty should not be involved in the delimitation of EEZ. The Diaoyudao Islets (Senkakus in Japanese) attached to Taiwan islands belong to China. They are parts of the territory of the People's Republic of China. Even though the Diaoyuao Islets were occupied and controlled by Japan, it is no legal effect and the legal status can not be changed. the Diaoyudao Islets are small, uninhabited, and cannot sustain economic life of their own, and thus according to the 1982 UN Convention on the Law of the Sea (1982 UNCLOS) are not entitled to generate a continental shelf or a 200nm EEZ and thus have no significant legal effects on the boundary delimitation in the East China Sea. So as to the so-called chongniao rock（"Okinotorishima" in Japanese）.

2). Delimitation of a boundary for the vast EEZ and Continental Shelf of the East China Sea.

With regard to the delimitation of the East China Sea between Japan and China, Japan maintains that relevant provisions of the UN Convention on the Law of the Sea, which are formulated in the light of topographic and geomorphic features of the Atlantic Ocean, are inapplicable to the East China Sea and the Pacific Ocean area with complicated topographic features. It stresses that Japan and China belong to the same continental shelf in the East Sea area and that the Okinawa Trough is only a back arc ocean basin contingently formed in the course of the natural prolongations of the land

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USA, p.1.

[13] IBID.

territory of the two countries and cannot break up the continuity of the continental shelf of the two countries. For this reason, Japan proposes that when delimiting the East China Sea, the two countries should neglect the legal effect of the Okinawa Trough.

Thus it can be seen that there exists a serious divergence between China and Japan in their claims to the East China Sea area and the principle of the delimitation. First, on the claim to the continental shelf, China stands for the natural prolongation criterion, while Japan the distance criterion. Second, on the principle of the delimitation, China stands for the equitable principle, while Japan prefers the equidistant "median line". Third, on the issue whether the two countries belong to the same continental shelf, China holds that geographically, topographically, geomorphologic ally and geologically the Okinawa Trough has distinct features that separate the continental shelf and slope of the East China Sea from the Japanese Ryukyu Islands, which is of special significance and an important factor that should be taken into consideration in the delimitation of the continental shelf. Japan holds that the Okinawa Trough is only a back arc ocean basin contingently formed in the course of the prolongation of the continental margin of the two countries. So, Japan's claim to the continental shelf of 200 nautical miles is not affected by this, and the legal effect of the Okinawa Trough should not be taken into consideration in the delimitation of the continental shelf of the East China Sea.

With regard to the East China Sea area, China holds that topographically, geomorphologic ally and geologically, the continental shelf of the East China Sea is the continuity and underwater natural prolongation of the Chinese continent. The continental shelf of the Chinese continent ends at the Okinawa Trough; that is to say, China's claim to the East China Sea area is natural prolongation, and the Okinawa Trough is the natural boundary between China and Japan in the delimitation of the East China Sea. The Okinawa Trough delineates the edge of the continental margin and that the axis of the Trough thus serves as the boundary between the continental shelves of China and Japan.

The exclusive economic zone is an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention. The exclusive economic zone shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured. And China shall exercises sovereign rights over the living and non-living resources of the waters superjacent to the sea-bed and of the sea-bed and its subsoil, and jurisdiction with regard to marine scientific research and the protection and preservation of the marine environment. The EEZ were introduced to halt the increasingly heated clashes over fishing rights, although oil was also becoming important.

2) Which principle should be applied in the delimitation of the East

China Sea.

In terms of the system of the rights over the continental shelf, "natural prolongation" principle has advantage over the "distance criterion". But in terms of the relationship between the natural prolongation and the distance of 200 nautical miles, the natural prolongation criterion is prior to the distance criterion that is in a subordinate position, for the first part of Paragraph 1 of Article 76 of the Convention clearly defines that "The continental shelf of a coastal State comprises 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". A distance of 200 nautical miles in the second part of the paragraph is provided by taking into consideration the interests of the coastal States whose continental shelf does not extend as far as 200 miles. The two methods for the delimitation of the outer limits of the continental shelf in Paragraphs 4 and 5 are provided in accordance with the principle of natural prolongation. In terms of topographical, geological and geomorphologic characteristics, the continental shelf of the East China Sea is the continuation of the Chinese continent and underwater natural prolongation of China's land territory. According to surveys by geologists, the Okinawa Trough covering an area of about 100,000 square kilometers slopes from northeast to southwest, with a length of 1,100 kilometers from south to north, a width of 150 kilometers at most and 30 kilometers at least and a maximum depth of 2,940 meters, the northern part of the Trough being shallow and the southern part deep. That is to say, the Okinawa Trough constitutes a natural boundary between the continental shelf of the East China Sea and the Ryukyu Islands. Therefore, China's proposition that the continental shelf of the East China Sea extends to the Okinawa Sea conforms to the definition provided in the UN Convention on the Law of the Sea. In other words, only by adopting the natural prolongation criterion can the basis of China's title over the continental shelf of the East China Sea area be in line with the principle of international law. If the distance criterion is adopted, the continental shelf of the East China Sea will undoubtedly be broken up into the "interior continental shelf" and the "exterior continental shelf", which is totally at variance with the connotation of the definition of the continental shelf and thus runs counter to the UN Convention on the Law of the Sea.

In the areas where its EEZ overlaps with those of neighboring states, the boundary will be delimited by agreement in conformity with the relevant rules of international law. However, there are no effective rules of stare *decisis* in International Law and the law of the sea and the Equidistance Principle Not a Rule of Customary International Law. The ICJ considered that the principle of equidistance, as it now figures in Article 6 of the Convention, was proposed by the Commission with considerable hesitation, somewhat on an experimental basis, at most de *lege ferenda*, and not at all de *lege lata* or as an emerging rule of customary international law.[14]

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[14] Pparas.60-82 of the Judgment of the North Sea Continental Shelf , by ICJ, 1960. (1969)I.C.J Rep.3.

4). Joint development in the East China Sea.

The Joint Developments could be undertaken within the overlapping or disputed areas. Joint development means or implies the areas disputed and overlapped only. Japan will not interfere with Chinese exploitation of fields on its side of the line and the area for joint development is that between the median line claim and China's claimed continental shelf boundary including the area around the disputed islets. joint development of fish, minerals and hydrocarbon resources will be undertaken. This has essentially already been agreed in principle and in practice for fisheries.

5). Intelligence-gathering activities (as mentioned above).

6). The legal status of islands etc,,

In the end, I suggest that Conflicting claims regarding the exclusive economic zone and the continental shelf by the People's Republic of China and States with opposite or adjacent coasts shall be settled, on the basis of international law and in accordance with the equitable principles and taking account of all the relevant circumstances, by an agreement delimiting the areas so claimed. In the course of the negotiations, the factors to be taken into account are to include: the general configuration of the coasts of the Parties, as well as the presence of any special or unusual features, and the element of a reasonable degree of proportionality.[15]

4. **The position and respective Claims of China**

Obviously, the coast states of the East China Sea as China and Japan have different of conflict claimants. All claimants are also entitled to a 200 nm EEZ. In its EEZ, a country exercises sovereign rights over the living and non-living resources of the waters superjacent to the sea-bed and of the sea-bed and its subsoil, and jurisdiction with regard to marine scientific research and the protection and preservation of the marine environment. The delineation of EEZ boundaries was not an issue until February 1996 when Japan and South Korea almost simultaneously declared 200 nm EEZ. Anyhow, China's position and claimants in the East China Sea have been consistent with the principles of the law of the sea, adhered the same position.

In 1972 at the Conference of the UN Council of International Seabed Authority, the Chinese government for the first time put forward the principle of equal consultation for the delimitation of the sea. In April 1978 when the Third UN Law of the Sea Conference was bogged down in debates over whether to adopt the "equitable principles" or the "median line" method in the delimitation of the sea area, the Chinese representative pointed out, "The median line or equidistance line is only a method in the delimitation of the sea, which should not be defined as the method that must be adopted, still less as the principle for the delimitation. The delimitation of the sea should follow the

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Louis Hen kin, <International law, cases and materials>, west publishing company, June.1980. P366-367.

[15] IBID

fundamental principle, i.e., the equitable principle. In some cases, if equitable and reasonable results in the delimitation may be achieved by using the method of median line or equidistance line, States concerned can apply it by agreement. But China opposes the States concerned unilaterally imposing the median line or equidistance line on the other side before an agreement of the delimitation is reached." He stressed that China's principled stand on the delimitation of the sea is equitableness and mutual consultation.

The Convention Introduced a Number of Provisions. The most significant issues covered were setting limits, navigation, archipelagic status and transit regimes, exclusive economic zones (EEZ), continental shelf jurisdiction, deep seabed mining, the exploitation regime, protection of the marine environment, scientific research, and settlement of disputes.

The Chinese government signed the UN Convention on the Law of the Sea in December 1982 and ratified it in May 1996. In June 1998 the Ninth National People's Congress passed the Law of the People's Republic of China on the Exclusive Economic Zone and the Continental Shelf, which provides that "The exclusive economic zone of the People's Republic of China covers the area beyond and adjacent to the territorial sea of the People's Republic of China, extending to 200 nautical miles from the baseline from which the breath of the territorial sea is measured. The continental shelf of the People's Republic of China comprises 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 breath of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance." The Law clearly states that China's claim to the continental shelf is based on the criterion of natural prolongation. With regard to the principle of the delimitation of the sea area, the Law further stresses observation of the equitable principle.

The claims to the area of the East China Sea are complicated and involve sovereignty claims to territory, and claims to both continental shelves and 200 nautical miles (nm) Exclusive Economic Zones (EEZ).Again hereafter we express China's claimants distinctly as follows:

1/. It is recognized that there is but one China that is the People's Republic of China. Taiwan is a part of China. Just as the UN resolution of 2758 stated that the representatives of the Government of the People's Republic of China are the only lawful representatives of China to the United Nations and that the People's Republic of China is one of the five permanent members of the Security Council[16]. There is but one China in the world, both the mainland and Taiwan are part of that one and same China. It is an objectivity that cannot be changed by anybody.

2/. The territorial sea of the People's Republic of China is an adjacent belt of sea beyond its land territory and internal waters. The breath of China's

[16] U.N. General Assembly Resolution 2758.

territorial sea is 12 nautical miles measured from the baseline. The method of straight baseline joining appropriate points shall be employed composed of the straight lines connecting adjacent base-points on the mainland coast and on the outmost the coastal island, as the baseline of the territorial sea of the People's Republic of China. The outer limit of the territorial sea of PRC is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea. The land territory of China includes the Chinese mainland and its coastal islands , as well as Taiwan and its surrounding islands, including diaoyudao islets, the penghu islands ,the Dongsha island, the Xisha islands, the Zhongsha islands ,the Nansha islands and all other islands belonging to China which are separated form the mainland and its coastal islands by the high seas.[17]

3/. Diaoyudao Islets (Senkakus in Japanese) attached to Taiwan islands belong to China. They are parts of the territory of the People's Republic of China. Even though Diaoyudao Islets were occupied and controlled by Japan, it is no legal effect and the legal status can not be changed. China holds that the Diaoyudao Islets are small, uninhabited, and cannot sustain economic life of their own. Thus Diaoyudao islets can not be used as base points for the continental shelf and EEZ claims in the East China Sea.

4/. The continental shelf of the People's Republic of China comprises 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 where the outer edge of the continental margin does not extend up to that distance. With regard to the East China Sea area, China holds that the continental shelf of the East China Sea is the continuity and underwater natural prolongation of the Chinese continent. The continental shelf of the Chinese continent ends at the Okinawa Trough; that is to say, China's claim to the East China Sea area is natural prolongation, and the Okinawa Trough is the natural boundary between China and Japan in the delimitation of the East China Sea. The Okinawa Trough delineates the edge of the continental margin and that the axis of the Trough thus serves as the boundary between the continental shelves of China and Japan. Even though the Okinawa Trough is only a back arc ocean basin contingently formed in the course of the natural prolongations of the land territory, it is certainly the natural prolongation of the Chinese continent, not otherwise the natural prolongation of the Okinawa islands, so that China still enjoy the permanent sovereign rights over the East China Sea continental shelf for the purpose of exploring it and exploiting its natural resources. And the rights referred above are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent

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[17] "The Law on the Territorial Sea and the Contiguous Zone of the People's Republic of China", adopted at the24th meeting of the Standing Committee of the National People's Congress on 25 February 1992. art.2,3.

of the coast State.[18]

5/. The exclusive economic zone of the People's Republic of China is an area beyond and adjacent to the territorial sea of the People's Republic of China extending to a distance of 200 nautical miles from the baselines from which breadth of the territorial sea is measured. [19] The exclusive economic zone is an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention. The exclusive economic zone shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured. And China shall exercises sovereign rights over the living and non-living resources of the waters superjacent to the sea-bed and of the sea-bed and its subsoil, and jurisdiction with regard to marine scientific research and the protection and preservation of the marine environment. The EEZ were introduced to halt the increasingly heated clashes over fishing rights, although oil was also becoming important.

6/. The principle of natural prolongation of the land territory shall be applied in the demarcation of the continental shelf and EEZ in the East China Sea. The East China Sea continental shelf is the natural prolongation of the Chinese continental territory and not the opposite, i.e. it is not the natural extension of the Chongsheng (Okinawa) islands. On the basis of international law and in accordance with the principle of natural prolongation, the East China Sea continental shelf belongs to China, due to its being part of Chinese natural prolongation of its continental shelf.The People's Republic of China has inviolable sovereignty over the East China Sea continental shelf. The Chongsheng (Okinawa) Trough delineates the edge of the continental margin and that the axis of the Trough thus serves as the boundary between the continental shelves of China and Japan. The continental shelf claim can extend as far as 350 nm from baselines, depending on the morphology and geology of the continental margin. The presence of the Chongsheng [Okinawa] Trough constitutes special circumstances under which the median line principle cannot be applied.

7/. There should be two demarcation lines. One demarcation line is for EEZ, and the other line is for the continental shelf. However there could be a unified boundary for both the EEZ and continental shelf through negotiation and mutual compromise, by agreement. This would be a major concession on China's part. So called "median line" unilaterally declared by Japan is absolutely inviolable and unacceptable, either now nor in the future. The Equidistance Principle not inherent in the basic doctrine of the Continental

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[18] UNCLOS, part vi, art.77,PP.2.

[19] EXCLUSIVE ECONOMIC ZONE AND CONTINENTAL SHELF ACT OF CHINA

(Adopted at the third session of the Standing Committee of the Ninth National People's Congress, 26 June 1998)

Shelf [20]

8/. The delimitation is to be effected by agreement in accordance with equitable principles, and taking account of all the relevant circumstances. The overlapping areas are to be divided in agreed proportions.

9/, The Joint Developments could be undertaken within the overlapping or disputed areas. Japan will not interfere with Chinese exploitation of fields on its side of the so-called median n line and the area for joint development is that between the median line claim and China's claimed continental shelf boundary including the area around the disputed islets. Joint development of fish, minerals and hydrocarbon resources will be undertaken. This has essentially already been agreed in principle and in practice for fisheries.

10/. China holds that freedoms of navigation in its EEZ are not absolute and foreign aircraft flying over its EEZ should abide by China's laws and "refrain from activities which endanger the sovereignty, security and national interests" of the coastal country. [21] Intelligence gathering capabilities, especially the military intelligence gathering should be strictly restricted and illegal scientific research in another country's EEZ should be avoidable and prohibited.

5. Conclusions

"I've a lot to say about China-Japan relations, who, however, can be summed up in one sentence: The two peoples of China and Japan should live in friendship for generations to come. This point, underscored by the 12th National Congress of the CPC, shows that it is China's long-term national policy."[22] Conflicting claims regarding the exclusive economic zone and the continental shelf by the People's Republic of China and States with opposite or adjacent coasts shall be settled, on the basis of international law and in accordance with the equitable principle, by an agreement delimiting the areas so claimed. The delimitation is to be effected by agreement in accordance with equitable principles, and taking account of all the relevant circumstances. The overlapping areas are to be divided in agreed proportions.

In a new historical period, China and Japan both share increasing common interests and face major challenges. With this in mind, we the leaders of the two countries have reached agreement on building a strategic relationship of mutual benefit. Our goal is to follow the trend of the times and popular aspirations, lift China-Japan relations to a new historical stage, so that China and Japan will live together in peace, enjoy lasting friendship and carry out cooperation of mutual benefit for common development. To achieve this goal, it is important that we adhere to the following principles:

First, increase mutual trust and honor commitment. Second, seek common ground while shelving differences and uphold the larger interests of

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[20] Paras.37-59 of the Judgment of the North Sea Continental Shelf by ICJ, 1960. (1969)I.C.J Rep.3. Louis Henkin, <International law, cases and materials>, west publishing company, June.1980. P60.

[21] "China: USA 'Violates International Law' in Plane Collision," Xinhua BBC Monitoring Asia Pacific-Political (London, 4 April 2001).

[22] Deng said while meeting with Japanese Prime Minister Zenko Suzuki on September 28, 1982.

the two countries. Third, promote common development based on equality and mutual benefit. Fourth, strengthen exchanges with an eye on the future. Fifth, respond to challenges through close consultation.

As a Japanese saying goes, despite the wind hollowing, the mountain remains unmoved. Despite twists and turns and setbacks in China-Japan relations, the foundation of the friendship between the Chinese and Japanese peoples remains as unshakable as Mount Tai and the Fuji Mountain. To create a bright future for China-Japan relations requires the unremitting efforts of the two governments and peoples. Let us join hands and work together for the ever lasting China-Japan friendship, for a new strategic relationship of mutual benefit between our countries, and for peace and development in Asia and the world.[23]

[23] Speech by Premier Wen Jiabao of the State Council of The People's Republic of China at the Japanese Diet 2007/04/12 Tokyo, Japan, 12 April 2007

Northeast Asian Seas: Status and Legal Issues

By Prof. Ji Guoxing

---Paper for the China-Japan Dialogue on Ocean Security "**Ocean Security in Northeast Asia: Issues and Prospects** " in Tokyo August 27-28, 2007—

(1) Outline of Northeast Asian Seas

The Northeast Asian seas encompass the Sea of Japan, the Yellow Sea, and the East China Sea. They are all semi-enclosed seas. Maritime jurisdictional disputes in Northeast Asian seas include two dimensions: territorial sovereignty disputes over islands; and territorial sea baseline, EEZ (exclusive economic zone) and continental shelf delimitation disputes. An important factor affecting current Northeast Asian security is the undefined and insecure maritime jurisdictional areas in Northeast Asian seas.

In the Northeast Asian seas, the number of maritime boundaries yet to be concluded far exceeds those already in force. This contrasts with the Southeast Asia seas where most of the important agreements are already in force.

The three maritime boundary agreements in force in Northeast Asia are the North Korea-Soviet Union agreement on territorial sea in April 1985, the North Korea-Soviet Union agreement on exclusive economic zone and continental shelf in January 1986, and the Japan-South Korea agreement in 1974 concerning the establishment of boundary in the northern part of the continental shelf adjacent to the two countries.

The geographic circumstances of the area require the conclusion of a few more bilateral and trilateral agreements to complete the maritime boundaries. As the entire Sea of Japan will be overlapped by 200-nautical mile maritime zones of the littoral states (Japan, North Korea, South Korea, and Russia), the agreements needed to reach include three new agreements in the Sea of Japan: one each between Japan and Russia, Japan and South Korea (to extend the continental shelf boundary agreement of 1974), and North and South Korea. "In the Sea of Japan, the delimitation of maritime boundaries will not be complete until the terminal points of at least four bilateral boundary lines converge at a junction somewhere in the middle of the sea;" "There is also a risk that the common point of these four final boundaries will not coincide with the terminus of the North Korea-USSR continental shelf/exclusive economic zone boundary of 1986."[1]

In the Yellow Sea, boundary agreements are needed between China and North Korea, China and South Korea, and North and South Korea. In the northern part of the Yellow Sea, China and North Korea have not established their bilateral boundary seaward from the estuary of the Yalu River which marks their land boundary.

In the East China Sea, the claims of China, Japan, and South Korea substantially overlap, "with the South Korea claims extending 279.98 nautical miles into areas also

[1] Choon-Ho Park, *International Maritime Boundaries-Central Pacific/East Asia*, Martinus Nijhoff Publishers, 1993, pp. 1149, 297.

claimed by China and Japan."[2] Boundary agreements are needed to be concluded between China and Japan, China and South Korea, and Japan and South Korea.

The delimitation of the maritime boundaries in Northeast Asia involves the settlement of two serious territorial disputes over the ownership of tiny uninhabited offshore islands. One relates to a cluster of obscure islands in the Sea of Japan called Dokdo in Korean and Takeshima in Japanese, and the other a group of slightly larger islands called Diaoyudao in Chinese and Senkaku in Japanese. Japan is also involved in the so-called Northern Territories with Russia.

(2) Legal Issues

The legal issues involved in Northeast Asian seas, especially in East China Sea include:

1, **Straight Baselines**:

Article 5 of the UN Convention on the Law of the Sea (hereafter referred to as the LOS Convention) stipulates: "Except where otherwise provided in this Convention, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State;" Article 7 stipulates, "In locations 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 method of straight baselines joining appropriate points may be employed in drawing the baseline from which the breadth of the territorial sea is measured."

Northeast Asian countries have all adopted straight baselines, no matter whether "the coastline is deeply indented and cut into, or if there is a fringe of islands along the coast in its immediate vicinity". These straight baselines are usually contested by neighboring countries.

Japan has created 15 "groupings" of straight baselines. Of the 162 baseline segments, 28 % exceed 24 nm, with over 10 % of the baselines longer than 48 nm. "Japan's coastline in many locations does not meet the LOS Convention geographic conditions required for applying straight baselines. And, for the most part, the waters enclosed by the new straight baseline system do not have the close relationship with the land, but rather reflect the characteristics of the territorial sea or high seas, In these areas, it would be appropriate to use the normal baseline, the low-water mark." For example, in Group 8 (off the west coast of Okinawa-Jima), "While there are approximately 5 small islands over a distance of about 65 nm, they cannot be considered a fringe of islands. The territorial sea should be measured from the low-water line in this area;" in Group 9 (southeast, southwest and west coast of Kyushu), "This area cannot be considered fringed with islands along the coast in its immediate vicinity, and these segments should be considered excessive under the provisions of the LOS Convention."[3]

South Korea's coastline is deeply indented in several areas and there are areas off the coast which are fringed with islands. "However, the means by which South Korea

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[2] Ibid.

[3] *Limits in the Seas, No. 120*, Straight Baseline and Territorial Sea Claims: Japan, US Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, April 30, 1998, pp. 5, 9.

has drawn particular straight baseline segments in several locations do not meet the LOS Convention geographic conditions required for applying straight baselines. And in these areas, the waters enclosed by the straight baseline system do not have the close relationship with the land, but rather reflect the characteristics of the territorial sea or high seas. For these areas, it would be appropriate to use the normal baseline, the low-water mark. Overall, an area of approximately 20,260 square km (5,915 square nm) has been claimed as internal waters that should be either territorial sea or high seas." For example, "The baseline segments connecting points 6-18 are excessive;" "The segment connecting point 13-14 is 60.3 nm in length, clearly an excessive length;" "The islands on which basepoints 7-through 28 are located may not be used to draw a straight baseline system."[4]

"Much of China's coastline does not meet either of the two LOS Convention geographic conditions required for applying straight baseline. And, for the most part, the waters enclosed by the new straight baseline system do not have the close relationship with the land, but rather reflect the characteristics of high seas or territorial sea. In these areas, it would be appropriate to use the normal baseline, the low-water line."[5] A South Korean scholar says, "Applying the straight baseline method uniformly to the whole area of Chinese coast is unacceptable by the rule of the law of the sea." "The Chinese straight baseline claimed from the tip of Shandong peninsula to the estuary of the Yangtse should be redrawn by normal baseline method;" "With a fringe of islands and indented coast, the straight baseline method can be applied to the southern portion of Chinese coast from the estuary of the Yangtse."[6]

2, **Islands Effects**

Article 121/1 defines "An island is a naturally formed area of land, surrounded by water, which is above water at high tide", and grants islands to have territorial sea, contiguous zones, EEZ and continental shelf in the same way as land territory; but denies shelf and EEZ rights to "rocks which cannot sustain human habitation or economic life of their own" (121/3).

In implementing the stipulations, countries are accustomed to interpret in the way which best suits their interests. None of the parties to the disputes would confine its interests to the physical value of the islands claimed, but would count on the economic value of what it might be entitled. In enclosed or semi-enclosed seas, even an obscure island large enough or otherwise to qualify for a basepoint, could substantially affect boundary delimitation between or among the coastal states in favour of its owner.

Differences then exist in distinguishing between island and rock and in identifying whether or not a rock can sustain human habitation or economic life; and different treatment exists regarding the entitlements of an island or a rock in question. As to the

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[4] *Limits in the Seas, No. 121*, Straight Baseline and Territorial Sea Claims: South Korea, US Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, September 30, 1998, pp. 4, 8..

[5] *Limits in the Seas, No. 117*, Straight Baseline Claim: China, US Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, July 9, 1996, p. 4..

[6] Young-Koo Kim, "Northeast Asian Maritime Boundaries and Islands Disputes," in Dalchoong Kim edited, *Maritime Boundary Issues and Islands Disputed in East Asian Region*, Yonsei University, 1997, pp.91-92.

two conditions (*sustain human habitation* and *economic life of their own*) different interpretation exists. The first condition "cannot sustain human habitation" refers to "uninhability" or "uninhabitedness"? The second condition "cannot sustain economic life of their own" refers to rocks themselves or rocks with their adjacent sea areas? Some simply says that the claim of any island or reef, inhabited or otherwise, carries with it "at most a 12-mile territorial sea".[7] It's evident that the legal status of islands in the delimitation of maritime boundary has actually not been resolved.

It seems that for EEZ and continental shelf delimitation, strict conditions on islands' entitlements need to be applied. In State practice, islands are given full effect, or a limited and partial effect, or no effect. And "judging from various international continental shelf agreements, three approaches exist:

--In terms of acreage, small islands and rocks usually are neglected, or given limited effect in continental shelf delimitation. Most of these islands and rocks cannot sustain long-time human habitation and have little economic values.

--In continental shelf delimitation, mid-ocean islands are not given any effect, only with territorial sea.

--In terms of ownership, disputed islands are often not given any effect in continental shelf delimitation."[8]

If the above three approaches are followed in Northeast Asia, the delimitation would be easier. For the interests of continental shelf delimitation, China stands for the "enclosure" of disputed islands due to the existing complexities. For example, "Regarding the Diaoyudao (Senkakus) Islands, since they are small, uninhabited, and cannot sustain economic life of their own, they could only be given partial effect and are not entitled to have a continental shelf. Limiting the Senkaku Islands to only a 12 nm territorial sea would have no significant legal effects on the boundary delimitation in the East China Sea, thus making the settlement process much easier. The desirable approach is to agree to a 12 nm territorial sea enclosure around the Senkakus."[9]

The stand that all islands and rocks are entitled to have full effect needs to be contested. David Colson, a legal advisor in the US State Department, "stated that the United States had concluded that all islands should have the same capacity to generate EEZs, whether they are inhabited or not, and that isolated or awkwardly located islands should not be viewed as 'special circumstances' or geographical anomalies in determining extended maritime boundaries."[10] "Thus, the United States' position is that any insular feature that can generate a territorial sea can also generate an EEZ;" "The expansive EEZ claims now being made by the United States may, therefore, be setting a precedent that will haunt it in the future."[11] Evidently, the US position is not in line with the LOS Convention stipulations, and would endanger the order of the sea. By following the US stand, Japan claims that Okinotorishima, with two natural

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[7] Chien-peng, "The Spratlys and other South China Sea Islands Disputes", *the Journal of Social, Political, and Economic Studies*, Washington, Spring 1999.

[8] Zhao Lihai, *Literature on the Law of the Sea*, Beijing University Publishing House, 1996, p. 89.

[9] Ji Guoxing, *Maritime Jurisdiction in the Three China Seas*, IGCC Policy Paper 19, Institute on Global Conflict and Cooperation, University of California, October 1995, p. 19.

[10] Jon M. Van Dyke, Joseph Morgan, Jonathan Gurish, "The Exclusive Economic Zone of the Northwestern Hawaiian Islands: When do Uninhabited Islands Generate an EEZ?", *San Diego Law Review*, Volume 25, No. 3,, School of Law, University of San Diego, 1988, p. 430.

[11] Ibid, p.432-433.

structures some 70 centimeters above water at high tide, is entitled to generate an EEZ and a continental shelf.

3, **The Two Regimes of EEZ and Continental Shelf**

Continental shelf and EEZ are two regimes. The LOS Convention has Part V for EEZ, and Part VI for Continental Shelf. The delimitation in East China Sea relates to the two parts: the subsoil and the waters; and the two regimes of continental shelf and EEZ must be applied. The two regimes, though related to each other, are different in basic concept and legal nature, and one regime cannot be used to replace another regime.

The regime of continental shelf is primarily aimed at mineral resources in sea-bed and subsoil, and the EEZ regime is primarily aimed at living resources of the waters superjacent to the sea-bed. The rights which the EEZ entails over the sea-bed of the zone are defined by reference to the regime laid down for continental shelf.

The continental shelf originally is a geological concept, and the regime of the continental shelf is a legal regime in international law of the sea formed gradually since World War Two.

The continental shelf primarily refers to sea-bed and subsoil of the submarine areas, and the relevant stipulation in the LOS Convention is primarily aimed at mineral resources in sea-bed and subsoil. Article 77/4 of the LOS Convention stipulates, "The natural resource referred to in this Part consist of the mineral and other non-living resources of the sea-bed and subsoil together with living organisms belonging to sedentary species." Article 77/1 stipulates, "The coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources." The LOS Convention emphasizes that the rights the coastal State exercises over the continental shelf is "exclusive"; Article 77/3 stipulates, "The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation."[12]

EEZ is a new concept and a specific legal regime in the LOS Convention, and is developed on the "exclusive fishing zone" and "fishing conservation zone" originally in existence.

The EEZ regime in the LOS Convention is primarily aimed at living resources of the waters superjacent to the sea-bed. Though Article 56/1 (a) stipulates "In the EEZ, the coastal State has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the sea-bed and of the sea-bed and its subsoil," Article 56/3 affirms that "The rights set out in this article with respect to the sea-bed and subsoil shall be exercised in accordance with Part VI."[13] It clearly shows that oil and gas resources do not belong to the scope of EEZ, but belong to the scope of the continental shelf. ICJ points out in the Libya/ Malta case, "The rights which the EEZ entails over the sea-bed of the zone are defined by reference to the regime laid down for the continental shelf;" "This is not to suggest that the idea of natural prolongation

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[12] *Related Conventions on the Law of the Sea,* op.cit., p. 30.

[13] Ibid, p.20.

is now superseded by that of distance."[14]

The two regimes of EEZ and continental shelf have similarities and differences. The similarities are: firstly, they both are sea areas under national jurisdiction; secondly, they are similar in the distance criterion of 200 nautical miles; thirdly, the sovereign rights the coastal State enjoys in the EEZ and the continental shelf are all aimed at exploring and exploiting natural resources; fourthly, they have identical jurisdiction on artificial islands, installations and structures; etc.

The differences of the two regimes are: Firstly, a distinction in the scope. The EEZ shall not extend beyond 200 nautical miles from the baselines; whereas the outer limits of the continental shelf "either shall not exceed 350 nautical miles from the baselines...or shall not exceed 100 nautical miles from the 2,500 metre isobath". Secondly, a distinction in the legal system. The establishment of the EEZ needs the proclamation by the coastal State, which can choose the arrangement of either EEZ or exclusive fishing zone;[15] while the sovereign rights the coastal State exercises over the continental shelf are "exclusive", and "The rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation." Thirdly, the scope of sovereign rights is different. The EEZ is primarily aimed at living resources of the waters superjacent to the sea-bed; whereas the continental shelf primarily refers to sea-bed and subsoil of the submarine areas. Besides, the EEZ involves the residual fishing rights, and Article 62/2 says the coastal State "shall give other States access to the surplus of the allowable catch";[16] while the sovereign rights the coastal State exercises over the continental shelf are "exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its natural resources, no one may undertake these activities without the express consent of the coastal State." (Article 77/2). Thus, no residual rights exist in the continental shelf.

The delimitation of maritime jurisdiction between States with opposite or adjacent coasts involves the delimitation of the two jurisdictional areas of the EEZ and the continental shelf. Due to the differences in the two regimes, the delimitation should be done separately, and two different lines should be delimited in principle, With respect of countries with wider continental shelf, as they are qualified to have sovereign rights over more sea-bed and more natural resources, they have not adopted a single line for the EEZ and the continental shelf. Of course, for the reason of simplicity and for avoiding the overlapping of sovereign rights, there are cases using one single line for the EEZ and the continental shelf. There are also cases delimiting two lines first and adjusting to one line later International delimitation practices do not exclude the incorporation of the delimited two lines into one line. This totally depends on concrete conditions.

4, **The Principles of Delimitation**

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[14] Case concerning the Continental Shelf (Libya/Malta), op. cit., Paragraph 34.

[15] Lian Chuncheng, "On Delimitaiton Principles of Continental shelf", *Chinese International Law Annals*, 1983, p. 205.

[16] *Related Conventions on the Law of the Sea*, op.cit., p. 23.

The principles of delimitation involve the principle of equity as well as the principle of natural prolongation and the principle of equidistance.

The principle of equity is a principle of customary international law. The Truman Proclamation in 1945 stated that "In cases where the continental shelf extends to the shores of another State, or is shared with an adjacent State, the boundary shall be determined by the United States and the State concerned in accordance with equitable principles." Since then, the principle of equity has been confirmed by important legal documents of many countries.

International judiciary practices all devote to the application of the principle of equity, and make the application of that principle be concretized and systemized in maritime delimitation. In the North Sea Continental Shelf Case in 1969, the International Court of Justice (ICJ) affirms, "Delimitation is to be effected by agreement in accordance with equitable principles, and taking account of all the relevant circumstances, in such a way as to leave as much as possible to each Party all those parts of the continental shelf that constitute a natural prolongation of its land territory into and under the sea, without encroachment on the natural prolongation of the land territory of the other."[17] In the 1982 Continental Shelf case between Tunisia and Libya, ICJ observes, "It is the result which is predominant; the principles are subordinate to the goal. The equitableness of a principle must be assessed in the light of its usefulness for the purpose of arriving at an equitable result."[18] In the 1985 Continental Shelf case between Libya and Malta, in affirming the primary role of the principle of equity in the maritime delimitation, ICJ observes, "The normative character of equitable principles applied as a part of general international law is important because these principles govern not only delimitation by adjudication or arbitration, but also, and indeed primarily, the duty of parties to seek first a delimitation by agreement, which is also to seek an equitable result."[19]

The principle of natural prolongation and the principle of equidistance are not in equal status. They are not equal, with the former as primary and the latter as secondary. ICJ elaborates in the above cases: "To put second the obligation to make use of the equidistance method, causing it to come after a primary obligation to effect delimitation by agreement;"[20] "The equidistance method is not a mandatory rule of customary law;"[21]. "Equidistance is not, in the view of Court, either a mandatory legal principle, or a method having some privileged status in relation to other methods."[22] State practice "falls short of proving the existence of a rule prescribing the use of equidistance, or indeed of any method, as obligatory."[23] Besides, the application of the equidistance method would be restricted by "special circumstances".

The 200 nm distance criterion cannot replace the principle of natural prolongation. "The stipulation in Article 76 of the LOS Convention on the continental shelf does not

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[17] Case Concerning North Sea Continental Shelf, International Court of Justice (ICJ), 20 February 1969, Para. 101.
[18] Case Concerning the Continental Shelf (Tunisia/Libya), ICJ, 24 February 1982, Para. 70.
[19] Case Concerning the Continental Shelf (Libya/Malta), ICJ, 3 June 1985, Para. 46..
[20] Case Concerning North Sea Continental Shelf, op.cit., Para. 72.
[21] Ibid, Para .83..
[22] Case Concerning the Continental Shelf (Tunisia/Libya), op.cit.,,Para. 110.
[23] Case Concerning the Continental Shelf (Libya/Malta), op.cit., Para.44.

equate the 200 nm distance concept with the principle of natural prolongation of land territory, and instead makes the difference between the primary and the secondary. It first affirms the principle of natural prolongation, and makes clear that the adoption of the so-called 'distance criterion' would only be considered under specific circumstances. The stipulations in Article 76/1-76/6 are all closely linked with the actual conditions of geography and geology of natural prolongation of land territory. The idea that 'the principle of natural prolongation has been replaced by the distance criterion' is fundamentally groundless."[24]

As to the "median line", it is mentioned in the 1958 Geneva Convention on the Continental Shelf. Article 6/1 the 1958 Geneva Convention reads, "Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured."[25]

But that stipulation met with great contradictions in its implementation afterwards. In its judgment on the North Sea Continental Shelf Case in 1969, ICJ "held, inter alia, that article 6 of the 1958 Convention on the Continental Shelf did not embody or crystallize any pre-existing or emergent rule of customary law;"[26] stressed that "Delimitation must be the object of agreement between the States concerned, and that such agreement must be arrived at in accordance with equitable principles;"[27] ICJ affirms, "The Parties were under an obligation to act in such a way that in the particular case, and taking all the circumstances into account, equitable principles were applied. It was precisely a rule of law that called for the application of equitable principles, and in such cases as the present ones the equidistance method could unquestionably lead to inequity. Other methods existed and might be employed, alone or in combination, according to the areas involved."[28]

The LOS Convention, deeply influenced by the 1969 judgment, reflects this spirit. Article 74 and Article 83/1 of the LOS Convention stipulate that the delimitation of the EEZ and the continental shelf 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." Relating to relation to other conventions and international agreements, Article 311/1 of the LOS Convention reads, "This Convention shall prevail, as between States Parties, over the Geneva Conventions on the Law of the Sea of 29 April 1958." It is clear that "the principle of median line" does not possess the effects of international law. ICJ affirms that "Any indication of a specific criterion which could give guidance to the interested States in their effort to achieve an equitable solution has been excluded. Emphasis is placed on the equitable solution

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[24] Zhao Lihai, *Literature on the Law of the Sea*, Beijing University Publishing House, 1996, p. 69-70.
[25] *United Nations Convention on the Law of the Sea 1982, A Commentary II*, Martinus Nijhoff Publishers, p. 953.
[26] Case Concerning North Sea Continental Shelf, op.cit.Para. 69.
[27] Ibid. Para 85.
[28] Ibid.

which has to be achieved."[29]

The consensus in this respect in the international community is: agreements through consultation should take precedence over the median or equidistant line; the median or equidistant line can only be applied when it accords with the equitable principle; the median or equidistant line can only serve as a starting point when the related parties enter into negotiation; and the median line cannot be used to negate the equitable principle.

The problems of the Japanese unilateral "median line" which is based on distance criterion are: Firstly, it does not accord with the stipulation of the LOS Convention which reads that delimitation of the EEZ and the continental shelf between States "shall be effected by agreement... in order to achieve an equitable solution." Japan's intention to incorporate into it the larger part of East China Sea by equal treatment of the continental shelves of Liuqiu (Okinawa) Islands and of the Chinese mainland does not accord with the equitable principle. Secondly, it does not accord with the judicial precedents of the International Court of Justice (ICJ). ICJ makes clear that equidistance (or median line) is only a delimitation method, not a principle of customary international law in the delimitation;

The delimitation of the continental shelf and EEZ is an important issue relating to sovereign rights and vital interests of relevant countries. It is understandable that both China and Japan are trying their best to strive for more rights and interests for themselves. The question is that the principle of equity should be abided by, and a solution be reached through negotiations. "In the maritime delimitation in East China Sea, the principle of equity would play a leading role. Any other delimitation principles and methods, such as the principle of natural prolongation, the principle of proportionality, or the method of equidistance, can only be applied on the basis of conformity to the principle of equity."[30]

5, **International Judiciary Settlement**

Article 287/1 of the LOS Convention stipulates, "When signing, ratifying or acceding to this Convention or at any time thereafter, a State shall be free to choose, by means of a written declaration, one or more of the following means for the settlement of disputes concerning the interpretation or application of this Convention: (a) the International Tribunal for the Law of the Sea established in accordance with Annex VI; (b) the International Court of Justice; (c) an arbitral tribunal constituted in accordance with Annex VII; (d) a special arbitral tribunal constituted in accordance with Annex VIII for one or more of the categories of disputes specified therein." If a State does not specify its choice, then it is automatically regarded as choosing the method of arbitration.

Many countries have already made relevant declarations. For example, Guinea-Bissau declares that, "As regards article 287 on the choice of a procedure for the settlement of disputes concerning the interpretation or application of the UN Convention on the Law of the Sea, it does not accept the jurisdiction of the

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[29] *United Nations Convention on the Law of the Sea 1982, A Commentary II*, op. cit., p. 983.
[30] Zhao Lihai, op. cit., p.63.

International Court of Justice and consequently will not accept that jurisdiction with respect to articles 297 and 298."[31] Iceland declares, "Upon depositing the instrument of ratification of the UN Convention on the Law of the Sea, the Permanent Representative of Iceland, on behalf of the Government of Iceland, declares that under article 298 of the Convention the right is reserved that any interpretation of article 83 shall be submitted to conciliation under Annex V, section 2, of the Convention." China declares in 2006 that it does not accept the third-party's compulsory adjudication on the settlement.

Asian countries are not accustomed to resort to international judiciary settlement, but changes have taken place in recent years. The rule by ICJ in December 2002 on the ownership of Sipadan and Ligatan Islands in the Celebes Sea is something of a landmark, having been the first in which two Southeast Asian states sought to resolve a territorial dispute by taking it to ICJ. The two islands had been claimed by Malaysia and Indonesia and disputed for more than 30 years. Talks between Indonesia and Malaysia on their status made no progress over the years, so in 1996 the two states agreed to submit their dispute to ICJ, which ruled in favor of Malaysia's claims. Indonesia, though unhappy over the ruling, has expressed its readiness to accept it.

The adjudication by ICJ is a procedure of international judiciary settlement, and has binding force. The States who voluntarily submit themselves to such a binding procedure will be bound regardless of their reaction to the result. This is an effective way of securing without dispute a right and entitlement which would not otherwise be forthcoming.

The LOS Convention regards arbitration as one of the important methods for peaceful settlement of maritime disputes, and takes arbitral tribunal as one of compulsory procedures chosen by related parties. Arbitration handles disputes in the form of adjudication, which is similar to judicature, but arbitration is voluntary jurisdiction. Other means of third-party intervention include mediation and conciliation. The famous Norway (Jan Mayen)-Iceland Continental Shelf Agreement was reached in accordance with the recommendation of a conciliation commission; and the disputes over the Beagle Channel between Argentina and Chile, which lasted for150 years, was finally settled in 1984 through the mediation by Holy See..

(2) Options for Settlement in East China Sea

1, The adoption of two separate lines for EEZ and continental shelf

In view of the two different regimes of EEZ and continental shelf and in the light of actual conditions of East China Sea, it is quite suitable for China and Japan to draw two separate lines for EEZ and continental shelf.

With respect to the continental shelf, China adheres to the principle of natural prolongation of its land territory. This is made clear in China's EEZ and continental shelf law in 1998, and meets with the stipulations of the LOS Convention. "The principle of natural prolongation is the basis of the legal regime of the continental

[31] Declarations or Statements upon UNCLOS ratification.
http://www.un.org/Depts/los/convention_ag.../convention_declarations.ht

shelf, and plays a leading role in the delimitation on the continental shelf in East China Sea. It provides China with the legal basis for its jurisdiction over the continental shelf in East China Sea to the axis of the Liuqiu Trough."[32]

With respect to EEZ, in view of the fact that the breadth of East China Sea is less than 400 nm, China and Japan, in accordance with the principle of equity and proportionality, should take into consideration various factors such as the configuration of the coasts, the length of the coastlines, the geomorphological features, population, the level of industrial development, historic title, etc, and delimit a maritime boundary line through negotiations. The principle of proportionality is an important factor in the EEZ delimitation in East China Sea. "The length of China's coastline in East China Sea south of 30 °N is 900 kilometers, and the length of the coastline of Japan's Liuqiu Islands facing East China Sea is 380 kilometers. If the principle of proportionality is applied in the areas south of 30 °N, the ratio between China's coastline and Liuqiu's coastline is 64.3%:35.7%."[33]. The length of China's coastline is a factor which should be considered in its EEZ delimitation with States with opposite or adjacent coasts.

2, The "segregation" of Diaoyudao Islands with their sovereignty shelved

In order to make the disputes over Diaoyudao Islands not affect maritime jurisdictional delimitation, China and Japan could first reach agreement on their non-entitlement of EEZ and continental shelf; and then "segregate" the islands with their 12 nm territorial seas, and shelve the issue for subsequent solution. In fixing the joint development zone at present, the segregation of Diaoyudao is also a suitable arrangement.

3, To negotiate on the tri-junction point among China, Japan, and South Korea

Apart from China and Japan, the delimitation in East China Sea also involves South Korea. Japan and South Korea signed in 1974 an agreement on the establishment of joint development zone. The area encompassed in the zone is approximately 24,092 square nautical miles, more than 8 % of the total area of East China Sea. The zone reflects roughly their respective claims. The southwestern and southeastern sides reflect the continental shelf limits claimed by South Korea, with its southernmost reaching south of 30° N, which overlaps with China's continental shelf limits. The western side of the zone is the continental shelf boundary between Japan and South Korea based on the principle of equidistance adhered to by Japan, and the southward extension of the line is Japan's median line vis-à-vis China. Because this joint development zone affects China's claims of its interests and rights, China has taken up the matter with Japan (China didn't have diplomatic relations with South Korea then.)

The three sides need to negotiate for the settlement of the tri-junction point of their boundaries. Negotiated settlement for achieving an equitable result is the main

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[32] Zhao Lihai, *Literature on the Law of the Sea*, op.cit., p. 69.
[33] Ibid, p. 79.

approach, and the method of equidistance is not a suitable approach to solve the tri-junction point. The international practices show that the equitable consideration apparently becomes more important when more than two States are trying to decide a common boundary intersecting point. "The CSB Agreements in the North Sea and the Persian Gulf areas suggest that in very such case, the common point is always a negotiated point, not settled by any mathematical formula."[34]

One perspective is "Point 6 of the Zone (30° 46.2' N, 125° 55.5' E) is the approximate location of the PRC-Japan-South Korea trijunction point."[35] This has not been negotiated with China, and needs to be agreed upon by the related three sides through negotiation. My suggestion is that the tri-junction point has to be shifted northeastward from this point..

4, Joint Development

If China and Japan could agree to delimit two separate lines for EEZ and continental shelf, then the establishment of a joint development zone between the two lines could be considered. Because of China's sovereign rights over the sea-bed and subsoil and because of Japan's sovereign rights over the waters superjacent to the sea-bed, the establishment of joint development zone is beneficial to resources exploitation and both sides' economic interests.

5, The Signing of INCSEA between China and Japan

The 6th Round of the Sino-Japanese Consultation on East China Sea held on July 8-9, 2006 reached consensus in principle on the setting-up of a maritime hotline liaison mechanism to deal with any contingency.[36] The bilateral press communiqué issued on April 11, 2007 says, "strengthening the liaison mechanism between the defense authorities of the two countries, to prepare for any maritime contingency."[37] In his talk with Shinzo Abe on the same day, Wen Jiabao mentioned the need "to strengthen the exchanges and the dialogues on defense and security between the two armies, to have mutual notification on important moves relating to the military security realm, and to speed up the establishment of maritime crisis management mechanism between two armies."

The earliest INCSEA is the one signed between the US and the Soviet navies in May 1972 with the purpose of regulating the interaction of their fleets on the high seas, and avoiding collision and unexpected incidents. It has proven quite effective during the last decades since the signing.

Apart from a formal document, INCSEA has an important appendix, which uses various "codes" used in NATO countries' navies. Different codes represent different meanings. The application of codes is not restricted by different languages, and no interpretation is needed. Navies encountered will contact each other by codes, not by

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[34] Kuen-chen Fu, "Equitable Consideration in Maritime Boundary Agreements, An analysis", *Essays on International Law of the Sea*, Xiamen University Press, 2006, p. 199.
[35] Choon-Ho Park, *International Maritime Boundaries-Central Pacific/East Asia*, op. cit., p. 1072, 1074..
[36] A Xinhua news release, *Xinhua Net*, Beijing, July 9, 2006,
[37] A news release of Xinhua News Agency from Tokyo, 11 April 2007.

speaking.[38]

Due to the positive role of INCSEA in avoiding incidents at sea, many countries have signed similar agreements, and Asia is no exception. In west Asia, Egypt and Israel signed INCSEA, and no conflicts have ever taken place between their navies since then.

In Southeast Asia, the navy commanders of Malaysia and Indonesia signed INCSEA in 2001. At that time no final conclusion had yet been reached on the disputes over Sipadan Island and Ligatan Island between them, and the two naval ships often encountered each other in sea areas adjacent to the two islands. The signing of INCSEA constrained the activities of the two navies, prevented the escalation of tension, played an important role in guaranteeing the security in disputed areas, and created favorable conditions for the settlement of the disputes.

In Northeast Asia, Japan and South Korea signed INCSEA with Russia in 1993 and 1994 respectively. There is also INCSEA between Japan and South Korea. Despite their sovereignty disputes over Tok-Do (Takeshima), no unexpected conflicting incidents have ever taken place. China has not yet signed INCSEA with Japan, South Korea, and North Korea. Neither has North Korea signed any with its neighboring countries.

Since the settlement of the disputes between China and Japan in East China Sea is a long process, INCSEA-type agreements should be put on the agenda of the two countries and reached between the two sides. The two navies should first try to negotiate for the signing of INCSEA to avoid and minimize effectively the likelihood of conflict escalation. This agreement would not involve their national maritime interests and rights, nor would affect their negotiations on the delimitation issue. By avoiding the occurrence of conflicts, it would create conditions for the negotiated settlement through diplomatic channels.

6, As a Long-term Approach, Acceptance of Third-Party Assistance under the Conditions of Hopeless Settlement

(a) Arbitration

If China and Japan cannot solve for long by themselves their disputes over the maritime delimitation and Diaoyudao sovereignty, the acceptance of third-party assistance for the settlement of the disputes might be considered. The indefinite procrastination of the disputes would affect bilateral relations and maritime security in Northeast Asia. China and Japan are free to select the arbitrator(s). According to international experiences, such as the case of Sipadan Island and Ligatan Island between Indonesia and Malaysia, arbitration is the most desirable approach in the third-party involvement.

(b) International Court of Justice

When China and Japan cannot reach an agreement on the delimitation in East China Sea through negotiation, they might consider to submit the case to ICJ.

(c) International Tribunal for the Law of the Sea

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[38] Views expressed by Canadian scholar David N. Griffiths in his discussions with the author in Hainan, 9 December 2005.

According to the LOS Convention, it is one of the institutions for enforcing compulsory procedures to solve any disputes on the explanation or application of the LOS Convention. When China and Japan have disputes over the explanation of the LOS Convention, they could consider to submit them to the Tribunal for ruling.

Session 3 "Joint Development and Confidence-Building in East China Sea"

Session3-① Joint development of the East China Sea and CBMs

Vice Admiral (Ret'd) Hideaki Kaneda

Session3-② Japan-China joint development of oil and natural gas in disputed waters in the East China Sea (Initial examination of specific plans)

Lieutenant General (Ret'd) Masahiro Kunimi

Session3-③ On the Provisional Arrangements before the Final Delimitation between China and Japan in East China Sea

Prof. Yu Zhirong

Session3-④ Joint Development in East China Sea

Prof. Ji Guoxing

2nd Japan/China Ocean Security Dialogue, Tokyo, August 27-28, 2007

Ocean Security in the North East Asia---Problems and Prospects

Session III Joint development of the East China Sea and CBMs

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1. Japan-China dialogue on the Mid-Line issue

(1) Chinese Premier's visit and mutual consultations on the Mid-Line issue

After meeting with Japanese Prime Minister Abe to reconfirm the two countries' intention to build and strengthen "strategic relationship of mutual benefits" during his official visit to Japan in April 2007, the Chinese Premier Wen Jia Bao was invited to the Japanese Diet, and delivered the statement that, although "Chinese people had grave and serious damages through the Japan-initiated invasion of China (Chino-Japan War), and the wound and suffering beyond words still remain," the "Government of Japan and its leaders (after the War) have expressed sincere reflections and regrets to the victim countries ... and the Government of China and its people value such statement." [1]

Since there were several issues remained between Japan and China, his visit was met with anticipation that it would lead to extensive efforts and discussions to solve mutual problems at least in these areas where solution could be found. However, due to briefness of his visit, there has been no concrete development in important issues. Still, both countries were able to reach agreement on the joint development of "comparatively broader seas mutually acceptable to both countries" in order to make "the East China Sea as the region of peace, friendship and cooperation", and concluded that both countries will agree on practical measures of joint development by autumn of this year." [2]

Upon such agreement, both Governments of Japan and China held the eighth high-level consultation on the natural gas field development of the East China Sea in Beijing the following May 2007, but Chinese side remained firm, claiming that the mid-line between Japan and China is the discrete decision of Japan, and China would not accept any consultation on the presumption that such mid-line as the national border between two countries, preventing the advancement in mutual consultation. The ninth consultation was held in Tokyo the next month with no progress in the issue, although the consultation focused on the scope of joint development, as the

[1] Yomiuri Shimbun, April 13, 2007
[2] ibid, April 12, 2007

consultation made it apparent that there was a huge gap in between Japan and China on their claims of seas subjected to the joint development. [3]

Mr. Kenichiro Sasae, the Director-General of the Asia Pacific Affair Bureau of Japan's Ministry of Foreign Affairs, who participated in the consultations along with Mr. Harufumi Mochizuki, Director-General of Resource and Energy Agency, explained after the consultations that "the both sides deepened the understanding on the issues involved", but "despite their intention to accelerate the consultation, Chinese viewpoints differ considerably from our viewpoints." During the dialogue, Japan side maintained that four gas fields China has been independently developing near the "Japan-China Mid-Line", such as "Shirakaba" (Chinese name "Chun Xia") should be subjected to the joint development between two countries, but the Chinese side repeated their claims that the joint development should be in the area nearer to Japan." In short, both countries maintained their earlier claims with no compromise, bringing the dialogue to a deadlock at present. Both countries intend to continue the dialogue toward the time limit of this autumn set through the summit meeting agreement between two summits, but many already expressed their fear that the consultation may fail to reach an actual agreement on the joint development. [4]

In reality, China took the action prior to their premier's visit to Japan of letting Chinese Ocean Oil Company (CNOOC) to announce the start of production at the gas field named "Kashi" (Chinese name "Tian Wai Tian") which has been the pending issue between Japan and China. [5] There is no proof that this announcement was directed by the Chinese side in order to take initiative in the dialogue with Japan-side, but such an action is hardly appropriate before the start of the Summit meeting. This fact may demonstrate that the policies and measures set by political leaders of China do not necessarily disseminate throughout the individual bureaus or sites of its government. The fact that the Chinese side maintains firm posture at the dialogue taking the posture of blunt denial and insistence from the very start may be a proof of such a notion. If the premier made agreement at the summit meeting while being well aware of such a fact or stance of high-level consultations, then his visit and agreement with the Prime Minister Abe was merely a political performance directed toward Japan.

(2) US's viewpoint on the Japan-China Mid-Line issue

Japan and China are not the only countries that have interests in the future of Japan-China dialogue on the Japan-China Mid-Line issue.

In April 2007 when Japan and China had a summit meeting for the first time in several years, the INSS (Institute for National Strategic Studies) of the U.S. National

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[3] ibid, June 26, 2007
[4] ibid
[5] Yomiuri Shimbun, April 13, 2007

Defense University has published the report titled "Sino-Japanese Rivalry: Implications for US policy", which summarized the analysis of Japan-China relationship [6], and warned that the conflicts between Japan and China over the gas fields in the East China Sea have a potential to develop into military conflicts between two countries, and recommended the US government to "Be prepared for a potential crisis in the East China Sea." The report prepared in time for Premier Wen's visit to Japan indicated that the US experts in military and diplomacy aspects took the Japan-China conflicts over maritime sovereign and interests as serious issues that would require close attentions.

The report summarizes the study conducted by a team of experts led by Mr. Jim Kelly, the former Assistant Secretary of State for East Asia and Pacific Affairs during the first Bush Administration, and Mr. Mike McDavid of CNA and Mr. Ralph Cossa of CSIS which are both experts of private research institutes for the Asian security issue. In the outline of the report, it analyzed that China's exploitation of gas fields in the East China Sea resulted in the heightened possibility of incidents risen between military, government, and private ships of Japan and China: it predicted that, if any incidents happens, then there is a possibility that such an incident may lead to more serious situation, such as the armed conflicts or the use of forces: and it concluded that the conflict between Japan and China over this issue would be, in essence, the conflict between the sovereign rights of both nations, rather than the conflict over energy resources It also stated that paper simulation assuming the conflicts between the ships of both countries with study team members taken the roles of policy-makers of Japan, the US and China clearly indicated that there would be a considerable possibility that the incident may escalate to serious situation.

In conclusion, the report recommended that the US government should work on to "Encourage Japan and China to pursue better military-to-military relations." Especially, it stressed "an incidents-at-sea agreement (between Chinese Navy and Japan's Maritime Self-Defense Force and between the Coast Guards of both countries) seems especially useful." At the same time, the report indicated the benefits of Japan-China track-2 dialogue to discuss and identify the risks of military accidents at sea. Moreover, it pointed out that "the US must prepare now for the possibility of future crises: it must understand what Japan expects of it in a crisis and be prepared to respond. It must also understand what Beijing expects." Thus, the report argued for the need to review US's response to the incident of conflicts between Japan and China, while projecting on the possible actions of Japan and China upon the incident.

As stated in its foreword, the report is the summary of personal viewpoints shared by the study group members, and does not necessary represent the views of the US Defense Department. Still, it is easy to interpret that the report does reflect a certain

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[6] INSS Special Report, Sino-Japanese Rivalry: Implications for U.S. Policy, April 2007

atmosphere of the current US administration.

2. Trends of China's maritime activities

(1) China's advancement toward oceans and their activities near Japan

In 1973, when the US withdrew from Vietnam, China advanced to the Paracel Islands located south-south-east of Hainan Island, eliminated the South Vietnam forces stationed there by forces, and took the practical control of the islands. Furthermore, from 1987 to 1988, China occupied the Spratley Islands by forces, and built military facilities on the islands. Although Spratley Islands are located at far distance from China's mainland and have had hardly any historical connection with China, it started to claim the sovereign over the islands, ever since the presence of off shore oil reserve was confirmed in late 1970's.

China's advance toward the Spratley Islands was accelerated after 1992 when the US forces withdrew from Subic Navy Base, and Clark Air Force Base in Philippines. China started to "secure maritime interests" in the South China Sea, and "expand national presence" in the region, while US's presence in the region weakened.

In recent years, China is actively expanded their activities in the East China Sea and near seas of Japan including Senkaku Islands. China's intention of advancement in these waters became apparent since 1990's, and their purpose was thought to be the military survey or the survey activities to determine "the limit of continental shelf" before May 2009. To name the few of their main activities, China started information gathering activities around the coastlines of the Japanese archipelago in May 2000 using their icebreaker and information gathering vessel "Hai Bin 723", another information gathering activities throughout Japan's broad EEZ seas between Ogasawara Islands and Nansei (South West) Islands from July to November 2001, and maritime survey activities towing cables probably to gather information needed for submarine activities on the seas south of Iriomote island in June 2003. It was also confirmed that their vessel "Dong Tiao 232" to support missile observation and to gather information implemented information gathering activities at the seas west of Kyushu and near seas of Okinawa Islands in February and July of 2000, as well as in September 2002. [7]

Among their activities using surface combatants, the most notable activities include the surface navigation of a "Ming" Class attack conventional submarine through Osumi Strait from east to west in November 2003, and in November 2004, their "Han" Class attack nuclear submarine unlawfully did the submerged navigation in Japan's territorial water, which violated against the international laws. In addition, it was observed that Chinese navy vessels did training, information gathering, or demonstration activities in the near seas of Japan, and those vessels of Chinese Navy

[7] "Defense of Japan" (Defense White Paper), 2001 version, etc.

and governments that have done maritime survey activities within Japan's EEZ did navigate the near seas, also.

More recently, in September 2005, five vessels including one Sovremenny class destroyer navigated near the "Kashi"gas field in the East China Sea, and three of them including the destroyer did circle the exploitation facilities of "Kashi" gas field. [8]

In October 2006, Chinese Navy's "Song" Class attack conventional submarine surfaced near the US Navy's aircraft carrier "Kitty Hawk" in the international water near Okinawa Islands. It is a common sense in international military that for foreign submarine to approach the aircraft carrier in action without prior approval is an extremely risky incident. As a responsible officer in the US indicated, with their anti-satellite test in January 2007, the incident can symbolize China's growing military confidence and their military (unrelated to political intention) has started to take more aggressive and offensive posture. [9]

On the other hand, Chinese naval vessels started to conduct training and drills abroad, such as their first international joint drill with the navy vessels of other countries of Pakistan, India and Thailand in November 2005, the first joint drill with US Navy last year by dispatching their vessels to the US, and their first ever participation in multilateral joint drill in March 2007, when their navy vessels participated in the multilateral anti-terrorist joint maritime drill held in Pakistan. In September 2007, they are said to implement trilateral joint drill with Australia and New Zealand near the seas of Australia.

With Japan, they have agreed to the basic agreement on mutual port visit by naval vessels, but no actual visit has been done due to the reasons on the Chinese side. With the resumption of summit meeting in April 2007, and the visit by Zeng Gang Chuan, Minister of Defense of PRC in the end of August, there is a growing expectation that the first visit of Chinese navy vessels may be realized within this year.

(2) Maritime activities of Chinese Navy and others

Chinese Navy is aggressively building up their submarine forces through the introduction of modern Kilo Class submarines from Russia, and the domestic construction of new type of submarines, while accelerating its efforts to modernize air power and introduction of surface combatants with higher air defense and anti-ship missile capabilities. Such modernization of Chinese Navy seems to indicate its intention to build military capabilities to execute operation in seas of long distance away from the mainland China. In addition, China is said to have strong interests in the development and possession of aircraft carriers.

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[8] Ibid

[9] Testimony of Richard Lawless, Assistant Secretary of Defense at the Committee to review economy and security of US and China held on February 1, 2007.

In the spring of 2007, the Rand Corporation published a paper titled "Entering the Dragon's Lair" [10], which named China's anti-US strategy as "Antiaccess Strategy" based on surprised attacks and sustenance, and warned the US forces on its own force building as well as operational readiness. As an apparent movement to demonstrate such "Antiaccess Strategy", China is widely reported to introduce various types of modernized submarines and surface combatants including nuclear submarines and the so-called fourth generation fighters. In addition, it was also reported that Chinese forces started to develop anti-ship ballistic missiles to attack US aircraft carriers in view of emergency in Taiwan, while introducing super-sonic long distance bombers from Russia, as a part of their modification in anti-US forces tactics. By focusing on the out-range capability from the various intercepting weapons of US forces and Japan's Self-Defense Forces, China seems to aim even for the interception of dispatched US aircraft carrier task forces upon the invasion of Taiwan.

The "Defense of Japan 2007" made general review of the China's geographical conditions, and various circumstances including globalized economy, and stated that the maritime activities of Chinese Navy and other vessels seemed to indicate their ultimate goals as follows:

(i) To deter any enemy operation at the seas as far away as possible from China's territorial land and seas in order to defend its territory;

At the background of such notion is the recent development of science and technology that has raised the effectiveness of long distance attacks;

(ii) To develop sufficient military capabilities to deter and prevent the independence of Taiwan;

Since China clearly indicated their intention to refuse any intervention of foreign forces in resolving the Taiwan issue, and realizing the unification with mainland China. If China plans to prevent foreign intervention to an island state of Taiwan by forces, they must develop sufficient military operation capability to execute operation at sea;

(iii) To acquire, maintain, and protect maritime interests;

In the East China Sea and South China Sea, China started to explore and survey underwater resources such as oil and natural gas, and to build its facilities. This includes the construction of exploitation facilities in the seas extending to the east of mid-line between China and Japan, where the geological layers of resource reservoirs lay continuously underwater;

(iv) To defend SLOCs for Chinese vessels as a lifeline of its economy in the world of economic globalization;

The extent of Chinese Navy's activity range for this purpose may differ from time to time depending on international situation, but considering the current

[10] Rand Corporation, Entering the Dragon's Lair---Chinese Antiaccess Strategy and Their Implications for the United States, Spring 2007

pace of modernization in Chinese Navy and Air force, it may go beyond the near seas of China.

In addition to the maritime activities of Chinese Navy, which has above purposes, and in consideration of past history of their maritime survey activities conducted by the surface combatants and vessels of Chinese Navy, State Oceanic Administration and other related organizations in the near seas of Japan, Japan will continuously watch the movement of China's maritime activities in relation to the joint development of gas fields in the East China Sea.

3. Japan's posture of maritime security cooperation

(1) Measures to improve international security environment taken by Japan

For years, Japan has taken active roles in various international peace cooperation activities, including the Self-Defense Forces' participation in the UN Peace keeping activities in order to "contribute" to the building of more stable security environment.

In regards to such international peace cooperation activities, the Government of Japan has taken the view that to secure the peace and safety of Japan is closely related to the prevention of any situation that may threaten the peace and stability of the international community. Based on this view, the Government of Japan adopted a new National Defense Program Guideline in December 2004, which clearly indicated Japan's willingness to "subjectively and actively participate" in such peace cooperation activities rather than to "contribute" to such activities, with the purpose of further solidifying the peace and safety of Japan as a nation.

As a part of international peace cooperation activities, the maritime security cooperation activities of Japan originally cover broader range of activities with participating entities ranging from maritime forces such as Maritime Self-Defense Forces (defense) and Coast Guard (law enforcement), to various entities involving civil service personnel, relevant private entities, etc., and require more comprehensive measures to be implemented by the government as a whole involving diplomacy. Throughout the measures taken by the government, the Maritime Self-Defense Force and the Coast Guard should take an appropriate role in the maritime security cooperation activities using their capability of self-completeness and organization. For this purpose, both organizations have made efforts to develop various fundamental systems including the necessary education and training system, operational readiness, transportation capabilities, etc., in order to implement the quick dispatch of units and to maintain activities abroad.

To reinforce such operational posture further, the Government of Japan plans to adopt the following measures:

With the promotion of the Defense Agency to the Defense Ministry, the international peace cooperation activities of the Self Defense Forces have been defined as the "essential duties" rather than the previous "additional duties", so that the Self-Defense

Forces can take to such maritime security cooperation activities more appropriately. The Government also plan to review the definitions of duties and roles of the Maritime Self-Defense Force (defense) and the Coast Guard (law enforcement), so that both organizations will be able to share more appropriate relationship in the execution of their roles.

Moreover, in terms of overseas dispatch of Self-Defense Force with the purpose of maritime security cooperation and other international peace cooperation activities, the current laws supporting such activities are mainly special measures laws and the laws with specified duration including the PKO Cooperation Law (PKO Law) to allow the participation in the UN Peace Keeping Activities, the Special Law for Anti terrorism Measures, and the Law for the Special Measures to Restore Iraq. However, if there is a crisis or urgent need for the dispatch of Self-Defense Forces, such as global or regional conflicts, international terrorism, piracy, humanitarian relief efforts, and natural disaster relief activities, it is more desirable to have a general law that will allow the Government to immediately dispatch forces within the range of preconcerted approval by the Diet. Therefore, the ruling parties started to consider the enactment of such generalized law for international cooperative activities.

Moreover, there are two other key points in Japan's national measures. One is the newly created post of a minister in charge of maritime policies, and another is the establishment of comprehensive maritime policy Headquarter reporting directly to the Prime Minister. With these new functions, Japan is expected to promote more comprehensive maritime policies that can actively implement the activities of Maritime Self-Defense Force and Coast Guard using the capabilities to their maximum. Furthermore, the Government is reviewing the possible establishment of Japanese version NSC (National Security Council) that can act as the "commander" of strategic planning, information gathering and execution monitoring of the entire governmental functions as a necessary system to implement more comprehensive national security policies. The Government also plans to have close coordination with relevant organizations including private organizations in order to provide regional maritime security cooperation.

(2) Measures on regional maritime security cooperation taken by Japan

Japan has already taken initiative in regional cooperation to respond against piracy, terrorism, and the proliferation of weapons of mass destruction and ballistic missiles.

As piracy measure, Japan has implemented the dispatching of patrol boats and aircrafts to South-East Asian region mainly by the Coast Guard, provision of anti-piracy cooperative training with other maritime patrol organizations of South East Asian countries, the acceptance of trainees from such organizations, support of piracy measure experts, etc., based on the "Asia Anti-Piracy Challenges 2000" adopted at the "Regional Conference on Combating Piracy and Armed Robbery Against Ships"

in Tokyo hosted by the Japanese Government in 2000.

With the proposal by former Prime Minister Koizumi, the ReCAAP (Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia) was adopted in Tokyo in November 2004, through the efforts mainly of the Ministry of Foreign Affairs. The adoption of ReCAAP made it possible to establish the ISC (Information Sharing Center) that would exchange information of each authority, while promoting capacity building cooperation among maritime patrol organizations. In November 2006, the first meeting of ReCAAP members was held in Singapore, and Mr. Ito, the Japanese Minister to the UN Office, was elected as the first Secretary General of the ISC.

Since the 9.11 terrorist attacks, the world is constantly fighting the war against terrorism. In response, Japan has dispatched the ships and aircrafts of the Maritime Self Defense Force to take part in the OEF (Operation Enduring Freedom) led by the US ever since its start in December 2001, making up a part of a strong anti-terrorism network in the world. This OEF continues the efforts to prevent the escape of terrorists through SLOCs of the Indian Ocean and Arabian Sea, so to prevent the proliferation of terrorism, with considerable successes.

In the South-East Asian region, there is a growing need to address maritime terrorism in addition to piracy. For this, Japan has taken initiative in the continuation of regional naval cooperation activities through WPNS (Western Pacific Naval Symposium), which is the conference among regional navies. In June 2004, the Coast Guard of Japan hosted the Conference of HACGA (Heads of Asia Coast Guard Agencies) in Tokyo, which adopted the "Asian Maritime Security Initiative 2004" as a guideline in the cooperation and coordination among regional coast guard agencies and the addressing of measures against maritime terrorism. Moreover, Japan has actively implemented and provided cooperation by Maritime Self-Defense Force and Coast Guard on various items agreed at WPNS and HACGA in order to promote appropriate addressing of international terrorism and piracy.

In the military aspect, also, Japan has taken an initiative in the region especially in the fields of non-offensive training, and human resource development for the purposes of promoting friendship, providing humanitarian aid, and helping the capacity buildings in basic skills, which include multilateral communications, tactical maneuvers, submarine rescues, search and rescue activities, mine-sweeping, etc.

The activities carried by organizations other than governmental organizations include the seminars on maritime law enforcement held in Japan through JICA (Japan International Cooperation Agency) for maritime law enforcement officers of various countries, with the purpose of capacity building in the law enforcement to control maritime claims in Asia. In addition, maritime authorities and private maritime organizations proposed the development of self-guard measures and legal frameworks based on the "Tokyo Appeal" and "Model Action Plan", as well as the development of

focal points in information sharing. The Japan Foundation, a private entity in Japan, has actively donated navigation marks and patrol boats to the South East Asian countries from the early stage, in addition to the provision of funds to host various conferences, and for human resource development projects including training and seminars.

Moreover, the Government of Japan, mainly by the Ministry of Foreign Affairs, has held various seminars for Asian nations in order to reinforce non-proliferation system in Asian region and to prevent the proliferation of weapons of mass destruction and ballistic missiles that can fall in the wrong hands of countries of concerns or international terrorists.

As for the PSI (Proliferation Security Initiative), Japan has actively implemented the initiative as an original member, and participated in various seminars and maritime prevention training held among multilateral nations. In October 2004, Japan hosted maritime interception training with the participation of the Ministry of Foreign Affairs, Coast Guard, and Maritime Self Defense Force, and as a part of the exercise, implemented the training of boarding and inspection of vessels. In August 2005, Singapore hosted the PSI maritime interception training for the first time in the South East Asian region, and Japan actively participated in this PSI training by dispatching naval surface combatants and patrol aircrafts from the Maritime Self-Defense Force, and patrol boats of the Coast Guard. For another PSI air interception training held in Darwin, Australia, by the Australian Government in April 2006, Japan sent officials of the Ministry of Foreign Affairs, Self-Defense Forces, the National Police Agency, the Metropolitan Police Department, and the Ministry of Finance.

Moreover, as a part of outreach activities to strengthen the comprehensive non-proliferation system including PSI, the Maritime Self-Defense Force and the Coast Guard used various opportunities of exchanges with relevant organization of Asian nations and actively provided the knowledge and experiences earned through the past training, in order to deepen their understanding on PSI.

4. Concrete measures to avoid conflicts and CBM with the joint development activities

(1) Mechanisms to prevent conflicts and to avoid the escalation of conflicts

As agreed upon the Japan-China summit of this year, Japan and China must develop mutual understanding and share common recognitions in order to make "the East China Sea as the region of peace, friendship and cooperation" in a true sense. It is important that both countries continue serious and serene dialogue based on the view that Japan and China are equal and fair. The most important matter in continuing the dialogue is to develop an agreement that will provide "win-win" situation to both countries by both countries providing compromise in the area of joint development, the scope of works, and joint procedures. Upon the implementation of Japan-China joint

development in the East China Sea, it is important that both countries develop a system to prevent the occurrence of maritime and air accidents in the region, on the presumption that a situation with a potential to lead to militarily tense situation may arise, and to create a mechanism to prevent the escalation of tense situation, while making cooperation to control the situation.

For this, it is essential to create a mechanism to prevent the rise of crisis, and to avoid the escalation of the situation.

Therefore, both Japan and China need to introduce the prior notification and consultation systems on their actions related to the joint development, in order to maintain transparency in their efforts of joint development, and to avoid another party developing suspicion or distrust on the action of another.

Furthermore, it is essential to develop, enter, and conform to, an agreement on the prevention of maritime accidents that include the prevention of accidents and the measure to prevent the escalation of situation upon the happening of accidents, assuming that incidental accidents may happen to ships and aircrafts on the regional seas.

Before agreeing on such agreements and protocols, moreover, both countries need to develop a trustful relationship in which both countries will not take to provocative action under the situation where the ships of both countries approach each other. Such trustful relationship will certainly prevent and greatly reduce the possibility of crisis even if unintentional situation arises, and control the situation within a short period of time without leading to the escalation of the situation. In order to develop such relationship, both countries need to encourage the atmosphere of mutual confidence building by deepening the understanding on the Operational Culture of counterpart from the peacetime, and increasing the transparency in the intentions and actions taken. Then, it becomes extremely important to promote and encourage the confidence building measures between military authorities (Japan Maritime and Air Self-Defense Force with PLA Navy and Air Force) in charge of maritime defense, and between maritime law enforcement authorities (Japanese Coast Guard and Chinese counter Maritime Agencies).

(2) Prior notification and consultation system

In August 2000, the Governments of Japan and China agreed at the Foreign Minister meeting in Beijing about the development of mutual prior notification system in order to appropriately respond to unlawful activities frequently conducted by Chinese maritime survey ships, and in February 2001, the mutual prior notification system entered into effect.

According to a Japan/China diplomatic statement, "The Framework for Mutual Prior Notification on Scientific Oceanographic Research Activities" in areas close to each country in the East China Sea, it clearly stated the following three items as "prior

notification items" based on the agreement to establish the Framework, and as a result of continuous dialogue between the officials of both countries, and the mutual compromise:

(i) Subjected waters of prior notification

Near seas of a counter part nation in the East China Sea (except territorial waters)

China side: "near seas of Japan where Japan maintains interests"

Japan side: "near seas of PRC"

(ii) Timing of prior notification

Notify the counterpart nation through diplomatic channel by the oral statement at least two months prior to the scheduled start of survey activities

(iii) Contents of the notification

- Name of the organization to implement the scientific oceanographic research activities, Name of the vessel(s) used, type of the vessel(s) used, and the name of the responsible person
- Outline of the scientific oceanographic research activities (purpose, contents, methods, and equipment used)
- Period and the region of the scientific oceanographic research activities

However, there are some shortcomings in the contents of such statements. First of all, the statement did not define the "scientific oceanographic research activities" and failed to differentiate "the exploration of resources" and "scientific research" which used to be the issue between two countries. Chinese oceanographic research activities since February 2002 were apparently the "resource exploration" activities as they used air guns and conducted boring activities in the region, raising a strong suspicion that their activities did not conform to the "scientific oceanographic research activities" agreed between Japan and China. Some activities were conducted without prior notification, while others with prior notification started the activities without waiting for the approval from the Japanese Government. In some cases, the research ships changed the research period and contents without notification, and some activities were conducted within the territorial water of Japan. All these activities by Chinese ships raised the question on the effectiveness of prior notification system itself.

Second shortcoming of the statement is the different interpretation of "the waters subjected to the prior notification". The seas Japan side can implement maritime research with the consent of Chinese Government is "the near seas of PRC", while the seas Chinese side can implement research with the consent of the Government of Japan is not the "near seas of Japan", but the "near seas of Japan where Japan maintains interests". The problem is that while Japan side accepts the position of the Chinese Government toward the Chinese side of the Japan-China mid-line in the East China Sea, Chinese side does not respect the position of the Japanese Government on the Japan side of Japan-China mid-line, but just "understands" the position of the

Japanese Government.

The third problem of the statement is that there is no penalty in case of infringement, so the agreement lacks effectiveness and totally relies on the mutual confidence building between two countries.

Nevertheless, the oceanographic research activities of China seemed to cover beyond the "scientific oceanographic research activities" agreed between two countries under the Framework and extended to include resource exploration and military purpose surveys, in violation of Japanese national interests. In other words, China continues to conduct same oceanographic research activities they used to do before agreeing to the Framework. This fact can be proven by the fact that they use the very same oceanographic research ships they used to use for the oceanographic research activities before the exchange of the Framework.

For the future, Japan needs to review the prior notification system, and ensure that any oceanographic research activities should be done in accordance with the true mutualism, and based on the fair and equal standard. In case of activities with the purpose of resource exploration, both countries needs to implement such activities on the presumption of mutualism, and based on the mutual agreement.

(3) Prevention of the occurrence of any maritime incidents and accidents

Through the diplomatic consultations between foreign ministers and director generals, both Japan and China has agreed in principle on the need to establish a mechanism to prevent the occurrences of any emergency situation around the gas fields in the East China Sea. However, they have not had any concrete dialogue to discuss such issue. One reason is the political situation between Japan and China, which did not favor such consultation. Another reason is the different administrative structures adopted by each country. On one hand, Japanese system defines that the Coast Guard is the first authority to enforce maritime laws, and only when the situation calls for the capability beyond the one possessed by the Coast Guard, then the Maritime Self-Defense Force will conduct the complimentary activities of maritime law enforcement. In case of China, on the other hand, the jurisdiction and authorities of maritime law enforcement have been commissioned to many administrative organizations other than the State Oceanic Administration, so that it is difficult to establish a forum between Japan and China at which relevant officials of both governments gather to discuss the issue. In addition, it is not clear how Chinese Navy is related to these maritime law enforcement organizations in China.

Nevertheless, it is a common understanding between two countries that to establish some form of mechanisms to prevent any maritime incidents and accidents, if both countries are to conduct joint development of resources in the East China Sea. Even at the Japan-China Summit meeting in April 2007, the joint press release indicated that "both countries are to develop a communication mechanism between defense

authorities and to prevent the occurrence of unpredicted maritime incidents", demanding the early conclusion of agreement. A concrete example of such a mechanism can be found in the Agreement to prevent the incident at seas (INCSEA : Incident at Sea) Japan entered with Russia in 1994, immediately following the end of the Cold War, which has been exercised appropriately.

The outline of the Japan-Russia INCSEA's purposes and contents is as follows:

(i) Purposes

To prevent the occurrences of collision between vessels or aircrafts of Japan and Russia, and to secure the safe navigation of ships and aircrafts

(ii) Contents

Action norms to avoid collision, prohibition of dangerous actions, determination of local communication methods, information exchange procedures when the accident happens, periodical meeting to be held at least once a year, etc.

This INCSEA agreement not only succeeded to prevent the occurrences of maritime incidents between Japan and Russia, but also greatly contributed to the development of mutual understanding and confidence building between two countries.

In making such agreement, one important aspect is how to disseminate the knowledge and information about such agreement with other countries to the end units of authorities involved. In case of Japan, as Chinese side is likely to know already, the Coast Guard and the Maritime Self-Defense Force are being under extensive democratic civilian control. With thorough education and training on international laws and agreements with other countries, both organizations strictly observe the stringent and concrete rules and procedures in details upon the encounters with foreign vessels and aircrafts, with thorough understanding on the spirits of agreements to avoid maritime incidents and accidents.

From the viewpoint of Japan, the interests in such agreement naturally direct toward the situation in Chinese Navy and other maritime law enforcement authorities including the State Oceanic Administration. Unfortunately, however, we find frequent incidents of some local authorities of the State Oceanic Administration and People's Liberation Army acting outside the control of central government or communist party in China, as demonstrated by the infringement or broadened interpretation of agreement on "prior notification system" occurring after the conclusion of the agreement, illegal submerged navigation in the territorial water of Japan conducted by "Han" Class submarine, anti-satellite attacking test (ASAT), "Song" Class submarine's ridiculous and dangerous approach to US aircraft carriers, etc. At the Japan side, some argued that there should be immediate improvement of the situation.

(4) Promoting the transparency and the development of mutual confidence building

Along with or prior to the review of agreements concerning prior notification and

consultation system, or the conclusion of agreement to prevent maritime incidents and accidents, it is necessary to improve the mutual transparency in maritime law enforcement organizations, navies and air forces of both Japan and China, and to introduce and implement a measure to develop mutual confidence building.

Already, Japan side asked China to improve transparency in their military force. In the future, we expect further improvement in the transparency of Defense White Paper, and in the intentions of the country, maritime law enforcement organizations, and military forces, fully utilizing the aforementioned prior notification system.

As a concrete measure to develop mutual confidence building, it is necessary to start mutual visits by vessels, which could start from this Autumn, to implement joint training with friendship, to establish hot channels between China's coast guard authorities (represented by supervising authority), naval and air forces, and Japan's Coast Guard and Maritime Self-Defense Force (at central and local levels) [11], and to establish communication methods at sea and in the air. While continuing efforts to establish such systems, it is important to link such efforts to the conclusion of a bilateral agreement to prevent incidents at sea. To raise mutual confidence building relationship between two countries to even higher level, possible course can involve both countries to exercise various joint drills between two countries and among multilateral countries to the extent possible, while entering into an agreement on maritime search and rescue (SAR) from humanitarian viewpoint, and implementing periodical drills and training based on such SAR agreement.

If both countries develop mutual understanding through such fundamental measure to develop mutual confidence building, both countries will likely find the opening on the road to advance and maintain regional maritime order through individual and bilateral efforts. In other words, both Japan and China need to recognize that both countries must start "dialogue" to consider regional security issues including maritime order maintenance issue as "Responsible Stakeholders" of the region, and must step up to the stage of "implementing" the maintenance of regional security.

4. Conclusion

If Japan and China, both major powers in the East Asia, can develop mutual confidence building through their efforts in solving the long time problem of joint development in the East China Sea, it would not only improve the relationship between Japan and China but also provide the norms of improved relationships among relevant countries having similar problems. As a result, it would provide significant benefits to the security of the region as a whole.

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[11] Yomiuri Shimbun (April 16, 2007) reported that the defense ministers meeting between Japan China scheduled in the end of August will likely result in the official agreement on the setting of a hotline between the Joint Staff Office of the Self-Defense Forces in Japan and the General Staff Office of People's Liberation Army.

Finally, I'd like to present following five questions to China, instead of "conclusion."

(i) Current situation and the future of "Agreement between the DOD of the US and MND of the PRC establishing a consultation mechanism to strengthen military maritime safety" (January 19, 1998)

(ii) Situation of "INCSEA" type agreement between US and China after the incident of EP-3 in 2001.

(iii) Current situation and assessment of military exchanges between the naval forces of the US and China

(iv) Relationship between China's Territorial Water Law and establishment of INCSEA type Agreement with foreign countries in the East China Sea and South China Sea

(v) Constitution of Chinese maritime law enforcement organizations upon various forum to negotiate INCSEA type Agreement

(Which organization(s) shall be in charge of consultation with Japanese Coast Guard, representing Chinese organization relevant to maritime law enforcement?)

第２回「日本と中国との海洋安全保障ダイアログ」海洋政策研究財団　平成１９年８月２７－２８日

北東アジアの海洋安全保障･･･課題と展望

セッションⅢ　東シナ海の共同開発と信頼醸成

岡崎研究所理事　金田秀昭

１．日中中間線問題に関する日中間協議

（１）中国首相の訪日と日中中間線協議

本年４月、日本を訪問した中国の温家宝首相は、安倍首相との会談で「戦略的互恵関係」の構築、強化を再確認した後、衆院本会議に招かれ、「日本が発動した中国への侵略戦争（日中戦争）によって、中国人民は重大な災難に見舞われ、心に言葉では言い表せないほどの傷と苦痛を残した」としつつ、「（戦後）日本政府と日本の指導者は、…被害国に対して深い反省とお詫びを表明し、…これを中国政府と人民は積極的に評価」していると述べた。[1]

日中間には幾つかの懸案事項があることから、今回の訪問では、可能な領域での解決のための努力や議論が期待されていたが、訪問日数が短かったこともあり、結果的に重要案件での具体的な進展はなかった。しかし、日中首脳会談では、「東シナ海を平和、友好、協力の海」にしたいとして、「双方が受け入れ可能な比較的広い海域」で共同開発を行うことでは合意し、本年秋を目処に共同開発の具体的方策について結論を出すこととした。[2]

この合意を受けて、日中両政府は、東シナ海のガス田開発をめぐる第８回局長級協議を５月に北京で行ったが、中国側は、日中中間線は日本の一方的な主張で、今後とも中国政府がこれを前提とした共同開発案の議論を受け入れることはないとして強くけん制し、協議は進展しなかった。その後、第９回協議が６月、東京都内で開かれたが、ここでも、共同開発の範囲について集中的に議論したものの進展はなく、対象海域に対する日中間の主張に、なお大きな溝があることが浮き彫りになった。[3]

日本からは外務省の佐々江賢一郎アジア大洋州局長と資源エネルギー庁の望月晴文長官らが出席したが、佐々江局長は協議後、「お互いにどこに問題があるかを含めて理解は深まったが、意見の一致を見るには至っていない」と説明し、「中国も協議を加速させたいという意欲はあると思うが、日本側と見解が一致していない」と述べた。同協議では、日本側は両国の排他的経済水域（EEZ）の境界である「日中中間線」付近で、中国が独自に開発を進める「春暁（日本名・白樺）」など四つのガス田を共同開発の対象に含めるように主張したが、中国側は、日本寄りの海域での共同開発を改めて主張したとみられ、両者の主張は相変わらず平行線を辿り、現在のところ、協議の出口が見えない状況が続いている。両首相が合意した今秋までという期限に向けて協議を続ける方針だが、共同開発の具体的合意ができるのかどうか、早くも危惧する声が上がっている。[4]

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[1] 読売新聞　19.4.13
[2] 同上　19.4.12
[3] 同上　19.6.26
[4] 同上

実のところ中国は、温首相の訪日直前に、日中で懸案となっていたガス田「樫（中国名天外天）」で生産を開始したことを、中国海洋石油（CNOOC）が明らかにするという行動に出ている。[5] これが日本側をけん制する意味を持って用意周到に演出されたものかどうかは判断する材料がないが、首脳会談を前にして、適切な行動であったとは言いがたいことは事実である。このことは、ある意味では、中国の政治指導者の方針が、個別の行政府や現場まで浸透していないことの現われとも見ることが出来る。折角、首脳会談で合意しても、政府専門家会合のレベルでは、中国側の協議に臨む姿勢が、最初から否定的かつ強硬であることは、その証拠なのかも知れない。それを承知した上での首脳合意であったとすれば、温首相の単なる対日政治的パーフォーマンスであったということになる。

（2）日中中間線問題に関する米国の見方

こうした日中中間線を巡る日中協議の先行きについて強い関心を寄せているのは、日中両国のみではない。

米国防大学国家戦略研究所は、本年 4 月、日中首脳協議の時期にタイミングを合わせ、日中関係について分析した「日中対立：米国政策へのインプリケーション」と題する報告書をまとめ、[6] 東シナ海のガス田をめぐる日中摩擦が軍事的紛争に発展する可能性があると警告し、「東シナ海で発生し得る危機に備えるべきだ」と米政府に提言した。温首相の来日日程に合わせて作成されたこの報告書は、米国の軍事・外交専門家が、海洋主権や海洋権益問題での日中摩擦を深刻に受け止め、注視していることを示している。

この報告書は、ブッシュ政権１期目に国務次官補（東アジア・太平洋担当）を務めたジム・ケリー氏を中心に、アジアの安全保障問題を専門とする民間研究所 CNA のマイク・マクデヴィット氏や CSIS のラルフ・コッサ氏らのチームが行った研究の成果をまとめたものである。骨子は、中国が東シナ海でガス採掘施設建設を進めた結果、日中の軍・官・民の艦船が絡む事案が発生する恐れが高まったと分析し、仮に何らかの事案が発生すれば、武力の行使や紛争といった事態にエスカレートする恐れもあると予測し、本問題についての日中の対立は、エネルギー資源というよりも、両国の主権の対立という本質を持つものだと結論付けている。また、研究チームのメンバーが日米中３国の政策決定者に扮し、日中の艦船衝突を想定した机上シミュレーションを実施した結果、紛争拡大のリスクが十分あることが判明したとも述べている。

その上で報告書は「米政府は日中に対して、軍・官当局間のより良好な関係構築を目指すよう働き掛けるべきだ」と勧告した。特に中国と日本の海軍（海自）間、及び海上保安当局間の「海上事故防止協定」の締結が有益だとしている。また同時に、日中間のトラック２対話において、海上における軍事的事故の危険性について明らかにしていくことが有用であるともしている。さらに、「米国は将来の危機発生の可能性に備えなければならず、危機の際に日本や中国が米国にどのような対応を求めるかを理解し、それに応える用意を整えなければならない」と指摘し、紛争発生時の日中両国の出方を予測しつつ、米国としての対応を検討する必要性を訴えている。

本報告書は、その但し書きにも書かれているように、研究参加者の個人的見解をまとめ

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[5] 読売新聞　19.4.13

[6] INSS Special Report, Sino-Japanese Rivalry: Implications for U.S. Policy, April 2007

たもので、米国防省の意見を代表するものではないとの注釈がついているが、米国政府内のある空気を反映するものであろうことは容易に推測できる。

２．中国の海洋をめぐる動向

（１）中国の海洋への進出とわが国周辺での活動

中国は、ベトナムから米軍が引き揚げた直後の 1973 年に、海南島の南南東に位置する西沙諸島に駐留していた南ベトナム軍を武力で排除し、実効支配下に置いた。更に中国は、1987 年から 88 年にかけて、南沙諸島についても実力占拠し、軍事施設を構築した。南沙諸島は、中国本土からはるか彼方にあり、歴史的に縁が薄いにもかかわらず、1970 年代後半に海底油田の存在が確認されたころから領有権を主張するようになった。

中国の南沙諸島進出は、米国がフィリピンのスービック（海軍）、クラーク（空軍）の両基地から撤退した 1992 年以降、拍車がかかる。中国は米国のプレゼンスが希薄となった間隙をついて、南シナ海における「海洋権益の確保」すなわち「国家プレゼンスの増大」を図ってきた。

中国は近年、東シナ海や尖閣列島などわが国周辺の近海でも、活発に活動している。この傾向は、1990 年代から見られたが、その目的は、軍事的調査、または 09 年 5 月を期限とする「大陸棚限界」調査活動と理解される。主だった行動だけを列挙してみても、2000 年 5 月、砕氷艦兼情報収集艦「海氷 723」が、日本列島沿岸部を周航する情報活動を行ったのを手始めに、01 年 7 月から 11 月にかけては、小笠原諸島と南西諸島間の広大なわが国の EEZ 海域において、また 03 年 6 月には、西表島南方の海上で、曳航ケーブルを降下して、潜水艦作戦用と見られる海洋調査活動を行った。また、ミサイル観測支援兼情報収集艦「東調 232」が、00 年 2 月及び 7 月、02 年 9 月九州西方海域及び沖縄近海で情報収集活動を実施したことが確認されている。[7]

戦闘艦艇の活動のうち、特異な活動としては、03 年 11 月明級攻撃型潜水艦が大隈海峡を浮上して西航、04 年 11 月には、漢級攻撃型原子力潜水艦が、国際法違反となるわが国の領海内での潜没航行を行った。この他にも、訓練活動や情報収集活動、示威行動を行っていると考えられる中国海軍艦艇や、わが国の排他的経済水域において海洋調査と見られる活動を行う中国の海軍艦艇や政府船舶が、近年、わが国の近海において視認されてきた。

最近では、05 年 9 月、東シナ海の「樫」ガス田付近をソブレメンヌイ級駆逐艦 1 隻ほか計 5 隻の艦艇が航行し、その一部（ソブレメンヌイ級駆逐艦 1 隻ほか計 3 隻）については、同ガス田の採掘施設を周回したことが確認されている。[8]

また、06 年 10 月には、沖縄近海の国際水域において、中国の宋級攻撃型潜水艦が米空母キティホークの近傍に浮上した。行動中の空母に、外国の潜水艦が事前の了解を得ないまま接近したことは軍事的に極めて危険な事象と考えるのが軍事的常識である。米国の責任ある立場の高官からも、本年 1 月の対衛星兵器の実験と合わせ、中国が以前に比べて、（政治的意向と無関係に）軍事的に自信に満ちた攻勢的な態勢をとるようになってきているとの見解が示されている。[9]

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[7] 日本の防衛（防衛白書）平成 13 年度版など

[8] 同上

[9] 本年２月１日の米中経済及び安全保障見直し委員会におけるローレス国防副次官の証言

一方、中国海軍艦艇の海外における訓練なども行われるようになってきており、05 年11 月にパキスタン、インドおよびタイにおいて初の海外における外国との海軍艦艇の共同訓練、昨年は米国に艦艇を派遣して米海軍との初の共同訓練を行ったほか、本年３月には、パキスタンで開催された対テロ多国間共同海上演習に、中国海軍が多国間演習としては初めて参加した。本年９月には、豪州近海で、豪、ニュージーランド３カ国共同訓練を実施すると伝えられている。

日本とは軍艦の相互訪問についての基本的合意はなされているものの、中国側の都合により、棚上げの状態が続いているが、本年４月の首脳会談や８月末に予定されている曹剛川国防部長（国防大臣）の訪日を契機として、今年中に中国艦艇の初訪日が実現するのではないかと期待されている。

（２）海洋をめぐる中国海軍などの動向

中国海軍は、近代的なキロ級潜水艦のロシアからの導入や新型国産潜水艦の積極的な建造を行うなど潜水艦戦力を増強するとともに、防空能力や対艦ミサイル能力の高い水上戦闘艦艇の導入や航空戦力の近代化を進めている。また、従来遅れがちであった揚陸艦や補給艦の増強も行なっている。このような中国海軍の近代化状況などから、中国はより遠方の海域において作戦を遂行する能力の構築を目指しているものと考えられる。また、中国は、空母の保有にも強い関心を持っていると考えられる。

今春、米国のランド研究所が発表した「龍の巣窟への侵入」[10] と題した論文では、中国の対米阻止戦略を、電撃・持久を基本とする「接近阻止戦略」と名づけて、米軍の兵力整備や運用体制に警告を発している。この「接近阻止戦略」を裏付ける最近の顕著な動きとして、既に原子力潜水艦を含む各種の近代化潜水艦や水上戦闘艦、いわゆる第４世代と称される新型戦闘機などの導入が大々的に報道されている。これ以外にも、中国軍が、台湾有事をにらんで米空母攻撃用の対艦弾道ミサイルの開発に着手するとともに、ロシアから超音速長距離爆撃機も導入し、対米軍戦術を修正していることが明らかになった。米軍や自衛隊の迎撃兵器の射程外からの攻撃に力点を置くことで、台湾有事に際して米空母機動艦隊来援を阻止する目的とみられている。

本年 7 月に公表されたわが国の「日本の防衛（防衛白書）」では、中国の置かれた地理的条件や、グローバル化する経済などの諸条件を一般的に考慮すれば、中国海軍などの海洋における活動には、次のような目標があると考えられると論及している。

① 中国の領土や領海を防衛するため可能な限り遠方の海域で敵の作戦を阻止する。
近年の科学技術の発展により、遠距離攻撃の有効性が増していることを背景とする。

② 台湾の独立を抑止・阻止するための軍事的能力を整備する。
中国は、台湾問題を解決し、中国統一を実現することには如何なる外国勢力の干渉も受けないとしており、中国が、四海に囲まれた台湾への外国からの介入を実力で阻止することを企図すれば、海洋における軍事作戦能力を充実させる必要がある。

② 海洋権益を獲得し、維持および保護する。
中国は、東シナ海や南シナ海において、石油や天然ガスの採掘およびそのための施設

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[10] Rand Corporation, Entering the Dragon's Lair---Chinese Antiaccess Strategy and Their Implications for the United States, Spring 2007

建設や探査に着手しており、その中には、中国とわが国の中間線の東側まで、その構造が連続している油ガス田での採掘施設建設も含まれる。

④　経済活動のグローバル化に伴い、その生命線である自国の海上輸送路を保護する。将来的に、中国海軍が、どこまでの海上輸送路を自ら保護すべき対象とするかは、そのときの国際情勢などにも左右されるが、近年の中国の海・空軍の近代化を考慮すれば、その能力の及ぶ範囲は、中国の近海を越えて拡がっていくと考えられる。

上記のような目標を有すると考えられる中国海軍などの海洋における活動の動向に加え、わが国周辺における海軍艦艇や国家海洋局などの政府船舶による海洋調査活動の過去の経緯を考慮すれば、今後、日中による東シナ海のガス田での共同開発に関連し、日本側として、その動向には特別に注目しているところである。

3．日本の海洋安全保障協力への取り組み姿勢

（1）国際的な安全保障環境改善のための取り組み

日本は従来から、より安定した安全保障環境の構築への「貢献」のため、自衛隊による国連平和維持活動をはじめ、さまざまな国際平和協力活動に取り組んできた。

こうした国際平和協力活動について、国際社会の平和と安定が脅かされるような状況は、わが国の平和と安全の確保に密接に関わるとの認識の下、わが国政府は、2004年12月に新防衛大綱を採択し、今後は「貢献」という位置付けではなく、わが国の平和と安全をより確固たるものとすることを目的として「主体的・積極的に取り組む」決意を表明した。

そもそも国際平和協力活動の一環としての海洋安全保障協力については、その範囲は非常に幅広く、Maritime Forces である海上自衛隊（防衛）、海上保安庁 （法執行）のみならず、政府文民や関連民間団体の活動などの諸施策を通じ、外交と一体のものとして政府全体として統合的に取り組む必要がある。海上自衛隊や海上保安庁 は、政府全体の取り組みの中で、自己完結性、組織力などの能力を生かして海洋安全保障協力活動に適切に取り組むため、所要の教育訓練体制、部隊待機態勢、輸送能力などを整備し、迅速に部隊を派遣し、継続的に活動するための各種基盤を確立する態勢をとってきたところである。

この態勢を更に強固なものとするため、日本政府は、下記の措置をとることとしている。

即ち、防衛庁の省昇格に合わせ、国際平和協力任務としての海洋安全保障協力活動により適切に取り組むため、当該任務を、自衛隊の「付随任務」から「本来任務」に位置付け直し、海上自衛隊（防衛）と海上保安庁 （法執行）の任務や役割の適切な関係などに関し、政府内で所要の検討を加えていくこととされている。

また現在、国際平和協力活動の一環としての、海洋安全保障協力などを目的とする自衛隊の海外派遣については、国連平和維持活動（PKO）に参加するための PKO 協力法のほか、時限立法としてのテロ対策特別措置法やイラク復興支援特別措置法など、特別法や時限立法によっている。しかし、世界や地域での紛争、国際テロや海賊問題、人道的復興支援、災害派遣などで自衛隊の派遣についての緊急の要請があった場合に、より機動的に即応する必要があるため、国会による事前承認の範囲内で、政府の判断で派遣を決定することを可能とするよう、与党を中心に、これらの活動協力などについての一般法を制定する動きがある。

国家的な取り組みとして、更に2点挙げねばならない。ひとつは、先般の通常国会にお

いて、新たに海洋政策担当大臣が設置され、また首相直轄機関として総合海洋政策本部が設置された。これにより、わが国として、今後も海上自衛隊や海上保安庁の実行能力を最大限に活用し、積極的にこれらの活動を実施していくなど、国家的な総合政策の推進が期待されている。更に、より総合的な国家安全保障政策遂行に必要となるわが国政府内の体制として、政府全体の戦略企画、情報集約、実行監督についての「司令塔」となる日本版NSC（National Security Council）の設立などの検討を行うほか、地域の海洋安全保障協力に関し、民間機関を含む関係機関のより密接な連携を図ることとしている。

（2） 地域海洋安全保障協力に関する日本の取り組み

日本は既に、海賊やテロ、大量破壊兵器や弾道ミサイルの拡散に対応するための、地域協力についてイニシアティブをとり成果を挙げている。

海賊対策については、1999年10月に発生したアランドラ・レインボー号の海賊被害を契機として、2000年に日本が東京で主催した「海賊対策国際会議」で採択された「アジア海賊対策チャレンジ2000」に基づき、海上保安庁を中心として東南アジア海域への巡視船や航空機の派遣、東南アジア諸国の海上警備機関との海賊対策連携訓練、これら機関からの研修生の受け入れ、海賊対策専門家会合の開催支援などを進めてきた。

また小泉前首相の提唱を契機として、外務省が中心となって進めてきた ReCAAP（Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia）が2004年11月に東京で採択され、これにより海上警備機関間の能力構築に関する協力や当局が保有する情報も含めた情報共有センターの設置が実現した。2006年11月には、ReCAAP締約国の初会合がシンガポールで開かれ、情報共有センターの初代事務局長に、日本の伊藤国連代表部公使が選出された。

一方、9.11テロ以降、世界各地でテロとの闘いが実施されるようになったが、これに対応して、わが国も、2001年12月以降、現在に至るまで、米国が主導するOEF（Operation Enduring Freedom）に海上自衛隊の艦船および航空機を派遣し、強靭な対テロ・ネットワークを構築している。OEFにおいては、インド洋およびアラビア海などにおいてテロリストの海路を通じた各地への逃亡とテロの拡散を防止する努力が継続され、着実な成果を挙げている。

また、東南アジア地域でも、海賊に加え、海上テロ対策への取り組みが強く求められるようになってきたことを踏まえ、地域における海軍の会議体である WPNS（Western Pacific Naval Symposium）において、地域海軍協力活動に継続してイニシアティブを発揮してきた。一方、2004年6月に東京において、海上保安庁が主催者となって HACGA（Head of Asia Coast Guard Agencies）会合を開催し、海上テロ対策に対する今後の取り組みおよび連携・協力の指針となる「アジア海上セキュリティー・イニシアチブ2004」を採択した。その他にも、国際テロや海賊問題に適切に対応するため、WPNS や HACGA でコンセンスを得られた事項について、海上自衛隊や海上保安庁が、各般にわたる協力を積極的に実施しているところである。

他方、軍事の分野でも、多国間の通信、戦術運動、潜水艦救難、捜索救難、掃海など、親善、人道、基礎術科能力向上などを目的とした非攻撃的な訓練や人材育成に関し、日本は地域でイニシアティブをとっている。

これらの政府機関以外の活動としては、アジア全体の海上犯罪取り締まり能力の向上を図るため、JICA を通じて、各国の海上保安機関等職員を対象に、わが国において海上法令励行セミナーを実施している。また、海事当局と民間海事関係者間でも「東京アピール」や「モデル・アクションプラン」に基づき、自主警備策や法的枠組みの整備、情報連絡窓口の整備等を提唱してきた。また、民間団体である日本財団が、早い段階から、これらの会議の開催や、研修等の人材育成事業に財政的支援を行っているほか、東南アジア地域への航路標識や警備艇の提供を積極的に行っている。

一方、懸念国家や国際テロリストと結びつく可能性のある大量破壊兵器や弾道ミサイルなどの拡散を防止し、アジア地域における不拡散体制を強化するため、外務省を中心としてアジア諸国を対象とした各種セミナーを開催している。

また、PSI (Proliferation Security Initiative) には、原加盟国として積極的に取り組み、多国間による各種セミナーや海上阻止訓練に参加してきた。2004 年 10 月には、わが国主催により、外務省、海上保安庁および海上自衛隊が参加して海上阻止訓練などを実施し、その一環として、乗船・立ち入り検査の展示訓練を実施した。また、2005 年 8 月、東南アジア地域では初めてとなるシンガポール主催の PSI 海上阻止訓練に、海上自衛隊から護衛艦や哨戒機、海上保安庁から巡視船を派遣するなど、積極的に PSI 訓練に参加している。2006 年 4 月には豪州主催の PSI 航空阻止訓練がダーウインで開催され、日本は外務省、防衛庁・自衛隊、警察庁、警視庁、財務省の要員が参加した。

更に PSI を含む包括的な不拡散体制の強化のためのアウトリーチ活動の一環として、海上自衛隊や海上保安庁がアジア諸国の関連機関と交流する機会を活用して、これまでの訓練によって得た知見を積極的に提供するなど、PSI への理解を求めてきた。

4．共同開発に伴う紛争回避と信頼醸成の具体策

（1）紛争予防・拡大回避のメカニズム

先の日中首脳会談で合意したように、真に「東シナ海を平和、友好、協力の海」とするためには、両国の相互理解と共通認識が必要であり、日中が対等かつ平等であるとの立場で冷静に協議していくことが重要である。この際、共同開発の区域、業務の範囲、共同要領などについて、双方が妥協をすることにより、ウィン・ウィン・ゲームとなるような合意案を作ることが何よりも重要となる。一方、現実に東シナ海での日中共同開発を実行する段階では、軍事的な緊張を誘発する可能性のある事態が、偶発的にせよ生起する可能性があることを前提として、まずは、現場付近での海上や航空における事故の発生を予防し、また何らかの事故が生起した場合にも、双方の緊張関係がエスカレートしないようなメカニズムを創設し、事態の収集に向け協力していくことが重要となる。

このため、まずは事態発生予防・事態拡大回避メカニズムを作ることが重要である。

そのためには、日中双方において、共同開発に関する相互の行動についての事前協議や事前通報制度を導入し、双方ともに相手の行動に疑念や不信感を持たないように透明性を持たせることが緊要となる。その上で、海上における艦船や航空機による偶発的な事故発生を想定し、事故の未然防止や事故発生時の事態不拡大のための処置など、海上事故防止の取極めを締結し、それを遵守していくことが重要となる。

更に言えば、それらの協定や取極め以前に、そもそも双方の艦船が近接しあうような状

況下においても、相手を挑発することなく、相互に相手を信頼する関係を醸成しておくことが必要となる。このことにより、まずは、事態発生の可能性を大幅に抑制することが出来る。また、仮に偶発的な事態が発生したとしても、それを拡大させることなく短時間に事態を収集させ得る。このためには、平素から相互に相手の運用様式（Operational Culture）についての理解を深め、意図や行動に関しての透明性を高め、日中間の相互信頼の雰囲気を醸成しておかねばならない。そして、双方の海洋法執行を担任する海上保安当局（海上保安庁と中国国家海洋局など）及び海上防衛を担任する軍当局（海空自と海空軍）間との、信頼醸成措置の深化・拡幅の促進がきわめて重要となってくるのである。

（2）事前協議や事前通報制度

日中両政府は、00年8月、北京における日中外相会談において、中国の海洋調査船による度重なる不法行動に適切に対処するため、相互事前通報の制度を作ることで合意し、翌01年の2月相互事前通報制度が発効した。

「海洋調査活動の相互事前通報の枠組みの実施のための口上書の交換について」という外交文書によると、「海洋調査船の問題に関して、相互事前通報の枠組みを作ることで一致したことを踏まえ、事務レベルの協議を継続してきた結果、今般双方で妥協した」として、以下の三点からなる「通報事項」を規定している。

① 通報の対象水域

東シナ海における相手国の近海（領海を除く）

中国側：「日本側が関心を有する水域である日本国の近海」

日本側：「中華人民共和国の近海」

② 事前通報の時期

外交ルートを通じ調査開始予定の少なくとも二カ月前までに口上書により通報

③ 通報事項

・海洋の科学的調査を実施する機関の名称、使用船舶の名称・種類、責任者

・当該調査の概要（目的、内容、方法および使用器材）

・当該調査の期間および区域

しかしこの口上書の内容には、幾つかの欠点が存在する。まず第1は、そもそも「海洋の科学的調査」とは何かについて、特に問題となっている「資源探査」と「科学的調査」の違いについて、具体的に何も説明していないことである。02年2月以降の中国側の海洋調査船による調査活動は、現実には、ボーリングを行ったり、エアガンを使うなど、明らかに「資源調査」を行っていると見られ、日中で合意した「海洋の科学的調査」の範疇を外れていると考えられる活動を実施している疑いがあったり、事前通報がないまま実施されたもの、事前通報をしてもわが国政府の許可が下りないうちに調査を始めてしまったもの、あるいは調査期間や調査内容を勝手に変更したもの、さらには調査海域にわが国の領海を含めているものなどがあり、事前通報制度そのものの在り方が問われている。

第2は、「通報の対象水域」の違いである。日本側が中国政府の同意を得て海洋調査を実施できる海域は「中華人民共和国の近海」であるのに対して、中国側が日本政府の同意を得て実施できる海域は「日本国の近海」ではなく、「日本側が関心を有する水域である日本国の近海」である。問題は、東シナ海の日中中間線・中国側海域について、中国が主

権的権利を有しているとの中国政府の立場を日本政府は認める形となっているのに対して、東シナ海の日中中間線・日本側海域について、日本が主権的権利を有する海域であるとの日本政府の立場を中国政府が認める形とはなっておらず、その日本政府の立場に「理解」を示しただけに過ぎないということである。

第３に、口上書にはその内容に違反した場合の罰則事項はなく、実効性については、相手を信頼する以外にはないと言う問題である。

何れにせよ、中国の海洋調査活動は、両国政府が「口上書」で合意した「海洋の科学的調査」の範疇を越えて、資源探査や軍事目的の調査にまで及んでいると考えられ、わが国の権益が侵害されていることになるが、こうした調査活動は「口上書」交換以前の活動と変わるものではない。そのことは何よりも、海洋調査活動を行っている中国の海洋調査船が、「口上書」に基づく海洋調査が実施される以前の時期に海洋調査活動を行った調査船であることからも裏づけられる。

今後はこの事前通報制度を見直し、真に相互主義で公平な基準に則った形で、海洋調査が行われる必要がある。また、資源調査を目的とする場合は、相互主義を前提として、双方の合意に基づき実施される必要がある。

（３）海上での偶発的事故の発生防止

日中間では、東シナ海ガス田をめぐる日中外相会談や日中間局長級協議において、不測の事態を防止する観点から、何らかのメカニズムの設置が必要であるとの原則的な意見の一致は見ているものの、具体的な協議は全く進展していない。その理由として、第一に、日中間の政治的関係に由来するものがあることが挙げられるが、その他にも行政構造上の問題が存在することが考えられる。即ち、日本における海上法執行は第一義的に海上保安庁が行うことになっており、海上保安庁の能力が及ばない場合、海上自衛隊が海上警備行動により補完することとなっているが、中国の場合は、そもそも海上法執行機関の所掌や権限が、国家海洋局以外の多くの行政機関に分散しているため、日中間の政府実務者協議の場が設定しにくいことが挙げられる。また海上法執行に関するこれら海上法執行機関と海軍との関係は不明である。

何れにせよ、日中共同開発ということになれば、何らかの形で海上での偶発的な事故防止メカニズムを設置することが緊要であることは、双方に認識されている。本年４月の日中首脳会談でも「両国の防衛当局間の連絡メカニズムを整備し、海上における不測の事態の発生を防止する」と共同プレス発表に明記されるなど、早期の協定締結が求められている。ここで具体的な参考となるのは、わが国が冷戦終了直後の 1994 年から、領海を接するロシアとの間に海上における海上事故防止協定（INCSEA：Incident at Sea）を締結しており、きわめて適切に運用されているという事例である。

日露間の海上事故防止協定の目的や内容の骨子は次のとおりである。

① 目的

日露の艦船・航空機の間の衝突事故の未然防止と航行・飛行の安全確保

② 内容

衝突回避のための行動規範、危険な行為の禁止、現場での通信方法、事故発生時の情報交換要領、毎年１回以上の定期会合など

この防止協定締結により、日露間の海上での偶発的事故防止に成果を挙げたのみならず、相互の信頼感の醸成に大いに寄与することとなった。

この際、重要なことは、対外的な協定を、末端の部隊に浸透させる手段である。既に中国側には理解が進んでいると思われるが、わが国の海上保安庁や海上自衛隊においては、シビリアン・コントロールが徹底しており、また国際法や外国との取極めなどに関する教育訓練が行き渡っているため、例えば領海警備、監視任務や訓練行動などにおいて、外国の艦船や航空機と遭遇する場面があった場合、きわめて厳格、かつ具体的な細部規定により、海上事故や衝突を回避するよう協定の趣旨が徹底され、厳格に規律が保たれている。

そこで日本側の立場としては、中国側の国家海洋局などの海上法執行機関や海軍の状況はどうかということに自然と関心が向く。残念ながら、前述した「事前通報制度」実施後の各種海洋調査活動における取極め内容違反や拡大解釈の状況、あるいは漢級原潜の不法領海潜航侵犯や衛星攻撃、宋級潜水艦の米空母異常接近など、中央の党や政府のコントロールが効かない状況下で、国家海洋局や人民解放軍の一部の組織が独走しているとしか思えない場面が多く、速やかな改善が図られる必要がある、といった指摘が増えている。

（4）透明性の促進と信頼醸成の推進

事前協議や事前通報制度の内容の見直しや海上事故防止協定の締結とは並行して、あるいはそれらに先んじて、日中の海上法執行機関や海空軍間での双方向の透明性の促進や信頼醸成措置の進展を図って行く必要がある。

既に日本側からは、繰り返して中国の軍事態勢の透明性の向上について申し入れをしているところであり、今後は、国防白書の更なる透明性の向上や、先の事前通報制度を十分に活用して、国家や海上法執行機関・軍の意図についての透明性の促進を期待する。

また、信頼醸成のための具体的な行動として、早ければ今秋にでも予想される艦艇相互訪問や親善訓練より始めたあと、中国側の海上保安当局（主管的な官署が代表）及び海空軍と、日本側の海上保安庁及び海空自衛隊間とのホットチャンネル（中央及び地方レベル）を設定し、[11] 更に、海上または航空の現場間の意思疎通手段を確保することが望まれる。そういった中で、前述の2国間の偶発的な海上事故防止協定の締結に結び付けていくことが重要である。その上で、より高度な2国間の信頼醸成を推進するため、可能な範囲で各種の2国間、又は多国間の共同訓練を進める傍ら、人道的な立場からする海上捜索・救難（SAR）協定などを締結し、同協定に基づく訓練や演習の定期的実施にまで高めていくという流れが期待されよう。

こういった基本的な信頼醸成措置により、相互理解を具体的に進めた後は、地域海洋秩序維持のための協力を各個にまたは日中が協力し合うことにより進めていくための道が開けてくるのである。即ち、日中両国は、既に責任あるStakeholderとして、海洋秩序維持問題を含む地域安全保障問題について、「対話」から始めて「実行」の段階に来ていると認識すべきである。

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[11] 読売新聞（19.4.16）は、今秋の日中防衛大臣会談で、自衛隊統合幕僚監部と人民解放軍総参謀部間に直通電話を設定について正式合意する運びと報道した。

５．終わりに

日中という東アジアの大国間で、長年の係争点となっていた東シナ海共同開発における信頼醸成が進捗していけば、日中間のみならず、日中双方が抱える同種の問題に関しての、それぞれの関係国との関係改善の模範ともなり、結果的に日中双方のみならず、地域全体の安全保障にとって、大きな利益をもたらすものとなると考える。

最後に、中国側に次の５点について質問することで、「結言」に代えたい。

① 米中間における「軍事海上安全強化のための米中間の協議メカニズム」の現状と将来
② 米中間における「海上事故防止協定」のEP-3事件以後の状況
③ 米中間における海軍間の軍事交流の進展状況とその評価
④ 中国の領海法と東シナ海及び南シナ海における海上事故防止協定との関係
⑤ 海上事故防止協定など各種協議における中国側の海上法執行機関の構成（主管者）

2007/08/27-28

2nd "Japan and China Ocean Security Dialogue"
Ocean Policy Research Foundation

North-East Asia Ocean Security --- Problems and Prospects

Japan-China joint development of oil and natural gas in disputed waters in the East China Sea

Initial examination of specific plans

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1. Introduction

(1) The East China Sea should symbolize a peaceful relationship between China and Japan, and should be peaceful in reality as well. Oil and natural gas in the East China Sea are important seabed resources for both countries. There is, however, a huge gap between the two countries concerning the demarcation of the EEZ and continental shelves, which provides the basis for resource development. The two countries claim overlapping areas. Since demarcation negotiations are deadlocked, both China and Japan agree in general that they should jointly develop resources in the overlapping areas, i.e. disputed waters. Concerning specific matters, however, China and Japan have not reached an agreement yet. The specific matters include areas to be co-developed, development procedures, and development conditions. With their remarkable economic development, both China and Japan need large quantities of energy to support their economies. In waters around the world, there are over twenty co-development projects where nations jointly develop resources. China and Japan starting such co-development projects as early as possible is desirable. In order to make such co-development projects happen, both China and Japan must make political decisions from a broad viewpoint, refraining from being too assertive and trying to make concessions. China and Japan must work together on an equal footing to design a co-development system.

(2) For China and Japan co-develop oil and natural gas in the East China Sea, confidence in each other is essential. The purpose of this article is to conduct an initial study of matters to help understand the concept of co-development.

(3) To start co-development projects, we need to examine the following matters:

i. Setting a co-development area

ii. China and Japan entering into an agreement (or treaty), establishing Japan-China consultation bodies, and defining the authorities and other matters for co-development negotiations.

iii. Types of development corporations (establishing a joint venture corporation, or China and Japan setting up corporations individually)

iv. Specific development procedures to be included in the Japan-China agreement, i.e. how China and Japan share the labor and costs for overall procedures including the exploration, drilling, and production of oil and natural gas, and maintenance, repair, and dismantlement of facilities.

v. Arrangements for preventing disputes, ensuring security, preserving the environment, and other such matters in the co-development area throughout the co-development period

I would now like to examine the above matters.

2. Extent of disputed waters and setting a co-development area

(1) Extent of disputed waters

Japan's definition of boundary lines is "lines that are 200 sea miles away from the nearest Japanese coast (hereinafter referred to as 200-sea-mile zone boundaries), and if such lines are closer to another country than to Japan, the lines in the middle between the two countries should be the boundary lines, unless otherwise agreed between the two countries."

China bases their definition on the concept of natural prolongation of the continental shelf, claiming that the deepest part of the Okinawa Trough, laying to the west of the Okinawa Islands, should be the boundary line.

Since China does not agree with Japan on establishing the median line as the boundary line, the disputed waters between China and Japan are waters between Japan's 200-sea-mile zone boundary and the deepest part of the Okinawa Trough.

(2) Setting a co-development area

A. In order for China and Japan to jointly develop resources in the East China Sea, they need to agree which area to jointly develop. The co-development area should not provoke any objections from any third countries or territories, specifically Korea and Taiwan.

B. Concerning the Senkaku Islands, China, Taiwan, and Japan all claim

territorial rights. Japan claims that the Senkaku Islands are inherently a territory of Japan, believing there is no legitimate territorial dispute concerning the Senkaku Islands. China's territorial-sea law claims the islands belong to China, and Taiwan also registered the islands in their land registry book in April 2004, claiming the islands belong to Taiwan's Yilan county. China's ex-chairman, Deng Xiaoping, once said the next generation's wisdom would solve this territorial issue. To avoid any further disputes as well as negotiations becoming too complicated and time-consuming, the Senkaku Islands should be excluded from the co-development area.

Concerning the northern part of the East China Sea, South Korea and Japan entered the Japan-South Korean South Continental Shelf Joint Development Agreement in 1974. In order to avoid dispute with South Korea, the northern limit of the co-development area should not enter into the area defined by the above agreement.

C. The co-development area can extend to Japan's 200-sea-mile zone boundary in the west, and to the deepest part of the Okinawa Trough in the east. However, such an area is too large to be the co-development area. Waters near the western boundary of such an area are too close to China's mainland and waters near the eastern boundary too close to Japan's mainland. For protecting fishery resources and national security, reaching an agreement will be difficult if the co-development area includes the waters near these two boundaries. To make it easier to reach an agreement, as well as making co-development speedier and more cost-effective, such areas should be excluded from the co-development area.

D. The co-development area should extend, in the west, to a line 100 sea miles east of the western boundary of Japan's 200-sea-mile zone and, in the east, to a line 100 sea miles west of the deepest part of the Okinawa Trough. In the north, the co-development area should extend to the southern limit of the area defined by the Japan-South Korean South Continental Shelf Joint Development Agreement. In the south, the co-development area should extend to the line 100 sea miles (200 sea miles minus 100 sea miles) north of the Senkaku Islands. The co-development area would be the waters surrounded by these western, eastern, northern, and southern boundaries.

E. In another proposal, the co-development areas are defined as areas between the median line and the deepest part of the Okinawa Trough. Japan, however, cannot accept this proposal because demarcation of waters in recent years is

based on the right and title to continental shelves. When discussing the definition of the co-development area, the joint fishery waters that were set between China and Vietnam on both sides of the Tonkin Gulf boundary serve as a useful reference.

3. **Establishing Japan-China consultation bodies for joint development, and the authorities of such consultation bodies (agreement or treaty)**

(1) Entering into an agreement (or treaty)

China and Japan should enter into an agreement (or treaty) that defines matters concerning the development of oil and natural gas resources in the co-development area in the East China Sea, in conformity with Article 74, Paragraph 3 of the United Nations Convention on the Law of the Sea (UNCLOS).

This agreement establishes a joint ministerial council consisting of appropriate Cabinet ministers of Japan and China (and assisted by a council consisting of the countries' director-general level officials), as well as a joint development body consisting of members of both countries. They decide on policies, supervise development corporations (including joint venture corporations, if such joint venture corporations are established), and make necessary adjustments for co-development.

(2) Functions of the Joint Ministerial Council and Joint Development Body

A. Joint Ministerial Council

(a) The Japanese members on the council are the minister in charge of ocean policies, Minister of Foreign Affairs, and Minister of Economy, Trade and Industry. The Chinese members are the equivalent counterparts.

(b) The Joint Ministerial Council decides upon basic policy matters, as well as authorities and rules for implementing the agreement (or treaty) for developing resources in the co-development area. The Joint Ministerial Council is responsible for supervising the concerned development corporations. The Joint Ministerial Council is the supreme decision-making body that discusses and decides upon issues occurring during the development of the two countries.

(c) The Joint Ministerial Council holds regular meetings and, when necessary, extraordinary meetings. China and Japan alternately host such meetings. A member of the host country serves as chairperson. Decisions are made by consensus.

(d) Ministries that supervise development corporations submit reports to the Joint Ministerial Council concerning the development conducted by such

corporations. The reports are disclosed to all ministries and checked by all of them. Transparency must be ensured when co-developing resources.

B. Joint Development Body

(a) The Joint Development Body consists of an equal number of Chinese and Japanese representatives of the development corporations of the two countries. If any adjustments become necessary on a daily basis when carrying out the development, the Joint Development Body makes such adjustments, in conformity with the resource development agreement (or treaty) and decisions of the Joint Ministerial Council.

(b) The Joint Development Body decides its members, appoints executive office staff, defines staff rules, and establishes a system to promptly report all appropriate information to concerned government ministries of the two countries.

(c) If any important matter or dispute occurs when carrying out the development, the Joint Development Body can report the matter and submit proposals to the Joint Ministerial Council, asking for the council's judgment.

C. Responsibilities of development corporations and ensuring transparency

(1) Making development plans (including the exploration, drilling, and production of resources, and maintenance, repair, and dismantlement of facilities) and reporting to supervising government ministries

(2) Obtaining mining permits and entering into development contracts

(3) Making estimated development budgets and reporting their implementation

(4) Making production plans with costs, conditions, and schedules, and reporting their implementation

(5) Under the supervision of supervising ministries, preparing data to be reported such as operation logs, account books, and bank accounts

(6) Collecting and keeping data to be reported to supervising ministries

4. Procedures for developing the co-development area

When developing the co-development area, China and Japan should make all the efforts they can in order to explore the possibility of establishing a joint venture corporation. If such a joint venture corporation cannot be established, China and Japan can carry out development individually.

◆ Options for co-development

* Exploring the possibility of establishing a joint venture corporation, with a fifty-fifty investment ratio, for co-development (including the exploration, drilling, and production of resources, and maintenance, repair, and dismantlement of facilities)
* If such a joint venture corporation cannot be established, China and Japan can carry out development individually.

5. **Development procedures for where a China-Japan joint venture corporation carries out development**

(1) The joint venture corporation carries out all of the exploration, drilling, and production of resources, and maintenance, repair, and dismantlement of facilities.

(2) China and Japan participate in the joint venture corporation on an equal footing. Participating corporations discuss the organization of the joint venture corporation, obtaining the Joint Ministerial Council's approval.

(3) The exploration plans and results, locations and number of mine sites to be developed, estimated production volume of each mine site, profitability evaluation, and other such matters are determined after they are reported, one by one, to the Joint Ministerial Council.

(4) China and Japan have equal jurisdiction over the determined mine sites, and the mining rights belong to the joint venture corporation. China has already started developing some mine sites to the west of the median line. China and Japan need to discuss whether the mining rights for these mine sites belong to China, regarding these mine sites as exceptional cases, or they belong to the joint venture corporation.

◆ Options for the mine sites that China already started developing to the west of the median line

* The mining rights of development corporations belong to China, regarding these mine sites as exceptional cases.

  These mine sites are regarded as exceptional cases because they were developed with Chinese capital alone before China and Japan started negotiating about co-development.

  China unilaterally started developing these mine sites in waters that China and Japan are disputing over. Even though they are located to the west of the median line, such action violates the spirit of the amicable relationship between China and Japan.
* The mining rights belong to the joint venture corporation, treating them in

the same way as other mine sites. This would be ideal.

In this case, the joint venture corporation pays, or obtains, all the costs, or profits, of the mine sites that China already started developing to the west of the median line, including development costs that China has already spent and future profit and maintenance costs.

(5) Laws to be applied to mine sites

* Since the demarcation of the mine sites being developed is not fixed, the sites are not subject to the laws of either country. Proposals of new rules to be applied to both China and Japan should be made using the existing laws of China and Japan as reference, and submitted to the Joint Ministerial Council for approval.
* If any criminal or civil cases occur at the mine sites, criminal or civil courts of the country of the victims or defendants have jurisdiction. If this is not possible, the Joint Ministerial Council decides upon which country's courts have jurisdiction.
* Financial jurisdiction and rights to tax wages of staff of the development corporations and the Joint Development Body working in the mine sites are granted to the Joint Development Body. The Joint Development Body distributes the obtained taxes and profits to both China and Japan.
* The above also apply to disputes relating to the entire co-development area, even if the disputes occur outside the mine sites.

(6) Cost sharing

Proposals of new rules on cost sharing should be made using the existing laws of China and Japan as reference, and submitted to the Joint Ministerial Council for approval. Such new rules should be based on the principle of China and Japan investing equally, regulating how China and Japan share the costs including the exploration and production costs, wages and necessary social security burdens for staff of the joint venture corporation and the Joint Development Body's executive office, royalties, distribution of profits obtained from produced oil and natural gas, costs for maintaining, repairing, and dismantling the facilities, and costs for preserving the environment and ensuring security around the mine sites.

(7) Shipping and sales of products

Considering that both China and Japan need oil and natural gas, shipping distances, international prices, and cost-efficiency of the products, China and Japan closely discuss the optimal ways for shipping and selling the products. The conclusions of such discussions are reported to the Joint Ministerial Council for approval.

(8) Dispute settlement

* If any disputes between China and Japan (or with any third country) occur in the

co-development area outside the mine sites, the joint venture corporation that carries out development at any mine site near the location of the dispute and the Joint Development Body report the dispute to the supervising ministries. Then the ministries report to the Joint Ministerial Council.

* Appropriate supervising ministries of both countries and the Joint Ministerial Council do their best to settle any dispute peacefully and promptly, respecting the spirit of the amicable relationship between China and Japan.
* If a dispute cannot be settled, the appropriate supervising ministries of both countries and the Joint Ministerial Council ask for experts' advices, and continue the discussion, trying to settle the dispute by arbitration. The Joint Ministerial Council makes the final decision.

6. **Development procedures for where China and Japan carry out development individually**

A. Exploration of the co-development area

The co-development area is divided into two equal parts, i.e. the northern and southern parts, or the eastern and western parts. China and Japan each explore one part. China and Japan look at the exploration results together and discuss which mine sites to develop.

B. Determining and allotting mine sites and their development

(a) The agreement (or treaty) states that the profitability of China and Japan should be equal when determining and allotting mine sites. Evaluating marine conditions and soil properties in a comprehensive manner, based on exploration results, indicators showing the economical efficiency of mining should be examined.

* The mine sites that China already started developing to the west of the median line belong to the joint venture corporation, and the development costs that China has already spent and profit are borne and obtained by the joint venture corporation. Although China unilaterally started developing these mine sites, the development is questionable in international laws.
* In order to ensure equality between China and Japan, if Japan agrees to allot these mine sites which China already started developing to the west of the median line to China, Japan should hold priority rights in allotting mine sites, based on the exploration results of the co-development area.
* If a resource deposit extending outside a mine site is found (regardless of whether it extends towards Chinese or Japanese side), the Joint Ministerial

Council discusses the matter and decides how the deposit should be developed.

(b) Development of allotted mine sites (including drilling and production of resources, and maintenance, repair, and dismantlement of facilities)

* When a mine site is allotted to a country, jurisdiction over the mine site belongs to the country the mine site is allotted to.
* When a mine site is allotted to a country, the country the mine site is allotted to chooses development corporations for the mine site and enters into contracts with such corporations.

(c) Cost sharing

* When a mine site is allotted to a country, taxes and duties for development costs, royalties, distribution of profits, and oil and natural gas produced are subject to the laws of the country the mine site is allotted to.
* When a country develops a mine site, the country pays for the development costs for the site and receives any resulting profits. Details are subject to the laws of the country.

◆ Options concerning development costs and profits of the mine sites

* Such costs and profits should be borne and obtained by the corporation that developed the mine site (and the country that the corporation belongs to) for the following reasons:

(1) How to share costs and profits of the mine sites that China already started developing to the west of the median line is not clear.

(2) Mine sites are allotted so that the equality between China and Japan is ensured.

(d) Laws to be applied

* Development of a mine site is subject to the domestic laws of the country the mine site is allotted to. (At the mine site, the country has jurisdiction over both civil and criminal cases, as if the mine site were located within the country's EEZ.)
* Rights to tax wages of staff of the development corporations and the Joint Development Body working at a mine site, and any criminal or civil case occurring at the site, are subject to the domestic laws of the country the mine site is allotted to.
* Since the demarcation is not fixed, disputes occurring outside the mine sites and relating to the entire co-development area are not subject to the laws of either country. Therefore both China and Japan have jurisdiction, and the

Joint Ministerial Council discusses and decides which country's laws should be applied to such disputes, depending on the types of the disputes.

(e) Mining rights

* A corporation that carries out development at an allotted mine site exclusively holds the mining rights for the site.
* Concerning pipelines, the country where a pipeline arrives has jurisdiction.

(f) Shipping and sales of products

* Considering that both China and Japan need oil and natural gas, shipping distances, international prices, cost-efficiency of the products, China and Japan closely discuss the optimal ways for shipping and selling the products.

(g) Dispute settlement

* If any dispute between China and Japan (or with any third country) occurs in the co-development area, the corporation that develops a mine site near the location of the dispute and the Joint Development Body report the dispute to the supervising ministries. Then the ministries report to the Joint Ministerial Council.
* Appropriate supervising ministries of both countries and the Joint Ministerial Council do their best to settle the dispute peacefully and promptly, respecting the spirit of the amicable relationship between China and Japan.
* If the dispute cannot be settled, the appropriate supervising ministries of both countries and the Joint Ministerial Council ask for experts' advices, and continue the discussion, trying to settle the dispute by arbitration. The Joint Ministerial Council makes the final decision.

7. Ensuring security, preventing disputes, and preserving the environment in the co-development area

(1) Ensuring security and preventing disputes in the co-development area

In order to ensure security and prevent disputes at the mine sites allotted to either China or Japan, actions of ships and airplanes are subject to the laws of the flag state. China has jurisdiction over Chinese ships, airplanes, and people, and Japan has jurisdiction over Japanese ships, airplanes, and people.

For the co-development area outside the mine sites, and ships, airplanes, and people of third countries, China and Japan discuss and establish new rules, which are applied to both China and Japan.

(2) Preserving the environment

The above also applies to environmental preservation. Obligations to make

necessary efforts throughout the development period including the exploration, drilling, and production of resources, and maintenance, repair, and dismantlement of facilities, as well as obligations to inform the other party of any threat to the marine environment should be included in the agreement.

8. Conclusion

As at the beginning, the East China Sea should symbolize the peaceful relationship between China and Japan, and should be peaceful in reality too. Joint development of the East China Sea is beneficial for both China and Japan, who are maintaining their remarkable economic development as powerful countries.

In order to make the East China Sea symbolize peace, understanding and shared awareness between China and Japan are essential. To achieve these, mutual confidence between the leaders of the two countries are most important.

Since Abe became the Prime Minister of Japan, the Chinese and Japanese leaders are strengthening exchange, pursuing talks. People of China and Japan are also aware of the achievements of such exchange, and the mutual confidence and understanding between the Chinese and Japanese people is improving, creating a good atmosphere for starting joint development in the East China Sea.

When carrying out co-development, discussion between the Chinese and Japanese administration officials is important. They have difficulties making decisions from a broad viewpoint, refraining from being assertive, and making concessions because it is their duty to represent national interests.

In this regard, Chinese and Japanese experts with thorough knowledge of maritime affairs, including international maritime treaties, court precedents, and case examples, work together on an equal footing, discussing in a calm manner, drawing up and submitting joint proposals to the forum for policy discussions is very useful. To make this happen, further track-two dialogues are required.

It is also important not to increase tensions in the East China Sea. Even if small disputes occur, they should not be escalated. Solving such disputes promptly, keeping them as small as possible, is important. In order to make this possible, a constructive and collaborative atmosphere and framework between China and Japan must be created. Confidence building between the Chinese State Ocean Administration and Japan Coast Guard, the maritime law-enforcement agencies responsible for ensuring security in the co-development area and at mine sites, between the Chinese Ministry of National Defense and the Japanese Ministry of Defense, who are engaged in security affairs as national government agencies, and

between the Chinese People's Liberation Army, Navy, and Air Force and the Japanese Maritime and Air Self-Defense Forces, is essential. In these fields, efforts for confidence-building between China and Japan have been scarce, and there has been no framework. Further efforts are required.

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第２回「日本と中国との海洋安全ダイアログ」海洋政策研究財団　平成１９年８月２７－２８日

北東アジアの海洋安全保障・・・課題と展望

東シナ海の紛争海域における石油･天然ガスの日中共同開発
（具体策の初歩的な検討）

海洋政策研究財団　特別顧問
国見　昌宏

１．はじめに

（１）東シナ海は、日中両国の平和の海であり、実際にそうあらなければならない。東シナ海の石油･天然ガスは、日中双方にとって重要な海底資源であるが、開発の前提となるEEZないし大陸棚の範囲について日中両国の主張が大きく食い違い、重なり合っている。日中両国は、この海域における境界確定が膠着状態にあることから、双方が主張する範囲の重なり合う部分、即ち紛争海域を日中が共同開発しようとする総論ではおおむね一致している。しかし、具体的な共同開発の区域や開発の要領、開発に当たっての条件などは、これまでの協議でも双方が納得する成果は上がっていない。現在日中はともにめざましい経済発展を遂げており、その基盤を支える大量のエネルギーを必要としている。世界の海域では20以上の共同開発計画があるといわれていることから、日中の共同開発も早期に実現することが望まれる。共同開発を可能にするためには、両国が大局に立って自己主張を抑え一定の妥協をするとの政治的意思のもと、日中は対等であり、平等であるとの立場に立って協力して共同開発の制度設計を行うことが必要である。

（２）ここでは、日中両国が東シナ海で石油･天然ガスの共同開発を行うにあたって、その前提となる信頼醸成を図るための研究を行う場合において、共同開発の概念を理解するために参考となる事項やその内容を初歩的に考察することを目的とした。

（３）共同開発を行うために具体的に検討すべき事項としては、①共同区域の設定、②日中間で協定（又は条約）を締結するとともに、日中協議機関を設立して共同開発にかかわる協議を行う場合の権限等を規定する。③開発を担当する企業の形態（合弁企業か日中個別の企業か）、④主に日中間の協定に盛り込むべき具体的な開発要領即ち石油・天然ガスの探査、掘削、生産、施設の維持管理や補修、撤去の全般に係わる日中双方の分担比率や資本分担等、④共同開発の全期間を通じた、共同区域での係争防止や安全確保、環境保全などに関する取り決めなどが考えられる。
以下、これらの事項について検討する。

２．紛争海域の範囲と共同開発区域の設定

（１）紛争海域の範囲

日本は、境界線を「わが国の沿岸から 200 海里の線又はそれが向かい側の国との中間線を超える場合は、対岸国と別の境界線に合意しない限り、中間線である」と規定している。

中国は大陸棚の自然延長論に立って、沖縄列島の西方に横たわる沖縄トラフの最深部を境界線と主張している。

中国は、日本が主張する中間線を境界線とすることに合意していないことから、日中間の紛争海域は、日本から 200 海里の線と、沖縄トラフ最深部に囲まれた海域と解される。

（２）共同開発区域の設定

ア　日中が東シナ海で共同開発を行う場合、その海域は日中間の合意が必要なことは当然であるが、隣接する国や地域、具体的には韓国と台湾から異論のない地域に設定する必要がある。

イ　尖閣諸島は、日本（実効支配する自国領土であり、尖閣諸島を巡る領有権争いは存在しない）、中国（領海法）及び台湾（宜蘭県に属すとして 2004 年 4 月土地登記簿に記載.）がそれぞれ自国（地域）の領土と主張している。これら諸島の問題解決は次ぎの世代の叡智に任せるとの鄧小平元主席の発言のほか、協議を複雑にせず協議に係わる時間を短縮し、かつ係争を防止するため共同区域から除外すること望ましい。

東シナ海北部では1974年に日韓南部大陸棚共同開発協定が締結されていることから、韓国との係争防止の観点から、日中の共同開発区域の北限はこの地域以南とすべきである。

ウ　日中が共同区域を設定するため検討する範囲は、西側は日本から２００海里の線、東側は沖縄トラフ最深部であるが、この範囲は余りにも広く、かつ東西の線に近い区域は双方にとって自国の領土に近接する地域であり、漁業資源や安全保障上からも共同区域とするとの合意を得ることは困難であるとみられる。両国の理解が得やすく、共同開発のスピードや費用対効果から、東西の線から双方とも平等な面積を削除することが必要である。

エ　共同区域の東西の範囲は、日本が主張する２００海里及び中国が主張する沖縄トラフ最深部からそれぞれ平等に１００海里を減じた線に囲まれた範囲とすることが望ましい。共同区域の北側は日韓南部大陸棚共同開発協定で規定された区域の南端、南側は尖閣諸島を基点に（２００海里から１００海里を減じて）１００海里の線とし、これらの線に囲まれた範囲を共同区域とする。

オ　なお、中間線と沖縄トラフ最深部に囲まれた地域を共同区域とする案は、近年の海域境界画定で大陸棚の権原が距離を基準とするに至っており、日本としては受け入れられない。なお、共同区域設定の検討において、中越間でトンキン湾境界線を挟

んで設定された共同漁業海域が参考になる。

3．共同開発を行うための日中協議機関の設立とその権限（協定又は条約）

（1）協定（又は条約）の締結

日中両国は、国連海洋法条約第74条3項に基づき、東シナ海の共同開発区域における石油･天然ガスを対象とした資源開発に関する事項を定めた協定（又は条約）を締結する。

この協定において、両国の関係閣僚で構成する共同閣僚協議会（両国の関係局長レベルの協議会でこれを補佐）、及び両国の共同開発機関を設立し、政策事項の決定及び開発企業等（合弁企業を設立する場合はそれを含む、以下同じ）を指導監督し、相互に調整して資源開発を行うものとする。

（2）共同閣僚協議会及び共同開発機関の機能

ア　共同閣僚協議会

（ア）日本側メンバーは、海洋政策担当大臣、外務大臣、経済産業大臣とし、中国側メンバーは日本側のそれぞれのカウンターパートとする。

（イ）共同閣僚協議会は、共同区域での資源開発を行うに当たって、基本的政策事項と協定（又は条約）の実施に関する権限や規則を決定し、関係する開発企業等の監督責任を有し、開発間に生じた懸案事項等を協議し決定する両国間の最高意思決定機関とする。

（ウ）共同閣僚協議会は、定期協議会および必要に応じて開催される臨時協議会とし、日中交代で開催し、議長はホスト国メンバーが務め、意思決定はコンセンサス方式とする。

（エ）開発企業等を監督する省庁を経由して共同閣僚協議会に報告された、当該企業等の開発等に関する状況を相互に公開･確認し、透明性を持って開発等を進めるものとする。

イ　共同開発機関

（ア）開発を担当する両国の企業等の同数の代表で構成し、資源開発に関する協定（又は条約）及び共同閣僚協議会の決定に基づき、開発現場で生じる日常的に必要な事項を調整する。

（イ）共同開発機関の内部構成、事務局職員の任命、職員規則の作成、および両国関係官庁等への速報態勢を確立する。

（ウ）開発現場で生じた重要事項や係争事案に関し、共同閣僚協議会に報告、協議案を提案してその決定を仰ぐことが出来る。

ウ　開発企業等の責任と透明性の保持

（ア）開発計画（探査、掘削、生産、施設の維持管理や補修、撤去のすべてを含む）の作成と監督省庁への報告

（イ）操業許可と開発契約の締結
（ウ）開発予算（見積もり）の作成と実行の報告
（エ）生産計画（生産費用、生産条件、生産スケジュール）の作成と実行の報告
（オ）開発企業等が監督省庁から監督を受け、報告すべき事項（操業日誌、会計帳簿類、銀行口座等）の整備
（カ）監督官庁等を経て報告すべきデータの収集･保存

4．共同区域の開発要領

共同区域の開発に当たっては、まず日中の合弁企業を設立して行う可能性を追求し、困難な場合は日中が個別に開発を行うものとする。

◆ 共同開発に当たってのオプション

・共同開発（探査、掘削、生産、施設の維持管理や補修、撤去のすべてを含む）のため、日中の合弁企業（出資比率は、50対50）を設立する。・・・可能性を追求
・日中が個別に開発を行う。・・・合弁企業の設立が困難な場合とする。

5．日中が合弁企業を設立して開発を行う場合の要領

（1）合弁企業が探査、掘削、生産、施設の維持管理や補修、撤去のすべてを行う。
（2）合弁企業の構成は日中が平等、対等であることを基本に、構成する企業間で協議し、共同閣僚協議会の同意を得るものとする。
（3）共同区域の探査計画、探査結果、開発する鉱区の場所と数及びそれぞれの予想される生産量と採算見積もり等を順次共同閣僚協議会に報告し確定するものとする。
（4）確定した鉱区の管轄権は日中両国が平等に保有し、操業権は合弁企業とする。
中国が既に開発に着手している中間線以西の鉱区の操業権を、中国に例外として認めるか、合弁企業含めるかに関しては、日中で協議する必要がある。

◆ 中国が既に開発に着手している中間線以西の鉱区の操業権に関するオプション

・例外的に中国の開発企業等の操業権を認める。
例外を認める理由は、共同開発に係わる日中協議以前に中国のみの資本で開発。
しかし、日中の係争海域で中国が一方的に開発を開始したことは、中間線以西とはいえ、日中友好の精神に反する。
・合弁企業の操業件として一体的に取り扱う。・・・本来あるべき姿である。
この場合、中国が既に開発に着手している中間線西側の鉱区に関する経費は、中国側がこれまでに要した開発経費や利益及び今後の利益や維持管理費等を含め、全て合弁企業の経費とする。

（5）鉱区に関する法律の適用
・鉱区の開発等に関する法律の適用は、境界画定がなされていないことから何れの国の法律も適応せず、日中双方の法律を参考に共通の新ルールを設定し、共同閣僚

協議会の決定を得るものとする。

・鉱区内で発生する犯罪等の刑事及び民事管轄権等は、被害者又は被告人の国の法律によることとする。これによりがたい場合は、共同閣僚会議の協議に委ねるものとする。

・鉱区の財政的な管轄権及び鉱区で働く開発企業・共同機関職員の賃金への課税権等は共同開発機関に付与し、得られた税金や利潤は共同開発機関から日中両国へ配分するものとする。

・鉱区外で、かつ共同区域全体に係わる係争等の場合において適用する法律も同様とする。

（６）費用分担

・探査と生産等に要する費用、鉱区で働く合弁企業の職員や共同開発機関の事務局職員等の給与や必要な保障等、ロイヤリテイ、産出された石油・天然ガスから得られる配潤の分配、施設の維持管理や補修、撤去に要する経費、環境保全や鉱区周辺の安全確保に要する経費等は、日中の出資比率が５０対５０であることを基準に、日中双方の法律等を参考に新ルールを設定し、共同閣僚協議会の決定を得るものとする。

（７）生産物の輸送・販売先

日中ともに石油・天然ガスを必要としていること、及び生産物の輸送距離や国際価格、費用効率などを考慮して、日中が最善の方策を密接に協議するとともに共同閣僚協議会に報告しその同意を得るものとする。

（８）紛争の解決

・鉱区外の共同区域で日中両国（第三国を含む）間の紛争等が発生した場合は、近傍の鉱区を開発する合弁企業及び共同開発機関を通じて、速やかに両国の監督官庁を経由して共同閣僚協議会に報告するものとする。

・両国の関係監督官庁及び共同閣僚協議会は、日中友好の精神に則り、平和的かつ速やかな解決に努めるものとする。

・紛争が解決されない場合は、両国の関係監督官庁及び共同閣僚協議会は、専門家による判断などを踏まえ、さらに協議を重ね、仲裁に努めるものとし、最終的な判断は共同閣僚協議会の決定によるものとする。

６．日中が個別に開発を行う場合の要領

ア　共同区域の探査

共同区域を南北、又は東西に二等分して、日中がいずれかの探査を担当する。

探査の結果を日中が持ち寄り、開発する鉱区を検討する。

イ　鉱区の設定・割り当てと開発

（ア）鉱区の設定・割り当てに当たっては、探査の結果に基づき海洋条件や海洋土質などから総合的に判断した採掘の経済性指標を検討し、日中の採算性が平等になる

ことを協定（又は条約）に規定する。

・中国が既に開発に着手している中間線西側の地域は、（日本の合意を得ていない一方的開発であり、国際法上問題であるが、）中国側がこれまでに要した開発経費及び利益を含め合介企業の鉱区とする。

・中国が既に開発に着手している中間線西側の鉱区を中国側鉱区と認めることから、共同区域の探査結果に基づく鉱区割り当てに際して日中の平等わ担保するため、割り当ての第一優先権を日本とする。

・鉱区の外側海域（中国側又は日本側）にまたがって鉱床が発見された場合には、共同閣僚協議会で協議し、別途開発方法を定める。

（イ）割り当てられた鉱区の開発(掘削、生産、施設の維持管理や補修、撤去を含む)

・割り当てられた鉱区は、割り当てられた国に管轄権を認める。

・割り当てられた鉱区の開発企業の選定や契約締結等は、割り当てられた国が行う。

（ウ）費用分担

・開発等に要する費用、ロイヤリテイ、利潤の分配および産出された石油･天然ガスに対する課税権等は、鉱区を割り当てられた国の法律による。

・鉱区の開発に必要な経費及び開発から得られた利潤については、開発を担当した国の企業とし、細部は各国の法律による。

◆鉱区の開発に必要な経費、利潤に関するオプション

・共同開発であることから、各鉱区に関する必要経費、利潤を日中がオープンにし、かつ平等に配分（分担）する。

・鉱区を開発した企業、(企業の属する国)のものとする。・・・採用

理由：①中国が既に先行している中間線西側鉱区の経費、利潤配分の要領が明確でない。

②鉱区の割り当てにおいて、日中がイーブンになるように設定している。

（エ）法律の適用

・割り当てられた鉱区の開発等に関する法律の適用は、それぞれの国の国内法による。（鉱区内では自国の EEZ と同じ民事管轄権及び行政管轄権を行使することが出来る。）

・鉱区で働く開発企業･共同機関職員の賃金への課税権及び鉱区内で発生する犯罪等の刑事及び民事管轄権は、鉱区を担当する国の国内法による。

・鉱区外で、かつ共同区域全体に係わる係争等の場合において適用する法律は、境界画定がなされていないことから、日中両国が管轄権を保有するものとし、何れ国の法律を適応するかは、紛争等の形態に応じ共同閣僚会議で協議し決定するものとする。

（オ）操業権等

・操業権は割り当てられた鉱区での開発を担当する企業等のみに認められるものとする。

・パイプラインは、着岸国が管轄権を有するものとする。

（カ）生産物の輸送･販売先

・日中ともに石油･天然ガスを必要としていること、及び生産物の輸送距離や国際価格、費用効率などを考慮して、日中が最善の方策を密接に協議するものとする。

（キ）紛争の解決

・共同区域で日中両国（第三国を含む）間の紛争等が発生した場合は、近傍の鉱区を開発する企業等及び関係共同開発機関を通じて、速やかに両国の監督官庁を経由して共同閣僚協議会に報告するものとする。

・両国の関係監督官庁及び共同閣僚協議会は、日中友好の精神に則り、平和的かつ速やかな解決に努めるものとする。

・紛争が解決されない場合は、両国の関係監督官庁及び共同閣僚協議会は、専門家による判断などを踏まえ、さらに協議を重ね、仲裁に努めるものとし、最終的な判断は共同閣僚協議会の決定によるものとする。

7．共同区域での安全確保と係争防止、環境保全などに関する事項

（1）共同区域での安全確保と係争防止

日中いずれかが担当する鉱区内の安全確保や係争防止のため、船舶及び航空機に関する行為については、旗国管轄権に属する。すなわち両国は自国籍船や航空機および自国民に管轄権が及ぶものとする。

鉱区外の共同区域および第三国船籍船等及び第三国民に対する措置は、日中が協議し共通の新ルールを設定するものとする。

（2）環境保全等

環境保全などについても上記と同様とし、資源の探査、掘削、生産、施設の維持管理や補修、撤去のすべての期間を通じて必要な措置をとる努力義務と、海洋環境の脅威の相互通報義務を規定する。

8．おわりに

冒頭に述べたとおり、東シナ海は、日中両国の平和の海であり、実際にそうあらなければならない。東シナ海の日中共同開発は、世界の大国として経済発展を続ける両国の共通利益である。

東シナ海を平和の海にするためには、両国の相互理解と共通認識が必要であり、そのためには両国の指導者間の相互信頼が最も大切である。

日本の安倍総理誕生以降、日中両国首脳の相互交流や会談が継続しており、両国民もその成果を確識しつつ、相互の信頼感や相互理解が深まる方向にあり、東シナ海

の日中共同開発を進める上でも、よい雰囲気が醸成される方向にあるといえる。
共同開発を進めるに当たっては、日中両国政府の関係者による協議が中心になることは勿論であるが、国益を代表する立場にあることから、大局に立って自己主張を抑え一定の妥協をするとの政治的意思決定を行うことは難しいといえる。
この点、海洋に関する国際的な条約や判例・事例などに詳しい学識豊かな両国の専門家が、日中は対等かつ平等であるとの立場に立って冷静に協議して、共同案を作成し政策協議の場に提供することは極めて有意義である。そのためにも今後第２トラックでの更なる議論の深まりが望まれる。
同時に、東シナ海で緊張を高めないことが重要である。仮に若干の係争が発生した場合においても、それを拡大させることなく短時間に最小限の範囲で解決するような、日中の建設的な協力の雰囲気を醸成し、その枠組みを作ることが大切である。
このため、共同区域や鉱区の現場周辺の安全を確保する立場にある海洋の法執行機関たる海上保安庁と中国国家海洋局との間や、国家の権力機関としてこの地域の安全保障に関係する防衛省と中国国防部、海上及び航空自衛隊と中国人民解放軍海軍及び空軍の間との、信頼醸成がきわめて重要である。この方面の日中の信頼醸成はこれまで希薄であり、何らの枠組みも設定されていないことから、今後一層の関係増進が望まれる

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7. 参考とした各国の大陸棚の共同開発等に関する協定や条約等

（１）タイ＝マレーシア間の共同機関の構成及び設立に関する諸問題に関する協定

（２）ナイジエリア＝サン・トメ・プリンシペ間の石油等共同開発に関する条約

（３）チモール海条約（オーストラリア＝東チモール）

（４）コロンビア＝ジャマイカ間の海洋境界画定条約

（５）アルゼンチン＝UK 巻の南大西洋におけるオフショア活動協力に関する共同宣言

（６）バルバドス＝ガイアナ間の二国間の排他的経済水域が重複し、かつ第三国の排他的経済水域とは重複しない水域における管轄権行使に関する条約

（７）マレーシア＝ベトナム間の両国に含まれる大陸棚の「規定水域」における石油の利用と開発に関する覚書

（８）サンライズユニット化協定（チモール海条約第９条関連）

（９）CMATS 条約（オーストラリア＝東チモール）

On the Provisional Arrangements before the Final Delimitation between China and Japan in East China Sea

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According to Article 74 paragraph 3 and Article 83 paragraph 3 of United Nations Convention on the Law of the Sea (hereafter referred to as UNCLOS), when settling the delimitation of the EEZ and continental shelf between States with opposite or adjacent coasts, " Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into **provisional arrangements** of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. Such arrangements shall be without prejudice to the final delimitation."

After the talks between Chinese Premier Wen Jiabao and Japanese Prime Minister , Shinzo Abe in Tokyo on April 14th, 2007, Beijing and Tokyo has issued the China-Japan Joint Press Communique, which states that both sides reach consensus on appropriately handling the issue of the East China Sea: "(1) Firmly adhere to making the East China Sea a 'Sea of Peace, Cooperation and Friendship' ; (2) Conduct joint development as a provisional framework before the final delimitation, based on principles of mutual benefit, and on the premise that it does not prejudice the position of either side on various issues concerning the law of the sea". Leaders of both sides have recognized that the settlement of delimitation in East China Sea is a long-term and complicated issue. Entering into provisional arrangements acceptable to both parties before the reaching of the final agreement is not only a practical measure but also in accordance with international law of the sea

The issue on the settlement of the delimitation between China and Japan in East China Sea emerged with the UNCLOS in 1982 and has become intense because the delimitation involves respective basic benefits of maritime sovereign rights and

jurisdiction. They are difficult to be resolved because the delimitation not only deals with the two regimes of continental shelf and EEZ, but also relates to different comprehension of international law of the sea, and diverse understanding of topography, geomorphology and geological structure of continental shelf. The author holds that the delimitation in East China Sea should be settled through diplomatic negotiation of the two parties to achieve an equitable solution on the basis of legal analysis and scientific research. It is necessary to enter into provisional arrangements before the final delimitation for easing the contradiction in the delimitation and prevent the conflict from being intensified. According to the current situation, apart from joint development, provisional arrangements should include the following aspects.

I. Joint Study on International Law of the Sea

The issue of the delimitation between China and Japan in East China Sea emerges with the UNCLOS in 1982. For continental shelf China insists on the principle of natural prolongation of land territory and is firmly against the "median line" claimed unilaterally by Japan. Japan has put forward the "median line" since 1982, and has proclaimed that the natural prolongation principle is out of date and the continental shelf regime has been replaced by EEZ regime. The diversity in the comprehension of regimes of continental shelf and EEZ in international law of the sea between China and Japan has been developed into two sharply contrasting actions. Since the day the "median line" was put forward, Japan has actually controlled the sea areas in the east side of that line by armed forces. In spring 2004 Japan spread like wild-fire the news of "Chun Xiao" oil-gas field exploited by China, asked for the relevant data and called for ceasing of construction in the name of "the effects of siphoning off resources". From July 2004 to June 2005 it rented the exploration ship "Victory" of Norway to conduct seabed resource survey near the sea area of "Chun Xiao". In July 15, 2005 the Japanese government authorized the private enterprise----Teikoku Oil Company to conduct trial-exploitation at East China Sea. This year the Japanese House of Representatives and Senate passed four acts including "Enactment on Setting Safe

Water Area for Structures at Sea".

International law of the sea differs from domestic laws. The former comes into being through negotiations and compromises among more than one hundred of countries. It has no relevant detailed rules and regulations, and no authoritative institutions can make the explanations. Many aspects remain to be solve by countries' practices. It is normal that China and Japan have different comprehensions on international law of the sea, and that both have the right to make interpretations in its own favor. But either should not make misinterpretations departing and violating the principles of the UNCLOS.

The author holds, many aspects such as origin, form, content, nature, definition, and practice can prove that EEZ and continental shelf are completely two different regimes despite of their connection. The origin of these two regimes can be traced back to the two declarations of ocean policy proclaimed by US president Harry S. Truman on September 28, 1945. The main purpose of these two declarations is to protect US fishery and oil resources. The ocean policy of the US influences not only its own legislations, but also the whole world, and it accelerates the development of international law of the sea. It can be seen from the way the UNCLOS expresses. The UNCLOS defines the two regimes respectively in Part V (EEZ) and VI (Continental Shelf), and different expressions exist regarding their definition, rights and obligations of the coastal countries, the manner of the coastal countries obtaining such rights, and the method of determining their scope. And it is accepted worldwide that the regime of continental shelf governs the seabed exploitation of mineral resources (mainly oil) while the EEZ regime mainly governs the conservation of the living resources of the sea. Moreover, the fact that Australia and Indonesia used two lines to settle the delimitations of EEZ and continental shelf proves that the regimes of EEZ and continental shelf are two different regimes in current international law of the sea.

China insists all along on the natural prolongation principle, while Japan puts forward the "median line". Under such a situation that the two parties hold very different opinions affecting the delimitation, the best way is that China and Japan

organize ocean law scholars and experts of both parties (even including third party members) to have discussion calmly and objectively on comprehending and interpreting the legal principles of international law of the sea on the ground of fairness and equity. The conclusions obtained through such discussions could be submitted to leaders or decision-making authorities of both parties to serve as the basis of diplomatic negotiations on the delimitation in East China Sea.

II. Joint Survey of Continental Shelf Structure

In addition to joint study of legal principles by international ocean law scholars and experts from both parties to create a common perspective as a legal basis for an equitable solution, it is also needed to organize marine geologists of the two countries to conduct scientific survey of continental shelf structure of East China Sea to come to persuasive conclusions serving for decision-making analysis and assessment. The root of serious differences and acute contradictions between China and Japan on the delimitation in East China Sea lies on whether the two countries are on the same continental shelf or not in East China Sea. Each country proposes its own opinion but no one can make pertinent authoritative explanation.

The principle of natural prolongation proposed by China all along is a legal concept as well as a geologic one. Since 1982 Japan has proposed to delimitate East China Sea by the "median line" with just a sketch map without detailed coordinates. Japan has neither made clear whether the line is to delimit EEZ or continental shelf. But it can be deduced from its behavior and speech later that the "median line" is to settle the delimitation of both EEZ and continental shelf. The "median line" can be regarded as the adoption of equidistance principle theoretically. But the adoption of equidistance principle can reach an "equitable solution" only when the geographical and human environments are the same or similar in the two countries involved. But the geographical and human environments of China and Japan in East China Sea are wildly different, where the adoption of the "median line" runs counter to the principle of "equitable solution". Firstly, China and Japan are on opposite sides of East China Sea, and the coast of the former is mainland while that of the latter is Ryukyu. It is

well known that mainland is legally superior to island in delimitation. Secondly, the Yangtse River, Qiantang River and Min River of China contribute much more living resources, mineral resources and water resources to East China Sea than Japan. Thirdly, Japan is far behind to match China in the traditional use of East China Sea. Fourthly, Japan calls the East Sea as "East China Sea" all along, which indicates the close relationship between East China Sea and the Chinese nation. Fifthly, From the formation and establishment of the EEZ regime itself, the relevant interpretations should be made in favor of the developing countries when disputes arise. Thus, the application of the principle of proportionality in the delimitation between China and Japan in East China Sea would conform to the equitable principle of the UNCLOS for the delimitation.

Japan is the geographically disadvantaged state in the delimitation of East China Sea. And it has to prove that China and Japan share the same continental shelf in East China Sea if it wants to delimitate the East China Sea evenly with China. If things go on like the present situation, there will never be a solution to the delimitation disputes in East China Sea acceptable to both countries. In order to achieve an equitable solution in East China Sea delimitation, the two countries should organize marine geologists of both parties(or even including third party members) to conduct joint survey of the continental shelf structure of East China Sea to provide scientific support to the delimitation between the two countries. This will also be a touchstone manifesting whether the parties are willing to reach an equitable solution in delimiting East China Sea according to principles of international law of the sea and marine scientific study conclusions.

III. Joint Development of the Disputed Sea Areas

The China-Japan Joint Press Communique of April 14th, 2007 states that both sides have reached consensus on appropriately handling the issue of the East China Sea, and that the two parties should conduct joint development as a provisional framework before the final delimitation based on the principle of mutual benefit, and on the premise that it does not prejudice the position of either side on various issues

concerning the law of the sea. The achievement of the consensus has been through a long and tortuous course since China proposed joint development of oil-gas resources in the East China Sea. When Japanese Foreign Minister Yoriko Kawaguchi was at Qingdao, she flatly rejected the proposal on joint development in the East China Sea put forward by Chinese Foreign Minister Li Zhaoxing. And Japan was also against it in the first two rounds of consultation on oil-gas resource issues in the East China Sea. Thus it is hard to anticipate how long it will take from the consensus reached to the stage of implementation. The provisional arrangement is of great practical significance.

It was in 1978 when Deng Xiaoping visited Japan, the concept of "joint development" was first initiated for solving the Diaoyu Islands issues between China and Japan. This concept goes down in history together with the concept of "one country, two systems", and these two "have different tunes sung with equal skill". It is marvelous to use the concept of joint development as an provisional arrangement of East China Sea delimitation 20 years later. But the implementation phase won't come up immediately. The two countries have much difference in the comprehension and requirement of joint development. China requests to conduct joint development in the disputed sea areas, while Japan wants to conduct joint development on both sides of the "median line". It should be said that Japan has made great progress by changing its policy from rejecting China's positive proposal to accepting and reaching consensus.

China has already naturally got the sovereign rights and jurisdiction over 200 nautical miles continental shelf of East China Sea based on the natural prolongation principle stipulated in Convention on the Continental Shelf in 1958 and UNCLOS in 1982. It is unreasonable for Japan to compete for the oil-gas resources in East China Sea continental shelf with China if Japan can not prove that China and Japan share the same continental shelf in East China Sea. The fact that China proposes joint development indicates that it persists in the foreign policy of building a good-neighborly relationship and partnership with neighbors, and expresses its good

will of making the East China Sea a Sea of Peace, Cooperation and Friendship.

All in all, joint development of East China Sea as a provisional framework has its positive significance in settling the disputes on the basis of mutual negotiations.

Ⅳ. Other Aspects Related to Provisional Arrangement

Before the final delimitation in East China Sea between China and Japan, as part of the provisional arrangements the armed forces and law enforcement agencies of both counties should set up mutual confidence-building mechanism and take all possible measures to prevent the occurrence of incidents at sea. Such INCSEA agreements have been established between the former Soviet Union and USA, Canada and Spain, Egypt and Israel, Indonesia and Malaysia, Japan and South Korea, Russia with Japan and South Korea, and have obtained desired results. The INCSEA agreement consists of a formal text as well as annex. The annex provides all kinds of operation codes which parties to the agreement can use to replace traditional language expressions. Each code stands for a particular meaning. Using codes to communicate can avoid misunderstandings caused by traditional phone calls. The naval forces and law enforcement agencies of China and Japan should draw on the above-mentioned experiences, and establish the mutual confidence-building mechanism, East China Sea hotline, and enter into INCSEA agreement as soon as possible.

In addition, both parties should take all effective measures to guide the media to report East China Sea issues responsibly and positively, and especially should prevent another occurrence of maliciously instigating the public feelings and stirring up disturbances in disregard of the principles of international law of the sea. Before the final settlement of delimitation in East China Sea between China and Japan, neither side should impose its unilateral claim on the other side, or have actual control of its claimed sea areas by dispatching armed ships and aircrafts.

Provisional arrangements are temporary measures taken by states with opposite or adjacent coasts before the final delimitation of EEZ and continental shelf. Although there is no relevant detailed explanation on provisional arrangements, the main

purpose is to prevent contradictions arising from delimitation from being intensified. The delimitation disputes between China and Japan are deep-rooted and need both parties to take effective measures to handle with rationality and forbearance. Provisional arrangements should include but not limit to joint development. The two parties should jointly discuss the international law of the sea and conduct marine scientific survey so as to provide legal and scientific basis for the delimitation. Meanwhile the two parties should enter into agreement on prevention of incidents at sea, establish the coordination and liaison mechanism, guide the mass media properly, cease actual control over the disputed sea areas so as to keep the normal order and stability at sea and to make the East China Sea a Sea of Peace, Cooperation and Friendship.

Joint Development in East China Sea

By Prof. Ji Guoxing

---Paper for the China-Japan Dialogue on Ocean Security "**Ocean Security in Northeast Asia: Issues and Prospects** " in Tokyo August 27-28, 2007—

(1) An Expedient Measure

Shelving the disputes for a period and working for joint development among relevant parties in the disputed areas is a good measure. Though this is not the permanent solution to the problem, but only an expedient measure in the transitional period towards the final equitable settlement, it is a practical and realistic approach, and the preferred alternative to no action. All parties could reap the benefits from the resources.

Joint development usually refers to gas exploration and exploitation in disputed areas where no delimitation lines exist, or in areas where exist delimitation lines but with resources striding across the delimitation lines. Joint development can be initiated both before the final delimitation and after the delimitation agreement.

Joint development has become common practice worldwide. Up till now, there are 21 joint development cases spreading around the world. Among them, 13 belong to disputed areas where no delimitation lines exist, and 8 belong to the areas where delimitation lines exist but with resources striding across the delimitation lines. The former include the agreement between Australia and Indonesia on cooperative development in the Timor Gap. The latter include the 1958 continental shelf agreement between Bahrain and Saudi Arabia, which solves the two islands sovereignty disputes and makes arrangements for joint sharing of profits from the gas field of Fashtu bu Saafa, and the 1969 continental shelf agreement between Qatar and Abu Dhabi, which solves the three islands sovereignty disputes and arranges the profit sharing from the oil field Al-Bunduq.

Joint development in disputed areas where no delimitation lines exist puts emphasis on the precondition that joint development in the overlapping areas does not affect the sovereignty issue, such as the Timor Gap agreement between Australia and Indonesia.

Regarding the Sino-Japanese joint development in East China Sea, the important thing now is to specify the exact scope of overlapping areas or disputed areas, and to reach consensus first on it. If Japan insists on the taking the two sides of its "median line" as the area for joint development, then there is no way out. As China has repeatedly said that Chun Xiao and other gas fields are in the undisputed area west of the Japanese "median line", Japan's attempt to embrace Chun Xiao and other gas fields into joint development zone is unworkable.

If China and Japan could agree to delimit two separate lines for EEZ and continental shelf, then the establishment of a joint development zone between the two lines could be considered. Because of China's sovereign rights over the sea-bed and subsoil and because of Japan's sovereign rights over the waters superjacent to the sea-bed, the establishment of joint development zone is beneficial to resources

exploitation and both sides' economic interests.

(2) The Timor Gap Treaty of Joint Development

Australia and Indonesia are neighboring countries separated by the Timor Sea and the Arafura Sea. In early 1970s Australia and Indonesia concluded treaties that established seabed boundaries. In the treaties, the Timor Trough with the depth of 3,200 meters is considered as the most important "relevant circumstances" by both sides.[1] As East Timor was then a colony of Portugal, a gap of approximately 200 nm was left in the boundary south of East Timor, called "the Timor Gap"..

After Indonesia incorporated East Timor in July 1976, Australia and Indonesia began to negotiate the delimitation in the gap. Australia holds that there are two continental margins between Timor and Australia. A wide Australian continental margin is in the south, a narrow Indonesian continental margin is in the north, and the two are separated by the Timor Trough. Australia claims that the Trough's axis or a line halfway down the Australian margin should be the boundary as an extension of the 1972 agreed seabed line. Indonesia claims that there is only a single continental margin between the two countries, that the Timor Trough is just a depression in the continuous feature, and that the boundary should be an equidistant line between their territories.

The disputes area in the Timor Gap between them is around twelve thousand square nm (nautical miles). The Timor Gap consists of the Timor Basin and the Bonaparte Gulf Basin. If the equidistant line is the boundary as Indonesia proposes, the Timor Basin and 1/3 of the Bonaparte Gulf Basin would belong to Indonesia; if an extension of the 1972 agreed seabed line is the boundary as Australia proposes, then a small portion of the Timor Basin and the whole Bonaparte Gulf Basin would belong to Australia.

After 10 years of tough negotiations, Indonesia and Australia reached in December 1989 the Agreement on Zone of Cooperation (ZOCA) in the Timor Sea. In October 1999 Indonesia recognized the result of the plebiscite by East Timor nationals and agreed to let East Timor break away from it. On the day of its independence on May 20, 2002, East Timor signed with Australia the Timor Sea Treaty. The Joint Petroleum Development Area (JPDA) in the Australian-East Timor Treaty replaces the Joint development Zone (Areas A.B.C) in the ZOCA. Actually the JPDA is exactly the same as Area A in the ZOCA in its scope and coordinates. As to the profit-sharing in the JPDA, Australia makes concessions, and apparently for political consideration, is willing to share 90% of the profits for East Timor and 10% for Australia. However, there is an understanding between them that the petroleum crude would be brought to Darwin for processing, which would bring benefits to Australia, particularly in terms of business and employment.

The Australian-Indonesian agreement on joint development in the Timor Sea is the most comprehensive and perfect document on joint development in disputed sea areas, and an innovation in the mechanism of joint development. Its main contents include:

The establishment of Areas A.B.C. The joint development zone stipulated in the

[1] Zhao Lihai, Contemporary International Law, China Law Publishing House, 1993, p. 150.

agreement amounts to 61,000 square kilometers, and is divided into Area A, Area B, and Area C. Area A is situated in the center of the zone, lying between the median line claimed by Indonesia and the center line of the trough claimed by Australia,. and is larger than Area B and Area C. It is the joint development area in real sense. "In Area A, there shall be joint control by the Contracting States of the exploration for and exploitation of petroleum resources, aimed at achieving optimum commercial utilization thereof and equal sharing between the two Contracting States of the benefits of the exploitation of petroleum resources, as provided for in this Treaty.";[2] Area B and Area C are situated in the north and south of Area A, and is administered by Australia and Indonesia respectively. Area B is an Australian independent administrative area, and Area C is an Indonesian independent administrative area. In Area B, Australia is supposed to obtain 90% of the profit from hydrocarbon exploitation and Indonesia would obtain 10%. Similarly in Area C, Indonesia would obtain 90% and Australia 10%.

The limits of the whole joint development zone are defined as follows: The northern limit is the farthest continental shelf line claimed by Australia; the southern limit is the farthest EEZ line claimed by Indonesia. The eastern and western limits are defined according to equidistant lines. The northern limit of Area A is delimited according to simplified 1500 isobath, and the southern limit of Area A is delimited according the median line.

The dual administrative institutions in Area A The agreement sets up two administrative institutions: the Ministerial Council and the Joint Authority with purpose of dividing the policy-decision body from the management body. The former comprises an equal number of government ministerial chiefs, and the latter comprises an equal number of persons nominated by each Contracting State. The Joint Authority shall be responsible to the Ministerial Council, and shall have juridical personality and the capacity to contract.

The formulation of detailed regulations on managing joint development The appendixes of the agreement formulate a series of regulations to guide and administer joint development in Area A. Those formulations include Petroleum Mining Code, Model Production Sharing Contract, Taxation Code for the Avoidance of Double Taxation..[3] .

(3) China-Japan Joint Development Zones A.B.C

The Timor Gap Treaty signed between Indonesia and Australia serves as a good example for the joint development between China and Japan in East China Sea. Though the Timor Gap Treaty is invalid now, it remains the most comprehensive document on joint development in disputed sea areas.

There are many similarities between China-Japan disputes in East China Sea and Australia-Indonesia disputes in the Timor Sea. Both involve a continental country (China/Australia) and an island country (Japan/Indonesia); the former has a large and

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[2] Treaty between Australia and Indonesia on the Zone of Cooperation in an Area between the Indonesian Province of East Timor and Northern Australia (Timor Gap Treaty), 11 December 1989, Article 2, 2(a).

[3] See Cai Penghong, "Managing Models of Joint Development in Disputed Sea Areas: Comparative Study", Shanghai Social Sciences Publishing House, 1998, pp. 217-231.

shallow geological continental shelf extending from its coast, and the latter faces a trough with the depth of more than 2000 meters at a short distance from its coast. The Liuqiu Trough and the Timor Trough are also similar. The seabed in the Timor Trough has a depth of more than 1,400 meters (the deepest, 2,380 meters), much deeper than the nearby shelf; and the seabed in the Liuqiu Trough with the depth of 1,000 meters exceeds half of the total trough area, and the seabed with the depth of more than 2,000 meters constitutes 1/5 of the total (the deepest, 2,940 meters)..

Based on the Australian-Indonesian experiences in establishing the joint development zone in the Timor Sea, I suggest that China and Japan could also consider the establishment of the Joint Development Zone (Areas A.B.C) in East China Sea. The detailed suggestions are: (a) Regarding the limits of the joint development zone, the eastern limit is the center line of the Liuqiu Trough, i.e., the farthest line China claims for its continental shelf; the western limit is Japan's unilateral median line; the northern and southern limits are to be decided. (b) Regarding the limits of Area B near China's side, the western limit is Japan's unilateral median line; the eastern limit is the China-claimed EEZ line, which is an adjusted line on Japan's median line. (c) Regarding the limits of Area C near Japan's side, the eastern limit is the center line of the Liuqiu Trough, the western limit is a compensation line China makes to Japan in reference to the scope between Japan's median line and China's adjusted EEZ line. (d) The area between Area B and Area C is Area A.

Area A is a joint development zone in real sense. Both sides would jointly administer its oil and gas exploration and exploitation, and would equally share the benefits. Area B is administered independently by China, and Area C is administered independently by Japan. China and Japan would respectively pay the other side 10 % or 25 % of the profits.