

## **KEY ISSUES IN THE EAST CHINA SEA:**

### *A STATUS REPORT AND RECOMMENDED APPROACHES*

ZHIGUO GAO

Director General, China Institute for Marine Affairs  
State Oceanic Administration

JILU WU

Research Fellow, China Institute for Marine Affairs

#### **The Evolution of Seabed Petroleum Issues in the East China Sea**

Offshore oil and gas exploitation and development have grown throughout the world in recent decades due largely to two major factors. First, the advance of science and new technology for the exploitation of ocean resources. Second, the demand for petroleum by the major industrialized economies. The demand for oil has also been witnessed in the East Asian states that were also growing rapidly. This combination of factors led to the formation of the Committee for Coordination of Joint Prospecting for Mineral Resources in Asian Offshore Areas (CCOP) under the auspices of the United Nations Economic Commission for Asia and the Far East (ECAFE) in 1966.

Late in 1968, a geophysical survey was conducted by CCOP in the Yellow Sea and the East China Sea. It was reported in their report by the scientists that “a high probability exists that the continental shelf between Taiwan and Japan may be one of the most prolific oil reservoirs in the world. A second most favorable area for oil and gas is beneath the

Yellow Sea.” This report caused a great sensation among the littoral states. In the case of the East China Sea, the immediate reaction of the coastal states was to make conflicting claims of sovereignty over the oil-rich continental shelf, often in the form of establishing unilaterally offshore concession blocks and boundary limits.

Japan unilaterally asserted the principle that the shelf should be divided on the basis of an equidistant median line, and following this principle, delineated four exploration blocks defined by the median line and the Okinawa Trough on the east. China claimed in December 1970 both sovereign rights over the continental shelf up to the Okinawa Trough and its underlying resources and the ownership of the Tiaoyutai Islands.

Japan and South Korea engaged in bilateral negotiations concerning disputed seabed areas that ended in the conclusion of a joint development agreement in January 1974. South Korea ratified this agreement in December 1974. But it was not until June 1978 that Japan finally ratified the agreement.

### **The Korea-Japan Agreement**

The Korea-Japan agreement was concluded with no regard to Chinese claims to sovereignty over the shelf up to the Okinawa Trough. The major contents and features of its 31 articles can be summarized as follows:

*The Joint Development Zone.* The Zone is the overlap of 24,092 square nautical miles enclosed by the outer limits of each party’s claims to the continental shelf. Japan’s claim is based on the median-line toward China and South Korea, and South Korea’s claim is based on the natural prolongation of land territory toward China and Japan. The Zone is

divided into nine Subzones to be jointly explored and exploited by concessionaires nominated by both parties (Article III).

*Nomination of Concessionaires.* Each party is required to nominate a concessionaire or concessionaires for each Subzone within 3 months following the coming into force of the agreement (Article IV).

*Equality of Rights and Obligations.* Each party is entitled to one-half of the proceeds recovered from each Subzone, and is also obligated to meet one-half of the expenses incurred for the recovery (Article IX).

*Duration of Contracts.* The rights of concessionaires comprise the rights of exploration and the rights of exploitation. The rights of exploration are tenable for a period of 8 years; and the rights of exploitation are tenable for an initial period of 30 years, 5-year extensions being possible thereafter (Article X [1-3]).

*Commencement and Suspension of Operations.* Concessionaires are required to commence operation within 6 months from the date on which the rights of exploration or exploitation are granted, and operation may not be suspended for longer than 6 months (Article XI).

*Measures for Prevention of Marine Pollution.* Each party is required to take measures necessary for the prevention of collision at sea and marine pollution with reference to the 1954 International Convention for the Prevention of Pollution of the Sea by Oil, as amended in 1962 and 1969.

*Non-Interference with Other Uses of the Sea.* Exploration and exploitation activities are not to interfere with other uses of the superjacent waters, such as navigation or fishing (Article XXVII).

*Non-prejudice clause.* It is stipulated that the agreement does not, in any way, affect each party's sovereign rights over the Joint Development Zone or otherwise prejudice its stand with respect to the delimitation of the shelf boundary with the other (Article XXVIII).

*Duration of the Agreement.* The agreement is to remain in force for a period of 50 years, being subject to abrogation upon or following the expiry of this period. This provision notwithstanding, it is also subject to termination by agreement between the parties should they recognize that the natural resources are no longer economically exploitable in the Joint Development Zone (Article XXXI [2-4]).

### **China and Japan: Recent Developments**

After more than 30 years of periodic seabed controversies with no progress in the East Asian region in general and in the East China Sea in particular, the beginning years of the 21<sup>st</sup> century began to see positive developments. This progress has been led by China and Japan in developing a "conflict avoidance" regime for the East China Sea where they have extensive overlapping claims. Two aspects of this regime merit attention as possible precursors of future cooperation relating to seabed petroleum development: a joint fishing agreement and a prior notification scheme for scientific research.

### **Fisheries Agreement**

Negotiations for a new fisheries agreement between China and Japan started in 1996. In the process of the negotiations, China wanted a small X factor and a larger joint management area than Japan, while Japan just wished for the reverse. Japan had wanted

the eastern boundary of the joint zone set at 127° E. After 7 rounds of negotiations, China and Japan finally concluded their new agreement in November 1997. The two countries agreed to establish three different zones where different fisheries regimes apply.

*Exclusive fishing zones.* The exclusive fishing zones extend up to 52 nautical miles from their respective baselines in the area between 27° N and 30°-40° N. Within this zone the principle of coastal-state jurisdiction applies.

*Fishing quotas.* If Japan or China does not have the capacity to harvest the entire allowable catch in their respective zones, as provided for in Article 62 of the 1982 Law of the Sea Convention, each state can allow the nationals and fishing vessels of other states to fish its EEZ in accordance with this agreement and other related laws and regulations, based on the principle of mutual interest. Every year Japan and China are to determine the quotas of catch, fishing areas, and other terms of fishing of the nationals and fishing vessels of other signatory states that are allowed to fish in its EEZ.

*Joint Fisheries Commission.* A Joint Fisheries Commission is set up as a management body to enforce the treaty. Its responsibility and functions include making 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 cooperation between the two states.

*Conservation measures.* The Agreement also provides that each party may take necessary measures in its EEZ in accordance with international law to ensure that the nationals and fishing vessels of the other observe its conservation measures. To this end, each state is to immediately notify the other state to observe its conservation measures. To

this end, each state is to immediately notify the other state of its measures for the conservation of the marine living resources and other terms provided for in its domestic laws and regulations.

Each state is to take appropriate measures to control its catch in order to avoid over-exploitation in the joint management area, taking traditional fishing operations into consideration.

The parties also agreed to allow a total of 600 fishing boats from China annually into its exclusive economic zone east of the “free” fisheries zone, while China agreed to allow 317 Japanese vessels into its EEZ to the west of the zone. These numbers are to be renegotiated each year.

The application of the fisheries agreement does not extend to the area south of 27° N. The agreement is valid for five years (2000-2005) and after this period will continue to remain in effect until a six-month advance notice of abrogation from either party terminates it.

In summary, under the provisions of the agreement, each country will manage its fisheries within 52 miles of its baselines; beyond 52 nm, and between 27° N and 30° 40' N. No boats of the two countries may fish without prior approval of the other's government. The area south of 27° N including the area around the disputed Tiaoyutai islands remains excluded from the treaty coverage.

The Agreement is by nature provisional pending boundary delimitation of the EEZ and the continental shelf. The two states have committed themselves to continue negotiating the boundary delimitation in good faith, so as to reach an agreement. However, both China and Japan have made it clear that the provisions of the Fisheries

Agreement do not affect their positions on other legal matters, including the issue of disputed islands and boundary delimitation of their EEZs and the continental shelves.

The Agreement adversely affects the fishermen of both countries. More than 17,000 Chinese fishing boats will be unemployed, affecting 170,000 fishermen, and the Chinese fish catch is expected to be reduced by a million tons a year in Zhejiang Province alone.

Although this bilateral agreement is a step in the right direction, the agreement may be said to have a number of inherent inefficiencies including its ambiguity of third party application. The fact that boats from other countries and regions also fish in the East China Sea is a complication, since it is not clear whether the joint management areas are with the EEZ of Japan and South Korea. Moreover, there is no effective dispute settlement mechanism built into the Agreement. Nevertheless, this shortcoming will not offset its merits toward the building of a transitional bilateral regime governing fishing activities in overlapping areas.

### **Notification on Scientific Research**

Entering the 21<sup>st</sup> century, China and Japan began to encounter a new sort of issue: incidents relating to research vessels in the areas of overlapping claims in the East China Sea. The two nations agreed on 31 August 2000 to negotiate an agreement for advance notification of such “surveys” by either party. The first working level meeting was held in Beijing on September 15, 2000. Finally, on February 13, 2001 China and Japan agreed on a mutual prior notification system.

The Agreement cleverly avoids specifying any line beyond which advance notification is required. It simply says that China is to give Japan at least two months' notice when its research ships plan to enter waters "near Japan and in which Japan takes interest" and that similarly, Japan is to inform China before its vessels enter waters "near" China. The notification must include the name of the organization conducting the research, the name and type of vessels involved, the responsible individual, the details of the research such as its purpose and equipment to be used, the planned length of the survey, and the areas to be surveyed.

### **Findings and Policy Suggestions**

The East China Sea is perhaps one of the most complicated marine areas anywhere in the world in terms of its overlapping claims, sovereign disputes over islands and boundary delimitation. No progress has been achieved in negotiating bilateral maritime boundaries over a long period of 35 years. The existing marine policy regimes are weak and frequently ineffective.

Significantly, the unilateral maritime claims made in Northeast Asian seas in general and in the East China Sea in particular have traditionally been inexplicit. This practice has either intentionally or unintentionally served as a buffer for conflict avoidance. Despite the lack of precise definition of bilateral marine boundaries, incidents and friction have been minimal because the governments of the states concerned have tried to control the extent of petroleum development activities by pursuing them solely in marine areas that clearly belong to them. For instance, the coastal states have generally refrained from oil



and gas exploration in the East China Sea except in non-disputed sections of the continental margin.

Of the controversies over islands and boundary delimitation, the most contentious issue is beyond any doubt sovereignty over the Diaoyudai islands. It is China's consistent position and policy that Diaoyudai islands belong to China since time immemorial. Japan also claims these uninhabited features and has attempted to re-enforce its claim by actual control.

To shelve disputes and pursue joint development in overlapping areas has been China's consistent policy and position over the last two or three decades. On November 11, 2003, it was announced that China and the Philippines signed an agreement of intention to jointly develop oil and gas resources in the South China Sea. The agreement provides that the two parties shall proceed to set up a Joint Working Committee to: look for blocks suitable for exploration; study and examine geological and other relevant data and information; and prepare together the work program. This agreement represents a major breakthrough by China in the bilateral relations with its neighbors. It may well serve as a paradigm for resolving the issues in the East China Sea.

To move forward, the littoral states should work closely on confidence-building measures, and avoid steps that increase mutual suspicion and cloud their political relations. In the longer term a partial or comprehensive resolution of the current dilemma in terms of island disputes and boundary delimitation is necessary to minimize the danger of conflict and promote regional peace and security.