The Troubled Waters of East Asia

East Asia is home to many of the world’s most vexing maritime disputes. The diplomatic spat in fall 2010 between China and Japan over the Senkaku/Diaoyu Islands in the East China Sea proves the point that any mishandling of maritime issues can hijack the subtle balance of power and interests in the region. Equally divisive are matters in the South China Sea, where China’s growing assertiveness provokes not only its Southeast Asian neighbors but also the United States, which has thus far provided maritime stability for East Asia, but is increasingly challenged by China. Other examples of unresolved island disputes include competing sovereignty claims to the Dokdo Islands in the East Sea/Sea of Japan, the Northern Territories/Kurile Islands in the Northwest Pacific Ocean, and the islands of Sipadan, Sebatik, and Ligitan in the Celebes Sea, all of which have served as the most persistent and explosive bones of contention among littoral states in the region.

The complex balance of power and interests in this region does not allow for a single pacesetter. South Korea has longed for a balancer role among its giant neighbors with only limited success. Despite a certain degree of institutional resilience and adaptability, the Association for Southeast Asian Nations (ASEAN) has shown structural limitations in dealing with maritime challenges. Japan has been seeking greater room for maneuver while relying on U.S. leaders to check China as a potential rival for regional hegemony. China’s increasingly assertive maritime policy has greatly alarmed many in the region. To make matters even more complicated, the United States has recently shown signs of reengagement in maritime Asia, departing from its earlier hands-off approach. As such, many analysts have warned that the volatile links between contested resource-rich maritime areas, high energy demand, and competing national identities could create a perfect storm for conflict in Asia.

China has feared being trapped in institutions not of its own making while seeking new terms of regional maritime order. China’s navy seems to be well prepared to go beyond its traditional role of coastal defense and engage in far-sea defense to protect its economic and strategic interests. After years of denials, Chinese officials have confirmed that they are close to deploying an aircraft carrier group within a few years. China is also developing a sophisticated submarine fleet that could be used to prevent foreign naval vessels from entering its strategic waters if a conflict took place in the region. Reportedly, the Chinese navy gets...
more than one-third of the overall Chinese military budget, reflecting the priority Beijing currently places on the navy as a backbone of national security. Will the rise of China, combined with an altered U.S. engagement policy toward maritime Asia, further strain East Asian maritime stability, making any regional level of cooperation extremely difficult, if not impossible? To answer this question, recent maritime flare-ups can be analyzed in light of three major obstacles at sea. The rising maritime rivalry between the United States and China and its implications for the maritime stability of East Asia must also be considered. After that, a critical assessment of the future of the East Asian maritime order, which is currently caught between a rock and a hard place, will be possible.

Three Bones of Contention

East Asian maritime issue networks are multilayered and have stemmed from the three most prominent bones of contention: contested sovereignty over offshore islands, overlapping claims to exclusive economic zones (EEZ) and continental shelf boundaries, and resource development, particularly since the United Nations Convention on the Law of the Sea (UNCLOS) came into force in 1994.

First, sovereignty disputes raise questions of national identity and pride, thereby feeding territorial nationalism. The enduring sovereignty disputes in East Asia can be characterized in various ways, but four features are particularly important: (1) despite the frequent resort to the past to justify contemporary claims to contested territory, most disputes originated in colonial times during the late nineteenth and early twentieth centuries, often exacerbated by the arbitrary map-making of colonial powers and exploited by post-colonial nationalists; (2) in contrast to other parts of the world, few disputes have been formally resolved, and very few target states, whose territorial claim is challenged by revisionist states, recognize the existence of disputes at all, preventing claimant countries from engaging in negotiations; (3) a periodic pattern exists in the iteration of disputes, repeating between initiation, escalation, and de-escalation, if not termination; and (4) nevertheless, recurring crises have rarely increased the levels of escalation and hostility beyond control.

Turning to the second parallel, the already complex maritime space has become much more complicated as the claimant states began ratifying the UNCLOS in the mid-1990s. Along with the widespread adoption of the UNCLOS, East Asian coastal states recognized that disputes that had once been limited to the sovereignty of disputed islands now included overlapping maritime jurisdictional claims over EEZs and continental shelves. In addition, the adoption of straight baselines for territorial seas and other maritime zones has made the already daunting task of delimiting maritime boundaries much more difficult. On top of this, there has been a constant tension between the “equidistance” approach and the “equitable” principle in the history of the law of the sea. The UNCLOS chose to avoid any clear reference to either principle, thus providing insufficient guidance for delimiting maritime boundaries. Indeed, boundary delimitation disputes may become as intractable as sovereignty disputes, because state elites are equally constrained by domestic players who hold veto power if the state elites pursue cooperative approaches to the former issues.

Finally, the existence of islands in the disputed areas complicates not only the task of delimiting maritime boundaries but also the issue of marine resource development, because “sovereignty” over disputed islands, if granted to the challenger state, would possibly enable the challenger state to claim “sovereign rights” over the continental shelves and EEZs near disputed islands. The energy-hungry coastal states in the region all eye the high potential for oil and gas deposits near disputed islands. They also rely on contested offshore areas to provide a large portion of their marine diets. It is notable that East Asian countries have been able (albeit sometimes only occasionally) to cooperate on
maritime jurisdictional issues as well as joint development of resources by overcoming nationalist pressures. Yet the danger of conflict escalation looms particularly large during a global shortage of energy and marine resources.

Against the backdrop of fluid geopolitics and geoeconomics, a confluence of issues, including sovereignty disputes, undelimited maritime zones, fisheries, and offshore gas development in the region, has caused and escalated the latest maritime confrontations between China and its neighbors, including the United States. As popular sentiment between China and Japan has become more hostile, mutual grievances have been aired not only with regard to the disputed islands, but also against the exercise of sovereign rights in EEZs and continental shelves including China’s unilateral development of the Chunxiao gas field in the East China Sea.6 China and Japan differ fundamentally on basic principles of boundary delimitation. Although there is no explicit mention of the Japanese median line concept in the UNCLOS, International Court of Justice delimitation decisions increasingly favor an equidistance line based on “relevant factors” such as the comparative lengths of the coastlines. In contrast, China points to the 1969 North Sea case, which argued that length of coastline and continental shelf are the most important factors in delimitation. Thus, in the Chinese view, in light of the UNCLOS’s emphasis on “justice,” delimitation should consider factors such as the length of the Chinese coastline and the natural prolongation of the continental shelf. China indeed views Japan’s median line as against the spirit of the UNCLOS because it was not only declared “unilaterally” but also divides the East China Sea in half.

In effect, the median line presented the most significant barrier to concluding the Consensus on Resource Development reached in June 2008 between China and Japan. Neither party could agree on where to locate the joint development zone (JDZ). From the Chinese perspective, it needed to be located beyond the median line, in the area of overlap. From the Japanese perspective, a JDZ should bisect the median line, since it represented the equidistance point between the two coastlines. In the end, China agreed to a JDZ that includes space on the Chinese side of the median line. While there is no doubt that this was integral to concluding the agreement, this concession drew severe criticism from hardliners within China and explains Beijing’s ambivalence in implementing the agreement.

Many analysts agree that the September trawler incident was not an isolated irritant given China’s more provocative and overconfident efforts to secure its maritime interests. The incident took place against the background of Japan’s thinning patience and growing anxiety regarding China’s suspicious activities near the Chunxiao field in violation of the spirit, if not the letter, of the 2008 agreement, which now looks in jeopardy. Sentiment in Japan has steadily hardened against China, with some nationalists calling for Tokyo to resist a diplomatic solution and enforce its claims more assertively. The over two-week standoff vis-à-vis the Chinese trawler captain’s detention had seemed to end when Japan gave in to Chinese pressure—including a halt of trade in rare-earth minerals—for his release. Yet the national pressures on both sides continued to ratchet up throughout the fall, thanks to the Chinese demand for an apology and compensation and the YouTube leak of the September collision video footage that millions of people around the world have watched.

China’s maritime ambitions are also being felt in recent muscle flexing in the South China Sea. In 2009, China fiercely protested against the Philippines, which had filed with the UN Commission on the Limits of the Continental Shelf (UNCLCS) a formal claim to continental shelf around some of the disputed islands in the Spratly chain, and against Malaysia and Vietnam, which had jointly filed their continental shelf claims with the UNCLCS. In sharp contrast to its challenger position in the East China Sea, China has aggressively arrested fishermen from its Southeast Asian neighbors for their allegedly illegal fishing activities near the disputed islands in the South China Sea in violation of Chinese laws. Vietnam has been one of the principal
targets in recent years. The latest trawler incident in the East China Sea clearly reminded Vietnam and other ASEAN countries of China’s assertive unilateralism to defend its maritime interests.

**Sino-American Rivalry at Sea: Between a Rock and a Hard Place**

Maritime East Asia has become a much more volatile place as a result of its fluid geopolitics and geoeconomics, at the center of which are a rising and more assertive China and a reengaging but ambivalent United States. In the post–Cold War era, many would agree that two major trends have opened a new horizon of regional peace and security. The first trend has been associated with the overall reconfiguration of the East Asian regional system from the Cold War’s (quasi-) bipolar confrontation to unipolar American dominance. Many experts agree that the U.S. Cold War military structure still dominates in matters of regional security.

The second and more important feature of the post–Cold War East Asian order is the rise of China. To many observers, China’s economic and military might has already established bipolarity within the region. On the one hand, East Asia’s rapidly rising economic interdependence centered on China has mitigated political and diplomatic tensions among countries by giving them economic incentive to avoid costly disputes. On the other hand, in the absence of Cold War era strategic constraints, China would now find an assertive maritime policy more palatable to serve its national interests. Although not all draw worst-case scenarios, a good deal of uncertainty about the ways in which a more capable China would project its power has alarmed its neighbors, including the United States, and prompted them to scramble to balance against the possible dangers.

During the Cold War period, the United States and the Soviet Union both had geopolitical interests of their own, but not territorial ambitions. China, as an emerging regional hegemon, presents a different landscape for the future of the East Asian maritime order, because it has both geopolitical and territorial ambitions. Though controversial, China’s policies toward territorial disputes have largely been dictated by insatiable irredentist ambition. Seen in this light, China believes that territory, both land-based and maritime, once won for civilization must not be given back to barbarism; therefore, that which was once Chinese must forever remain so, and, if lost, must be recovered at the first opportunity to regain the full territory and standing of the Chinese empire at its peak.

Economics is also the prime motivation for China’s maritime reorientation, and securing the sea lines of communication (SLOC) that convey foreign energy supplies and other commodities now ranks at the top of China’s list of military priorities. For instance, the Senkaku/Diaoyu dispute reared its head above the waters following the 1968 UN report of high hydrocarbon potential in the seas that surround the disputed islands. While this finding occurred in the wake of the first oil shock, neither Japan nor China was as insecure about energy back then as they are now. Yet following China’s shift to net oil importer status in 1993, energy increasingly became a principal motivator in the South and East China Sea disputes. A rising great power with a growing demand for energy, that is, China, would likely make assertive claims to disputed maritime zones with greater intensity. The fact that China’s maritime disputes are with Japan, a regional rival, or with a collection of smaller Southeast Asian countries bodes poorly for the stability of maritime East Asia.

China’s renewed assertiveness has given the United States an opportunity to reassert itself in a region where its eclipse by China had been considered inevitable. In the wake of the escalating feud between China and Japan over the Senkaku/Diaoyu Islands and despite China’s “deep dissatisfaction” with America’s intervention, the United States reaffirmed that the disputed islands fall under a treaty that enables the superpower to protect Japan’s security interests. In a similar vein, Vietnam has a rapidly warming rapport...
with the United States in large part because its arch-enemy, China, makes broad territorial claims in the South China Sea.\textsuperscript{10} Hanoi’s strategy has been to try to internationalize the dispute by bringing in other players for multilateral negotiations. Partly in response to Hanoi’s diplomatic effort, the Obama administration has repeatedly stressed that it remains neutral on which regional countries have stronger territorial claims to the Paracel and Spratly Islands, but that it would step into tangled disputes between China and its smaller Southeast Asian neighbors over the islands in order to preserve its freedom of navigation.\textsuperscript{11}

At the center of the emerging Sino-American rivalry at sea is the long-standing dispute over what kinds of military activities can be conducted in another country’s EEZ. As seen in the case of the U.S. Navy EP-3 collision with a Chinese jet fighter in 2001 and again in the case of Chinese harassment of the USS Impeccable in 2009, Beijing’s continuing challenges to U.S. military activities in China’s EEZ, both settled and unsettled, have led to dangerous confrontations. In such a zone, a coastal country has complete control over all living and nonliving resources and can limit marine scientific research by other countries. Although its failure to ratify the UNCLOS makes its position weak, the United States has consistently contended that surveillance activities are legitimate in another country’s EEZ because the ships and planes of other countries, military and commercial, enjoy freedom of navigation in and over these waters. Not surprisingly, China has refused to accept this position and characterizes such activities as “marine scientific research” which, in an EEZ, requires the consent of the coastal state. However, China’s position is not consistent with its quiet engagement in similar activity offshore Japan and Vietnam. So this matter remains highly controversial.\textsuperscript{12}

One of the latest and most open displays of the rising competition between the United States and China was staged in simultaneous naval exercises off the Korean Peninsula in the aftermath of the Cheonan incident.\textsuperscript{13} Nearly four months after the sinking, the United States and South Korea announced that a series of large-scale naval exercises—including an American aircraft carrier, the nuclear-powered George Washington—off Japan and the Korean Peninsula would begin in the following week. Both parties originally planned to conduct naval exercises on the Yellow Sea as well, but the plan was abruptly canceled because of China’s vehement protests. China was extremely sensitive to U.S. participation in naval exercises in this area, most of which allegedly belongs to China’s military operations zone and EEZ, and launched preemptive naval exercises there.\textsuperscript{14} In fact, China has not yet formally settled the boundary of its EEZ in the Yellow Sea with South Korea, so China’s assertion was not fully justified. Because of this legal ambiguity and in the wake of North Korea’s sudden artillery attacks on South Korea’s Yeonpyeong Island on November 24, 2010, the United States and South Korea went ahead with joint naval drills in the Yellow Sea involving the George Washington without much interference by China. But China’s silence this time was no indication of its willingness to change its future behavior, and recent diplomatic spats between the United States and China demonstrate the dangers of the two regional hegemons’ failure to agree on mutually acceptable military activities in the semi-enclosed seas in East Asia.

The Future of the East Asian Maritime Order

East Asian countries have repeatedly assured their neighbors that they would fully comply with UNCLOS principles to resolve their maritime disputes. All East Asian countries with the exception of North Korea (and the United States as an extra-regional stakeholder) have ratified the UNCLOS and in some cases this development has facilitated the management of the region’s fisheries resources. However, this normative progress has done little to mitigate political tensions on overlapping maritime boundaries and resource development, let alone sovereignty issues. Aside from
thorny sovereignty claims to the disputed offshore islands, the delimitation of EEZs and continental shelf boundaries and resource development therein are complicated because: (1) it is a game with many players; (2) there are disputes on the baselines and base points; (3) the concerned coastal states do not have common positions on the applicable principles on delimitation, whether “equitable” or “equidistant”; (4) “sovereign rights” over the continental shelves and EEZs near disputed islands have become ever more important during a global shortage of energy and marine resources; and (5) the rise of China and the (re-)engagement of the United States in maritime Asia have placed unpredictable pressures on the balance of power and interests among the principal players in the region.

These observations lead to an important policy implication: delimitation issues and resource concerns should be separated from larger territorial questions in favor of joint development at the multilateral level. The first substantive step that should be taken is for claimant countries to agree on the unimportance, for purposes of sea boundary delimitation and joint resource development, of the disputes concerning sovereignty over the islands in question. As noted by Cohen and Van Dyke, “these tiny islets and reef features should not become the tail that wags the dog in maritime delimitation.” The track record in East Asia shows that resource development is subject to both cooperation and confrontation despite and because of sovereignty questions. On the one hand, resources are a material object that can be shared between claimant countries. From this perspective, East Asian countries—especially China—are not creating resource wars at sea, because their political leaders have made decent efforts to cooperate with each other, while keeping sovereignty questions at bay. On the other hand, the aspiration to control resource-rich maritime areas has often served as an open invitation to conflictual territorial nationalisms.

What can be done to improve the situation? The maritime issues are so complicated that it is virtually impossible for any East Asian countries to undertake unilateral or bilateral initiatives for regional cooperation. At the same time, without China’s cooperation, it will not be possible to find a multilateral solution. China has insisted on bilateral negotiations with its neighbors to settle maritime disputes. This does not undermine the imperative of moving beyond bilateralism, although it seems to be a dominant strategy at the moment. This does not mean either that third-party arbitration is recommended. Rather, it calls for multilateral regionalism, which Secretary Clinton described as “a collaborative diplomatic process by all claimants for resolving the various territorial disputes without coercion.” It is against this background that the Obama administration has repeatedly hinted that it would be willing to facilitate multilateral talks on the maritime issues in East Asia.

In order for the maritime boundaries to be completed multilaterally, a common understanding has to be shared across the region. The adoption of, and enhancement of, a code of conduct as seen in the South China Sea can be a good start to promote mutual understanding, while maintaining the status quo. In the past, maritime disputes in East Asia tended to take place separately from one another. As seen this year, however, one flashpoint at sea is increasingly becoming capable of spreading to others. As a result, there cannot be an effective maritime regime without the full participation of all the major states: China, Japan, South Korea, ASEAN, and the United States. ASEAN plus four party (APF) talks in the future will be useful in this regard.

As for China, it has successfully avoided appearing too dominant or assertive until recently. The latest maritime turmoil across the region will be the first critical test for China’s much-heralded “peaceful rise” principle, and Beijing could quickly lose the diplomatic credit gained over the past three decades unless it successfully alleviates the concerns of its neighbors with respect to Beijing’s irredentist ambition. As for Japan, it simply lacks the political will and credibility to serve as a leading goose in forming a multilateral...
maritime regime. Tokyo’s broad but vague maritime claims, best symbolized by its bizarre claim to Okinotorishima, consisting of two tiny rocks in the Pacific Ocean about 1,700 kilometers south of Tokyo, only make the country look like a greedy bird. Amid these new dynamics and challenges, South Korea and the ASEAN states could assume a role as stabilizer, perhaps by offering a bridge role between the regional giants: the United States, China, and Japan. It would not be a good policy option for these medium- and small-sized countries to balance China by overly relying on the United States in response to what they see as China’s growing willingness to throw its weight around.

For its own part, the United States needs to recognize that it is now unable to determine regional outcomes unilaterally. China has vehemently criticized the superpower for bullying China and encroaching on its neighborhood. Although the United States has sought to convince China that it will be in China’s interest to protect the freedom of navigation, China has not yet accepted this view. As such, the United States also needs to reassure China that it welcomes China’s rise if Beijing behaves like a responsible stakeholder, while making sure that there is a clear limit to the expansion of China’s power. To conclude, the perfect storm of opportunity for more effective maritime cooperation vital to the common prosperity of the region may arrive only after the opening-up of all sorts of rock-and-hard-place problems in Pandora’s Box.

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Notes

1 The Chinese fishing trawler incident in September 2010 has brought Sino-Japanese relations to their lowest point since 2005. Japanese authorities arrested the Chinese trawler captain for having purposely rammed a Japanese coast guard vessel just off the disputed islands. The incident set off a diplomatic shoving-match between Beijing and Tokyo. The political pressure from Beijing was so intense that the Japanese prosecutors released the captain after seventeen days of detention without pressing charges, citing concerns about Sino-Japanese ties (Pilling 2010). Despite Tokyo’s apparent climb-down in releasing the captain, nerves were still rubbed raw on both sides until November.

2 Bumiller and Wong 2010; Wong 2010.

3 For more details about key characteristics of East Asian maritime disputes, see Emmers 2009 and Koo 2009.

4 As stipulated in the UNCLOS, maritime boundaries are measured from two types of baselines. UNCLOS Article 5 defines “[e]xcept 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.” However, states with the coastline being “deeply indented and cut into or if there is a fringe of islands along the coast in its immediate vicinity” are allowed to employ “straight baselines” as long as the drawing of straight baselines does “not depart to any appreciable extent from the general direction of the coast” (Article 7 (1) and (3)). These guidelines notwithstanding, the letter, if not the spirit, of the provisions for straight baselines is ambiguous at best. This ambiguity has in turn encouraged many states to adopt straight baselines, even where the basic conditions are not met.

5 UNCLOS Article 15 specifies that in the absence of “historic title or other special circumstances,” a maritime boundary between adjacent states will follow “the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two states is measured.” However, this equidistance principle only applies to the delimitation of the 12 nm territorial sea. The equidistance line is not referred to at all in either Article 74 or 83, which defines delimitation of the EEZ and continental shelf, respectively.
Instead, they simply state that delimitation “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 solution.”

6 The Chunxiao constitutes one of the largest natural gas fields in the East China Sea, which straddles the median line suggested by Japan and lies between the two areas proposed by China. Beijing does not recognize the median line, because the Japanese side of the median line includes China’s continental shelf.

7 Holmes and Yoshihara 2009.


9 Gaouette 2010.

10 Landler, Yardley, and Wines 2010.

11 Landler 2010. Having been invited as a special guest to the East Asia Summit (EAS) in Hanoi in late October 2010, U.S. Secretary of State Hillary Clinton reaffirmed that the United States has a national interest in freedom of navigation and lawful commerce without hindrance. She also said that when disputes arise over maritime territory, the United States is committed to resolving them peacefully based on international law (NHK WORLD 2010).

12 Cohen and Van Dyke 2010b.

13 On March 26, 2010, a South Korean Navy ship, the Cheonan, carrying 104 personnel, sank off the country’s west coast in the Yellow Sea, killing 46 seamen. The United States and South Korea have blamed the North for sinking the Cheonan.

14 Bumiller and Wong 2010.

15 Cohen and Van Dyke 2010a.

16 At their summit in Phnom Penh, Cambodia, in November 2002, ASEAN and China signed a Declaration on the Conduct of Parties in the South China Sea, with the aim of preventing conflict and promoting cooperation in the region. During the negotiations for the code of conduct, ASEAN wished to prohibit all occupation of new islands and improvements to existing structures. In the face of strong Chinese opposition, however, the negotiating parties simply agreed to exercise self-restraint in the conduct of activities such as inhabiting presently uninhabited islands, reefs, shoals, cays, and other features. Although this declaration did not establish a legally binding code of conduct, it represents a significant step forward (Tønnesson 2003: 55-62).

17 Cohen and Van Dyke 2010a.

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