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## **Societal Heterogeneity, Weak States and Internal Conflict: Evaluating One Avenue to Territorial Peace and Instability**

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### **Abstract**

As an exploratory study, we test a modified version of Ben Miller's regional theory of interstate and intrastate conflict. The argument is that regions with weak states and high internal and external societal incongruities are more likely to be war prone. This relationship is conditioned by the level of economic development and democratization. The findings support Miller's thesis for intrastate conflict at both the national and regional level from 1960-2009. These results pave the way for future work on interstate conflict and territorial disputes.

### **Keywords**

regions, intrastate conflict, societal heterogeneity, ethnic conflict, transborder ethnic kinship, legitimacy, state capacity

Studying conflict resembles unpacking a variety of peace explanations that reside at multiple levels of analysis. We are attracted to various peace explanations that revolve around single variables. The democratic peace is predicated on a particular kind of regime type. The more newly emerged territorial peace is associated with spatial stability, especially around state borders. The capitalist peace depends on advanced economic development. But when you press these explanations, multiple possible pathways to the pacific outcomes emerge. Is the democratic peace due to institutional constraints or decision-maker socialization? Is the territorial peace based on older political systems having had the time to work out their boundary disputes or are some neighborhoods of states rougher because they encompass more states with nearby external threats? If it's the latter, why do some neighborhoods have more disputatious states in proximity? Is the capitalist peace based on industrialized weaponry that inhibits conflict with other states that also have industrialized weaponry, engaged in extensive trade that raises the costs of interrupted exchange networks, or modernized attitudes that discourage reliance on coercive solutions? In short, our explanations tend to lead to more puzzles which, if nothing else, keep conflict analysts in business.

We do not have a handy solution for the problem of nested explanations for peace and war. But, we are interested in adding another theoretical and empirical approach to these explanations. In this examination, we focus on societal heterogeneity which tends to be linked to autocracy, lower levels of development, majority-minority frictions, and intra- and inter-state conflict. Benjamin Miller's incongruity theory provides our theoretical and empirical focus. We ask if the theory's emphasis on internal incongruity (or heterogeneity), external incongruity (kindred groups in adjacent states), and weak states is a good starting place for inquiries into the phenomena of nested conflict. More precisely, we are interested in establishing whether there is empirical evidence for the linkages in Miller's theory. How well do incongruities and weak states explain interstate conflict?

One reason for beginning at this point is that a focus on territorial instability requires some consideration of agency. It seems unlikely that the causal mechanisms for pacifying state boundaries and borders are singular. Yet a conceivably prominent source of boundary conflicts are the many mismatches between nation and state. States that contain multiple groups that identify themselves as nations, especially if they are associated with states that are too weak to constrain domestic conflict or provide much in the way of state services and find themselves adjacent to states with overlapping identifications are unlikely to be very pacific. Peripheral groups near the border will seek to secede. Ethnic groups separated by state boundaries will aid each other, providing weapons and safe havens. Adjacent states will pursue irredentist claims to re-unify scattered kindred people.

As noted, it is unlikely that domestic group conflict is the sole avenue to territorial pacification. But it could be the major source in a broad arc of contemporary instability stretching from at least South Asia through the Middle East to sub-Saharan Africa—the regions in which nation-state misalignments are concentrated. Assessing whether or the extent to which this is the case will require several stages of examination. Our initial focus is on the relationship of structures of societal heterogeneity (internal and external) and weak states to internal conflict. How strongly are they intertwined? If we find that heterogeneity and weakness provide a strong foundation for explaining internal conflict, the linkages among these variables and territorial conflict can be examined in subsequent analyses.

One problem in this effort is that data for regime type and development are more readily available than are data for societal incongruities and state weakness. This is a problem that we think can be overcome but it leads to solutions that restrict the evidence to varying time periods. For instance, we can tackle state weakness best if the analysis is confined to the post-1995 period due to the availability of recent World Bank data. To move beyond that limited interval, however, means that compromises need to be made in what and how we can measure state weakness. Yet, if we find that empirical outcomes are similar despite different combinations of appropriate measures over different time periods, we can make strong theoretical claims. Fortunately, that is exactly what we find.

We believe that societal incongruities and state weakness offer a theoretically and empirically valid starting point for an analysis of intra-state conflict. In spite of the multiple indicators that we have applied to the problem, the empirical outcomes are basically similar. We maintain that our findings for an incongruity-weak state internal peace relationship also extends to other forms of conflict. Miller's theory appears to be one possible starting place but it will need elaboration and integration with other interpretations to fully disentangle the complexities of nested discord.

## Social Homogeneity and Internal Peace

There is some possibility, we think, that all of the types of “peace” (democratic, territorial, and capitalist) are linked in some fashion, both in terms of domestic and interstate behavior. Regimes, for instance, do not spring forth in political-economic and societal vacuums. We know that some level of economic development and societal homogeneity facilitates the emergence and maintenance of democratic regimes (Lipset, 1959; Przeworski, Cheibub, Alvarez, & Limongi, 1990). There are also arguments that regime types are byproducts of their threat

environments (again, both internally and externally) in the sense that high threat environments do not preclude democratization but they do tend to work against processes aimed at wider political participation (see, among others, Thompson, 1986; Rasler & Thompson, 2004; Gibler, 2007).

Not surprisingly, arguments have been developed that claim that the regime type-conflict linkage is spurious or, at the very least, greatly exaggerated (among others, Rasler & Thompson, 2005). Since the democratic peace works much better among developed states than it does when less developed states are involved, it is not much of a stretch to suggest that economic development may be more important (Mousseau, Hegre & Oneal, 2003). What is sometimes called a “capitalist peace” can be used to encompass several distinctly different interpretations of why greater development leads to less conflict (Mousseau, 2003, 2012; Gartzke, 2007; McDonald, 2009; Rosecrance, 2010; Schneider & Gleditsch, 2010; Weede, 2011). Since it has been shown that settled borders are closely linked with peaceful interaction, it is also possible to assert that it is a territorial peace that is critical (Vasquez, 1993; Gibler, 2007, 2012; Rasler & Thompson, 2011; Owsiak, 2012). More developed states seem less likely to devote attention and resources to boundary disputes—perhaps because they have had time to negotiate their resolution or because affluence depreciates the value of territory. Low threat environments mean small probabilities of territorial disputes which, in turn, means interstate conflict is less likely. As in the case of greater economic development, low threat environments are also conducive to democratization processes. Thus, we have a complicated set of nested causal effects in which it is difficult to isolate what comes first. Is it regime type, economic development, or threat environment which is most likely to precede changes in the other two and/or to be most responsible for greater and lesser amounts of conflict?

Where do we begin to tackle these nested explanations? Societal homogeneity appears to be related to democratization, development, and quite probably, boundary and territorial disputes. Benjamin Miller (2007) argues persuasively that what is most important to understanding conflict is societal homogeneity. Heterogeneous societies for him, in combination with other variables, are the root cause of both interstate and intrastate conflict. More homogenous societies are more peaceful at home and abroad. Less homogenous societies engage in irredentism externally and civil wars internally over which domestic groups will rule. Democracy is one of his intervening variables. Yet, we also know that homogeneity facilitates democratization. The relationship between economic development and societal heterogeneity seems complex but there is a sense that more developed societies tend to blur their ethnic differences given time and continuous economic growth. Alternatively, it may be that modern economic growth, for a variety of

reasons, was more likely to emerge in relatively homogenous societies. Places that are more heterogeneous, then, have experienced problems in catching up in terms of economic development and democratization.

Miller's argument is all about high and low threat environments but he also adds that territorial disputes should not be the principal focus of interstate conflict. He maintains that we also need to know why people have grievances about who controls which slices of territory. Therefore, heterogeneity is the societal context in which domestic groups make political claims for territorial expansion or defense. Thus, Miller's argument holds some potential for integrating our disparate approaches while also adding a theoretical twist that has yet to be explored empirically.

We do not know how far the Miller argument will take us. Nonetheless, we do think it is worth investigating. The theory is complex and the data demands are challenging. We proceed initially with simple operationalizations and gradually improve them. Throughout this effort, we are exploring the extent to which Miller's theory has empirical support.

## Miller's Theory of Regional War and Peace

Describing Miller's theory of regional war and peace should be a straight forward proposition but it is not since it offers multiple interpretations. From our vantage point, we will combine our interpretation of Miller's theory with some critical issues that will lead us to modify it, which could lead us to misspecify it. We take this risk with the presumption that we can always correct them in future empirical iterations (in much the same vein that we expect to improve our operationalizations over time).

Miller's theory is first of all a theory with region as the unit of analysis. Regions that possess certain attributes tend to be more conflictual within and between states than are regions that lack these attributes. There are three main attributes and two intervening variables. The first variable is the state-to-nation imbalance. Regions with many states encompassing multiple nations are imbalanced or incongruent. If most states in a region possess a singular national identification, the region is said to be balanced or congruent in an internal sense.

A second variable refers to external balance/congruence. Greater imbalance occurs in regions in which the groups found in one state are also resident in neighboring states. Miller prefers to merge these first two variables into one state-to-nation attribute. The greater the overall state-to-nation imbalance or incongruence, the greater is the conflict. The types of conflict that are most prevalent in

highly incongruent regions are wars of unification (one state attempts to expand in order to combine scattered groups in different states) or wars of secession (minority groups attempt to break away from a state in which the majority discriminates against the minority).

But we find this merger of internal and external incongruence to be awkward. A region might encompass many states with strong majorities and multiple minorities. In fact, if all states in a region have the same strong majority and similar multiple minorities, it could be viewed just as incongruent as a region with one state with a majority that is linked to minorities in a number of adjacent states (the Somali variant). Yet these two hypothetical regions, presumably, would be much different in terms of conflict potential. The first region might be very pacific while the second one would have a greater potential for being turbulent. Our solution is to treat internal and external congruence as two separate variables. A region is congruent in the internal sense if most states in the region have predominant majorities. A region is congruent in the external sense if groups in one state are not also found in adjacent states.

The central issue seems to be whether groups are satisfied with their national identities. We assume that states lacking a predominant majority are more likely to contain dissatisfied groups than is the case in states in which one group is predominant.<sup>1</sup> We also assume that there will be more dissatisfaction in regions in which similar groups are found in multiple but proximate states. Groups in one state will be unhappy if groups with which they identify are mistreated in a neighboring state. Alternatively, dissident groups are likely to find assistance from kindred groups residing in adjacent states.

The third variable is state strength. International relations scholars tend to think of state strength as an externally-oriented calculation based on which states possess more troops, tanks, and planes. It is a question of which state has the capability to project its power into other states. But it seems clear that Miller is talking about the internally-oriented version of state strength.<sup>2</sup> He states:

The strength of states is determined by the institutions and resources available to them for governing the polity. Weak states lack effective institutions and resources to implement their policies and fulfill key state functions. Most notably, they lack effective control over the means of violence in their terri-

1 The cost of this assumption is that we give up the connection to wars of unification for this examination.

2 It is not always clear, however, that Miller himself maintains this distinction throughout his discussion of how the theory works.

tory and an effective law-enforcement systems. Weak states thus face difficulties maintaining law and order and providing security in their territory. This hobbles the economic activity in these states, making it difficult for them to raise sufficient revenues, to collect taxes, and maintain an effective bureaucracy and provide vital, or even rudimentary, services to the population... (Miller, 2007, p. 54).

This is the conventional comparative politics version of state strength. Strong states monopolize violence, collect taxes, and provide services to their populations. Weak states lack the resources to instigate interstate trouble but they also lack the ability to maintain order or prevent secession attempts in their own territory. They also cannot police very well their dissidents who either reside in another country and/or receive aid across their borders. Miller's basic point is that weak states aggravate regional incongruence. Such states cannot control nationalistic or secessionist propensities very well. If there are predominantly weaker states in an incongruent region, the greater the potential there is for conflict. Yet, it is not clear whether this sub-argument is compatible with the initial focus on wars of unification and secession. It would seem to apply better to the latter than the former.

Table 1, taken from Miller (2007) underscores this problem. It is not clear whether we can regard states in the South American southern cone, North Korea, Pakistan, Syria, or Iraq as strong states. Or, perhaps, they are weak states with relatively strong militaries at least for their neighborhoods. On the other hand, North Korea, Pakistan, Syria, and Iraq have all been unsuccessful in their revisionist efforts at least so far. This does not differentiate them from genuinely strong states such as Germany and Japan prior to World War II but at least Germany and Japan were initially successful in their revisionist efforts. One way to reconcile this problem is to insert a category in between strong and weak in which the Southern Cone and many of the Asian/Middle Eastern examples might fit better. The argument could be that states of medium strength in incongruent circumstances are more likely to find themselves in protracted conflicts that are difficult to resolve while stronger states are tempted to take on the odds against them and seek revisionism on a grander scale.

Internal incongruence, external incongruence and weak states, therefore, are Miller's trinity for explaining which regions are likely to be most conflictual. Two other variables are introduced as intervening variables. According to Miller, liberal compatibility can overcome incongruence. If most of the states in a region are liberal in politics and economics, they will become status quo-

Table 1. Miller's Examples of Combinations of Congruence and State Strength

State strength	Congruent	Incongruent
Strong states	<b>Status quo states</b>	<b>Revisionist states</b>
	Europe	Asia/Middle East
	Oceania	(China-Taiwan, N. Korean-S. Korea,
	North America	India-Pakistan on Kashmir, Syria,
	South America (Southern Cone)	pre-2003 Iraq
Weak states	<b>Frontier states</b>	<b>Incoherent/Failed states</b>
	(some likelihood of evolution	sub-Saharan Africa
	toward	
	state-to-nation balance)	
	South America (northern)	
	Central America	

Source: Based on Miller (2007, 58). "Frontier states" are described as states that are not especially fragmented but are too weak to fully control their territory or borders (Miller, 2007, 59). The other categories seem self-explanatory.

oriented.<sup>3</sup> But the adoption of liberal institutions and values seems to be more likely if states are nationally congruent. If national congruence precedes liberal institutions, it is not clear whether liberalness truly overrides regional incongruence or merely makes regional peace all the more likely (in conjunction with strong states and congruence). There is also the problem that liberal compatibility encompasses a number of processes (economic interdependence, elections, human rights) that are usually considered as pacifiers in their own right—with or without the other parts of the liberal package (Russett & Oneal, 2001; Mansfield & Pollins, 2003). Finally, there is the problem of dealing with situations that are characterized by parts of the liberal package. Does it matter, for instance, if most of the states in a region are democratic but not economically interdependent or vice versa? This is the type of intervening variable which will require considerable experimentation and probably some unpacking in order to see just how it works empirically.

The other intervening variable is not as complex as liberal compatibility but it is also less than straight forward in its application. One of the aspects of the Miller theory that is so appealing is its combination of multiple levels: system, region, state, and society. Not surprisingly, this combination also complicates research designs. The systemic variable is the nature of great power involvement in the region which can encourage/discourage more or less conflict. Four types of great power involvement are envisioned. At one end of the continuum, a single great power

3 Political liberalism refers to states that have free/fair elections and separate powers, respect human rights, and maintain the rule of law. Economic liberalism encompasses free markets, free trade, and economic interdependence.

Table 2. Great Power Involvement and Regional Outcomes

GP Involvement	Less congruent	More congruent
Hegemony/ cooperation	<b>Cold peace</b> Balkans, 1815-1878 (cooperation) Balkans, 1939-1991 (hegemony)	<b>Warm peace</b> Western Europe during the Cold War (hegemony)
Competition/ disengagement	<b>Cold war punctuated by hot wars</b> Balkans, 1878-1939 (competition) Middle East during Cold War (competition) Africa post-Cold War (disengagement)	<b>Warm peace</b> Western Europe post-Cold War (partial US disengagement)

Source: based on Miller (2007, 65). Note that Miller 's categories for rating regional outcomes is based on a probability of the use of force continuum, ranging from hot war to cold war to cold peace to warm peace (Miller, 2007, 12).

can dominate (hegemony). At the other end of the same continuum, no great powers may be involved (disengagement). In between these end points, two or more great powers can choose to cooperate or compete with one another.

Essentially, great power involvement can work at the margins of regional realities and make things better or worse. They cannot eliminate regional incongruence. Table 2 gives some examples. Great powers can help suppress conflict if they are hegemonic or cooperative. Competition and disengagement tends to exacerbate conflict. It is not clear, however, just how strong this effect is other than that we are told that it cannot eliminate the effect of regional incongruence. Moreover, great power involvement effects can apparently be partial. Miller cites the Egyptian-Israeli dyad as a cold peace example in the hegemony-less congruent cell. The cold peace of this rivalry has persisted throughout a fair amount of conflict in the system—some of which is traceable to the nature of great power involvement which can be either coercive or benign. That record would suggest that great power hegemony does not guarantee regional cold peace but can facilitate dyadic cold peace. Similarly, one wonders whether the western European warm peace is due to U.S. hegemony, the Cold War, or the effects of World War II? Most likely, it has been some combination of the three, in conjunction with some aspects of the liberal compatibility variable.

These considerations make the effects of great power involvement a bit nebulous. That does not mean that we should ignore this part of the argument. The idea that great powers can facilitate or exacerbate conflict in regions makes too much sense to ignore. Yet it is also an added on effect that might be most easily treated as something of an auxiliary consideration. Once we have assessed the

relative contribution of congruence, state strength and liberal compatibility, can the basic nature of great power involvement add much to our understanding of regional conflict?

## Research Design

Accordingly, our initial examination of the Miller regional war and peace theory focuses primarily on the two congruence variables, state strength, and liberal compatibility. This paper represents our third attempt to operationalize Miller's theory. We began with simple indicators with limited applicability over time due to the non-availability of some of the data prior to 1996. While the early efforts were successful in providing validation for the theory's core arguments, our subsequent efforts have been characterized by a search for indicators less restricted by time and more sophisticated in conceptualization. We generate main indicators for each of the variables in the following way:

**Internal or national congruence:** Initially, the relative size of the largest single group in each state was taken as an indicator of the degree of societal homogeneity. In most cases, we looked at the distribution of ethnic groups. In some cases, however, other identities claim priority. Tribes in sub-Saharan Africa and religious sects in the Middle East constitute most of the exceptions.<sup>4</sup> The principal source used was Central Intelligence Agency (2012).

The largest single group approach has several weaknesses. Some readers will be bothered by changing the focus from country to country depending on which type of categorization seems most problematic in specific political systems. But this is a question of focusing on congruity as opposed to a single form of societal discrimination. Still, looking only at the size of the largest group does not tell us much about the size of the smaller groups or how they are treated. A configuration in which there is a large majority and a number of small minorities is apt to be structurally different from a society which also has a large majority and one significant minority of respectable size.

An alternative and oft-used measure is the Taylor and Hudson (1972) ELF (ethno-linguistic fractionalization) index. This indicator, also used initially, tells us something about the relative size of different societal groups but also does not tell us much about who is unhappy with whom. ELF is also based on 1960 informa-

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<sup>4</sup> We have discussed this issue with Benjamin Miller and he agreed that it was compatible with his original intent.

tion and has a checkered track record of analysts finding the full gamut of possible relationships with civil war behavior. Nonetheless, ELF was a positive and significant predictor of civil war in one of our earlier examinations.

To get away from the apolitical nature of our two earlier indicators, the measure used in this examination is the relative size of politically excluded ethnic groups based on 1946-2009 country level data taken from the Ethnic Power Relations dataset (Cederman, Wimmer & Min, 2010). While the dataset is designed for group level analyses, we take the logged size of the largest politically excluded group for each state as our proxy for incongruity that matters politically. Politically excluded groups are judged to be blocked in their access to political power.

**External congruence:** For a simple index of external congruence, we initially asked whether each country's largest minority was also resident in an adjacent country. This procedure generates a binary indicator (present or absent) and does not discriminate between situations in which minorities in one country are also minorities or majorities in other adjacent states. Nor does it tell us whether the largest minority is discriminated against politically. The principal source used was information found in Central Intelligence Agency (2012). Needless to say, creating this indicator requires some interpretation on a country-by-country basis. The variable was coded 1 for years in which a minority resides in some neighboring country and 0 otherwise for each state and corresponds to our first internal congruence measure.

Fortunately, there is a better indicator that corresponds to the relative size of the largest politically excluded ethnic group. The indicator of external congruence used in this examination is the relative size of the trans-border ethnic kin (TEK) group and is taken from the Cederman et al. (2013) TEK dataset. This variable is based on the relative demographic weight of a TEK group compared to the incumbent's population across the border where its primary ethnic kin reside. According to Cederman et al (2013, pp. 396-397), the larger the TEK group, the more likely that it will intervene on behalf of internal opposition groups against the incumbent regime. In addition, this group is likely to encourage the political radicalization of internal opposition group(s) against the incumbent regime.<sup>5</sup> But Cederman et al (2013) argue, and find, that the relationship is actually curvilinear. Smaller TEK groups tend to be more cautious while larger TEK groups, especially if they are in power in their own countries tend to demonstrate restraint in assisting kindred groups in other countries. It is TEK groups that are roughly the same

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5 We thank Idean Salyehan and his research team for their generosity in providing the TEK dataset for this analysis.

size as the size of the dominant group in the adjacent state that are more likely to escalate conflict (Cederman et al., 2103; Cederman, Giraden, & Gleditsch, 2009; Van Evera, 1994; Van Houton, 1998). For those countries that had more than one TEK group residing across a border area, we selected the largest TEK group for the analysis and employ its size as the external incongruence indicator.

**State strength:** We assume that it is the comparative politics version of state strength (and not the international relations version of armed forces size) that is most germane to Miller's theory. Accordingly, we first applied a new operationalization of the concept that focuses on Holsti's (1996) definition of state strength (Hendrix, 2011). Three major components are emphasized (Thompson, forthcoming). Extraction capability is captured by the size of central government revenues as a share of gross domestic product. Violence monopoly is measured by a World Bank political stability and violence composite index. While this indicator is referred to as a "political stability" measurement, it actually focuses on the individual sense of security and the level of conflict in the society that might destabilize government. Legitimacy is operationalized by four World Bank indexes on rule of law, government effectiveness, government accountability, and corruption described in table 3.<sup>6</sup> Since the modeling effort treats conflict as the dependent variable, we were forced to drop the violence monopoly measurement. Both aggregate (combining extraction and legitimacy) and the two components separately were found to be related negatively to civil war. But use of the World Bank data restricts the temporal scope to 1996-2010. To avoid being limited in this fashion, several different measures related to state strength are employed in this paper.

**Relative Political Capacity:** As a measure of state extractive strength, we use the Relative Political Capacity measure found in the dataset (Arbetman-Rabinowitz et. al., 2013; Arbetman-Rabinowitz & Johnson, 2007; Kugler & Tammen, 2012). This variable measures extraction as the ability of governments to appropriate or extract portions of their national output. Operationally, it is actual extraction divided by expected extraction based on the size and type of economy. Some states tend to under-perform (collect fewer tax revenues than expected), especially weak states, or over-perform. Relative political capacity is an interval level variable and replaces our earlier reliance on state revenues as a proportion of gross domestic product.

**State Legitimacy:** We utilize two new indicators for state legitimacy. One indicator, suggested earlier by Belkin and Schofer (2003, p. 607), is derived from combining two measures from the Polity IV dataset: durability (the number of

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6 States are first rank ordered on each index and then the four rank orders are averaged for the full legitimacy score.

Table 3. Four Subjective Composite Indicators of Legitimacy

Indicator	Description
Voice and Accountability	Perceptions of the extent to which a country's citizens are able to participate in selecting their government, as well as freedom of expression, freedom of association, and a free media
Government Effectiveness	Perceptions of the quality of public services, the quality of the civil service and the degree of its independence from political pressures, the quality of policy formulation and implementation, and the credibility of the government's commitment to such policies
Rule of Law	Perceptions of the extent to which agents have confidence in and abide by the rule of society, and in particular the quality of contract enforcement, property rights, the police, and the courts as well as the likelihood of crime and violence
Control of Corruption	Perceptions of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as "capture" of the state by elites and private interests

Source: <http://info.worldbank.org/governance/wgi/resources.htm>.

years since the most recent regime change) and parcomp (the extent to which political competition occurs) dimensions. Basically, this measure captures the degree to which contests for political office and political parties are allowed. We standardized each measure and then added them together to form a single variable. We find that this measure is strongly correlated with our earlier state legitimacy measure using World Bank governance data ( $r=.75$ ).

A second measure focuses less on how the political system functions and more on how it was structured. Englebert (2000, p. 127) develops a binary historical continuity index that separates states that have been colonized, experienced diminished sovereignty at independence, lacked human settlements prior to colonization, virtually eliminated or assimilated the indigenous population during colonization, or created post-independence institutions that deviated considerably from pre-existing institutions. States that lack continuity are considered to be less legitimate than those that can claim continuity over time. Years in which states are identified as "non-legitimate" by Englebert's measure are coded 1 and zero otherwise. Since we have two legitimacy measures, the Polity-based indicator is referred to as (political system) "legitimacy" and the Englebert index is labelled (state) "non-legitimacy."

**Liberal Compatibility:** For this analysis, we use, as before, the most common measure, the Polity 21 point scale taken from the Polity IV Project: Political Regime Characteristics and Transitions, 1800-2012 at [www.systemicpeace.org/polity/polity4.htm](http://www.systemicpeace.org/polity/polity4.htm). Given two measures of legitimacy, however, it remains unclear how useful this indicator will prove to be. In earlier analyses, it tended to lack sta-

tistical significance.

**Conflict:** For this analysis, we focus exclusively on internal warfare as captured by the PRIO/Uppsala data (Gleditsch et al, 2002; Themner & Wallersteen, 2012). This is a binary variable in that the years in which a country's government is involved in the use of armed force against an internal opposition group, resulting in 25 deaths or more, is coded 1 and 0 otherwise.

**Control Variables:** Only three control variables are considered. We choose to control for development (GDP per capita) and total population size since either one might be expected to influence the amount of conflict experienced. Economic development, all things considered, should dampen conflictual tendencies. Larger populations, other things held constant, might be expected to be more conflict-oriented than smaller states, especially in the Global South. A third control is the now standard attempt to control for autocorrelation in conflict with a peace years count measure. We anticipate some possible problems using these control measures, especially with GDP per capita, in the context of relative political capacity which is based on calculations employing GDP.

**Units of Analysis:** We use a cross-sectional, pooled time series design with country-year as the unit of analysis at the national level for the first stage of analysis. Correlations are developed for the regional level of analysis in a second stage that directly address Miller's theoretical emphasis on the regional unit of analysis. Variables that perform as expected at the national level are averaged across the relevant years at the national level and then aggregated for a regional mean which are used to create regional rank orders by variable. The rank orders are then aggregated to create composite scores reflecting Miller's theoretical argument.<sup>7</sup> The rank order of the composite score is then compared to the rank order established by the incidence of conflict which has also been aggregated by region.

**Regions:** We began with a 21 region menu originally developed to group interstate rivalries (Thompson & Dreyer, 2011). The idea is that conventional groupings often overlook sub-regions within regions. Examples include dividing the Middle East and North Africa into Maghreb, Mashriq, and Gulf or sub-Saharan Africa into East, West, Southern, and Central Africa. Since some readers might be dubious about our straying from the usual approach, the 21 groups have been collapsed into 11 regions that will appear to adhere to more conventional regional groupings. Our expectation was that it should not matter too much exactly how fine-tuned the regions are specified and our findings support this assumption. However, we restrict the reported outcome to 11 relatively conventional

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<sup>7</sup> In some cases, we need to reverse the rank orders to make the aggregation meaningful.

regions: North America, South America, Caribbean and Central America, Europe, sub-Saharan Africa, the Middle East and North Africa, South Pacific, South Asia, Southeast Asia, East Asia, and the Former Soviet Socialist Republic states.

**Expectations:** Our expectations are that intra-state conflict is most probable in states and regions characterized by internal and external incongruence and state weakness. There is more to Miller's argument but these three variables are at the heart of it. We can examine briefly his argument that liberal polities reduce conflict propensities. We choose not to pursue at this time the more complicated question of great power involvement, Miller's fifth variable. We evade this issue in part because of its complexity but also because it seems more pertinent to inter-state conflict and our immediate analysis focuses exclusively on domestic conflict.

## Findings

The aim of our analysis is to assess Miller's thesis that some regions are more war prone than others. The main reasons for variations in regional conflict are the "state-to-nation balance" or the degree to which ethnic/national and political boundaries in a region are congruent and the extent of state strength. Miller argues that regions with "weak and incongruent" states are more likely to experience civil wars. Regions with predominantly more states that have weak governing structures coupled with internal and external incongruence are likely to have more internal conflict than regions with states that have strong national structures and internal and external congruence. Internal congruence occurs when ethnic majorities exist as opposed to incongruence where states have multiple ethnic and sub-nationalist communities. States experience external incongruence when ethnic minority communities exist in neighboring states. External congruent states have few or no ethnic minority communities nearby.

In order to pursue a preliminary analysis of Miller's thesis, we pursue two approaches. First, we conduct an investigation linking intra-state conflict to the measures of internal and external congruence between 1960 and 2009. Initially, we measure the linkages between these variables at the individual nation-state level. The full sample of states varies between 5,949 and 6,320 observations depending on the data availability of the independent variables in the sample. In a second approach, we aggregate these variables at the regional level (11 regions) and look at their associations. Since the number of observations is small, our analysis will center on measures of association and scatterplots.

### Nation-State Level

A logit regression model with robust standard errors is used to estimate the relationships between intra-state conflict and the independent variables, including controls for GDP/per capita, democracy, and total population. A count variable for the number of peace years in addition to three splines is included in the model to control for temporal dependence. The results in table 4 below show that five models were estimated. The first three models in table 4 are estimated with different variations associated with the state legitimacy (the polity-based index) and relative political capacity. Meanwhile, models 4 and 5 are estimated without the presence of the count variable for peace years, which is highly collinear with state legitimacy and rela-

Table 4. Logistic Regression of Intra-State Conflict Years, 1960-2009

	<b>Model 1</b>	<b>Model 2</b>	<b>Model 3</b>	<b>Model 4</b>	<b>Model 5</b>
	Coeff.	Coeff.	Coeff.	Coeff.	Coeff.
% Excl. Ethnic Pop	1.016**	1.104**	1.059**	1.769**	1.828**
	0.196	0.225	0.208	0.138	0.129
TEK Size	1.227**	1.165**	1.215**	1.150**	1.905**
	0.573	0.647	0.592	0.443	0.389
TEK Size Squared	-1.164**	-1.182**	-1.163**	-1.121**	-2.362**
	.574	.650	.590	.446	.394
Non Legit. State	.186*	.263**	.195**	.596**	.301**
	.108	.122	.113	.089	.074
State Legitimacy	—	.006	—	-.005**	—
	—	.002	—	.001	—
Rel. Pol. Capacity	—	—	.274	—	-.208**
	—	—	.115	—	.072
LGDPC, lagged	-.147**	-.131**	-.117**	-.002	—
	.039	.046	.043	.030	—
LPOP, lagged	.329**	.337**	.349**	.537**	—
	.037	.039	.037	.028	—
Peace Years	-1.539**	-1.553**	-1.522**	—	—
	.084	.092	—	—	—
Constant	-1.751	-2.129	-2.405**	-7.497**	-2.167**
	.529	.591	.554	.401	.069
N	6320	5988	5949	5988	6187
Log Likelihood	-1386.55	-1189.91	-1311.03	-2188.61	-2716.77
Chi-Square	1399.94**	1241.81**	1332.66**	591.11**	351.72**
Pseudo R-square	0.52	0.53	0.52	0.14	0.06

Note: Robust standard errors are reported below coefficients. \*\* $p < .05$ ; \* $p < .10$ . Sample sizes vary due to data availability on GDP and relative political capacity variables. Three spline coefficients are not reported for Models 1-3.

tive political capacity. Finally, we dropped the GDP and population variables from Model 5 since the measure for the relative capacity variable incorporates GDP and the size of the economy is related to population size.

The overall results show that the internal incongruence measure for size of the excluded ethnic population is positively and statistically associated with intrastate conflict years from 1960-2009. The external incongruence measure for the size of the relative trans-border ethnic kin (TEK) relative to the incumbent's population is also strongly associated with intra-state conflict. We included a squared value of TEK, because Cederman et al. (2013) found that at the upper range of TEK size, a negative relationship with intra-state conflict emerged. In other words, there is an inverted U-shaped curvilinear relationship between TEK size and intrastate conflict. Our state-level findings replicate the ones they found at the group level. Meanwhile, non-legitimate states (Englebert's measure) have a strong and robust connection to intrastate conflict. The Polity-based measure of state legitimacy has a statistically significant negative association with conflict (see Model 4) when the count variable for peace years is not in the equation. Meanwhile, the relative political capacity variable also has a strong negative association with intrastate conflict (see Model 5) in the absence of the count variable.

Table 5 provides the post-estimation simulation results derived from two models estimated in Table 4. In the upper half of the table, the expected value of intrastate conflict increases by 86% when the size of the excluded ethnic population is held at its highest value while the remaining variables are held at their

Table 5. Post-Estimation Simulation Results: Expected Values for Intrastate Conflict, 1960-2009

	Variable	Expected Y for Max. Value of X	95% Confidence Interval
Model 1:	% Logged Excluded Ethnic Pop.	.060	.021, .101
Intrastate Conflict	% Size of TEK	.100	.052, .167
	% Size of TEK, Squared	.027	.124, .052
	Non-legitimate State	.111	.083, .146
Model 4	State Legitimacy: (Polity IV Measure)	.047	.026, .076
	Baseline Model 1 (Conflict)	E(Y)= .052	.045, .061
	Baseline Model 4 (Conflict)	E(Y)= .113	.104, .123

Notes:

- a) Simulations are based on Models 1 and 4 in Table 4 and are generated by CLARIFY: Software for Interpreting and Presenting Statistical Results, Version 2.0 by Tomz, King and Wittenberg (2003). Post-estimation estimates are provided for key independent variables that are statistically significant.
- b) Expected values of Y for Models 1 and 4 are based on the maximum value of X while the remaining X variables are held at their mean.

means. The expected value of conflict increases by 52% when the size of the TEK population is held at its highest value while the remaining independent variables are held constant at their means. Another key variable of interest is non-legitimacy which is associated with a 47% increase in intrastate conflict. The polity measure for state legitimacy has a stronger association with a 140% decrease in internal conflict, but again, the count year for peace years and the splines are not included in this model. Finally, the relative political capacity variable is associated with a 28% decline in intrastate conflict. Overall, we think these findings suggest that the linkages between incongruity and political exclusion are the most important of the Miller core trinity (the two types of incongruity and state strength). Yet they leave little doubt that the theory has been supported strongly by the empirical outcome.

### Regional Level Analysis

The variables in this section are calculated for eleven fairly standard regions: North America, South America, Caribbean and Central America, Europe (West, East and the Balkan states), sub-Saharan Africa, Middle East and North Africa or MENA, South Pacific, South Asia (including Afghanistan), Southeast Asia, and the former Soviet Socialist Republics. Table 6 displays the inter-correlations among the various measures for internal and external incongruence. With the exception of relative political capacity, the correlations among the remaining variables are fairly high, ranging from .38 to .65. The two variables dealing with legitimacy are correlated at .55, while excluded population regional ranks are correlated at .44 with relative TEK size. The highest correlation is .65 between regional ranks on state non-legitimacy and excluded population size. Relative political capacity is negatively correlated with the other independent ranked variables.

Table 7 displays the correlations between the internal and external incongruence ranked variables and the ranked variable for intra-state conflict. Starting with the internal incongruence measure, table 7 shows that regions with states that have higher percentage values of an excluded ethnic population are positively correlated

Table 6. Inter-correlations among Ranked Regional Variables for Internal & External Congruence and Legitimacy Measures

	Excluded Ethnic Pop. Size	Relative TEK Size	State Non-legitimacy (Englebert)
Excluded Ethnic Pop Size	1.00		
Relative TEK Size	.44	1.00	
State Non-Legitimacy	.65	.38	1.00
State Legitimacy (Polity)	.51	.50	.55

N=11 regions.

Table 7. Correlations for Ranked Variables by Region, 1960-2009<sup>a</sup>

	Intra-State Conflict
<b>Internal Incongruence Measure:</b>	
Excluded Population Size	.57
<b>External Incongruence Measure:</b>	
TEK Population Size	.34
<b>Legitimacy Measures:</b>	
State Non-legitimacy (Englebert)	.65
State Legitimacy (Polity-based)	-.49
Total Rank <sup>b</sup>	
(Excluded Pop Size + TEK Pop Size + Non-legit + Legit)	.63

N=11.

<sup>a</sup> Each region yielded a mean value for the variables; then, regions (based on their mean) were rank ordered from highest (value of 1.0) to lowest for each variable (11.0) to produce rank-ordered variables.

<sup>b</sup> The rank order has been reversed for State Legitimacy in order to include it in the total rank.

Regions: North America, South America, Caribbean & Central America, Europe, Africa, MENA, South Pacific, South Asia, Southeast Asia, East Asia, Former Soviet Socialist Republic states.

( $r=.65$ ) with regions that have higher intra-state conflict. Meanwhile, the external incongruence measure for TEK shows that it is moderately correlated with intra-state conflict ( $r=.33$ ). Regions higher ranked on non-state legitimacy are strongly positively associated ( $r=.63$ ) with higher ranked regions on intra-state conflict. As expected, the polity-based measure for state legitimacy shares a negative ( $r=-.47$ ) association with internal conflict. Finally, when we combine the total ranks on the independent variables, the correlation with intra-state conflict is high ( $r=.70$ ).

In sum, both statistical approaches to assessing Miller's argument provide support for his main argument. Regions that are characterized by internal and external incongruence and less legitimate states are more likely to be those that have greater intra-state conflict involvement.

## Conclusion

We are all looking for ways to make our explanations of inter- and intra-state conflict more parsimonious and efficient. Benjamin Miller has developed a theory which is quite promising. The core propositions work well at both the national and regional levels. Incongruent and weak states are closely linked to intrastate conflict in our examination. We think we are off to a good start but it is only a start. Corroboration has been provided for the Miller theory. At the same time, the focus has been sharpened by shifting from incongruity in general to incongruity

leading to political exclusion of ethnic groups. A parallel change has been made to the interpretation of external incongruity in the form of replacing a linear relationship with a curvilinear one. We may have also offered a bridge to a larger canvas for analysts working on regionalized civil war.

What we need to do now is to extend the incongruity/political exclusion/state strength combination in two, quite probably overlapping directions. One path is to pursue the link to interstate warfare and great power involvement already present in the Miller theory. A second path is to explore the linkages from incongruity/political exclusion/state strength to boundary disputes and earlier findings that stress the conflict escalatory significance of another combination of variables—proximate rivals involved in spatial disputes (Rasler & Thompson, 2006; Colaresi, Rasler & Thompson, 2007). Both of these targets reflect an interest in the underpinnings of the asserted territorial peace. It is not enough to say that most international conflict is about territorial disputes and, therefore, resolving the disputes will end international conflict. We need to take the next step and ask why there are territorial disputes in the first place. No doubt, the sources of contention about and around state borders are multiple but we think we have specified one of the most likely suspect culprits. Of course, whether ethnicized exclusionary politics are actually linked systematically to territorial disputes remains to be investigated. At some point, though, we will also need to pursue a third path that links incongruities and state strength to democratization, economic growth, and threat environments (see, for example, Gibler & Tir, 2010, 2014). All in all, the conflict-peace dynamics are nested within domestic, regional and international systems and manifest themselves in multiple processes. Unraveling their complexities will not be a simple matter.

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## **Maintaining Maritime Peace in East Asia: A Legal Perspective**

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### **Abstract**

Defined under the 1982 UN Convention on the Law of the Sea as semi-enclosed, East Asian seas are abundant not only in rich marine resources, but also with overlapping claims and maritime disputes, which would trigger and/or escalate tensions and even armed conflict in the relevant maritime areas, thus endangering peace and security which is necessary for economic development and better life for people living around these seas. This article is designed to examine the recent developments in maritime conflict and cooperation in East Asia in a legal perspective and explores the future possible solutions perpetual maritime peace and security.

### **Keywords**

East Asia, law of the sea, LOS Convention, East China Sea, South China Sea

The East Asian seas, from north to south geographically, include the East Sea/Sea of Japan, the Yellow Sea, the East China Sea and the South China Sea. All these seas carry the same characteristic that defines them as semi-enclosed under the 1982 United Nations Convention on the Law of the Sea (LOS Convention).<sup>1</sup> The bordering countries include Brunei, Cambodia, China, Indonesia, Japan, two Koreas, Malaysia, the Philippines, Russia, Singapore, Thailand and Vietnam. Natural resources are abundant in these seas and serve the peoples living around them.

In order to maintain peaceful uses of these seas, there should be a maritime order which is supported by rules and institutions deriving from international law. The LOS Convention provides that oceans and seas should be used for peaceful purposes, and any threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the principles of international law embodied in the Charter of the United Nations shall be prohibited (Art. 301). This article is designed to examine how and to what extent international law, particularly international law of the sea, plays a role in promoting and maintaining peace in East Asia seas by looking at several aspects including marine resources management, marine environmental protection, safety of navigation, maritime boundary delimitation and island disputes and their settlement. The assumption is: as long as international law can be dully observed by the States in East Asia, then peace can be maintained and orderly development can be promoted in that region.

The current marine legal order in the world has been largely established by and maintained under the LOS Convention, which is commonly regarded as the constitution of oceans and has incorporated many previously existing conventional and customary rules and norms concerning the oceans. Pursuant to the provisions of the LOS Convention, a coastal State has the right to establish maritime zones under its jurisdiction: internal waters inside the baselines which are used to measure the extent of the territorial sea and other jurisdictional waters, the territorial sea of 12 nautical miles (nm), the exclusive economic zone (EEZ) of 200 nm, and the continental shelf of 200 nm (or up to 350 nm in some cases), outward from the baselines. Within these maritime zones, a coastal State is entitled to enjoy either sovereignty or sovereign rights and to exercise its jurisdiction and enforce its laws and regulations in accordance with international law. All 16

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1 According to Article 122 of the LOS Convention, “enclosed or semi-enclosed sea” means a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States. 21 ILM (1982) 1261. The Convention was open for signature on 10 December 1982 and came into effect on 16 November 1994. As of March 2014, there were 166 Contracting Parties to it, including one international organization.

East Asian countries except Cambodia and North Korea have acceded to the LOS Convention. In order to implement the LOS Convention, these countries have adopted relevant domestic laws and regulations for the management of its own maritime zones and maritime activities within their jurisdiction (United Nations Office of Legal Affairs, 2011).

The extension of jurisdictional maritime zones of coastal States may cause conflicts and disputes between and among neighboring countries that share the same sea so that bilateral arrangements are needed to facilitate the maintenance of the marine legal order. These arrangements are concerned with various maritime matters such as fisheries management, maritime boundary delimitation, joint development of marine non-living resources, marine environmental protection, and maritime safety. Ironically, some bilateral agreements are a source of disruption when they involve and/or encroach on the rights and interests of a third State. The typical example is the Agreement concerning Joint Development of the Southern Part of the Continental Shelf Adjacent to the Two Countries between Japan and South Korea signed in January 1974 (Park, 2000, pp. 181-198). China made a strong protest by stating that the agreement had violated China's sovereignty and sovereign rights in the East China Sea (Zhao Lihai, 1998, pp. 41-57). In that sense, multilateral arrangements are preferable to bilateral ones when rights and interests of a third party are involved.

## Maintaining Maritime Peace through Cooperation

It is noted that maritime cooperation in East Asia is extensive. They are at least reflected in the following areas:

### Fishery Management

While there is no regional institution or organization relating to fisheries management in East Asia, there are a number of bilateral fishery agreements. For example, China concluded fishery agreements with Japan (1997), South Korea (2000) and Vietnam (2000) respectively with an aim at sustainable fishery management in the East China Sea, the Yellow Sea and the Gulf of Tonkin (Zou, 2002, pp. 127-148). South Korea and Japan also concluded a new fishery agreement in November 1998 and it entered into force in January 1999 (Kang, 2003, p. 117). All the agreements established joint fisheries zones in the relevant sea areas and fishing in these areas should be conducted in accordance with terms and conditions provided for under these agreements. It is to be noted that all these agreements were concluded after the entry into force of the LOS Convention and based on the rel-

evant provisions of the latter.

On the other hand, it has to be realised that bilateral fishery agreements have limitations; they may affect the interests of a third party. For example, South Korea expressed its dissatisfaction with the Sino-Japanese Fishery Agreement by asking China and Japan to explain how they drew the northern-limit line of their joint fishing area. They should consult South Korea before reaching their agreement (Pak, 1999, pp. 614-615). In addition, since bilateral agreements only regulate bilateral relations, fishing activities of third parties are outside any regulation. This is particularly true when Taiwan is concerned.<sup>2</sup> Finally, many fishery resources in the East China Sea and the Yellow Sea are migratory species so that they belong to the same marine ecosystem. In that sense, the East Asian seas urgently need a regional and multilateral fishery arrangement which can be more effective to conserve and manage the fishery resources therein.

### Joint Development

Regarding the management of marine non-living resources, the legal concept of joint development has been applied to East Asian seas. “Joint development” refers to “an agreement between two States to develop so as to share jointly in agreed proportions by inter-State cooperation and national measures the offshore oil and gas in a designated zone of the seabed and subsoil of the continental shelf to which both or either of the participating States are entitled in international law” (British Institute of International and Comparative Law, 1989, p. 45). It contains several characteristics: (a) it is an arrangement between two countries; (b) it concerns an overlapping boundary maritime area; (c) it is a provisional arrangement pending the settlement of the boundary delimitation disputes between the countries concerned; (d) it is designed to jointly develop the mineral resources in the disputed area. In East Asia, joint development agreements include, *inter alia*, the Japan-South Korean joint development arrangement in the East China Sea in the 1970s, the Malaysia-Thailand joint development area in the Gulf of Thailand and the Australian-Indonesia joint development zone for the Timor Gap.

The Japanese-South Korean joint development arrangement was the first as such in East Asia. It was based on several agreements signed between the two countries. The arrangement is significant in state practice since it represents the first application of the idea of joint development of offshore oil where the parties failed to agree on boundary delimitation (Miyoshi, 1999, p. 1). Under the agree-

<sup>2</sup> It is noted that in April 2013, Taiwan reached a fishery agreement with Japan, but China was obviously not pleased with this arrangement as, in China's view, Taiwan is part of China and the Taiwanese government is a local authority.

ment, concessionaires who are authorized by the two respective governments have an undivided interest with respect to each of the nine defined sub-zones, and one operator is chosen from among the concessionaires so authorized for a particular sub-zone (Miyoshi, 1999, p. 12). The agreement establishes a Joint Commission as a consultative body to implement the agreement.

What is more significant is the joint arrangement made by three countries—Malaysia, Thailand and Vietnam—in the Gulf of Thailand for their overlapping claimed sea areas, consisting of two separate but associated bilateral agreements either between Malaysia and Thailand or between Malaysia and Vietnam. In 1979, Malaysia and Thailand signed a Memorandum of Understanding (MOU) to establish, on an interim basis of 50 years, a Malaysia-Thailand Joint Authority “for the purpose of the exploration and exploitation of the non-living natural resources of the seabed and subsoil in the overlapping area” (Charney & Alexander, 1993, pp. 1099-1123). More than ten years later, the two countries worked out the Constitution and other matters relating to the establishment of such an authority, which provides details of the operation in the joint zone (Charney & Alexander, 1993, pp. 1099-1123). There are two striking characteristics in this joint development scheme: a powerful joint authority which decides on the plan of operation and the work program, to permit operations and conclude transactions or contracts, to approve and extend the period of exploration and exploitation, to approve the work program and budgets of the contractor, and inspect and audit the operator’s books and accounts (Art. 7); and the introduction of a production sharing system which include such terms and conditions as the duration of the contract not exceeding 35 years, the payment of 10% of gross production of petroleum by the contractor to the Joint Authority as royalty, 50% of gross production to be applied by the contractor for the recovery of costs, the remainder of gross production to be profit and divided equally between the Joint Authority and the contractor, all costs of operations to be borne by the contractor, and any dispute arising out of the contract to be referred to arbitration unless settled amicably (Art. 8).

In the same vein, Malaysia and Vietnam also signed an MOU in 1992 for joint development in the Gulf of Thailand. Accordingly Petronas and Petrovietnam are assigned to undertake respectively petroleum exploration and exploitation in the “defined area.” The arrangement between the two state-owned oil companies made in August 1993 established an 8-member Coordination Committee to issue policy guidelines for the management of petroleum operations. This is different from the Thai-Malaysia model in which the Joint Authority is appointed directly by the governments. After the conclusion of the commercial arrangement in July 1997, oil has been extracted from the Bunga Kekwa field (Nguyen, 2003, p. 145). Based on the bilateral arrangements, a tripartite mechanism has been gradually

evolving for an overlapping maritime area.

On 11 November 2003, the China National Offshore Oil Corporation (CNOOC) and the Philippine National Oil Company agreed to jointly explore oil and gas in the South China Sea through the signing of a letter of intent between the two sides. A joint committee was set up to help select exploring areas in the South China Sea. They also agreed to establish a program to “review, assess and evaluate relevant geographical, geophysical and other technical data available to determine the oil and gas potential in the area” (Agence France Presse, 13 November 2003). Following this development, the State-owned oil companies of China, the Philippines and Vietnam (CNOOC, PetroVietnam and Philippine National Oil Company) signed an agreement on joint seismic exploration in a designated area (143,000 km<sup>2</sup>) of the South China Sea in March 2005 (*LianheZaobao*, 15 March 2005). However, after the first stage of the joint seismic survey, there has been no follow-up activity sponsored by the above three countries. Apparently, this preliminary joint development scheme has encountered a political stalemate resulting from distrust and conflict of maritime interests.

In the East China Sea, China and Japan also discussed the possibility of joint development of petroleum resources in the disputed areas. A consensus agreement was reached in June 2008 regarding joint development in the East China Sea after 11 rounds of negotiation. Accordingly, the agreed consensus includes (a) bilateral cooperation in the East China Sea and turning it into a sea of peace, cooperation and friendship; (b) joint development in the East China Sea and a small patch of joint development zone has been identified; and (c) participation of Japanese legal person in the development of Chunxiao Oil and Gas Field in accordance with Chinese laws (Gao, 2009, pp. 291-303). The conclusion of this agreement is in line with the spirit and provisions of the LOS Convention which encourages States concerned to work out provisional arrangements including joint development agreement pending the settlement of their maritime boundary disputes. However, the designated maritime zone for joint development is just a small patch and China is currently reluctant to go further with the implementation of this consensus agreement.

In fact, joint development is an actual implementation of the LOS Convention as it contains provisions stipulating that pending agreement reached between them on the delimitation of the EEZ and continental shelf, the states concerned, in a spirit of understanding and cooperation, are required to “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” (Art. 74 and Art. 83 of the LOS Convention). But in practice, it is not easy to implement these provisions in East Asian seas due to various factors.

### Marine Environmental Protection

Regional cooperation and institutions for marine environmental protection is not new in State practice. Under the sponsorship of the United Nations Environmental Program (UNEP), several regional arrangements have been made for different sea areas throughout the world. They are the Wider Caribbean Region, the Southeast Pacific Region, the Mediterranean Region, the West and Central African Region, the Red Sea and Gulf of Aden Region, the Kuwait Action Plan Region, the Eastern African Region, the South Asian Seas Region, the South Pacific Region, and the Black Sea Region (Birnie & Boyle, 1992, pp. 260-263). All these arrangements bear some common characteristics: they were sponsored by UNEP; they have an action plan as well as a treaty. In 1989, the UNEP Governing Council designated the Northwest Pacific (NOWPAP) as a new area where a regional action plan and later a regional sea treaty should be developed. The geographical coverage includes the marine environment and coastal zones of China, North and South Korea, Japan and Russia. Interested countries around the Northwest Pacific sent their representatives to attend the initial contact meeting held in Nairobi shortly thereafter (Kim et al., 1993, p. 204). The subsequent developments showed that the establishment of a regional program in East Asia was not as easy as in other regions. The main culprit may be the abnormal political relations among the coastal States in the East Asian region (Paik, 1995, p. 7). The tension in the Korean Peninsula and the Taiwan issue are all obstacles against smooth regional co-operation for the marine environmental protection. For example, when the first meeting of National Focal Points and experts convened in Vladivostok in October 1991, North Korea did not send its representative (Kim et al., 1993, p. 73).

In 1994 the Action Plan was finally adopted and contained five objectives: monitoring and assessment of the environment condition; creation of an efficient and effective information base; integrated coastal area planning; integrated coastal area management; and establishment of collaborative and cooperative framework (NOWPAP, 2005). To implement the Action Plan, a number of projects are designed and carried out in parallel by national institutions with the support from relevant regional and international organizations. For multiple projects, the scattered nature of the various activities, as well as the wide scope of input possible from both within and outside the region, a network of participating institutions coordinated by regional activity centres will be established. Besides, a Regional Coordination Unit (RCU) should be established to ensure the integrated and well-managed execution from within the Region of the projects under the Action Plan. Until such time as an RCU is established and functioning effectively, the member governments designate UNEP as the organization responsible for the coordination of the Implementation of the Action Plan (NOWPAP, 2005).

Following the Action Plan, the Intergovernmental Meeting (IGM) was created which is the high-level governing body of NOWPAP that provides policy guidance and makes decisions. As of 2013, 18 annual IGMs were held. In accordance with the IGM decisions, Regional Activity Centres (RACs) were established between 2000 and 2002. Regional Coordinating Unit (RCU) was also set up in Toyama, Japan and Busan, Korea, in November 2004 (NOWPAP, 2005).

Associated with the NOWPAP is the Coordinating Body on the Seas of East Asia (COBSEA) which was established in 1981 and the participating countries include Australia, Cambodia, China, Indonesia, Malaysia, the Philippines, Singapore, South Korea, Thailand and Vietnam. In 2000, a Regional Programme of Action for the Protection of the Marine Environment of the East Asian Seas from the Effects of Land-based Activities was adopted and the New Strategic Direction for COBSEA (2008-2012) was adopted in 2008 to strengthen member capacity in responding to the growing pressure from the coastal and marine environment (COBSEA, 2005).

The other regional marine environmental program is the Partnerships in Environmental Management for the Seas of East Asia (PEMSEA) jointly sponsored by the International Maritime Organization (IMO), the United Nations Development Programme (UNDP), the Global Environmental Facility (GEF) and the World Bank. This regional program, implemented in 1994, has such participating countries as Brunei, Cambodia, China, Indonesia, Japan, Malaysia, North Korea, the Philippines, Singapore, South Korea, Thailand, and Vietnam. Therefore, its geographical coverage is broader than the NOWPAP. Its overall objective is to support the efforts of the participating countries in the prevention and management of marine pollution at both the national and sub-regional levels on a long-term and self-reliant basis (IMO, 1997). In order to institutionalize integrated coastal management (ICM), the Regional Program established two demonstration sites to demonstrate the application of ICM in Xiamen, China and Batangas Bay, the Philippines. Later such sites are set up in Cambodia, Indonesia, Malaysia, North Korea, Thailand and Vietnam. Another kind of Demonstration Sites for subregional sea areas and pollution hot spots were also established in China (Bohai Sea), the Philippines (Manila Bay), Malaysia/Singapore (Malacca Straits), and Thailand (Gulf of Thailand). The program launched the Marine Pollution Monitoring and Information Management Network to help build linkages with participating countries on the status of the marine environment in the East Asian seas. The program has four operating mechanisms: the East Asian Seas (EAS) Congress, the East Asian Seas (EAS) Partnership Council, the PEMSEA Resource Facility, and the Regional Partnership Fund (PEMSEA, 2006). During the 2<sup>nd</sup> East Asian Seas Congress held in Haikou, China in December 2006, the partners signed the Haikou Partnership

Agreement on the Implementation of Sustainable Development Strategy for the Seas of East Asia (PEMSEA, 2014). Since 2010 PEMSEA has become an international organisation with legal and financial status separate from the UNDP (Dyke & Broder, 2014, p. 22). Since the three regional programmes are independent of one another, it is suggested that an integrated approach with close collaboration among them be taken to strengthen the protection of the marine environment in East Asia.

### Maritime Security and Safety of Navigation

In terms of maritime security and safety of navigation, the piracy problem is the most threatening factor in East Asian seas. The term “piracy” is usually referred to a broad range of violent acts at sea. According to the LOS Convention, piracy consists of any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed to: (i) on the high seas or in a place outside the jurisdiction of any State, against another ship or aircraft, or against persons or property on board such ship or aircraft (Art. 101).

However, the LOS Convention definition has limitations. First, it defines “piracy” as only for “private ends” and terrorist acts at sea for political ends are generally excluded. Second, according to the above definition, piracy *juris gentium* presupposes that a criminal act be exercised by passengers or the crew of a ship against another ship or persons or property on its board. The two-vessel requirement is an ingredient of the crime of piracy, unless a criminal act occurs in terra nullius (Ronzitti, 1990, p. 1). Thus “internal seizure” within the ship is hardly regarded as “act of piracy” under the definition of the LOS Convention. Finally, piracy must occur on the high seas and piratical acts within territorial waters are not subject to the above definition.

To remedy these limitations, IMO has attempted to divide acts of piracy into two categories by geographical and legal division of maritime zones: piracy on the high seas is defined as “piracy” under the LOS Convention definition, while acts of piracy in ports or national waters (internal waters and territorial sea) are defined as “armed robbery against ships” (Olsen, 1999, p. 2).

International law has established an obligation for States to cooperate in the suppression of piracy and grants States certain rights to seize pirate ships and criminals. Article 100 of the LOS Convention provides that “All States shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State.” Article 105 further provides that “on the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy

and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith.” However, only warships or military aircraft or similar governmentally authorized ships or aircraft have the power to seize a pirate ship or aircraft in the high seas. It should be noted that the above piracy provisions are also applicable to the EEZ though it is within the national jurisdiction.<sup>3</sup>

The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention) applies to all maritime terrorist acts, whether private or political. The significance lies in that if terrorist acts would not be punished and suppressed under the LOS Convention, they are still under the suppression of the SUA Convention. This means that any maritime terrorist and piratical act cannot escape justice. The other twin instrument is the 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf (the SUA Protocol, 1988), which was adopted at the same time as the SUA Convention and contains similar provisions. It is relevant to the East Asian seas in the context that the seas are rich in oil and gas and the coastal States have already launched exploitation projects either by themselves or jointly with foreign oil companies. It is said that offshore oil and gas installations are potential targets of piracy (Bateman & MacKinnon, 1998, p. 5). In case that any terrorist or piratical attack should be aimed against oil platform(s) or artificial islands located in the East Asian seas, it could be suppressed under this protocol.

Regional cooperation is a necessity to effectively combat piracy in the region. In November 2002, the Joint Declaration of ASEAN and China on Cooperation in the Field of Non-Traditional Security Issues (the Joint Declaration) was adopted, which initiated full cooperation between ASEAN and China in the field of non-traditional security issues and listed the priority and form of cooperation. The priorities at the current stage of cooperation include “combating trafficking in illegal drugs, people-smuggling including trafficking in women and children, sea piracy, terrorism, arms-smuggling, money-laundering, international economic crime and cyber crime.” As to the multilateral and bilateral cooperation, it aims to “(a) strengthen information exchange, (b) strengthen personnel exchange and training and enhance capacity building, (c) strengthen practical cooperation on non-traditional security issues, (d) strengthen joint research on non-traditional security

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3 Provisions on the high seas of the LOS Convention are applicable to the EEZ as long as there is no contradiction.

issues, and (e) explore other areas and modalities of cooperation.” In addition, the 2002 Declaration on the Conduct of the Parties in the South China Sea also mentions the suppression of piracy and armed robbery at sea.

A most significant development recently is the adoption of the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP). It was signed by 16 Asian countries including Bangladesh, Brunei, Cambodia, China, India, Indonesia, Japan, Laos, Malaysia, Myanmar, the Philippines, Sri Lanka, Singapore, South Korea, Thailand and Vietnam on 11 November 2004. The Agreement came into force on 4 September 2006 when it received 10 ratifications.<sup>4</sup> The Information Sharing Centre (ISC) was officially launched in Singapore in November 2007.

The Agreement obliges Contracting States (a) to prevent and suppress piracy and armed robbery against ships; (b) to arrest pirates or persons who have committed armed robbery against ships; (c) to seize ships or aircraft used for committing piracy or armed robbery against ships; and (d) to rescue victim ships and victims of piracy or armed robbery against ships (Art. 3). The Contracting States pledge to implement the Agreement including preventing and suppressing piracy and armed robbery against ships “to the fullest extent possible” “in accordance with their respective national laws and regulations and subject to their available resources or capabilities” (Art. 2.1).

There are several characteristics regarding the ReCAAP. First, though the original negotiators of the Agreement are 16 Asian States, the accession to the Agreement is not exclusive; any State can join after its entry into force as provided for in the Agreement (Art. 18.5). Second, the ReCAAP is the first specific international treaty concerning the prevention and suppression of piracy. Because of this, it becomes a model of law for other regional legal arrangements. For example, the Djibouti Code of Conduct was signed on 29 January 2009 for the fight against piracy in the Western Indian Ocean and Gulf of Aden (IMO, 2009). Thirdly, the ISC established under the ReCAAP is a governmental international organization, different from other organizations which operate similar functions such as the Piracy Reporting Centre (situated in Kuala Lumpur) of the International Maritime Bureau under the International Chamber of Commerce. Finally, it contributes to the legal definition on piracy and armed robbery against ships as it has endorsed the definition provided by the IMO above (Zou, 2009, pp. 323-345).

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<sup>4</sup> It is to be regretted that two major Straits States Indonesia and Malaysia have not yet ratified the Agreement, though participating in ISC activities as observers.

### Maritime Boundary Delimitation

There are a number of bilateral agreements concerning maritime boundary delimitation in East Asia. A significant one is the agreement between China and Vietnam regarding the Gulf of Tonkin. The size of the gulf, as agreed by the two countries, is more than 126,000 square kilometers (Vietnam News Agency, 2004; Ministry of Foreign Affairs of the People's Republic of China, 2004),<sup>5</sup> with abundant marine living and non-living resources. On 25 December 2000, the two sides completed the negotiation process and signed the Agreement on the Delimitation of the Territorial Seas, Exclusive Economic Zones and Continental Shelves in the Beibu Gulf (the Sino-Vietnamese Boundary Agreement) (Zou, 2005a, pp. 22-24) and the Agreement on Fishery Cooperation in the Beibu Gulf (the Sino-Vietnamese Fishery Agreement) (Zou, 2002, pp. 127-148). Both agreements came into effect from 1 July 2004 after the ratification of the two countries concerned. A new marine legal order based on the LOS Convention has been, therefore, established in the Gulf of Tonkin.

The Sino-Vietnamese Boundary Agreement contains 11 clauses. Article 1 defines the area of the Gulf of Tonkin for the purpose of delimiting the territorial seas, EEZs and continental shelves of the two countries. Article 2 uses 21 geographic points to draw the maritime boundary in the Gulf of Tonkin. In the use of the coordinates, the line connecting Point 1 to Point 9 is the line to divide the territorial seas of the two countries, whereas the line connecting Point 9 to Point 21 is the line to delimit the EEZs and continental shelves of the two countries in the Gulf of Tonkin.

Both China and Vietnam have adopted straight baselines to measure the breadth of their territorial seas and other maritime zones. China publicized part of its straight lines along its mainland coast as well as Hainan Island in 1996 when it ratified the LOS Convention. The straight baselines connected by four geographic coordinates from YinggeZui (Oanh Ca in Vietnamese) to Junbi Jiao along the coast of Hainan Island facing the Gulf have probably affected the delimitation in the Gulf between the two countries. It is recalled that China deliberately left the baselines for the Gulf of Tonkin undefined because of the maritime delimitation with Vietnam. However, part of its baselines along Hainan Island still produce some impact on the delimitation since this sector of the baselines is within the area of the Gulf of Tonkin as defined by the Sino-Vietnamese Boundary Agreement.

For Vietnam, it has also adopted straight baselines as proclaimed in its 1982

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5 The figure that Vietnam refers to is 126,250 square kilometres while the Chinese figure is 128,000 square kilometres.

Statement on the Territorial Sea Baseline of Vietnam. But on the other hand, as the above Statement provides, the Vietnamese part of the Gulf of Tonkin, as delineated by the 1887 Border Treaty signed between France and China, “constitutes the historic waters and is subject to the juridical regime of internal waters” of Vietnam (United Nations, 1989, p. 384). Under this circumstance, there is no need to use baselines which are applicable to the territorial sea and beyond. However, the Vietnamese historic waters claim was not recognized by China and the Vietnamese agreement to the negotiation on maritime delimitation was in fact an acquiescent abandonment of its former claim.

The Sino-Vietnamese Boundary Agreement has produced the first maritime boundary that China has ever agreed to share with its neighbouring countries. As China still has maritime delimitation problems with eight countries (i.e. Brunei, Indonesia, Japan, Malaysia, North Korea, the Philippines, South Korea, and Vietnam), the success of the delimitation in the Gulf of Tonkin is an invaluable experience to China in its future negotiations with other countries. The practice of using one single maritime boundary line to delimit three different maritime zones (territorial sea, EEZ and continental shelf) indicates that China may follow this practice in future negotiations with other neighbouring countries, bearing in mind that China has used the doctrine of natural prolongation in its claim to the continental shelf in the East China Sea,<sup>6</sup> which would create two different maritime boundary lines in the event that China’s claim could be accepted by Japan. For Vietnam, though the Boundary Agreement is the second of the three agreements Vietnam has signed with its neighbouring countries (with Thailand in 1997 and Indonesia 2003), Vietnam has admitted that this agreement is “the first most comprehensive of its kind” (Vietnam News Agency, 2004). Vietnam also concluded a boundary agreement with Indonesia in June 2003 and it was based on the willingness and desire to strengthen and further develop the existing friendly relations between the two countries (Nguyen, 2011, p. 182).

## Territorial and Maritime Disputes

Maritime boundary demarcation often becomes an issue which causes tensions between States concerned in East Asia. The recent incident in the Yellow Sea between the North and South Korea resulted directly from the unclear and contro-

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<sup>6</sup> The doctrine of natural prolongation is embodied in the LOS Convention which provides that “the continental margin comprises the submerged prolongation of the land mass of the coastal State, and consists of the sea-bed and subsoil of the shelf, the slope and the rise” (Art. 76).

versial demarcation of their maritime boundary. In June 1999 and June 2002 respectively, two Koreas had armed skirmishes in the disputed sea areas around the so-called Northern Limit Line (NLL) which was unilaterally drawn by the United Nations Command after the conclusion of the Armistice Agreement concerning the Korea War in 1953, but its validity was rejected by North Korea (Park, p. 108).<sup>7</sup> In response, the North Korean military authorities declared after the 1999 incident (on 2 September 1999) that they had set up a “North Korean Military Demarcation Line in the West Sea (Yellow Sea)” which overlaps with the existing NLL. The different lines existing in the same area definitely have caused and will continue to cause maritime conflicts unless a clear boundary line can be negotiated between the two sides. It is, therefore, not easy to reach agreements on maritime boundary delimitation, though relevant negotiations are now under way, for example, between China and Japan, China and South Korea, and Japan and South Korea.

Recent claims to the extended continental shelves exacerbated further the complicated situation in maritime boundary delimitation in East Asian seas. As we know, some countries such as Japan, Malaysia, Philippines and Vietnam have officially submitted their applications for outer continental shelves to the Commission on the Limits of Continental Shelf (CLCS), while others sent Preliminary Information to the CLCS to reserve their rights of future claims. Following their Preliminary Information, China and South Korea submitted their outer continental shelf claims to the CLCS in the East China Sea in December 2012, which was objected by Japan (United Nations Division for Ocean Affairs and the Law of Sea, 2014). The recent high tension in the South China Sea is actually triggered by such moves of littoral countries.

There are several islands issues/disputes in East Asia, including the Kuril Islands (between Russia and Japan), the Dokdo (between Korea and Japan), the Diaoyu Islands (between China and Japan), and the South China Sea islands (various claimants). The islands in the South China Sea, particularly the Spratlys are claimed by five countries including China (including Taiwan), Brunei, Malaysia, the Philippines and Vietnam. There were two armed skirmishes which happened in the South China Sea in 1973 and 1988 between China and Vietnam over the disputes of the South China Sea islands. The 1995 tension between China and the Philippines over the Mischief Reef also invited a high profile exposure in the mass media. Arrests of fishing boats and fishermen are frequent. The claimed States

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<sup>7</sup> A Korean scholar (Park, 2000), following the South Korean government position, argues that the NLL has become a bilateral customary law.

blame one another for incursions in the disputed areas.<sup>8</sup> In June 2002, Vietnam lodged a protest against China's live ammunition exercises in the South China Sea, but China dismissed Vietnam's protest and stated that the drill fully complied with international law (*Voice of Vietnam*, 2002; *Xinhua News Agency*, 2002).

Currently, China's U-shaped line in the South China Sea has been challenged by other claimants. This line is the line with nine segments off the Chinese coast on the South China Sea, as displayed in the Chinese map and its official Chinese name is "traditional maritime boundary line." China's claim to the South China Sea is based on the U-shaped line. On 1 December 1947, the Chinese Ministry of Interior renamed the islands in the South China Sea and formally allocated them into the administration of the Chinese Hainan Special Region (Hill et al, 1991, 88). Meanwhile, the same ministry prepared a location map of the islands in the South China Sea, which was then first released for internal use (Li & Li, 2003, p. 290). In February 1948, the Atlas of Administrative Areas of the Republic of China was officially published, in which the above map was included. This is the first official map with the line for the South China Sea. It has two general characteristics: the southernmost end of the line was set at 4° north latitude including James Shoal; and the eleven-segment line was drawn instead of the previous continuous line. According to the then official explanation, the basis for drawing the line was: "[t]he southernmost limit of the South China Sea territory should be at the James Shoal. This limit was followed by our governmental departments, schools and publishers before the anti-Japanese war, and it was also recorded on file in the Ministry of Interior. Accordingly it should remain unchanged" (Han, 1988, pp. 181-184). It should be noted that the map is an official map, different from those previously drawn by individual cartographers. Since then, maps officially published both in mainland China and Taiwan are the same regarding the line since both have succeeded to the official map published in 1948.

As China claims that it "has indispensable sovereignty over the islands in the South China Sea and the adjacent waters, and enjoys sovereign rights and jurisdiction over the relevant waters as well as the seabed and subsoil thereof. China's sovereignty and related rights and jurisdiction in the South China Sea are supported by abundant historical and legal evidence" (China's Note Verbale, 2011). China further stated that "since 1930s, the Chinese Government has given publicity several times the geographical scope of China's Nansha Islands and the names of its components. China's Nansha Islands therefore clearly defined" (China's Note

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8 For example, the Philippines expressed its alarm over increasing Vietnamese military and fishing vessel incursions into the waters off the disputed Spratly Islands in the South China Sea and there were 205 Vietnamese vessels in areas claimed by the Philippines in the first 10 months in 2001.

Verbale, 2011). It is indicated that historic aspect is an essential element in China's claim to the South China Sea islands.

On 26 June 1998, China promulgated the Law on the Exclusive Economic Zone and the Continental Shelf and Article 14 of the Law provides that "the provisions of this Law shall not affect the historic rights enjoyed by the People's Republic of China" (Zou, 2005b, pp. 342-345). It is generally agreed that this clause is connected to China's claim to the South China Sea within the U-shaped line. However, instead of using the term "historic waters," China wisely chose a more softened term "historic rights." The provision of the EEZ law on historic rights can be understood in the following three interpretations: (1) it might be interpreted to mean that the sea areas which could not become China's EEZ and/or continental shelf should have the same legal status as EEZ and/or continental shelf; (2) it might be interpreted to mean that the sea areas which embody China's historic rights are beyond the 200 nm limit; and (3) it might be interpreted to mean that the sea areas which embody China's historic rights but within the 200 nm limit can have an alternative management regime different from the EEZ and or continental shelf regime (Zou, 2001, p. 162).

However, China's historic rights claim has been rejected by other claimants. Moreover, in January 2013, the Philippines instituted the LOS Convention Annex VII Arbitration process to challenge China's such claim based on the U-shaped line. The notification sent to the Chinese Ambassador in Manila dated on 22 January 2013 notified China that the Philippines is bringing the dispute in the South China Sea before an arbitral tribunal in accordance with Article 287 and Annex VII of the LOS Convention. The Philippines asks the arbitral tribunal to issue an award that, among other things, "Declares that China's maritime claims in the South China Sea based on its so-called 'nine dash line' are contrary to [United Nations Convention on the Law of the Sea] and invalid" (People's Daily Online, 2013). In February 2013, the Chinese Ambassador in Manila rejected and returned the Note verbale and the attached the Philippines' notification of arbitration and statement of claim. Beijing accused Manila of violating the consensus in the 2002 Declaration on the Conduct of Parties in the South China Sea (DOC), because the declaration states that disputes should be solved through friendly talks and negotiations by sovereign states directly concerned. In addition, the Chinese government pointed out that there were factual and legal mistakes and unfounded accusations against China in the Philippines' notification and statement of claim. Despite that China returned its notification of arbitration, the Philippines claims that the arbitral procedure will continue.

China is facing an increasing pressure not only from the Philippines, but also from other members of the international community, which include the United

States and the European Union (EU) and its member states. In January 2013, U.S. Representative Ed Royce, chairman of the House Foreign Affairs Committee, stated in Manila that China should agree to face the Philippines before a U.N. arbitral tribunal to avoid a possible crisis over their long-raging territorial disputes in the South China Sea. This was followed by support from US Secretary of State John Kerry, German Foreign Minister and a group of EU law makers in February 2013. In March 2013, it is included in a report on EU-China relations approved by the European Parliament, stating that it “urgently appeals to all the parties involved to refrain from unilateral political and military actions, to tone down statements and to settle their conflicting territorial claims in the South China Sea by means of international arbitration in accordance with international law, in particular the UN Convention on the Law of the Sea, in order to ensure regional stability” (Song & Zou, 2014, p. 298).

Despite the refusal from China, the President of the International Tribunal for the Law of the Sea (ITLOS) has appointed ITLOS Judge Stanislaw Pawlak as Arbitrator representing China. On 24 April 2013, the ITLOS President appointed the remaining three arbitrators. It is interesting to note that among the five arbitrators, four are Europeans and one long-term European resident (ITLOS, 2013).<sup>9</sup> The arbitration raises two important questions: (1) To what extent this development could help clarify a number of legal issues that are related to the status of U-shaped line and a number of land features located in the South China Sea? (2) Would the existing complicated and complex South China Sea situation become more difficult to tackle between China and the other claimant states?

## Maritime Issues

One of the maritime issues which is haunting East Asia is the controversy on whether the conduct of military activities in the EEZ of another country is legitimate. Incidents such as the EP-3 in 2001 and the Impeccable in 2009 between China and the United States drew much attention from the world community. As there is no express provision contained in the LOS Convention, some states may invoke Article 58 (1) of it to justify their military activities in other countries' EEZ. The provision reads: “[i]n the exclusive economic zone, all States, whether coastal or land-locked, enjoy, subject to the relevant provisions of this Convention, the freedoms referred to in Article 87 of navigation and overflight and of the laying of

<sup>9</sup> Mr. Pinto was later replaced by Mr. Mensah.

submarine cables and pipelines, and other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines, and compatible with the other provisions of this Convention.” Freedoms in the high seas provided in Article 87 are thus applicable to the EEZ as long as they are not contrary to other provisions of the LOS Convention. According to maritime powers such as the United States, the term freedoms “associated with the operation of ships, aircraft” implies the legality of naval maneuvers in a foreign EEZ (Boczek, 1988, p. 450). However some coastal states such as Bangladesh, Brazil, Cape Verde, India, Pakistan, and Uruguay explicitly restrict unapproved military exercises or activities in or over their EEZs conducted by other countries.

In East Asia, countries like China, Malaysia and Vietnam hold the same view and position as above. For Malaysia: “the Malaysian Government also understands that the provisions of the Convention do not authorize other States to carry out military exercises or manoeuvres, in particular those involving the use of weapons or explosives in the exclusive economic zone without the consent of the coastal State” (United Nation Division for Ocean Affairs the Law of the Sea, 2013). According to a prominent Malaysian scholar, there are at least three reasons to explain Malaysia’s position. First, in Malaysia’s view, there is no law that prohibits a coastal state jurisdiction over foreign military activities in the EEZ. Moreover, unauthorised foreign military activities can undermine a coastal state’s security, particularly if they are non-peaceful in nature. Second, the LOS Convention is a treaty where the provision on foreign military activities in the EEZ is a new and controversial concept, rather than customary international law. Third, the provision on military activities in the EEZ is not consistent with the principle of peaceful uses of the sea. Malaysia views foreign military activities in its EEZ as undermining and threatening its security as well (Hamzah, 2013, pp. 164-165). The regulations above are made under the rationale that military activities are inherently potential threats to peace and good order of the coastal states.

The East-West Center once organized a series of workshops on “military and intelligence gathering activities in the EEZ” after the EP-3 Incident between China and the United States. The first one was held in Bali, Indonesia in June 2002 and the Honolulu Meeting in December 2003 drafted some guidelines for military and intelligence gathering activities in the EEZs. According to the Guidelines, “ships and aircraft of a State undertaking military activities in the EEZ of another State have the obligation to use the ocean for peaceful purposes only, and to refrain from the threat or use of force, or provocative acts, such as stimulating or exciting the defensive systems of the coastal State; collecting information to support the use of force against the coastal State; or establishing a ‘sea base’ within an-

other State's EEZ without its consent. The user State should have due regard for the rights of others to use the sea including the coastal State and comply with its obligations under international law" (Ocean Policy Research Foundation, 2005). Furthermore, "warships or aircraft of a State intending to carry out a major military exercise in the EEZ of another State should inform the coastal State and others through a timely navigational warning of the time, date and areas involved in the exercise, and if possible, invite observers from the coastal State to witness the exercise" (Ocean Policy Research Foundation, 2005). As for military surveying, the Guidelines provides that "maritime surveillance may be conducted by states for peaceful purposes in areas claimed by other states as EEZ and should not prejudice the jurisdictional rights and responsibilities of the coastal state within its EEZ" (Ocean Policy Research Foundation, 2005). Unfortunately, these constructive guidelines were rejected by the United States despite the involvement of American scholars in the drafting process.

## Conclusion

The LOS Convention has established a rule-of-law regime for the oceans. Compliance with international law including the LOS Convention is one of the requirements when States interact and cooperate in international relations. There is a special provision in the LOS Convention requesting contracting States bordering enclosed or semi-enclosed seas to cooperate among themselves, in particular (a) to coordinate the management, conservation, exploration and exploitation of the living resources of the sea; (b) to coordinate the implementation of their rights and duties with respect to the protection and preservation of the marine environment; (c) to coordinate their scientific research policies and undertake where appropriate joint programs of scientific research in the area (Art. 123). The requirement for cooperation is of course not limited only to the above areas and should apply to maritime security as well.

Nevertheless, it is admitted that law, particularly international law, has its limitations. While international law is useful to guide and govern States behaviour and their interactions, it is unable to solve all the problems. Sometimes even worse, new law may create new problems. This is reflected by the inception of the LOS Convention which has caused a number of maritime issues and disputes in East Asia largely due to its permission to coastal States to extend their maritime zones. Furthermore, due to the different interpretations of international law, States may have disputes over which interpretation can stand. The Sino-American dispute regarding military activities in the EEZs is just one of the examples.

It is generally recognized that the effectiveness of international law depends on the good faith of States to implement it as there is no supra-national organ at the global level which can enforce the law implementation. As we recall, the 2005 World Summit called for universal adherence to and implementation of the rule of law at both the national and international levels. Implementation of international law is an indispensable means to realise rule of law at the global level. However, by observing States practices in East Asian seas, we have found some gaps there: (1) inconsistency/non-compliance with existing international law, such as domestic regulations regarding innocent passage for warships made by China, Taiwan and Vietnam; (2) excessive claims such as straight baselines pronounced by quite a number of East Asian countries; (3) lack of confidence in or disregard for the utility of the international judiciary as exemplified by the exclusion declarations made by China and South Korea; and (4) abuse of international law such as claims to islets/reefs by the excuse that they are within the claimed 200 nm EEZ. From these gaps in implementing international law, it is well perceived that there is a long way for East Asian countries to fully realise the importance of international law and the benefit to effectively comply with it.

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## **Vietnam and the South China Sea Dispute: Sovereign Claim, Energy Security and Joint Development Agreement**

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### **Abstract**

Sovereign claims, energy security concerns and joint development agreements (JDAs) play a central role in the South China Sea (SCS) dispute. Publications have often treated these factors separately instead of studying how one claimant state's calculation of these factors could affect that state's strategy in the dispute. Selecting Vietnam as a case study, the present paper investigates this key claimant's calculation of sovereignty, energy security and JDAs. On the basis of primary sources (especially interviews with governmental officials), it demonstrates that Vietnam has displayed a relatively consistent path to resolving maritime disputes, and the pressure to achieve energy security may encourage Vietnam to adopt a flexible approach towards the issue of sovereignty in the SCS dispute. Vietnam supports JDAs as a viable option for settling this dispute. As Vietnam is one of the key claimants in the SCS dispute, an understanding of the country's calculation of sovereign claims, energy security concerns and JDAs is essential in order to seek viable peaceful solutions to the SCS dispute.

### **Keywords**

South China Sea, Vietnam, energy security, sovereignty, joint development agreement

Territorial and maritime disputes, which have existed since ancient societies, have been exacerbated in the post-modern era (Kim, 2014). The South China Sea (SCS) dispute has appeared in recent years as one of the most seemingly intractable disputes. The SCS plays a critical role in international navigation, maritime safety, environmental protection and natural resource exploitation. Unfortunately, the SCS dispute remains as a potential flashpoint that could lead to regional instability and affect international freedom of navigation in the Asia-Pacific region. Concerned states, including Brunei, China, Malaysia, the Philippines, Taiwan and Vietnam, have made efforts to stabilize the situation and to seek peaceful solutions to the dispute. However, recent developments such as the current naval arm race among regional actors and China's 'act of state piracy' (Till, 2012; Thayer, 2014) indicate that such solutions seem still to be out of reach.

Central to the SCS dispute are the sovereign claims by claimant states. These countries claim various groups of islands in the SCS either in whole or in part. Sovereignty and territorial integrity is the base concern of any state, especially East Asian states for which the state-building process is still on going. Several studies have demonstrated that sovereignty and territorial integrity are vital to the legitimacy of ruling regimes, particularly in China and Vietnam (Sutherland, 2008; Heberer & Schubert, 2009; Nguyen, 2010). Consequently, claimants appear to be insistent on their sovereign claims in any discussions or negotiations towards possible solutions to the dispute. Sovereignty claims make the SCS dispute seem intractable.

The reserve of seabed energy resources is often cited as a key driver that incentivizes littoral states to insist on their strong positions (Owen & Schofield, 2012). Energy resources in the SCS become important in the context that most littoral states are now facing national compelling energy demands and energy security has become a pressing issue in the region. China and some ASEAN countries have undergone a profound period of economic growth and rapid urbanization. Despite the recent economic recession, the region is expected to continue its economic growth and rapid industrialization of which energy is the life-blood. For instance, China commenced its maritime oil imports in 2006 and imported 239 million tons of oil in 2010. China's oil imports have increased from 28 percent in 2001 to 50 percent in 2008 and 55 percent in 2010, which exceeded the globally recognized energy security alert level of 50 percent (H. Zhao, 2011, p. 41; L. Zou, 2011). Similarly, ASEAN is faced with the maturity of existing oil and gas fields and the region's oil imports are projected to be four million barrels per day by 2030 (H. Zhao, 2011). Fossil fuels will continue to dominate energy demands for decades to come. In such circumstances, the reserve of energy resources in the SCS is expected to compensate imported energy and enable claimant states to secure energy

security. The soaring energy demands intensify littoral states' incentives to develop seabed energy resources in the SCS (Wu & Zou, 2009; Perlez, 2012).

Research on territorial and maritime disputes has often investigated energy resources in the SCS as both triggers for conflicts and potential resolutions to the SCS dispute. On the one hand, the fear is that China and other claimants may encounter military conflicts in the SCS due to the pressure from economic recovery, rapid growth and energy demand resurgence (Hughes, 2011). On the other hand, an optimistic view is that energy resources in the SCS could encourage concerned states to cooperate in oil and gas exploration and exploitation, of which joint development agreements (JDAs) seem to be viable options.

The idea of JDAs as viable options for settling overlapping maritime claims is not new to Asia. Joint development is often understood as when two or more countries agree to pool any right they may have over a given area in order to jointly explore and exploit offshore minerals (Gault, 1988). Southeast Asian and Northeast Asian states have used JDAs to deal with their overlapping maritime claims. Southeast Asian countries, including Brunei, Cambodia, East Timor, Indonesia, Malaysia, Thailand and Vietnam, and all three Northeast Asian countries (China, Japan and South Korea) have been party to at least one JDA (Davenport, 2012). In fact, China proposed joint development projects in the SCS as early as 1991. The failure of its initial proposal was mainly due to China's principle that other countries have to admit its sovereignty over the SCS. Contestant states' insistence on sovereignty claims in the SCS has greatly contributed to the failure of the proposed JDA.

Sovereign claims, energy security concerns and JDAs, among others, are the key influential factors in the SCS dispute. While there is no shortage of discussion, both popular and academic, on the dispute, scholarship has often treated these factors separately, while the question of how they are calculated within one claimant state has been left unexamined. Moreover, the study of the SCS dispute has so far focused mainly on data and information from public sources such as state-led media or press releases and government announcements. Such sources of information contribute to understanding states' perception of the SCS dispute officially but often insufficiently. The aim of this paper is to fill this gap by using Vietnam as a case study and interviews with governmental officials as the primary source of data to examine how a state calculates these influential factors.

This paper first gives a brief overview of Vietnam's sovereign claims over the SCS. It then discusses Vietnam's energy security issues and the role of energy resources in the SCS in this regard. Finally, it analyses Vietnam's perspective of JDAs as a potential solution to the SCS dispute. The paper demonstrates that Vietnam has pursued a relatively consistent path to discussions and negotiations towards

resolutions for maritime disputes and that the pressure to achieve energy security may encourage it to adopt a flexible approach to the issue of sovereignty in the SCS dispute. Vietnam is one of the key claimants in the SCS, and is willing and prepared to use JDAs as viable options for resolution. Thus, the investigation of how Vietnam calculates sovereignty claims, energy security concerns and JDAs in the dispute could shed light on its attitude towards possible discussions and negotiations on the dispute. It could also help maintain peace and stability in the region and seek long-term solutions in the SCS.

To explore Vietnam's calculation of sovereignty, energy security concerns and JDAs, this article draws primarily from research interviews with ministerial officials from the Minister of Foreign Affairs (MOFA) and the Ministry of Industry and Trade (MOIT), which is in charge of the energy sector in Vietnam. The research is also based on interviews with some senior staff at PetroVietnam (PVN)—a state-owned company under the authority of MOIT, which is both the operator and regulator of the oil and gas sectors. Oil production in Vietnam is operated by the PVN's upstream subsidiary—PetroVietnam Exploration and Production (PVEP). PVN is also involved with the downstream oil sector through its subsidiaries such as PetroVietnam Oil Processing and Distribution Company (PV Oil).

The author conducted 14 semi-structured interviews, of which seven were conducted with MOFA officials and the rest with MOIT officials, between March and April 2013 in Hanoi. Though research participants differed in terms of their education, age, gender and position, and they were strategically selected to hold middle and upper management positions in their respective institutions. The semi-structured interview approach was chosen because it is formal enough to ask the same set of questions but also flexible enough to conduct the interviews in a conversational flow. The author encouraged participants to give their own explanations and was able to follow up by asking additional questions. In this way, the author had the ability to get more complete information than formal interviews and survey questionnaires. The interviewees were guaranteed confidentiality and anonymity to encourage them to express their ideas and opinions in an open and honest manner. Furthermore, in order to provide a more comprehensive answer to the research question, the paper also relies on supplemental sources of information such as government documents and policies.

## **Vietnam's Sovereignty Claims over the SCS**

As a maritime country situated on the eastern coast of the Indochinese Peninsula, Vietnam has a long coastline of 2,828 nautical miles (nm). The country has sys-

tematically claimed sovereignty over both the Paracel archipelago (Hoang Sa in Vietnamese) and the Spratly archipelago (Truong Sa in Vietnamese) in the SCS (or East Sea in Vietnamese). Vietnam published the ‘Government Statement on the Territorial Sea, the Zone Contiguous, the Economic Exclusive Zone, and the Continental Shelf of Vietnam’ on 12 May 1977. This established a 200 nm exclusive economic zone (EEZ) from the breadth used to measure Vietnam’s territorial sea. Subsequently, on 12 November 1982, Vietnam issued the ‘Government Statement on the Baselines of Vietnam’ for implementing paragraph one of the 1977 Statement (Division for Ocean Affairs and the Law of the Sea, 2012). These two documents outlined Vietnam’s claims to the maritime areas in the SCS. Accordingly, Vietnam claimed an EEZ of 200 nm and the adjacent shelf in the SCS.

Vietnam ratified the 1982 United Nations’ Convention on the Law of the Sea (UNCLOS) in 1994. In addition, Vietnam’s National Assembly ‘reiterates Vietnam’s sovereignty over the Hoang Sa and Truong Sa archipelagos ... and of the sovereign rights and jurisdiction of the coastal states over their respective continental shelves and exclusive economic zones’ (Division for Ocean Affairs and the Law of the Sea, 2012). On 6 May 2009, Malaysia and Vietnam submitted the Joint Submission on the outer limits of continental shelves in connection with the two countries to the UN Commission on the Limits of the Continental Shelf (CLCS). On the following day, Vietnam submitted its National Submission on its Outer Limits of the Continental Shelf beyond 200 nm from the Vietnamese baselines to the CLCS. Most recently, Vietnam’s National Assembly adopted the ‘Law of the Sea of Vietnam’ on 21 June 2012, which came into force on 1 January 2013, and substantiated its sovereignty claims through international law, that is, the 1982 UNCLOS. Article 2 of the newly-adopted Law of the Sea of Vietnam clearly states that ‘in case there are differences between the provisions of this Law and those of an international treaty to which the Socialist Republic of Vietnam is a party, the provisions of the international treaty shall prevail’ (Vietnam News, 2012).

Vietnam’s sovereign claims over the SCS are based on historical records, discovery, maps and the succession of title from France during pre-colonial and French colonial times, as well as through effective occupation and control. It reiterates that the feudal Vietnamese state had effectively controlled the Paracel and Spratly archipelagos since the seventeenth century. Vietnam’s sovereign claim over the Spratly archipelago is based on the succession of title from France, which occupied some islets in the area and made declarations of sovereignty over them (Nguyen & Amer, 2007). Vietnam’s control over features in the archipelago has increased from seven features with permanent troop garrisons in the mid-1970s to current reports that it controls 27 features including reefs, shoals, cays and islands (Global Security, 2013). However, despite its claim over the whole Paracel group,

Vietnam does not currently occupy or physically control any islets in it. The archipelago has been fully under Chinese control since 1974 when the Chinese Navy took control over it from the then-Republic of Vietnam (South Vietnam).

Sovereignty and territorial integrity is sacred to Vietnam due to its unique centenary history of external invasion and colonial dominance. Top leaders of the Vietnamese government and state have publicly stated that Vietnam's sovereignty over the SCS is indisputable and it is always prepared to safeguard its sovereignty under any circumstances (Thanh Nien Daily, 2013; Vietnam's Sovereign Boundaries, 2013). However, research participants held a more flexible understanding of sovereignty in the SCS. All participants re-affirmed that sovereignty is of profound importance to Vietnam if not the most important issue with regard to the SCS dispute. Due to its long coastline exposing Vietnam to military vulnerabilities, all 14 participants reiterated that sovereignty over the SCS is vital because it enables Vietnam to guarantee its national defense. Yet, the same interviewees agreed that the overemphasis on sovereignty runs the risk of preventing stakeholders of the SCS dispute from seeking possible resolutions. In order to pave the way for negotiations and discussions, some participants suggested that disputant countries should admit that sovereignty over the SCS is *disputed* (original emphasis) and that one claimant should not require the acknowledgement of its own sovereignty from others as the top condition for negotiating possible solutions. One respondent from MOIT even emphasized that since the SCS is a contested area, the understanding of sovereignty over it should be 'flexible.' Governments should then inform their citizens implicitly or explicitly that the Sea is contested and the better solution is to negotiate with other disputants. This approach is difficult, those participants admitted, because the government that takes the first step in doing so may face domestic frustrations.

There is a popular argument that the SCS dispute is a good excuse for the Chinese government to redirect their public's attention away from domestic problems such as the increasing poor-rich gap and the Tibet and Xinjiang social unrests (Paterno, 2012). The case is different for Vietnam. As a MOFA participant commented, the SCS dispute has become a source of political disparity and public-government contradiction. Government forces had dispersed public protests against Chinese aggression in the SCS in 2011 and 2012. The public blamed the government for not having done enough to protest against Chinese harassment and violations of Vietnamese sovereignty. In addition to national defense, research participants agreed that the SCS is significant to Vietnam's energy security; the importance of the SCS to Vietnam's energy security comes second just after national defense.

## Vietnam's Energy Security and the Role of the SCS

Energy security is a multi-dimensional concept defined differently in various contexts. However, the 'security of energy supply' is used interchangeably with 'energy security', as it seems to be the ultimate goal of the energy policy of any state (Luft, Korin, & Gupta, 2011; Winzer, 2011). Although the Vietnamese government has highlighted environmental and sustainable development in its energy security strategy (Vietnam Ministry of Justice, 2007), all research participants agreed that the most compelling concern of Vietnam is the security of energy supply. This does not mean that they do not recognize the importance of other dimensions. One respondent from PVN explained that while the environment and sustainable development are of course important, since Vietnam is aiming to become an industrialised economy by 2020, economic development is the top priority, for which security of energy supply is the life-blood.

The reserve of seabed energy resources in the SCS plays a critical role in Vietnam's energy security. Vietnam has generally been an energy-sufficient country but indigenous energy resources are likely to be unable to meet the increasing domestic demand in the near future. The country has recorded its real gross domestic product (GDP) growth at about 7.2 percent during the past decade along with the rise of energy consumption of which more than one-third comes from oil and natural gas (U.S Energy Information Administration, 2012). The total demand for primary energy in Vietnam has increased annually by up to five percent, from 24.3 MTOE (million tons of oil equivalent) in 1990 to 55.6 MTOE in 2007 (Do & Sharma, 2011). A report by the Japan International Cooperation Agency (2008) projected that Vietnam's total primary energy demand would continue to increase by 5.5 percent annually up to the year 2025 in order for it to achieve its economic growth target of eight percent.

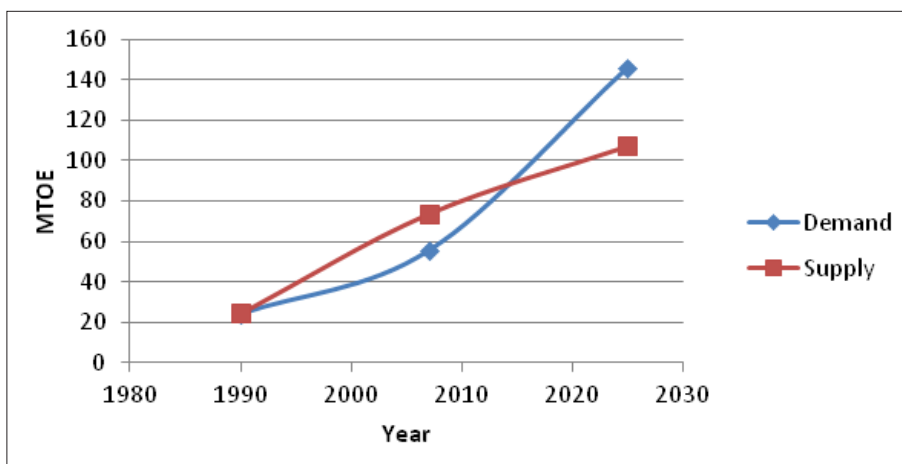
To meet this demand, Vietnam is seeking to develop all its natural resources. The country is endowed with several energy resources including hydro, renewable, oil, gas and coal but, as mentioned above, more than one-third of its primary energy demand comes from oil and natural gas. Due to industrialization and the expanding wealth of the growing middle class, this proportion will continue to escalate and put pressure on oil and gas exploration and exploitation.

Vietnam is currently a net exporter of crude oil but a net importer of oil products. It is also currently gas self-sufficient. However, this will not remain a long-term trend. Vietnam's oil production peaked in 2004 with above 400,000 barrels per day (bbl/d) but since then it has slowly decreased. A correspondent from PVN told the author that PVN supplied 30 percent of domestic product demand in 2012 and it is striving to meet between 50 and 60 percent by 2015. Yet

oil demand is projected to more than double from around 375,000 bbl/d in 2011 up to 830,000 bbl/d by 2030 (U.S Energy Information Administration, 2012). This will be a big challenge for PVN. The natural gas situation is similar. As of January 2012, Vietnam is estimated to hold 24.7 trillion cubic feet (Tcf) of proven natural gas (US Energy Information Administration, 2012). Though gas production has steadily increased and met domestic needs, PVGas—an entity under the PVN—projected that the demand will outstrip supply, making a negative balance of 1.3 Bcf/d by 2025 (PetroVietnam Gas Joint Stock Corporation, 2012). For the time being, most natural gas production is processed and supplied to the Southern part of Vietnam. PVGas has been constructing gas storages in Thi Vai (Ba Ria Vung Tau province) and Son My (Binh Thuan province). It also plans to develop infrastructure to expand the gas markets to the central and northern parts of the country. Vietnam will become more dependent on natural gas.

Other energy resources have increased their share in Vietnam's total energy structure but the future projection is in a state of flux. According to the US Energy Information Administration (2012), coal, hydroelectric power and biomass occupied two-thirds of total energy consumption in Vietnam in 2010. Nevertheless, biomass, accounting for 36 percent of total energy consumption, is mostly consumed by households rather than commerce or industry. Though Vietnam has an abundance of hydro potential, this source of energy is highly dependent upon rainfall that is increasingly being affected by global warming. Other energy resources such as wind and solar power are unlikely to reach commercial exploitability in the years to come due to the investment and technology required. In

Figure 1 Vietnam's Primary Energy Balance



Source: Compiled from Do and Sharma (2011), Z. Hong (2011) and U.S. EIA (2012)

the area of coal exploitation, the situation is the same. Vietnam currently exports coal to China, Korea and Japan. In 2012, Vietnam National Coal and Mineral Industrial Holding Corporation Limited (Vinacomin) produced 44.5 million tons of coal, of which domestic consumption was 24.8 million tons and exports were 14.4 million tons (Thanh Nien Online, 2013). Ironically, Vietnam's Deputy Prime Minister stated that the country would have to import six million tons of coal by 2015 and 36 million tons by 2025 (Thanh Nien Online, 2013). Vietnam will likely run out of its most abundant indigenous energy resource.

Figure 1 illustrates the overall projection of Vietnam's energy security, in which the concern about increasing dependence is visible. The decrease of indigenous energy resources contributes to realizing this concern by 2015. Do and Sharma (2011, p. 5771) estimate that Vietnam's energy demand will be 146.0 MTOE by 2025 but it can only supply 107.3 MTOE, making a negative balance of 40.7 MTOE. The lack of stockpiling makes Vietnam more vulnerable to energy market changes or oil disruptions due to geopolitical incidents. In the context of compelling energy demand, while oil and gas comprises more than one-third of the total energy demand and continues to rise, Vietnam has to rely heavily on the reserve of seabed energy resources in the SCS to secure its energy security.

Regarding the SCS, all research respondents stated that the importance of the SCS in Vietnam's energy security is two-fold: reserve and transportation. The SCS is believed to contain significant reserves of oil and gas. The most recent report from the US Energy Information Administration (2013) estimates that the SCS contains approximately 11 billion barrels of oil and 190 Tcf of natural gas in proved and probable reserves. Chinese newspapers and national oil companies tend to give higher estimates (Wang, 1997; Q. Zhao, 1997). The levels of oil and gas reserves in the SCS are unclear, and the various estimates of them are speculative and change over time. The significance of these estimates lies in the fact that they would function as compensation for claimant states' energy reserves and imports. For Vietnam, oil and gas in the SCS have supplied domestic energy demand. Oil exploitation in the SCS enables Vietnam to remain an oil exporter (H. Zhao, 2010). The revenue from oil exports contributes greatly to its GDP—almost 30 percent in 2012 (Petrotimes, 2012). This revenue has become more important in the context of an economic recession.

The SCS as the main transportation route for Vietnam is less significant than that of energy resource reserves, according to research participants. The SCS is the key transportation route through which both Vietnam's oil imports and exports traverse. Non-traditional threats such as piracy, terrorism and natural disasters are obvious in the SCS but disruptions from geopolitical conflicts are not a main concern. One commentator detailed that oil and gas transportation to and from Viet-

nam goes through international and Vietnamese waters, and some great powers are interested in keeping the freedom of navigation in the region. The most sensitive chokepoint is the Malacca Strait, but this is the common ground where great powers and regional states' interests converge. Therefore, energy supply disruptions due to geopolitical conflicts are not an urgent concern for Vietnam's energy security.

Despite recognizing the SCS's significance as a plentiful fishery resource to the Vietnamese, all research participants agreed that for the time being energy resources are far more important. Along the long coastline, millions of Vietnamese people rely on fish in the Sea as a source of income. According to the UN Food and Agriculture Organization (2008), Vietnam is one of the top five seafood exporters in the world, with an annual growth rate of seafood exports of 15 percent between 2001 and 2010. Seafood exports made up only 3.74 percent of GDP in 2010 in comparison with 25-30 percent of GDP from oil exports. The majority of research respondents commented that the SCS fishery resources are important in terms of social security because they provide jobs for millions of Vietnamese people. Yet when asked to compare energy and fishery resources, all participants replied that the former is of greater importance. One participant from the MOIT Department of Energy deliberately argued that:

if there is no seafood industry, millions of people would be affected but if there is no energy resources, the number of affected people would be multiple. In addition, the revenue from seafood export is just a bit more than one-tenth of oil exports.

Interestingly, one MOFA respondent commented that both energy and fishery resources enable Vietnam's human security. This comment is in line with the trend that Vietnam has gradually moved away from an emphasis on traditional national security towards a focus on human security in the SCS dispute since the 1990s (Tonnesson, 2000). The result is the tendency towards a more regional-level and less nationalist approach to resolve the dispute. Should this be the case, Vietnam would view energy resource reserves as a problem-solver rather than a problem-trigger.

Gaining access to energy resources and securing energy supply can generate both competition and cooperation. Many commentators believe that competition is the norm and energy security is a zero-sum game. Nevertheless, one common agreement is that energy resources play a 'neutral' role in the SCS dispute (Schofield & Storey, 2006). The Vietnamese perception of energy resources revealed an interesting story. Since the adoption of the Foreign Investment Law in 1987, Vietnam has signed dozens of contracts with foreign companies for energy exploration and

exploitation in the SCS. The strategy of Vietnam is to continue diversifying international companies to invest in oil exploration and exploitation. PVN is mandated to form partnerships with international petroleum companies. The number of international companies investing in Vietnam has expanded, including ExxonMobil, Chevron, BHP Billiton, Korea National Oil Corporation (KNOC), Total, India's ONGC, Malaysia's Petronas, Nippon Oil of Japan, Talisman, Thailand's PTTEP, Premier Oil, SOCO International and Neon Energy. This strategy mainly serves three key objectives: technology, capital and human resource training. These international companies bring advanced technology and huge capital investment into Vietnam and help Vietnam to train its own labor forces in the field.

In addition, the majority of research participants agreed that the strategy of partnership diversification is to create interdependence in the SCS in order to resolve the dispute cooperatively. A respondent from MOFA Department of Southeast Asian Affairs provided that the case of the Indian state-owned petroleum company, ONGC Videsh Ltd. is a good example of the success of Vietnam's strategy. ONGC Videsh Ltd accepted Vietnam's invitation to explore oil and gas in Blocks 127 and 128, ignoring the Chinese warning to stay away from the SCS. Following some small incidents between China and India in the SCS, Indian Navy Chief Admiral D. K. Joshi said that the Indian Navy is ready to protect its economic interests in the SCS (Pubby, 2012). Notably, the SCS tension is seemingly parallel with the emergence of energy demand among claimant states. One existing assumption is that energy resource reserves are in fact a trigger to the dispute (Owen & Schofield, 2012; Perlez, 2012). However, for Vietnam, they should be utilized as a potential problem-solver. Most research participants suggested that JDAs among concerned parties could be viable options.

## Vietnam's JDA Experience and SCS

The SCS is not the only dispute to which Vietnam has been a party. Due to its history and geographical position, Vietnam has both land and maritime border disputes with most of the countries in the region, including China, Cambodia, Laos, Thailand, Malaysia, Indonesia, Taiwan and the Philippines. As early as May 1977, Vietnam adopted the position that it shall 'together with the concerned countries through negotiations on the basis of mutual respect of independence and sovereignty, in compliance with international law and practices, resolve the issues relating to the maritime zones and the continental shelf of each side' (Nong, 2012, p. 139). Besides the most seemingly intractable SCS dispute, Vietnam started resolving disputes with its neighbors since the 1980s and had made substantial progress

during the 1990s.

Vietnam has indicated such a position in resolutions of maritime disputes with regional countries. On 7 July 1982, Vietnam and the People's Republic of Kampuchea signed an agreement on 'historic waters.' Subsequently, both countries agreed on the Treaty on the Settlement of Border Problems between Cambodia and Vietnam in Phnom Penh in 1983, and the Treaty on Delimitation of Vietnam-Kampuchea Frontier on 27 December 1985. The Voice of Vietnam (2006) reported that the Supplementary Treaty to the 1985 Treaty signed by the Vietnamese and Cambodian Prime Ministers in Hanoi on 10 October 2005 'created a legal foundation for a definite and sustainable resolution to borderline issues between the two states.'

Vietnam's withdrawal from Cambodia in 1991 paved the way for more negotiations between Vietnam and its neighbors. Vietnam and Malaysia reached an agreement to jointly develop the overlapping areas in the Gulf of Thailand on 5 June 1992. The Vietnam-Malaysia Joint Development is 'viewed as a great success and vindication of the Malaysian-Vietnamese model of joint development in the Gulf' (Nguyen, 1999, p. 84). Only a half-decade later, negotiations between Vietnam and Thailand resulted in an agreement to delimit their continental shelf and EEZ boundaries in the contested area in the Gulf of Thailand on 9 August 1997. The agreements between Vietnam and Malaysia, and Vietnam and Thailand had paved the way for the tripartite negotiations concerning the overlapping area claimed by all three countries.

Another significant event that needs attention is the Vietnamese-Philippine discussion on a 'nine-point code of conduct' to be observed in the SCS in 1995 in Hanoi (Dzurek, 1996). On 25 December 2000, Vietnam and China signed the agreement on the Delimitation of the Territorial Waters, Exclusive Economic Zones and Continental Shelves in the Gulf of Tonkin to the northeast of Vietnam and the southeast of China. On 11 June 2003, Vietnam and Indonesia signed an agreement on the delimitation of their continental shelf boundary in an area to the north of the Natuna Islands. Evidently, Vietnam made enormous progresses in maritime negotiations and resolutions with its neighboring countries in the 1990s and early 2000s. Vietnam's negotiations and resolutions of maritime disputes with other concerned countries revealed that these disputes were both bilateral and multilateral and that resolutions were various including demarcations and JDAs.

There have been optimistic views that JDAs would be potential resolutions to the SCS contention (British Institute of International and Comparative Law, 1989; Leszek & Sazlan, 2007). In the late 1970s, Deng Xiaoping stated that China was willing to resolve disputes with its neighbouring countries with the pattern of 'putting aside disputes and pursuing common development' (Huang, 2005,

para. 2). Chinese Premier Li Peng promised in Singapore in 1990 that China would concentrate on the possibility of joint development in the SCS. Vietnam's then Prime Minister Vo Van Kiet welcomed his Chinese counterpart's view (Amer, 2002, p. 17). Accordingly, the idea of joint development in the SCS was initially discussed in the 1980s and proposed by both China and Vietnam in 1990 (McElroy & Mills, 1992; K. Zou, 2006). Nevertheless, with one exception being the Vietnam-China agreement in the Tonkin Gulf, joint development proposals have not brought about any positive developments in the Paracel and Spratly archipelagos where tensions have been increasing recently. Comments from research participants shed light on the failure of these proposals.

Although Vietnam welcomed the Chinese proposal for joint development in the SCS, it was highly suspicious of Chinese intentions. Vietnam anticipated that with the advantages in capital, technology and human resources, China would gradually dominate and take over disputed areas. This distrust was justified through the long history of Chinese dominance and the contradictions between Chinese words and deeds. For instance, Chinese President Yang Shangkun restated the message of 'putting aside disputes and pursuing common developments' during his visit to Thailand and Indonesia in 1992. Yet, on 25 February 1992, China passed the Territorial Waters Law of which Article 2 claims the four groups of islands in the SCS (China Military Online, 1992). Indonesia hosted a series of workshops on 'Managing Potential Conflicts in the South China Sea' with financial support from Canada. China sent representatives to participate in the workshop from 29 June to 2 July 1992 in Yogyakarta, Indonesia. Almost immediately, the Chinese naval force occupied Vietnam-claimed Da La Reef (Storey & Ji, 2004).

The joint tripartite agreement between China, the Philippines and Vietnam in 2005 was evidence for the Vietnamese suspicion that China would always propose joint development in its 'neighbors' gardens.' The national oil companies of China and the Philippines reached an agreement in September 2004 to conduct pre-exploration studies for oil and gas in the Spratly islands. Vietnam initially protested but finally agreed to participate in the tripartite agreement, in which the national oil companies of the three countries signed the Joint Maritime Seismic Undertaking (JMSU). Nevertheless, when the Philippine government declared that it would not extend the tripartite agreement in 2008, Vietnam delivered no response. The Chinese strategy is to make 'undisputed' areas 'disputed' so that it can get a share. Consequently, Vietnam viewed China's joint development proposal as a 'trap.' The Chinese government acknowledged that though Vietnam, the Philippines, Malaysia and Brunei had agreed orally to its joint development proposals, they did not proceed in practice (K. Zou, 2006). However, half of all the research participants said that Vietnam overemphasized sovereignty and missed a good opportunity

to negotiate with China for possible JDAs in the SCS. They also suggested that Vietnam should bear a *flexible understanding* of sovereignty in the case of the SCS contention (original emphasis). Obstinate emphasis on sovereignty will prevent a state's political will to engage in discussions and negotiations towards resolutions of the dispute.

One MOFA senior official who held a key position in maritime negotiations with Malaysia and Thailand admitted that the SCS is far more complicated than the dispute between Vietnam, Thailand and Malaysia. He stressed that the SCS dispute is heavily dependent upon the political will of concerned states. In 1991, Malaysia announced that it had discovered gas reserves in the overlapping area with Vietnam. Vietnam protested by sending a diplomatic message to the Malaysian Ministry of Foreign Affairs. The diplomatic message stated that unilaterally granting a third party the right to explore and exploit for petroleum in the overlapping areas would violate the friendly and cooperative spirit between the two countries (Nguyen, 1999, p. 81). The two countries expressed their willingness to negotiate and define the overlapping area. Only a year later, both sides reached an agreement for a joint development area. Such a political will does not exist in the SCS.

The lack of political will also makes claimant states either exacerbate or misunderstand other claimants' intentions. China has several times accused other contesting states of complicating the SCS dispute and therefore of violating the spirit of the 2002 Declaration on the Conduct of Parties in the SCS (DOC) signed by ASEAN states and China in Phnom Penh, Cambodia. Most recently, China has accused the Philippines of complicating the situation and violating the DOC spirit by submitting the Scarborough Shoal dispute between the two countries to an arbitration tribunal under the UNCLOS (Wa & Zhang, 2013). China also accused Vietnam of internationalizing the SCS dispute by involving the US, Japan, Russia and India.

Vietnam responded that it used to pursue both bilateral and multilateral approaches to deal with the SCS dispute. Half of the research respondents commented that Vietnam held the view that bilateral and multilateral disputes should be discussed through bilateral and multilateral negotiations, respectively. However, the increasing Chinese aggression in the SCS dispute makes it less possible for Vietnam to follow bilateral negotiations to deal with bilateral disputes with China such as the Paracel dispute. Therefore, Vietnam has been insistent on including the dispute over the Paracel archipelago into every ASEAN declaration and document about the SCS dispute (Thayer, 2012). Vietnam's insistence complicates the ASEAN view on the SCS contention. Vietnam continues to see JDAs as viable options to deal with the SCS dispute, though its distrust towards China remains static.

To reduce the distrust and keep JDAs as a key strategy in resolving the dis-

pute, Vietnam suggested involving third parties to bilateral negotiations, which both disputants could invite to negotiate in JDAs. The third party would not only provide exploration and exploitation technology and capital but also function as the arbitrator in the event of disagreement. The third party is also expected to provide legal expertise in international trade and commercial laws to ensure fair shares among concerned parties. The multilateral dispute in the SCS seems to be more complicated but in reality, Vietnam views it as an advantage to negotiate and cooperate in joint development projects, especially with the involvement of the third parties.

With its experience in maritime negotiations and JDAs, Vietnam is more interested in JDAs as viable and potential solutions to the SCS dispute. One participant from the MOIT disclosed on the strict condition of anonymity that the MOIT has been mandated to draft joint development proposals in the SCS. Claimant states' agreement on JDAs in the SCS would provide a secure investment framework for international petroleum companies. More importantly for East Asian states who emphasize heavily sovereignty claims, joint development projects will not compromise the claims or positions of concerned states and give time for more negotiations towards sustainable resolutions to the SCS dispute. Research participants from MOFA highlighted that the SCS dispute is the thorniest problem between China and Vietnam. Vietnam's approach to the dispute is that the less complicated problems should be resolved first, while utilizing JDAs as a viable mechanism to ease tensions in the SCS.

## Conclusions

The SCS dispute is extremely complex due to the high stakes and the abundance of overlapping claims over various maritime features. One would be naïve to be too optimistic about peaceful solutions to the high-profile dispute in the near future. However, the findings of this paper have important implications that merit attention. First, what research participants made clear is that reducing suspicion is important in dealing with the SCS dispute. Regional efforts at mutual trust building since the early 1990s seem to be relatively productive, while the recently increasing aggressiveness of the Chinese and the division within ASEAN escalates the distrust among regional claimant states. Together with other efforts, claimant governments should focus on measures to build mutual trust.

Second, sovereignty is sacred to regional states and often cited as the factor that makes the SCS dispute seemingly intractable. Interestingly, the comments from research participants revealed that Vietnam is more likely to view the issue

of sovereignty over the SCS in such a way that could promote cooperative activities between claimant states. This opens windows for discussions and negotiations towards peaceful resolutions to the dispute.

Third, energy resource reserves are significant to the nature of the SCS dispute. A commonly shared view is that they serve as a trigger encouraging littoral states to the SCS claims, but Vietnam views energy resource reserves as potentials for regional cooperation to resolve the SCS dispute. Energy security has become a pressing issue for regional claimant states. Prolonged contention would prevent them from exploring and exploiting energy reserves in the SCS.

Fourth, Vietnam is ready and prepared for JDAs as the most viable option in resolving the SCS dispute. To avoid domestic social unrest, Vietnam prefers JDAs as resolutions to the contention since they would not compromise its claims and positions and would stabilize the region. The country appears to have a strong desire to resolve the dispute in order to strengthen its domestic politics and energy security. Of course, it is important to point out that this paper has drawn from personal interviews in which bias is unavoidable. However, all interviewees in this research currently hold important positions in charge of foreign affairs and the energy sector. Their views are significant to the policy-making process in Vietnam. More research on the SCS dispute should focus on other claimant states' real approaches and what channels could be used to exchange views in efforts to resolve the contention. Though limited, there are reasons to hope for a peaceful and stable SCS region.

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## China's Territorial Disputes with Japan: The Case of Senkaku/Diaoyu Islands

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### Abstract

Wrestling between China and Japan over the Diaoyu/Senkaku Islands continues on. Recent rounds of tensions have not only catalyzed Sino-Japanese relations, but also set the East Asia region in a conundrum, witnessing reemerging debates along with strong sentiments on issues, like historical hatred and war memories, Taiwan and the Okinawa issue. To certain degree, these issues are revisited at this sensitive timing, and are thus brought back to the front burner. The turmoil features that structural problems underpinning these territorial and sovereignty disputes once again resurface and stir up the troubled waters in this region. The focus will be on China's historical arguments, in ancient and near history after WWII, and its deployment of measures implying its effective administration upon the Diaoyu/Senkaku Islands recently. China's challenges are multi-dimensional: how to refine the evidentiary effect of its historical evidence and arguments? How should the Taiwan issue that is deeply intertwined with the Diaoyu/Senkaku Islands issue help reify China's (the People's Republic of China) claim? How does China justify its understanding toward post-WWII legal and political regional arrangement paved by a series of international documents? How does China deploy effective administrative measures, while avoiding regional stakeholder countries being greatly pitted against therewith?

### Keywords

history, sovereignty, consensus, territorial acquisition, Taiwan

Since resurfacing above the table in late 1960s<sup>1</sup> (Zhu, 2013, pp. 29-30; Guo, 2010; Jin, 2013), arguments and claims over the Diaoyu/Diaoyutai/Senkaku Islands<sup>2</sup> dispute are featured with affluent pieces of historical evidence (Courmont, 2014, pp. 113-134).<sup>3</sup> Both claimants trace their ancestral practices, when China dated civilian usage as early as in Ming Dynasty, when people from Fujian Province (a southeast province located in the Southeast part in China which borders the Taiwan Strait) established close economic and trade relations, via navigation routes bypassing the Diaoyu Islands, with the Ryukyu Kingdom (Li, 2012; Lai, 1996).

### **The First Myth: History v. Modern International Relations**

In the Diaoyu Islands dispute, the historical argument, relatively, does not trigger vigorous heated debates. Scholarly works indicate that the Han-Chinese had reached the Ryukyu Kingdom, en route the Diaoyu Islands, via various navigation routes as early as in late 14<sup>th</sup> century (Liu & Yuan, 2012; Shaw, 2008). The mentioning of the Diaoyu Islands was dispersed among civilian sailing diaries, as well as official documents that marked official investiture missions to the Ryukyu Kingdom.

As early as 1372 during the Ming Dynasty (1368-1644), the Chinese emperor initiated tributary relations with the Ryukyu kingdom whose reign extended from Amami to the Yaeyama islands (Suganuma, 1995, p. 167). The Ryukyu kingdom maintained these relations with China throughout the Ming and Qing eras. Between 1372 and 1879 (when the Ryukyu Kingdom was annexed to Japan, renamed and administered as the Okinawa Prefecture in Japan's governmental ad-

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- 1 The sovereignty issue over this Islands attracted heavy attentions in late 1960s. A UN study was issued, regarding the petroleum potential in the East China Sea. The estimated amount was believed to be prodigious.
  - 2 China, Taiwan and Japan all claim sovereignty over this Islands. They use different terms. China calls it, the Diaoyu Islands. Taiwan and Japan name it, respectively, the Diaoyutai and Senkaku Islands. These names will be used interchangeably in this article, depending on the narrative subject. This article will not go deep into Taiwan's case in the dispute. So, the Taiwanese term, the Diaoyutai Islands, will not be used considerably.
  - 3 Taiwan, the Republic of China, has also laid territorial claims over the Diaoyutai Islands (the Taiwanese term). However, this article will focus on China's historical argument, legal justification, and its measures in recent round of tensions (after 2010). Taiwan's role in this dispute is undoubtedly significant. Nevertheless, the author opines that it deserves deep and comprehensive discussions which should be done in another piece as a whole. Therefore, the author intends to leave the Taiwan's Diaoyutai Islands claim in a future article. On an insightful look of Taiwan's role in this dispute.

ministration), twenty-four investiture missions were sent by the Chinese Emperor to Ryukyu to bestow the formal title upon a new Ryukyu King (Suganuma, 1995, pp. 167-168; Wade, 2007). Records would be submitted to the Chinese Emperor, and later archived as official documents of each mission.

The first civilian record of the Diaoyu Islands is a non-official Chinese navigational record, entitled *Shun Feng Xiang Song* [Fair Winds for Escort] written in 1403 (Shaw, 2008, p. 104). By identifying the location of these islets, this record is to help sailors to navigate safely to the Ryukyu Islands.

These investiture missions generally set off at Fuzhou (a harbor city in Fujian province in China). The whole navigation was featured with considerable risks as it required sailors to repeatedly set the compass throughout the itinerary. The route was dubbed as “Compass Route.” Civilian diaries had lent significant supports for a safe trip and was said to be a compound of knowledge, experiences and folkloric tales contingent to navigation en route to the Ryukyu Islands. Accordingly, Chinese sailors might have been informed of the Diaoyu Islands long before these sailing diaries.

Further, in these mission reports, details shown that the island Chi Yu (Chi-wei-yu, the most northeastward island of the Diaoyu Islands chain) was regarded as the boundary between China and foreign lands. When passing, rituals might be held, with specific emphasis recording that the mission was entering the Chinese boundary (Suganuma, 2000, p. 54).<sup>4</sup>

Other than investiture mission reports, official records of the Diaoyu Islands could be spotted in other documents. The Ming Dynasty built up a military defence system extending from the northern Shandong province to Guangdong province in the south to fight against Japanese pirates, *Wo Kou*. A defense manual comprised of a total of 13 fascicles published by Zheng Ruozen, a military advisor to then Prime Minister Hu Zongxian in Ming Dynasty in 1561, the Diaoyu Islands are documented to be appurtenant to the Fujian garrison defence system (Couling, 1917, p. 255).

Civilian sailing diaries and official documents, viewed together, suggest that the disputed islands were first discovered and used by the Chinese as navigational aids over a period of about five hundred years. The detailed records that contain navigation passages, exact locations of these islets, undercurrents and rocks under-surface imply strongly a Chinese perception of its ownership over these islands.

Heavy reliance on historical evidence is clearly discernible in Chinese claims.

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4 This Xiao Chong mission (1576) recorded that before “having passed the Yebi Mountain (Kume Hill) it took days to enter the Kingdom (Ruguo).”

However, a close look reveals that these records are largely civilian, or semi-official in nature (Li, 2012; Lai, 1996). Official data exist, but only after well-established and well-acknowledged civilian practices—often in terms of business and trade (Qian, 2006). In the scenario of the Diaoyu Islands case, frequent civilian contacts, via navigation, between Fujian Province in China and Naha in Ryukyu Kingdom had largely informed the Fujian-ese about the Diaoyu Islands (Huang & Xie, 2013, pp. 14-19; Wade, 2007). Despite the early discovery of the Diaoyu Islands in folkloric narratives, there existed rare wordings, which were phrased in a definite way, showcasing Chinese ownership of these unmanned, remote islets (the Diaoyu Islands) at the brinkmanship of sailing range of Chinese vessels.

When reviewing these historical evidence, Chinese scholars tend to interpret it with a positive attitude, describing that despite their unofficial formality, frequent civilian activities, along with records in the logbook detailing navigation routes in this area, has constituted weighing supports that ancient Chinese had long regarded the Diaoyu Islands a part of their territories. However, such realization runs counter to the contemporary international law regarding territorial acquisition, which emphasizes explicit state actions that would convey clear sovereign inferences (Sharma, 1997, pp. 6-8, pp. 19-20).<sup>5</sup>

One vivid example is *terra nullius*, which diagnoses the discovery and then official claims to occupy a territory that belongs to no one. Chinese records showed that actions displaying sovereign function had not been specifically carried out over the Diaoyu Islands. There existed no official announcement of discovery of these islets, and no official gazettes recording the formal incorporation of such as a Chinese territory. In other words, not only the concept *terra nullius* was not realized with later legal behaviors announced to support required sovereign ownership, the Chinese authority also had not clarified when and to what extent that subsequent administrative management, dubbed as *animus occupandi*,<sup>6</sup> of these islets in contemporary international law by prescribing the disputed place a name and a corresponding position in its governance structure, was effectively implemented.

The jurisprudence of the International Court of Justice also shows a certain degree of insistence upheld by the Court on a clear display of this intention. The

5 Traditional international legal perspectives on territorial acquisition emphasize on sovereign actions and their political inference.

6 In *animus occupandi*, a state shows its intention to occupy through a formal announcement or some other recognizable act/symbol of sovereignty such as planting of a flag. In this logic, to formally give a name to a place shows the intention to integrate it into the acting authority's reign. This behavior also can be regarded a practice of sovereign function by the acting authority.

Court stated such in a paragraph in its decision upon the *Eastern Greenland Case*, "...[a] claim to sovereignty based not upon some particular act or title such as a treaty of cession but merely upon continued display of authority, involves two elements each of which must be shown to exist: the intention and will to act as a sovereign, and some actual exercise or display of such authority..." (Permanent Court of International Justice, 1933, pp. 45-46).

In this aspect, Chinese historical documents could not support its sovereign argument under the benchmark of contemporary international law. This, instead, has become one hurdle dampening contemporary Chinese efforts in regaining the sovereignty battle against Japan.

Similar obstacles exist in other territorial spats involving China and other Asian countries. China's claim over the South China Sea, which is based on a historical map, dubbed as the "nine dotted line," is another instance (Li, 2012, pp. 7-14).<sup>7</sup> Claims over the great swaths of water, and sovereignty of islands, rocks and reefs spotted thereupon are also grounded on historical facts that Chinese fishermen had long practiced navigation and fishing activities in that area since ancient time. The discrepancy between the Chinese and mainstream understanding is daunting.<sup>8</sup> Seasonal observations showcase this discrepancy, which intends to denigrate this Chinese logic, refuting that the Chinese could have claimed a larger portion of the world, since their ancestors had once conquered the Euro-Asia continent in Yuan Dynasty, and had sent an emissary fleet westward all the way to the coast of the African continent.

## The Second Myth: Territorial Disposition Not Consulting China(s)

Albeit the prioritization and over-emphasis of the historical dimension, the Chinese understanding in contemporary international law also raises concerns. In the Diaoyu Islands dispute, of significant importance are two international documents, to which Chinese interpretation also runs counter to the mainstream opin-

7 The Nine-dotted line map is also known as the U-shaped line. It was developed by the KMT government in 1947, after a group of experts was sent for investigations in the South China Sea after WWII.

8 The mainstream view upheld by most ASEAN claimants is that UNCLOS should be the benchmark for resolving the South China Sea disputes. Nevertheless, this view may raise further inquiries, in the sense that the South China Sea dispute is comprised of various dimensions, including islands sovereignty, maritime zoning and resources exploitation. UNCLOS regards mainly on the latter two issues, but not islands sovereignty.

ion in the international community.<sup>9</sup>

### China's Repudiation of the Peace Treaty with Japan

The first flashpoint is China's repudiation to the Peace Treaty with Japan (also known as the San Francisco Peace Treaty, SFPT). That said, a snapshot examination of Chinese legal justification helps sort out this unique Chinese interpretation.

China views that the secession of the Diaoyu Islands took place in 1895, together with Taiwan, due to the Shimonoseki Treaty that wrapped up the first Sino-Japanese War from 1894 to 1895. In 1941, the then republican government renounced the Shimonoseki Treaty, thus had rendered null and void the Japanese sovereign authority over the Diaoyu Islands (Wang, 1998, p. 399).<sup>10</sup> An echoing step was that Japan also made commitments in the Instrument of Surrender (1945) and the SFPT (1951) that Japan agreed to nullify all treaties and agreements it had entered into with China before December 1941, and to denounce its sovereign authority over occupied territories (Treaty of Peace between the Republic of China and Japan, September 8, 1951). At a later stage in WWII, the Cairo Declaration in 1943, and the Potsdam Declaration in 1945, fortified the Alliance stance in this regard (Shen, 2001, pp. 1112-1114). However, the SFPT which further codified the Cairo and Potsdam Declaration, is not recognized by the People's Republic of China government (the PRC).

The rejection by the PRC to the SFPT is apparent. The SFPT does not constitute a nexus in any part of Chinese legal justification. Further, official documents witnessed this renouncement. On December 4, 1950, Prime Minister and Minister of Foreign Affairs Zhou En-Lai, under plenipotentiary power authorized by the highest leader Chairman Mao, issued a formal statement rejecting the treaty as an unjustified document that would not bind the PRC government in Beijing (Tian,

9 The mainstream understanding of post-WWII regional arrangement, which considerably shaped the territorial disposition of the Diaoyu/Senkaku Islands, is based on a series of international documents. The initial one is in 1941 when the Cairo Declaration was endorsed by the Alliance powers. Subsequently, the most crucial one is the Peace Treaty with Japan signed in 1951. In the 70s, when China and Japan normalized their relations, two other documents jointly fortified bilateral efforts to maintain lasting peace between China and Japan, the Joint Communique signed in 1972, and a treaty marked mutual friendship and common goals for peace inked in 1978. Of crucial notice is China's proposition toward the Peace Treaty with Japan signed in 1951. China repudiated the 1951 Peace Treaty, which overshadowed its claims upon the Diaoyu Islands in the aftermath.

10 In 1941, the Chinese government formally declared war against Japan. China then renounced all treaties entered into with Japan before 1941, thus nullifying terms and conditions in these treaties. Inter alia, the Shimonoseki Treaty that wrapped up the first Sino-Japanese War (1894-1895) was also scrapped. In this sense, Japan's ruling authority over the Taiwan Island was called into question. China had long regarded the Diaoyu Islands as an inherent part to the Taiwan Islands. In this sense, Japan's sovereign claim thereupon was baseless and unsound, either.

1996, pp. 89-91). That position has been upheld, which remains one major principle guiding China's foreign policy in following decades.

Bearing in mind the deviation from the 1951 SFPT in the Chinese chronology, the next crucial moment came in early 1970s, when two events took place that greatly shaped up the Diaoyu Islands dispute.

In 1971, the US and Japan sealed the Okinawa Reversion Agreement, returning the administration authority of the Okinawa and its adjacent islands to Tokyo. Nevertheless, the US had adopted a strategic obscure position whether the reversion included the Diaoyu Islands (Manyin, 2013). Absent due consultation with China and the United Nations, the validity and legality of the Okinawa Reversion Agreement was called into question. The two Chinese governments in Beijing and Taipei (the Republic of China government, the ROC) launched formal protests to the US-Japan deal (*Peking Review*, 1972, p. 12).<sup>11</sup>

Nevertheless, the Communist China buried the hatchet with Japan first in 1972, when the two formalized bilateral ties, and later in 1978 by signing the Sino-Japanese Treaty of Peace and Friendship (Treaty of Peace and Friendship between the People's Republic of China and Japan. August 12, 1978). In the 1972 Joint Communiqué between the PRC and Japan, the Communist China held that Japan had confirmed again its commitment to the arrangement in the Potsdam Proclamation (Joint Communiqué between the People's Republic of China and Japan, 1972).<sup>12</sup> Quoting Chinese Premier Zhou Enlai's words when meeting with Komeito Chairman Takeiri Yoshikatsu as a part of bilateral efforts for normalization of the Sino-Japanese relations, "there is no need to touch on the Senkaku Islands issue. Mr Takeiri, you also had no interest. I also had no interest. But the historians raise it as a problem due to the oil issue, and Mr Inoue Kiyoshi is very keen on it. However, there is no need to place importance on it (*omoku miru*)" (Drifte, 2013, pp. 19-21). Similar exchanges took place between Zhou and then Japanese Prime Minister Tanaka Kakuei, when Kakuei responded to Zhou's proposal not to discuss the dispute in a similar manner, "Let's discuss it another time" (Drifte, 2013, p. 19).

In the negotiation process of the Peace and Friendship Treaty with Japan in 1978, China held that the two had reached a tacit understanding of sidestepping the Diaoyu Islands dispute, and of leaving it to later stages when the two had formed

11 The Communist China issued formal protest. The Republican China in Taiwan also launched formal protest on June 11, 1971. Republic of China Ministry of Foreign Affairs (Taiwan), The Republic of China's Sovereignty Claims over the Diaoyutai Islands and the East China Sea Peace Initiative.

12 The words stated that Japan "maintains its stand under Article 8 of the Potsdam Proclamation."

stronger basis for mutually acceptable and beneficial resolutions (Jin, 2013).<sup>13</sup>

These two international documents, the SFPT and the Okinawa reversion agreement, shared certain poignant commonalities: they both did not engage a crucial stakeholder, China(s), and were pursued mainly under the US domination. Further, territorial disposition made in these documents is related to the Diaoyu Islands dispute via issue-linkage, when China bundles the Diaoyu Islands into the Taiwan issue, and Japan to the Okinawa Islands group. In this sense, both documents created ambiguous rooms for territorial spats, which nevertheless suit the claimants respectively.

### **China Challenging Post-WWII Regional Arrangement?**

To China, the Diaoyu Islands constituted an inherent part of the Taiwan Island, to which Chinese sovereignty has been perceived as solid and legally sound. The Taiwan issue, while under manageable control under the quote by Foreign Minister, Wang Yi in September, 2013, remains unresolved. To Japan, the Diaoyu Islands belong intrinsically to the Okinawa Islands group, which interestingly, does not share the nerve with Tokyo toward these unmanned remote islets (Ministry of Foreign Affairs of Japan, 2012).<sup>14</sup> In other words, connection between the Okinawa and the Diaoyu Islands does not seem to be well-established, when studies in this aspect generate scarce outcomes either (Li, 2012; Lai, 1996).

However, in recent rounds of tensions, connection bridging the Okinawa and the Diaoyu Islands gets deepened, albeit on a negative note to Japan's position. Chinese scholars issued commentaries on the official media, arguing that the Diaoyu Islands issues should be viewed together with the questionable sovereignty over the Okinawa Islands now claimed by the Japanese government (Li & Zhang, 2013; Jin, 2013; Zhang, 2013; Wang, 2013; He, 2013).<sup>15</sup> Chinese scholars upheld

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13 The provisions of the Joint Communiqué are further confirmed by the Treaty of Peace and Friendship between the PRC and Japan, signed on August 28, 1978. The controversy exists because this understanding is written formally into neither the Communiqué (September 29, 1972) nor the Treaty (October 23, 1978). However, in a later occasion when Vice Premier Deng Xiaoping met Japanese journalists, Deng explicitly commented that there existed no interests for China and Japan to touch upon the Diaoyu/Senkaku Islands disputes at that time. The Japanese representative had not reacted to Deng's comment, which inferred a tacit understanding to shelve this dispute between the two for the time being.

14 Ancient Ryukyu-ans did not regard the Senkaku Islands (the Chinese called it the Diaoyu Islands) a part of their territories, see Huang and Xie, "Knowledge of the Diaoyu Islands by the Ryukyu Kingdom," 14-16. For modern Ryukyu-ans, they generally share Tokyo's position, thus have upheld the Japanese sovereign claim over the Senkaku Islands.

15 These pieces are conglomerated on the website of the Modern China Research in the Chinese Academy of Social Sciences. Retrieved from April 30, 2014, from [http://jds.cass.cn/Category\\_1195/Index.aspx](http://jds.cass.cn/Category_1195/Index.aspx). This issue also attracts considerable attentions from Chinese scholars.

that the Japanese sovereignty over the Okinawa Islands were legally unsound. Japan capitalized on the Qing government who was vulnerable to coercion, due to decades of foreign invasion starting from middle 19<sup>th</sup> century, and was financially indebted because unequal treaties (Hou, 2010). The negotiation between the Meiji administration and the Qing government was stuck, and ultimately abandoned. Literally speaking, the Okinawa, later incorporated by Japan in 1879, was, as perceived by the Chinese, stolen from China.

By rejecting the SFPT and revisiting the long-dormant Okinawa sovereignty issue, China is actually challenging the post-WWII arrangement in East Asia, and would burden itself with a laborious mission in justifying its interpretation. In this sense, it is precarious that Beijing had chastised Tokyo as a spoiler of the post-WWII arrangement in East Asia in recent rounds of tensions (*Dowei News*, 2013, October 30; 2013, October 21; 2013, October 22).<sup>16</sup>

As a stakeholder who has largely benefitted from decades of regional stability, in whatever forms, it will be rather unconvincing for China to sit in this position at this juncture. Chinese scholars have argued that the SFPT may serve as manifestations of Japan's commitments to be bound by the post-WWII arrangement mandated by the SFPT (Shen, 2000; Charney & Prescott, 2000, p. 469). Even without Chinese recognition, Japanese “unilateral” commitments would still be binding, requiring Tokyo not to be a spoiler in regional order. Yet, having repudiated the validity of the SFPT, China would be morally tarnished by making this claim. Judging that China has been substantially benefitted from this arrangement 60 years after its settlement, international criticism might confront China with its cherry-picking manner, when the certainty and predictability of international law would be significantly compromised and its function of enhancing the rule of law in international context, being eroded.

Besides the discrepancy of interpretations toward regional and international law and order, a contingent issue is to whom that Japan, the disputant, and stakeholder countries like the US, should talk to. A split China further overshadows the dispute.

### Implication of a Split China

Another key issue that keeps the Diaoyu/Diaoyutai Islands disputes heated is a split China across the Taiwan Strait. Despite the prevailingly-upheld “one China” principle and the fact that the Taipei government (also known as the Kuomintang, the Chinese Nationalist Party, the KMT) in Taiwan is largely excluded from the in-

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<sup>16</sup> The whole year of 2013 has seen escalating tension between China and Japan over the Diaoyu/Senkaku Islands dispute. Yet, from the second half of the year, China has targeted on Japan's efforts for “collective self-defense” rights, bashing it as a signal for militarization and inclination to a right-winged ideology.

ternational community after it was deprived of the United Nations membership in 1971 (Restoration of the Lawful Rights of the People's Republic of China in the United Nations, 1971, October 25), this split governance and separate sovereign claims over the Diaoyu/Diaoyutai Islands create loopholes, to which only a cross-strait talk, and ultimately a resolution of the Taiwan issue would redress such cleavage.<sup>17</sup>

To be more specific, both Chinese governments have laid sovereign claims, and both had sacrificed their Diaoyu/Diaoyutai Islands claims to other prioritized political interests at different periods. The KMT government in Taiwan has experienced a "China Dilemma" in this dispute, when the Chinese Communist Party (CCP) government in China, a "Taiwan Dilemma."

### China's "Taiwan Dilemma"

China is confronted with a "Taiwan Dilemma" in the Diaoyu/Diaoyutai Islands dispute. To China, the dilemma would cause domino effects, which overshadows first, the sovereignty battle over the Diaoyu/Diaoyutai Islands, and would be ensued by the Taiwan issue. Lastly, the overall strategic deployment of the Chinese navy, in the East and South China Sea, would be negatively overshadowed.

This "Taiwan Dilemma" is presented in several dimensions. In the beginning, the Communist China has made an issue-linkage between the Diaoyu/Diaoyutai Islands dispute and the Taiwan issue. Beijing was informed with the Diaoyu/Diaoyutai Islands dispute, and had issued protests in late 1960s against the inclusion of the Diaoyu/Diaoyutai Islands in the US-Japan Okinawa reversion. A piece in *Beijing's Review* issued by the Foreign Affairs Ministry of the PRC demonstrated the clear connection of the Diaoyu/Diaoyutai Islands with the Taiwan issue (*Peking Review*, 1972, p. 12). Then Chinese leader, Mao Zedong, had seen the Diaoyu Islands/Diaoyutai dispute from a broader context of Taiwan's return, and a symbol of wiping off a century-long memory of foreign invasion and of national humiliation.<sup>18</sup> To protest upon the Diaoyu Islands/Diaoyutai thus represented Mao's ambitions in resuscitating the Chinese glory, in liberating Taiwan from the grip of

17 The Diaoyu/Diaoyutai Islands sovereignty dispute also has plagued the two governments in Beijing and Taipei. They upheld similar claims, under different national titles representing the People's Republic of China and the Republic of China. Both sides have refrained from direct confrontation on this issue so far. The ultimate solution of the Diaoyu/Diaoyutai Islands sovereignty disputes between the two thus depends on if both sides could settle their political disagreement.

18 The foreign context then posed considerable challenges to the People's Republic of China government. The deteriorating relations between Beijing and Moscow, domestic political malaise characterized by the Cultural Revolution, and struggles to effectively boost domestic economic development had all driven the Beijing government to take a harsh stance in the Diaoyu Islands issue. In other words, a tougher position in territorial disputes with a feudal enemy, Japan, served to deviate public opinions from the focus of failing domestic governance.

western imperialism and more implicitly, in solidifying the legitimacy of the Communist Chinese government ruling.

From a realistic perspective, the “Taiwan Dilemma” has also made itself greatly felt in the contemporary regional context.

Externally, it has to cement further the “one China” policy. Only after this policy being honored in all dimensions could China be assured that external intervention would not make inroads to the Diaoyu/Diaoyutai Islands dispute, by allying Taiwan to form a more powerful anti-Chinese camp. In this sense, external stakeholders, like mainly the United States, would realize that their efforts are to be in vain because Taiwan's claim would be an adjutant to the Chinese one.

Internally, China has to downplay the rippling effect, generated by the Diaoyu/Diaoyutai Islands dispute, on the cross-straits relations. In particular, Beijing has been conducting self-restraints, not to engage direct conflict with Taipei regarding the Diaoyu/Diaoyutai Islands dispute in public occasions.<sup>19</sup> Taipei is also avoiding to bringing it up in its negotiation agenda with Beijing.

A close look reveals that the two Chinese governments have not engaged in discussions, let alone confrontations, in public occasions over the Diaoyu/Diaoyutai Islands dispute. Both claim they are the legitimate Chinese government, and have recourse to a grandeur verbalism that the Diaoyu/Diaoyutai Islands belongs to their common Chinese ancestors. In this sense, their affirmation of sovereignty claims over the Diaoyu/Diaoyutai Islands serves as a demonstration of their perceived legitimate Chinese representativeness, the legitimacy of their governance. That said, both Beijing and Taipei's sovereign claims over the Diaoyu/Diaoyutai Islands are directed at not only foreign audience, but the competing counterpart across the Taiwan Strait who, till present days, are still ensnarled in a de jure war of government-hood and state-hood. Before a consensus gets shaped over this governance legitimacy issue, both tend to shun away from direct, face-to-face confrontation over the Diaoyu/Diaoyutai Islands issue.

### Taiwan's “China Dilemma”

The KMT government remained muted officially in the 60s and 70s towards the US administration (Ministry of Foreign Affairs of the Republic of China (2014, February 5)).<sup>20</sup> Diplomatic archives later unraveled show that the Chiang admin-

<sup>19</sup> China has called for cross-straits cooperation on the D/S dispute against Japan in many public occasions. Yet, Beijing and Taipei are yet to touch upon this issue directly in cross-straits exchanges.

<sup>20</sup> Records show that the first formal diplomatic protest to the Diaoyu Islands by the Nationalist government in Taiwan was in 1971, when the Okinawa reversion arrangement was negotiated and to be in operation.

istration had required the returning of the Diaoyu/Diaoyutai Islands and had objected to include such in the Okinawa arrangement (Lee & Ming, 2012; *United Daily*, 2013, April 8). When the Okinawa reversion issue was negotiated, Washington was well informed of Taipei's requirement and had asked two partners and friends Tokyo and Taipei, to enter into negotiations.

Nevertheless, all intertwinements were deepened under the table, indicating that the KMT government was actually fighting a war between Scylla and Charybdis. On one hand, the sovereignty battle over the Diaoyu/Diaoyutai Islands was a painful reminding that the Chinese government was again being excluded from talks concerning its national interests, thus leaving its future at others' disposal (Price, 2001).<sup>21</sup> At that time, Taiwan, the ROC, was still smarting from not being engaged in the enactment and signing of the SFPT. To add these old hatreds, threats of being expelled out of its United Nations (UN) seat and being taken over by the rivalry Communist PRC government loomed large. In other words, the KMT government had made compromises on its sovereign claims over the Diaoyu/Diaoyutai Islands, in return of the US and international supports of its Chinese representativeness in the UN. However, the deliberate cooperation by the KMT government failed to earn US supports. As a nine days wonder, the UN seat of the KMT government was taken over by the Communist PRC government in 1971,<sup>22</sup> and the US severed ties with Taiwan, the ROC, in 1979.

On the other hand, the deliberately ambiguous attitude of the KMT government triggered public resentment, leading to the launch of large scale protests among overseas Chinese students to express their angers toward the US and KMT government (Lin, 2010, pp. 24-46).<sup>23</sup> Students' frustration was rooted from, first, disappointment toward the United States, who used to self-identify itself as a freedom fighter against the communist group. The long-propaganda-ed self-image collapsed, when the US ended up by striking a backdoor deal without consulting a crucial stakeholder, the ROC in Taiwan. Moreover, these advocates' furriness was also directed at the Chiang administration in Taipei, which was ensnarled in con-

21 In 1950 when negotiation of the SFPT began, opinions varied in terms of the Chinese participation in treaty enactment. Some objected to bring in the Chiang administration in Taiwan, like the UK. Some indicated that Chinese representation would enhance the legitimacy of the SFPT, like India. The US decided not to invite the Republic of China in, in order to accelerate the process. Lee and Ming.

22 Restoration of the Lawful Rights of the People's Republic of China in the United Nations. The United Nations General Assembly Resolutions 2758 (XXVI), 26<sup>th</sup> Session (1971, October 25).

23 The "Baodiao" campaign (Defending the Diaoyutai Islands sovereignty movement) started when students in Taiwan and the US convened to protest against the Okinawa Reversion agreement in 1971. Despite protests, a large number of Chinese intellectuals and residents in the US jointly submitted a proposal to Chiang Kai-Shek.

tradition when it tried to hush up students and advocates, overthrowing its original position that the Diaoyu/Diaoyutai Islands had belonged to us from ancestral time (Ministry of Foreign Affairs of the Republic of China, 2014, February 5).<sup>24</sup>

That said, the sovereign claims laid over the Diaoyu/Diaoyutai Islands by two Chinese governments also have caught Taiwan in a “China Dilemma,” in the sense that Taiwan is actually fighting to stand out its Chinese representativeness via demonstrating its sovereign claims over the Diaoyu/Diaoyutai Islands. This conundrum has presented considerable challenges to Taiwan, when a delicate management of fence-straddling is required between a potential rivalry with significant military and economic leverages, China and a necessary friend in its external relations, Japan. This “China Dilemma” also triggers inquiries, sometimes with a self-imposed limit, that if Taiwan’s diligent efforts in the Diaoyu/Diaoyutai Islands dispute were destined to strengthen China’s, but not Taiwan’s, territorial claims and their respective sovereignty status. These worries are not unrealistic, since Taiwan’s claims have often been shrugged off, or being regarded as those subordinate to and fortifying the claims made by the central government in Beijing.

In this aspect, the perceptions of younger generation in Taiwan to the Diaoyu/Diaoyutai Islands dispute are intriguing. In particular, their indifferent manner and bias toward the Chinese connection implied by the Diaoyu/Diaoyutai Islands dispute, has provoked heated discussions (Sun, 2011; Hsieh, 2010).<sup>25</sup>

Introspect of a senior advocate to the movement of Defending the Diaoyu/Diaoyutai Islands’ sovereignty (also known as the Baodiao movement) is worth mentioning. “...Perhaps, the quintessence of the Movement [to defend the Diaoyu/Diaoyutai Islands sovereignty] to the younger generation is to remind the people now living on the island [the Island of Taiwan] of a simple fact, that we are all sharing something in common with the Chinese, at various dimensions, such as the history, the kinship, the painful memory and humiliation of foreign intrusion and colonial exploitation... we are second to none to shoulder the responsibility to defend against all kinds of unjustified arrangements manipulated by power politics as characterized in the Diaoyu Islands dispute” (Lin, 2010).

24 The Republic of China government retreated to Taiwan in 1949 after it failed the Chinese Civil War to the Chinese Communist Party. The ROC government had long insisted on its sovereign status over the Diaoyutai Islands, and had taught its people this stance.

25 In Taiwan, the younger generation generally does not have the enthusiasm to the D/S dispute as their older counterpart. There emerge debates over factors of their indifference, and the ramification. In China, however, the D/S Islands issue remains a hot potato, easily provoking public sentiments and social criticisms.

## Lessons in Recent Rounds of Tension: From A Realistic Perspective

Situations surrounding the Diaoyu/Diaoyutai/Senkaku Islands have flared up since 2010. Starting with a fishing run-in which later escalated to a collision between a Chinese civilian fishing vessel and a Japanese coast guard agency ship, the hostility then peaked in September, 2012, when Tokyo formalized a nationalization plan of three islets in the Senkaku Islands group.<sup>26</sup> Since then, the Sino-Japanese relations have plummeted. The stalemate lingers on, freezing off once-heated bilateral exchanges in various dimensions. This three-year period has brought back some structural issues to the front burner, which has long been kept dormant (Ministry of Foreign Affairs of Japan, 2012, November).<sup>27</sup> Besides, the throwback of these structural issues also catalyzes changes of China's strategy, casting uncertain outlooks to the development of the dispute.

The following characteristics can be summarized after three years. First, a rising China, with greater national prowess, confidence and better understanding of engagement rules of regional and international affairs, is now intending to fine-tune established engagement rules in order to better serve China's national interests.<sup>28</sup>

The Diaoyu Islands dispute vividly exemplifies this action-reaction dynamism. China has grabbed the chance to enhance its effective control in various dimensions. Two events merit attentions, whose ramifications relatively run deeper than other measures.

On 10 September, 2012, China announced the territorial baselines of the Diaoyu Islands (*Global Times*, 2012, September 11). Later on 14 December, 2012, China submitted a continental shelf claim to the United Nations that asserted Chi-

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26 Beginning in April 2012, the Diaoyu/Diaoyutai/Senkaku Islands dispute flared up again when Tokyo Governor Ishihara, an infamous right-wing activist, announced a plan to purchase three islets of the five-island chain from the current private landowner. The plan was then backed by then Japanese Prime Minister Noda when he declared that the Japanese central government would purchase and nationalize these three islets. Noda opined that nationalization plan aimed at better risks management and administration, and to avoid self-willed decisions by the irredentist Tokyo Governor that may further exacerbate the situations. The plan was formally approved on September 11, 2012.

27 Some structural issues have been successfully tamed down, by a tacit understanding that both side should shelve the dispute and focus on joint development and mutually beneficial bilateral exchanges. These structural issues are like different understandings toward the legality of the San Francisco Peace Treaty, and whether a tacit understanding had been reached between China and Japan. It is apparent that Japan now adopts a position that there is not such understanding of shelving the dispute, and there exists no dispute on the sovereignty of the Senkaku Islands.

28 This perception is largely driven by the Chinese view toward international law and some established general principles in international community. In some cases, China appears quite cooperative, abiding by these well-developed laws and principles. Examples are like international treaty regimes, such as generally, the United Nations Charter, and most provisions in Law of the Sea Conventions. In other occasions,

nese sovereignty in the East China Sea to the Okinawa trough (Division for Ocean Affairs and the Law of the Sea, 2013, August 15). These claims, albeit pending subsequent state practices and approval of the Commission on the Limits of the Continental Shelf, connote something more than maritime delimitation. China's taking actions in response to Japan's nationalization announcement, to prevent further encroachment on China's sovereign claims, and to fortify China's effective control, a relatively weaker aspect, in this area.

Since tensions peak, grey zones featuring whether a tacit understanding to suspend the territorial disagreement remains valid, are quickly shrinking. However, it can also be interpreted from another perspective. China and Japan now both enact domestic legislations, codifying in words in their laws that the Diaoyu Islands constitutes a part of their territories.<sup>29</sup> Apparently, there exists a dispute, since a land piece cannot be simultaneously proclaimed by two separate sovereign countries. It becomes a fact now that disputes do exist and have continued on between China and Japan over this area, a reality that Japan cannot reject (*China Review News*, 2013, November 30).<sup>30</sup> Consequently, China is creating, albeit in a forceful way, a window of communication, to enable talks with Japan. Nevertheless, such talks are premised on one pre-understanding: disputes exist on the Diaoyu/Senkaku Islands between China and Japan.

However, China's move triggers suspicion if China is to abandon the maxim taught by late leader, Deng Xiaoping, about China's foreign policy, "*tao guang yang hui*" [to keep a low profile to buy time and cultivate supports to China's own developments] (*I-feng News*, 2013, December 17). Further, when speculations are rife, most address, on a negative note, worries if China is to become more assertive and aggressive in guarding its perceived national interests. These concerns are

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however, China seems to conditionally observe these laws and rules, which lead to harsh criticism that a rising China is trying to re-mouldle international legal order to better fit its unilateral national interests. For these latter controversial practices, international human rights treaties attract the most attentions. Also, China does not observe the rule enshrined in Law of the Sea Convention to accord "innocent passage" in its territorial waters to foreign military ships. The Chinese authority retains the right to decide whether to grant the passage permission to foreign military vessels.

29 On the Chinese side, "Law on the Territorial Sea and the Contiguous Zone," the law was adopted at the 24<sup>th</sup> meeting of the Standing Committee of the National People's Congress on February 25, 1992. On the Japanese side, "Law on the Territorial Sea of Japan," the law was enacted May 2, 1977, and was later amended to "Law on the Territorial Sea and the Contiguous Zone" on 1996.

30 Japan has denied the existence of the dispute over the sovereignty of the Senkaku Islands. In October 30, 2013, Japan Defense Minister commented in a special committee in Japan's newly established National Security Council that Tokyo would define the Senkaku Islands and adjacent areas as "grey zones." The rules of how Japan Self Defense Force conducts defense activities in this "grey zone" would be discussed later under the aegis of the National Security Council.

greatly felt in various Asian capitals, as some China's neighbors are relatively keen to welcome US presence in this region as a counterweight to China's overwhelming influences.

In this sense, it seems a fair observation that status quo in this part of Asia attracts considerable supports. China's perceived assertiveness thus triggers overwhelming dedication among regional countries to ally against China's intentional challenges to the post-war arrangement in East Asia (Jerden, 2014; Thuy, 2013; Swaine & Fravel, 2011).

Second, this changing attitude also leads to a shift of focus in China's strategy. Its attentions are drawn, from details at relatively far ends of the dispute, to structural problems that would shake/overthrow status quo and reshape stakeholders' interests considerably.

One vivid example is the re-invigoration of debates over the Okinawa sovereignty. Later in May 2013, two Chinese scholars from the Chinese Academy of Social Science wrote an article in the State media, the People's Daily, arguing about the perceived uncertainty of the sovereignty of Ryukyu Islands, also known as Okinawa in Japanese (Zhang & Li, 2013, May 8; McCurry, 2013, May 15). The article laid out, in chronological order, historical evidence and legal documents that support China's centuries-long relations with the Ryukyu Kingdom, and the unfruitful negotiations between the Qing government and the Meiji government over the Ryukyu issue in late 19<sup>th</sup> century. The piece concludes that the negotiations between the Qing government and the Meiji administration lapsed because the eruption of the first Sino-Japanese War in 1895, from which the Ryukyu issue remained yet to be fully settled. Later in middle May, a second piece came out, when one author of the first article further elaborated on what it meant (Zhang, 2013, May 17). The second piece elaborates on more contemporary events that followed the first Sino-Japanese War in 1895.

These two pieces are a mere drop in the ocean in past years, when numerous articles have been published under similar topics in nation-wide journals and newspapers (Suganuma, 1995; Wade, 2007). Authors reaffirmed in these pieces by touching on following issues: the validity of the 1952 San Francisco Peace Treaty and the reversion agreement between the US and Japan over Okinawa in 1971; whether several Statements made among major victory states, such as the Potsdam and the Cairo Declaration, had been faithfully upheld, and if the Japanese ruling were justified, eyeing the polarizing difference in Okinawa's dialect, religion, culture and polity from those in the Japanese home lands. To sum up, most would draw the conclusion that the Okinawa issue remains unsettled, and the self-determination right of the Ryukyu people requires weighing consider-

ations (Lei, 2013).<sup>31</sup>

A more sensible explanation will be that China is exploring new directions to break up current stalemate, while obtaining moral and political high grounds in the Diaoyu Islands issue. These gestures are inevitably tinged with nationalistic sentiments under the wave of the rising nationalism and the goal of developing marine powers under the new leadership.

Re-shovelling the Okinawa issue indeed has caught Japan in surprise, in particular, the shift of China's strategic focus. One primary observation is that China is now unraveling certain structural problems to earn more credits for its own claims. The discussion of the Okinawa issue is to fortify the historical dimension of Chinese sovereignty claim, arguing that Chinese suzerainty relations with ancient Ryukyu Kingdom had been established as early as in the 14<sup>th</sup> century (early Ming Dynasty) (Qian, 2006). Evidence shows that the discovery and utilization of the Diaoyu Islands and marine resources in adjacent areas by the Chinese had been facilitated via close relations between ancient China and the Ryukyu Kingdom. That said, Chinese discovery, in a formal sense, of the Diaoyu Islands was facilitated as early as in the 14<sup>th</sup> century, after well-established civilian relations and commercial exchanges between China and the Ryukyu Kingdom (Lai, 1996; Lei, 2013).

Further, both the Okinawa and Senkaku Islands were occupied, or annexed by Japan at the second half of the 19<sup>th</sup> century, when the Qing government was at the tether of its hands in dealing with imperial invasion from the Western powers. In other words, Japan had employed threat and use of force to bring these two islands into its control. Questions thus arise about the legitimacy of the Japanese annexation and the self-determination rights of the local population in the Okinawa Islands. Last, but not least, both were then impacted by the reversion agreement in 1971, with the Okinawa being a major subject of this transferring deal.

In short, current development indicates that China has learned to play rules of engagement in the Diaoyu Islands issue. With the shifting of its strategic focus to structural issues like the Okinawa Islands sovereignty and its connection to the Diaoyu Islands, China has been able to retain political one-upmanship by setting off legal wars against Japan, when the phrases are coined in a sensational way by appealing to the Okinawa people's emotions.

Third, recent developments have inflicted greater pressures upon the US, driving it to take a clearer role in the dispute. Pressures come from both side, al-

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31 Another piece, titling "the Mudan Incident and Annexation of Ryukyu Kingdom by Japan," stirred up the troubled water with a great public fanfare in Tokyo.

beit with different reasoning and for various purposes. China would like to see the US distancing itself away from the battlefield, as this preference has been upheld in various public occasions. On the contrary, Japan is hoping that the US would clearly strengthen the US-Japan security alliance by render explicit support to Japan's sovereign claims.

The Chinese announcement of a new Air Defense Identification Zone (ADIZ) in the East China Sea covering the Diaoyu Islands air zone on November 23, 2013, is killing two birds with one stone - to shore up Chinese effective marine controls by enhancing aviation information management and to teach stakeholder countries clearer lessons that the long-maintained strategic obscurity has been eroded by deeds and words favorable to Japan's position. Surely, the United States is second to none, as the main target of the Chinese action in this scenario.

From China's perspective, the US position, in actions or words, has long been favoring Japan. The scale is further tilting to Tokyo, when the US announced its rebalancing strategy with a high public fanfare in 2010 (Friedberg, 2012, October 9). Much to Beijing's annoyance, the US aims at bolstering its military presence in East Asia even as it cut overall defense spending. Even with a shift of focus to the economic front in Obama's second term, the US position and policy in the Diaoyu/Senkaku islands dispute is perceived as hardly neutral, let alone a qualified mediating role between China and Japan. In other words, the discord between US actions and words, and between intended and achieved outcome of US policy, is demonstrating.

However, recent developments indicate that a more right-winged Japan, which set fire on the historical issues with its neighboring countries, cast even thornier challenges to the US. The Deputy Secretary of State Richard Armitage publicly sent admonitions to Tokyo about possible backfiring impacts if the dispute continues to grow between Japan and its neighboring countries (*Dowei News*, 2013, October 24). Washington found itself stuck in a conundrum, when its continuing security commitment to Japan may cost it a greater price of losing an alliance, South Korea and an important country, China, engaging in many crucial dimensions in the US activities in the globe.

Accordingly, the US has seemingly started to consider rebalancing its position. Originally, the US policy intends to show supports favorable to Japan.

The US position in China's ADIZ has experienced a sharp overturn, after US vice President's Asian visit in early December, 2013. The State department began to use "disputed region" to describe the Diaoyu/Senkaku Islands area, besides its usual insistence on stressing Japan's effective administration (*Dowei News*, 2013, December 9). Nevertheless, the US appears rather vigilant about the term, when the spokesman manages to play down the impact by interchangeably using terms

“sensitive areas” and “disputed regions” (*Dowei News*, 2013, December 7).

Washington also softened up its positions in the Chinese ADIZ, when it later changed the tone, encouraging China not to implement the rules before talks being conducted with neighboring countries (*Dowei News*, 2013, December 3). The original harshness, questioning the legitimacy and the right to set up ADIZ, was quietly dismissed. While it may be premature to conclude that the US has changed its position by accepting China's ADIZ and admitting the existence of disputes in the Diaoyu/Senkaku Islands area, the signal to that direction, nevertheless, is stronger.

Recalling the Sino-US summit between Xi and Obama (*I-feng News*, 2013, June), where a concept of a new type of great power relation was proposed, the Sino-US communication channels are believed to be well-facilitated among, nearly, all levels in their respective governmental structure. The inference thus is, certain common understanding may have been debated and accomplished between China and the US in the management of the Diaoyu/Senkaku Islands dispute. That said, the US's concern in the Diaoyu/Senkaku Islands dispute now falls on Japan's tilting inclination to right-wing extremism and drastic military build-up. Facing a growingly rough US-Japan security cooperation relation, the US now is thrust upon a forceful reconsideration of its role in the dispute. Specifically, a neutral position would require Washington to conduct self-restraints from implying its support to Japan's position in words or actions. Further, Washington would need to cultivate credentials and trusts from regional and extra regional countries, if it intended to be an arbitrator in this dispute.

## Conclusion

At the current junction, clashes between China and Japan are not unlikely, when their pursuits conflict: China's continually growing national prowess which further strengthen its belief of taking back what originally belongs to it, and Japan's long desires of being a normal country which is further justified by the fear of losing the disputed Senkaku Islands. Moreover, the US influence in this region is in the decline, which has provoked repeated calls for a Japan, with more self build-up in the military and re-invigoration of economic developments (*Dowei News*, 2013, October 24). The fading US influences thus leave behind a vacuum in East Asia, which is competed for by various potential countries, such as a Japan enmeshed long in domestic economic malaise, and a rising China which reiterates repetitively that it has no intention to be another super power like the US, and has triggered Japan's worries of a throwback of historical hatreds and war memories.

All such phenomenon overshadows pending territorial spats and casts uncertain outlooks of their prospects.

The rising tension of the Diaoyu/Senkaku Islands area, as explored in this article, exemplifies these challenges. Besides, recent developments in the Diaoyu/Senkaku Islands dispute also show that, conflicts are imminent in first, an old interpretation of territorial concept informed by historical perceptions versus a modern understanding dominated by Westphalian thinking, and second, a poignant confrontation between power politics and international legal system.

The confrontation between the Chinese approach which heavily relies on historical evidence and the Japanese one on the concept of “effective control” is exemplary. In contemporary jurisprudence of territorial disputes, historical evidence is ranked as a supplementary means, while “effective control” of disputed land pieces is regarded as a weighing instrument for territorial justification. The reason why Chinese claims seemingly trigger less resonance is that it is informed by historical evidence, while Japan’s claims focus more on effective administration and has brought it into its control since 1971. Nevertheless, China is learning quickly and has now managed to make it up by enacting administrative measures in various aspects. All these efforts pay off. To the least extent, attempts and changes of status quo have stirred up the troubled waters to a significant degree.

Confrontation also is present when politics and law butted heads in a highly complicated dispute, like the Diaoyu/Senkaku Islands case. In a nutshell, disputants tend to rely on domestic and unilateral legislations to define the boundary of its compromises, and law is trumped by political deliberations.

In the scenario of the Diaoyu/Senkaku Islands case, Japan and China has enacted laws of territorial waters, including the disputed areas into its domestic legislations. China, as a late comer, has also announced territorial baselines of the Diaoyu/Senkaku Islands waters in 2012 (*Global Times*, 2012, September 11). In this sense, the Diaoyu/Senkaku Islands case is featured with a shortage of international and multilateral agreements, when disputants and stakeholder countries, like the US, enact a compound of domestic and unilateral legislations. The influence is, thus, profound. Therefore, dialogues are necessitated to carve a way out of this legal entanglement. Besides, negotiations may be better facilitated when disputants are safeguarded, with their behaviors justified by their own domestic legal obligations.

There remains one factor that merits discussions. Domestic politics in North-east Asia have overshadowed these drawn-out territorial disputes. Policy interruptions are not uncommon in company with cabinet re-shuffling, or power hand-over due to periodic elections. Termed positions bring along the issue of tunnel view with narrow-minded-ness, prioritization of party interests to national and people’s interest, and incoherency in governmental positions. Cleavages as such

often causes impediments to succeeding administrations, preventing bona fide thoughts but to spend considerable amounts of time and resource to solve out situations enmeshed in a stalemate. At times, external harshness may also lead to intra-governmental fighting in the disputant country. Military posture usually butts heads with the foreign policy ones, making it a more urgent requirement of interest reconciliation and policy coordination.

Eyeing this emerging institutional challenge, a contemporary development is a trend when major countries in Northeast Asia establish their national security organs in end 2013 (*Xinhua News*, 2013, November 12; *Global Times*, 2013, November 27; *Xinhua News*, 2013, December 20). Judging that a national security mechanism may facilitate more comprehensive policy-making and better coordination, the window of opportunity for establishing a platform of regular talks and later, of institutionalized negotiations is not unlikely.

Having said that, regular talks may better facilitate innovative solutions for the Diaoyu/Senkaku Islands dispute. Globalization of production chain, of mobility of human and financial capitals, and technology revolution has largely reshaped international relations and international legal concepts. Yet, the mindset and perception of human being toward concepts like territoriality and sovereignty is yet to catch up this trend. While tensions continue brewing in the Diaoyu/Senkaku Islands area, it may be a good timing for all those concerned, to reconsider upon the reasons and ramifications of territorial disputes.

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## **Russia's Territorial Disputes with China and Japan: A Comparative Analysis**

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### **Abstract**

Since the end of the Cold War, Russia and China have signed a number of agreements that have effectively put an end to the decades-long territorial dispute between the two neighbors. Comparatively, the prospects for resolving the territorial dispute between Russia and Japan seem almost as distant as at the height of the Cold War confrontation. This article will engage in a comparative analysis of the two disputes and attempt to answer the following question: "Why have Russia and China managed to solve their border problems, but Russia and Japan have not?" For this purpose, the article will consider the historical roots and political nature of the Russian-Chinese border dispute as well as the conditions that enabled recent settlement. Furthermore, it will determine the commonalities and differences between the two disputes from political, historical and legal perspectives. Finally, the article will make an attempt to assess how the experience of the Russian-Chinese settlement could be applied to the Russian-Japanese dispute.

### **Keywords**

China, Japan, Russia, islands, territorial dispute, settlement, comparative study

Russia and China have a common land border that is 4,380 km (2,738 miles) long—one of the longest inter-state borders on earth. During the time of the Russian empire and during the Soviet era this border was even longer and was to be the longest in the world. There is also a long and complicated history of territorial dispute between Russia and China which was settled just recently (in 1991-2008).

### **The Chinese-Russian Territorial Dispute: Historical Roots and Recent Settlement**

Unlike the Russian-Japanese border dispute, which is a legacy of the Second World War, the Russian-Chinese border debate was primarily a legacy of two treaties between the Qing Dynasty and the Russian Empire, namely, the Treaties of Aigun and Beijing concluded in 1858 and 1860, respectively. Amid China's defeat by Anglo-French forces in the Second Opium War, those treaties forced the Manchu dynasty to give up 1.2 million square kilometers of land in the region of the Amur and Ussuri rivers to the Russian empire. According to the Treaty of Nerchinsk, concluded in late 17<sup>th</sup> century, all those territories did not belong to either Russia or China and were very rarely populated. They were legally considered to be disputed land. During the Second Opium War China reluctantly agreed to recognize them as a part of Russia. In turn, the Russian Empire kept neutrality and did not support Great Britain and France militarily. However, the price of Russian neutrality was high, and both the treaties of Aigun and Beijing have long been regarded by the Chinese as unequal treaties.

After 1860 an eastern section of the Chinese-Russian border was demarcated by three rivers, the Aigun river from the tri-party junction with Mongolia to the north tip of China, running southwest to northeast, then the Amur river to Khabarovsk from northeast to southwest, where it was joined by the Ussuri River running southeast to northwest. Because of the political and military weakness of the Chinese empire in the 19<sup>th</sup> century, the Argun, Ussuri and Amur rivers were demarcated in non-standard manner: the demarcation line was on the right (Chinese) side of the river, putting the three rivers with all accompanying islands in Russian possession. According to international rule and practice, a demarcation usually uses shipping lanes. However, the Russian empire, and later the Soviet Union effectively controlled almost every single island along the rivers.

After the October Revolution in 1917, the new Bolshevik regime promised to abandon all semi-colonial concessions in China and to review bilateral treaties including the border ones. Lenin and Trotsky insisted, however, that such a revision should take place only upon victory of local communists. Later, with the rise

of the Stalinist bureaucracy, Moscow's foreign policy was increasingly based on national interest, and most of the former promises were forgotten.

A territorial issue could not but arise when in the early 1960s a Sino-Soviet split began. In 1960 the Chinese government suggested opening the border negotiations, and Chinese civilians and small military groups began to violate the Soviet border agreement. Soon such violations became numerous.

Border negotiations between the two countries took place for the first time in 1964, amid heightening tensions. Beijing demanded acknowledgement of the "unjust" character of all acquisitions of territories by Russia in the 19<sup>th</sup> century. The Chinese position was that the 19<sup>th</sup> century's border treaties were unequal and amounted to unfair annexation of Chinese territory. Moscow could not accept this interpretation. Nevertheless, the two sides were close to reaching a preliminary agreement concerning an eastern section of the border. But Chairman Mao Tse tung, who initiated the Sino-Soviet split, did not intend the dispute to be solved quickly and wanted to deepen confrontation with Moscow. In July 1964 he stated that tsarist Russia had stripped China of vast territories in Siberia and the Far East as far as Kamchatka. According to Mao, the total size of those territories was nearly 1.5 million square km. An interesting fact is that this historic statement was made by Mao Tse tung during his meeting with a delegation of the Japanese socialist party members—probably because Japan also had territorial claims with Russia (Vorobiev, 2011, p. 39). Outraged by Mao's comments, which were leaked to the public, Soviet leader Nikita Khrushchev refused to approve the preliminary border agreement, which had already been reached.

In 1966 the so-called "cultural revolution" started in China that led to a further deterioration on Sino-Soviet relations. In 1969 a second round of border talks started, but it ended abruptly because of an armed border conflict over Zhengbao (Damansky) Island in the Ussuri River. This incident is regarded by experts as a culmination of the Sino-Soviet split. The tiny island of Damansky was totally uninhabitable, its size was less than 0.7 square km, and it did not have any strategic or military value for either country. However, the Sino-Soviet relationship at that time was so hostile that the border clash over the island brought the two nations to the brink of war. A division-scale military combat over the island led to a Soviet military victory. An attempt of the Chinese army to seize Damansky island failed, and the status quo was restored. The Soviet army lost 58 military personnel. The Chinese losses were a few times higher, but a precise official figure is still unknown (Yang, 2000, pp. 21-52).

The border dispute forced the two countries to concentrate plenty of troops along their common border. In the late 1960s the Soviet Union had nearly 650,000 soldiers and officers along the border ready to fight, while the Chinese

had over 810,000 military men.

However, neither Moscow, nor Beijing wanted to unleash a big war, and took steps to lower the danger of a large-scale conflict. In September, 1969, Soviet Prime Minister Kosygin had historic talks with his Chinese counterpart Zhou En-lai in the Beijing airport. The two premiers agreed to resume border negotiations.

Bilateral relations remained sour after the conflict, despite the border talks, which lasted inconclusively for a decade. In 1982, a few years after Mao's death, a political tension in the Sino-Soviet relations began to decrease, and leaders on both sides adopted more conciliatory attitudes. In 1989 Gorbachev paid a historic visit to Beijing. He and Chairman Den declared that the 30-year cold war between the two nations was over. A normalization of political relations created prerequisites for the beginning of a constructive dialogue on border issues.

In this context the most important fact is that China gave up Mao's previously hostile and unrealistic claims concerning nearly 1.5 million square km of Russian territory. Still viewing the previous border treaties as unequal, Chinese leaders were willing to negotiate on the basis of the modern boundaries. That left about 35,000 square km of territory in dispute, with about 28,000 square km in the Pamir Mountains of Tajikistan, 6,000 square km elsewhere along the western border between China and Kazakhstan, China and Kyrgyzstan, and about 1,000 square km along the Argun, Amur, and Ussuri rivers on the eastern border. Sino-Soviet border negotiations were eventually resumed in 1987 at Gorbachev's initiative. The talks were quite productive, and in less than four years a deal was reached on the eastern portion of the border. The first border agreement was signed in May, 1991, seven months before the final dissolution of the USSR. The Russian Federation inherited most of the former Chinese-Soviet border, and ratified the agreement in February 1992, while the other post-Soviet republics negotiated separate border agreements.

This historic border agreement, signed in 1991, largely finalized the border conflict between the Russian Federation and China, except for two disputed areas. The agreement stated the intentions of both parties in resolving and demarcating the disputed border peacefully and identified the border as running through the center of the main channel of any river, based on the thalweg principle. The term "thalweg" means in geography the deepest continuous inline within the river. According to the agreement, a location of the main channel and the possession of various river islands would be decided in the course of the demarcation work. Other articles stipulated military usage, and traffic rights along the river borders. The two areas, Tarabrin and Bolshoi Ussuriysky Islands, were excluded from the agreement, and their status would not be resolved until 2004. Since numerous islands on the Argun, Amur, and Ussuri rivers often split the rivers into multiple

streams, the location of the main stream (and thus the border) is not often immediately apparent. Obviously, each country would receive a greater number of islands if the recognized main channel was closer to the opposite bank. Thus, the demarcation work was often controversial and subject to local protests over disputed territories. The demarcation work continued nearly up until its 1997 deadline and was completed successfully. It demanded enormous effort, patience, common sense, and good will of both sides.

The scale of the demarcation work can be illustrated by a few figures. So, on the Argun River 413 islands and islets along the river were disputed. A final apportionment has 204 islands in Russian territory and 209 islands in Chinese territory. Out of 320 islands along the Ussuri river, the agreement recognized 167 Russian islands and 153 Chinese islands. Some of these islands used to be sites of numerous clashes during the confrontation era. Damansky Island, which was a site of military incident in 1969, was transferred to Chinese hands. Out of 1680 islands along the Amur river, the agreement recognized 902 Chinese islands and 778 Russian islands (Stepanov, 2007, p. 232). Some of those islands were also sites of military clashes in the 1960s. Furthermore, a number of islands of the Amur river were subject to border clashes between Soviet and Japanese forces during the Manchukuo period in the 1930s.

After the breakup of the Soviet Union the former Chinese-Soviet border is shared by Tajikistan, Kyrgyzstan, Kazakhstan, and Russia. While a majority of the disputed territories lay in the west, the Russian Federation inherited only about 50 square km of the western section of the former Chinese-Soviet border. China negotiated separate agreements with each of the post-Soviet republics on its western borders. By now China has managed to achieve border settlements with all Central Asian republics and has signed border treaties with all of them (the latest one was concluded by China and Tajikistan at the end of 2011). In October, 1995, an agreement over the last 54 km of the western border stretch was reached by Russia and China.

The islands of Bolshoy Ussuriysky and Tarabarov near Khabarovsk, along the junction of the Amur and Ussuri rivers, were specifically excluded from the agreement and became a subject of further negotiations. There were at least two reasons for such exclusion. The first one deals with the economic and strategic significance of the islands. They are located very close to Khabarovsk which is the biggest Russian border city in the Far East. The second reason proceeds from the fact that the thalweg principle which became a legal basis for the Chinese-Soviet agreement of 1991 could not be applied to the islands. Precisely, if this principle had been applied to the disputed islands, they would have been given entirely to either Russian or Chinese hands, and this could not have been a basis for compromise.

To solve the problem President Vladimir Putin proposed a 50-50 percent division of the disputed land. The Chinese agreed on this compromise, and in October 2004 Russia and China signed a border agreement based on the Putin's initiative. Later on it was ratified by national parliaments. By 2008 the border had been demarcated, and in July, 2008, Russia and China signed a landmark document, officially ending all outstanding territorial disputes between the two powers.

Under the agreement, Russia handed over Tarabarov Island and half of Bolshoi Ussuriysky Island at the confluence of the Amur and Ussuri rivers. (In China Tarabarov Island is known as Yinlong Island, and Bolshoi Ussuriysky is known as Heixazi Island). The agreement signed in 2008 marked acceptance of their demarcation. An additional protocol with a map affiliated on the eastern part of the border was also signed.

The total size of 1,281 small river islands and swallows Russia ceded to China between 1991 and 2008 is nearly 851km<sup>2</sup>, including 174 km<sup>2</sup> of the Tarabarov island and a half of the Bolshi Ussusiysky Island (Vorobiev, 2011, p. 42). In its stead, China has given up all its territorial claims to Russia. The agreement signed in 2008 became a final step in resolving the longstanding border issues. In October, 2008, Chinese and Russian flags were raised and new border markers were erected as part of the handover at China's far northeastern tip near the city of Khabarovsk. The Russian foreign ministry said in a statement on this occasion: "This event completes the delineation and the legal establishment of all parts of the Russian-Chinese border ... The border issue, a historical legacy that had been left to Russia and China, has received its complete and final resolution" (Ministry of Foreign Affairs of the Russian Federation, 2008, July 22).

So, the Chinese-Russian dispute is now solved. The two nations have settled it due to their good will, mutually accepted legal principles and, above all, because of radical improvement of their political, economic and humanitarian relations within the previous two decades.

The Chinese who initiated the territorial debates have got a number of small islands and thus "saved face" in this dispute. The Russians gained legally unambiguous Chinese recognition of the contemporary border line. Chairman Mao Tse-dung used to talk about nearly 1.5 million km<sup>2</sup> of the Russian territory to be given to China, then his successors reduced an amount of claims to a few thousand km<sup>2</sup>, and finally Beijing was satisfied with getting a few hundred km<sup>2</sup> of unpopulated islands which economic value is rather symbolic. A common political benefit is that the territorial dispute is over, and now it does not prevent the two neighboring states from further developing of their friendly relations.

## Russia's Border Disputes with China and Japan: Common Features and Differences

Let's now try to compare the Japanese-Russian border debate with the already settled Chinese-Russian dispute and to think over lessons of this settlement with regard to the Japanese-Russian case.

The two disputes have some common points. Both of them have long-term and complicated historical roots. Historical arguments have always been very important for all the parties involved. Both disputes also caused very serious damage to Chinese-Russian and Japanese-Russian relations. And it is islands that are subjects of both disputes.

At the same time, distinctions between the two cases seem to be more important. First of all, they have completely different historical connotations. Whereas the Sino-Russian dispute was rooted in the 19<sup>th</sup> century treaties which were concluded during peace time, the Japanese-Russian dispute is a direct result of the Second World War. The four islands which are known in Russia as the "Southern Kuriles," and in Japan as "the Northern Territories," were seized by the Soviet Army at the very end of the war. One should admit that it is more difficult to reconsider territorial results of wars which always imply human blood and human losses rather than the border treaties concluded in the peace time.

The Japanese-Russian dispute also has a geographical or terminological dimension, which the Sino-Russian dispute did not have. Japan and Russia cannot agree on a common understanding of geographical definitions and names. Both the former USSR and contemporary Russia have considered the four disputed islands as an integral part of the Kurils chain which stretches north across the Pacific Ocean from Hokkaido to the southern tip of Russia's Kamchatka Peninsula. On the contrary, since the early 1950s the Japanese government has not recognized the four islands as part of the Kuril chain and call them "the Northern territories" which constitute a separate archipelago including Hokkaido as its biggest island. There has never been such a terminological discussion about river islands between Russia and China.

Another distinction deals with natural resources. The territories transferred from Russia to China did not have practically any of them, whereas the Southern Kurils are surrounded by rich fishing grounds. They also have offshore reserves of oil and gas. Rare rhenium deposits have been found on the Kudriavi volcano on Iturup (and this is the only rhenium deposit in the Russian territory) (Volcano Discovery, 2013; *BBC News*, 2013, April 29).

The two border disputes have different military and strategic significance for the parties concerned. Small river islands on the Amur and Ussuri rivers do not

have any defensive or military value for either China or Russia, especially taking into consideration the bilateral agreements concerning demilitarization of the border regions which were signed by the two countries in the 1990s.<sup>1</sup> At the same time Russia has repeatedly stressed a military significance of the Southern Kuril islands. Control over them gives Russia additional access to the Pacific Ocean. There exists Russian military presence on the island of Iturup. Moreover, Russia is now likely to boost its military presence on the whole Kuril chain. In particular, it is quite possible that some of the four Mistral assault ships that Moscow has contracted to buy from France in 2011 would be deployed in the Pacific Fleet, in part to defend the Southern Kurils (Gorenburg, 2011, May 23). Within the last few years Moscow repeatedly expressed its intention to expand the islands' military capability. Now it is looking to deploy a surface to air missile system on the islands in order to reinforce its message of sovereignty. In 2011 President Medvedev confirmed that Russia should deploy modern weaponry to ensure security of the Southern Kurils (*Sakhalin.info*, 2011, February 10). This military rhetoric and activity around the disputed territories is a direct consequence of the current border negotiations' deadlock.

One more considerable distinction between the two border cases is that all of the territories given from Russia to China were uninhabitable. But the Southern Kurils are now populated. A 30,000 strong Russian community lives on the islands, and its overwhelming majority supports the present status quo and does not want the islands to be transferred to Japan. When the Second World War began there were 17,000 Japanese residents on the islands, including members of Hokkaido's minority Ainu community. By 1949 the Soviet Union had deported all of these residents to Japan. There are still some people who had property there they want to reclaim. Lives, destinies and property of the former Japanese and the present Russian residents of the islands are also a part of the territorial dispute.

Another point of distinction deals with legal aspects of the two cases. The Chinese-Russian dispute originated in the 19<sup>th</sup> century treaties which came across to common international law practice in terms of defining inter-state rivers borders. The border debate between Russia and China was settled successfully primarily because both nations managed to agree on a common legal basis, namely on the above mentioned thalweg principle. In the case of the Russian-Japanese dispute the situation is completely different. Both countries do not share common legal approaches. Each of them think that international law is on its side.

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1 Now Russia and China have limited troops within the 200km zone along the common border and do not deploy big military units close to the border.

“The Northern Territories are the inherent territories of Japan, and Russia’s occupation has no legal basis under international law,” Japanese Foreign Minister Seiji Maehara said in 2011 (Ministry of Foreign Affairs of Japan, 2011, February 15). Japan insists that Russian control over the disputed islands is illegal until the two countries conclude a peace treaty.

Russia has its own arguments. One of them is that under the 1951 San Francisco Peace Treaty, signed between Japan and the Western Allies, Japan renounced “all right, title and claim to the Kuril Islands” as well as over other possessions. Under the Treaty, Japan had to cede the islands but it was not specified that they would be given to the Soviet Union, because it did not sign the San Francisco treaty. This treaty is still in force. According to it, Japan recognizes that it lost Southern Sakhalin and the northern part of the Kuril chain. However, since the Japanese government does not recognize the four disputed islands as part of the Kuril chain, the treaty resolved nothing for Tokyo in terms of the “Northern territories” problem.

Another Russian legal argument proceeds from the fact that in September, 1945, Japan signed an unconditional surrender. A legal essence of the surrender meant that Japan had to accept any political and territorial demands of the Allies. Moscow asserts that the Japanese “put themselves politically and territorially at the winner’s mercy.” The Russian public believe that Japan’s loss of Southern Sakhalin and the Kuril islands is in fact a punishment for unleashing aggressive war in China and in the Pacific during the Second World War.

In 1956, the Soviet Union and Japan signed the Joint Declaration which ended the state of war and restored diplomatic relations between the two nations. According to the Declaration, the Soviet Union agreed to hand over two smaller disputed islands to Japan after a peace treaty was signed. However, after Japan and the United States signed a security treaty in 1960, the Declaration was suspended by the Soviet government. This document could have become a joint legal basis of the territorial settlement. Now Russia recognizes the Declaration, but Japan in fact does not, demanding not only the two islands mentioned in the Declaration but all four disputed islands to be returned. From Japan’s position, the fate of Habomai and Shikotan was agreed in 1956, but the fate of Kunashir and Iturup was not, and that was the only reason why there could not have been a peace treaty then. Tokyo insists that there has to be at least some kind of agreement on the fate of them in the subsequent peace treaty.

One more important difference between the two territorial cases deals with the fact that the Russian-Japanese dispute has become primarily a matter of national prestige for both Japan and Russia, and this is the worst possible starting point for serious negotiations. Russia, in particular, sees the Southern Kurile is-

lands as one of the symbols of its victory in the Second World War and sees no reason why it ought to make unilateral concessions concerning its legitimately won war prize.

During the era of Sino-Soviet split, a territorial dispute between China and the USSR also used to be a matter of national pride and ideological struggle. However, after normalization of bilateral relations in the 1980s the situation was changed. The two powers began to perceive the border dispute as a routine political and diplomatic problem inherited from the past which had to be solved by statesmen and diplomats in silence of negotiation rooms. When the border negotiations was going on, neither Chinese nor Russian officials did not make loud and dramatic statements and avoided appealing to the public of their countries in order to assert diplomatic pressure on each other. This is the case when successful diplomacy was hardly compatible with mass media campaigns. The Russian and Chinese public opinion, of course, followed the course of negotiations and sometimes even protested against border changes. For example, in 2005 there were demonstrations of Russian Cossack residents in neighboring Khabarovsk against handing over of some Russian-controlled islands to China (Abelsky, 2006, October). On the other hand, sections of the media in Hong Kong and Taiwan denounced Beijing for giving up China's claim not just to the river islands, but to all of so called Outer Manchuria, gained by the Russian empire in the 19<sup>th</sup> century (Chan, 2008, August 14).

However, both Russian and Chinese authorities have never encouraged such popular and media protests and never tried to take advantage of them. They seemed to agree on the principle: "The less public discussion over the border issue the better." The Chinese diplomats treated their territorial claims to Russia rather pragmatically, and such an approach helped them as well as the Russian negotiators to find a mutually acceptable solution. Russia and Japan, on the contrary, continue to discuss their dispute publicly and regularly make loud statements.

Both territorial disputes have deep historical roots, but the role and significance of historical arguments in these cases are different. During the Chinese-Soviet and later the Chinese-Russian border negotiations both sides were only slightly concerned about which nation was the first one to come to the disputed lands and started to live there, because a criterion of historical priority of possession was not a principle of the negotiated territorial division. On the contrary, since the Japanese and the Russians lack mutually accepted legal basis for a border settlement, the debates over the Southern Kurile are focused mainly on their history. Nowadays, it is Russian and Japanese historians who continue to provide arguments to bolster each country's claim to the Southern Kurile, or "the Northern Territories."

But in both cases historical arguments seem to have little relevance in what have essentially been political problems. The both disputes have always demanded political will and diplomatic solutions.

Political and strategic contexts of the two territorial disputes are also quite different. Russia and China are now strategic partners, but Russia and Japan are far from genuine political partnership. It is needless to say that a friendly atmosphere of bilateral relations is crucially important for a successful territorial settlement.

A political calculation behind the Russian-Chinese border agreements is clearly to strengthen Russian-Chinese strategic partnership in order to counter the growing pressure from the US and its NATO allies on both nations on a number of fronts. Former Chinese Foreign Minister Yang Juechi described the agreement concluded in 2008 as a mutually beneficial “win-win” (Chan, 2008, August 14). Moscow agreed with his assessment. Russia conceded part of its territory to its key strategic partner. The latest Russian Foreign Policy doctrine released in 2012, declared that “Russia will expand the Russian-Chinese strategic partnership in all areas, based on shared basic fundamental approaches to key issues of world politics” (Ministry of Foreign Affairs of the Russian Federation, 2013, February 12). Former President Medvedev paid his first official visit to China. Vladimir Putin who was re-elected as President in last March visited China three weeks after his inauguration.

Russian-Chinese strategic partnership seems now to be stronger than ever before. But close friends and neighbors cannot afford to have territorial disputes. That is why a friendly atmosphere of contemporary Russian-Chinese relations contributed a lot to the border settlement.

Russia and Japan are far from genuine strategic partnership. A fundamental fact which influences Russian policy is that Japan is one of the closest military and political allies of the United States and heavily depends on Washington in international affairs. Most of the Russian politicians and experts believe that even if Moscow decided to hand over all four islands to Japan, this dramatic concession would not lead to a breakthrough or to a long-term genuine improvement of Russian-Japanese relations and thus would not bring any political benefit to Moscow (Streltsov, 2013, pp. 65-67). Japan, in its turn, is not prepared to compromise on the amount of its territorial claims and continues to demand all the four islands to be given back. On the contrary, China gave up much of its territorial claims to Russia and was satisfied with relatively small possessions in comparison with its initial demands.

In this political context, any formula of settling Russian-Japanese conflict still looks like a “zero sum game.” Many Russian experts and politicians suspect that new concessions in the border dispute could be perceived in Tokyo as a signal of

Moscow's political weakness, rather than a signal of its good will, and therefore will lead to Japan's even stronger political pressure rather than to a more conciliatory approach.

Contemporary Chinese and Japanese attitudes towards territorial disputes with their neighbors are also different. Twenty years ago China had territorial disputes with almost all its neighbors. Now the situation has been radically changed. Within the last two decades Beijing exerted much effort to settle border disputes not only with Russia, but with other neighbor states. China signed border agreements with the former Soviet republics of Kazakhstan, Kirgizia and Tadzhikistan, demarcated its land borders with Mongolia and Vietnam, worked on settling border issues with India and so on. Now China does not have serious land border disputes with its neighbors. On the other hand, Japan, being an island state, is involved in three territorial issues: with Russia over the Southern Kurils, with South Korea over Dokdo islands, and with China over the Senkaku/Diaoyu islands. In two instances, namely with South Korea and Russia, Japan does not physically control the territory, and is therefore referred to as a "challenger" state. But in the dispute with China, Japan controls the disputed territory and is said to be a "target" state.

A glance at a map is all it takes to realize how small and peripheral many of these disputed islands are. Dokdo and Diaoyu are particularly desolate and are both naturally uninhabitable. Some observers argue that these territories, particularly their surrounding waters are valuable both materially and strategically, but such claims are generally ill-founded: the fact is that by pursuing its territorial claims, a challenger state pays a much higher price in terms of opportunity costs, than it could gain by somehow winning control over the islands.

It is not a surprise that both China and South Korea sympathize with Russia in its territorial dispute with Japan. The reason behind it is obvious—in order to solve their border problems with Tokyo, they are not interested at all in Russian territorial concessions. An official newspaper "China daily" writes: "It is not wise for Tokyo to focus on the disputed islands if it wishes to improve ties with Moscow, which is unlikely to make concessions on this issue" (Cheng, 2011, February 11). Deputy chief of the Institute of Japan Studies at the Chinese Academy of Social Sciences Mr. Feng Zhaokui says that "Tokyo should not step up its rhetoric in the dispute if it aims to improve ties with Russia. "It will be hard to resolve the dispute in a short period of time. Instead, it will further stimulate nationalism in both nations, harming ties," Heng said (Xinyu, 2011, August 10). He also added: "If Tokyo sticks to the dispute, in which Russia is unlikely to make concessions, things will only turn worse" (Xinyu, 2011, August 10).

In Russia many experts believe that having border disputes with neighbors

is the Japanese way to strengthen national spirit as well as to gain instruments of political pressure on neighbor states.

## Perspectives of Russian-Japanese Territorial Settlement

Let's now try to assess how the experience of the Sino-Russian settlement could be applied to the Japanese-Russian debates. My main conclusion is that the two countries should work on strengthening mutual confidence and be prepared for mutual concessions.

A history of Japanese-Russian territorial dispute is first of all a history of missed opportunities (Togo, 2011, 2013). Many of them were missed in the era of perestroika when Gorbachev was in power in the Soviet Union. At that period China managed to get advantage of Gorbachev's "new political thinking" and concluded a first historic border agreement with the Soviet Union in 1991. Japan also had a chance for a border settlement, but missed it. Immediately before the collapse of the Soviet Union, when an economic situation in the USSR was desperate, there were hints that the Soviet leaders might cut a deal with the Japanese in return for a large sum of money to be given quickly and generously (Luzhkov & Titov, 2008, p. 188). In 1991 Gorbachev publically admitted after more than 30 year pause that the Soviet Union was prepared to cede two smaller islands on the bases of the Joint Declaration signed in 1956. However, Tokyo refused to discuss any possible scenario which could have included financial payments. The collapse of the Soviet Union in 1991 strengthened hopes in Tokyo that the dispute with Russia would be settled quickly. In the early 1990s when Russia also suffered from extremely bad economic crisis Russia's first President Yeltsin could have probably agreed with such a deal too. However, the Japanese again rejected to discuss any compromise including financial compensation and getting less than all the four disputed islands. By now the economic situation in Russia has been radically improved, and any financial deal is already beyond discussion.

There have been ups and downs in bilateral ties between Moscow and Tokyo in the 1990s, with a warm period of friendly relations between Boris Yeltsin and Japanese Prime Minister Ryutaro Hashimoto. In 1993 Boris Yeltsin agreed in writing that Kunashir and Iturup were also objects of disputes. The Japanese side, in its turn, also expressed more flexibility. In 1997-1998 Tokyo made it clear that it would be satisfied with acknowledgement of "Russian de facto occupation of the four islands" on the condition of Russian acknowledgement of "Japan's de jure sovereignty over the four islands." Another important Japan's concessions in the 1990<sup>th</sup> were its support of Russia's membership in G7 and APEC, as well as its

readiness for more substantial economic cooperation with Moscow.

When Russian and Japanese leaders had an informal summit in Krasnoyarsk in 1997, Yeltsin was considering the above mentioned acknowledgement proposal made by Prime Minister Ryutaro Hashimoto, but eventually declined it. He came to a conclusion that such a formula of territorial settlement would ultimately enforce Russia to transfer all the disputed islands to Japan sooner or later and found this perspective unacceptable.

When Vladimir Putin became President in 2000, he soon made it clear that a further demonstration of Tokyo's good will could get the negotiating process off the ground. He indicated that the offer of a return of the two southernmost islands was still on the table, but showed no signs of relinquishing the two larger islands. At the bilateral summit in Irkutsk in 2001 the Japanese side made a new concession and proposed parallel negotiations on Habomai and Shikotan on the one hand and Kunashir and Iturup on the other. The Russian side found this scheme worth discussing. However, this Japanese negotiation position soon collapsed due to domestic political turmoil, and the parallel negotiations formula was not realized.

In 2004 Russian Foreign Minister Sergei Lavrov again confirmed that Russia, as the legal successor of the Soviet Union, recognized the Soviet-Japanese Joint Declaration of 1956 and was ready to continue discussing the territorial dispute with Japan in accordance with the principles set forth in the declaration (Lukyanov, 2011, February 10). However, Japan decided that it could wait for Russia to make a more generous offer. But Moscow only suggested joint economic development of the islands and joint humanitarian projects, nothing more.

Since 2004 the situation around the disputed islands steadily became to change for the worse. In September, 2004, Japanese Prime Minister Junichiro Koizume took a boat trip to view "the Northern Territories." He said the islands were Japan's inherent territories and no peace treaty would be signed until they were returned. Addressing a rally of his supporters, he said: "There is no change in our policy that Russia should make it clear that the four islands belong to Japan." He also added: "We should not become impatient. We should not give up our hope" (*BBC News*, 2002, February 7). Russia reacted angrily to this visit, and its foreign ministry said it would complicate efforts to resolve the dispute. Moreover, in 2006, the Russian government backed a 17bn-ruble (US\$630 million) plan to develop the Kuril islands' chain, including improving energy and transport infrastructure and construction of a new all-weather airport (*Menas Borders*, 2011, November 1).

In 2006-2009 the Japanese side sent signals to Moscow that it could incline to the Russian-Chinese style of "cutting the territory into half" along the agreement reached on Tarabrin and Bolshoy Ussurisky. In December, 2006, foreign

minister Taro Aso told a parliamentary committee in Tokyo that Russia and Japan could end the dispute over the islands by “splitting” them. He proposed informally that Russia keep 75 percent of Iturup, the largest island, and that 25 percent of it and all of the other three islands should go to Japan. Later a Foreign Ministry spokesman told journalists that Mr. Aso was not making a formal proposal. In 2007-2008 Japanese senior officials made a few more hints that “islands’ splitting schemes” could be subjects of bargaining. However, Moscow did not show interest to the “cutting principle” with regard to Iturup and Kunashir.

After Dmitry Medvedev was elected President, Russia’s attitude towards the disputed islands became tougher, and this led to a few tough statements from Tokyo. In November, 2010 Mr. Medvedev paid the first visit by a Russian president to the disputed islands, sparking a diplomatic row with Japan. Medvedev met local residents in Kunashir and pledged more investment in the region. Japanese Prime Minister Naoto Kan said on this occasion: “Those four northern islands are part of our country’s territory, so the president’s visit is very regrettable (*Japan Probe*, 2010, November 3).” Separately, Foreign Minister Seiji Maehara warned that the visit would “hurt the feelings of the Japanese people” (*BBC News*, 2010, November 1). At a rally of Tokyo in February, 2011, to call for the return of “the Northern Territories,” Mr. Naoto Kan called Medvedev’s visit to Kunashir Island “an unforgivable outrage” (*Polit.ru.*, 2011, February 7). Russian foreign minister Sergei Lavrov condemned Japan’s reaction as “unacceptable.” He said: “It is our land and the Russian president visited Russian land” (*CNN*, 2010, November 2). In July, 2012, Medvedev in his new capacity of prime-minister paid his second visit to the disputed islands, and this again led to a new round of mutual critique and accusations.

Shinzo Abe’s visit to Moscow in April, 2013, which was the first visit of the Japanese Prime Minister to Russia in ten years, created new hope for improvement of Japanese-Russian relations. However, it did not lead to real progress in settling the territorial dispute. The two sides simply agreed to resume discussions on this issue which were frozen a few years before. At a final press conference President Putin made it clear that Russia would continue to build up infrastructure on the Southern Kurils, despite Tokyo’s protests. “We did not gather here to discuss a peace treaty ... But you can ask harsh, direct questions to which you will always receive equally harsh, direct answers”—he said to the Japanese reporter who raised the territorial issue (President of Russia website. 2013, April 29).

So we can conclude that the Russian approach towards the border dispute has become tougher than it used to be in the 1990s and even during the first Putin’s presidency. Instead of repeating its offer to hand over the two smaller islands to Japan, Russian top officials said for a few times that all the four islands are “Russian land.” These statements are a result of a deep disappointment in Moscow

and a reaction towards Japanese unwillingness to accept all conditions of the Joint Declaration of 1956. Japanese top officials, in their turn, repeated for a few times that Tokyo's claim over the all four disputed islands remained "absolutely unwavering" (*RIA Novosti*, 2011, February 12).

So, the situation around the islands has become tenser. A few last Japanese cabinets—predecessors of the current Shinzo Abe's government—escalated the rhetoric to almost Cold War levels. At the same time, they were reacting to Russia's more assertive stance toward the Southern Kuril Islands. However, the more forcefully Tokyo speaks out against visits of Russian top officials to the disputed islands, the stronger Moscow's desire to make its point.

Many experts in Russia believe that Japan's approach is a reflection of its concern and disturbance in the face of a rising China, an unpredictable North Korea, and Russia's greater involvement in Pacific affairs. At the same time they regard Tokyo's approach to the dispute as too tough and uncompromising, and believe that sooner or later the Japanese government will have to take a different track (Streltsov, 2013, pp. 63-67).

The territorial dispute has long soured relations between Tokyo and Moscow. It has caused great damage to both nations. It also asserts very detrimental effects on regional security and inter-state cooperation. Because of the dispute Russian-Japanese relations have been within the last seven years (up to the latest Shinzo Abe's visit to Moscow) at their lowest point since the fall of the Soviet Union. In those years the both countries stepped up their rhetoric. Chances of an early resolution to the dispute look very slim, and at present the positions of Russia and Japan seem to be irreconcilable. Moreover, since years pass, and the Second World War belongs to the more remote past, Russia becomes less interested in concluding a formal peace treaty with Japan.

## Conclusion

What has to be done? If we again look back at the Russian-Chinese border settlement, we will see that it was primarily a radical improvement of political, economic and humanitarian relations between the two nations that made the border compromise possible. A Japanese-Russian border settlement could not be a precondition, or prerequisite of general improvement of bilateral relations. On the contrary, it will be a final result of such improvement. First of all, a political atmosphere of Russian-Japanese relations should be changed for the better, and an economic cooperation should develop more rapidly. Otherwise the two countries will have no choice but to leave the territorial dispute to future generations.

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## Japan's Quest for Dokdo and the South Kurile Islands: A Sub-State/Non-State Actors Analysis

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### Abstract

This paper focuses on Japan's quest for two territories it lost after its defeat in the Asia-Pacific War: the South Kuriles (known as Northern Territories in Japan) Russia and Dokdo (Japanese name: Takeshima) currently administered by Russia and South Korea respectively. Focusing on the role of non-state actors, it explores the processes that led to the emergence of the two issues as the main building blocks in the discursive construction of Japan's identity. The paper specifically examines the role of sub-state actors such as municipalities and civil society in propelling the 'Northern Territories' and 'Takeshima' to the fore of Japan's identity discourse. It argues that while both of the final constructs are quite similar in terms of their historical narratives and symbolism, the processes that brought about the two constructs have some very important differences. This paper's main argument is that the interests of the sub-state actors had little in common with the final, national-level, identity constructs. The latter it is argued, have emerged as a result of a complex interaction between the sub-state/non-state actors and the ruling elites.

### Keywords

Dokdo, Northern Territories, territorial disputes, non-state actors, national identity

The historical arguments forwarded by Japan, Russia and South Korea to support their respective claims as well as Japan's negotiations with the two countries have been thoroughly discussed and analyzed by other scholars. Thus for lack of space I will refrain from repeating these facts and arguments (e.g. Stephan, 1975; Koo, 2009). For the purposes of this paper it suffices to note that in both cases, the roots of the disputes can be traced to the politics of early Cold War. Namely, increasingly complicated relations with the Soviet Union, the Korean War and other early Cold War events, resulted in the various bodies of the US government (the main architect of the peace process with the defeated Japan) issuing a number of contradictory statements and decrees in regards of the scope of Japan's territory, with the final draft of the Peace Treaty being rather brief and ambiguous. This combined with multiplicity of documents and statements that preceded the signing of the Treaty enabled the parties to the disputes to produce interpretations supportive of their respective claims to the islands in question (Hara, 2006).

This paper's main focus is on the various sub-state actors that participated in the domestic activism related to the two disputes, their interests and actions. In particular, it will focus on the role of local governments (*chihō jichitai*) and grassroots groups. In a nutshell, the paper argues that at the formative stages of their territorial dispute related activism, all of the actors have pursued their rational (maximization of material utilities) goals. These goals, I argue had little to do with nationalism but can be traced to other, more pragmatic interests of the actors. Appeals that referred to the nation, national territory and national rights were used by the actors mainly as a means to attract public and governmental attention to their plight. Over the years, however, the original economic interests behind territorial disputes related activism have disappeared while the disputes themselves got elevated to the level of national mission, intrinsically linked to Japan's nationalism.

## Grassroots Groups

### The Kuriles

The grassroots movement for the return of Soviet occupied territory sprung up on Hokkaido immediately after the completion of the Soviet occupation of the Kurile Islands in September 1945. The numerous groups consisted of former residents of the occupied territories and residents of Hokkaido proper with vested interests in the territories. Reflecting the background of their members, some of the groups demanded the return of all of the Kurile chain, others focused on the four islands known today as the 'Northern Territories,' some only on Habomai and Shikotan,

and some hoped for the return of southern Sakhalin as well (Kuroiwa, 2009). Besides the variety of the geographical scope of the territory, the various groups varied in terms of their interests related to the territory in question. Some were interested in the islands per se due to property rights. Other groups that included not only former residents but also fishermen from villages on Hokkaido or Northern Honshu had more interest in the fishing areas located in the waters adjacent to the islands (Kajiura, 1989). The analysis below will focus mainly on the movement formed in the city of Nemuro which is considered to be the spiritual origin of the irredentist cause.

The first appeal to reverse the Soviet occupation appeared almost immediately after its completion in the town of Nemuro. Prior to the Soviet occupation, Nemuro was the center of the economic zone that encompassed the islands and the eastern part of Hokkaido. It was also the place where most of the former residents of the disputed islands had settled after the Soviet occupation. The movement was led by Andō Ishisuke, the mayor of Nemuro. Andō and his followers formed an organization called the Commission to Petition for Returning Islands Attached to Hokkaido (*Hokkaidō fuzoku tōsho fukki konsei iinkai*, hereafter the Commission). Most initial members of the movement belonged either to the local administrative elite or held senior positions in the local fishing industry. All of them had clear personal stakes in the islands. Andō for example, owned a farm on Shikotan and was involved in running a crab cannery on Etorofu prior to the Soviet occupation (Kushiro Shimbunsha, 1988). Later however, probably as the result of the Soviet expulsions of the remaining residents from the islands, the movement expanded to include other members of the community.

Similarly to the Northern Territories related grassroots organizations today, the Commission activities involved submission of petitions to the occupation authorities and the Japanese government and organization of rallies. Like other civil society organizations that emerged in Japan in the aftermath of the defeat, they positioned themselves in opposition to the government and campaigned against the policy pursued by the authorities. Thus it is not surprising that some of the activists were occasionally detained and questioned by the US Occupation authorities (Kushiro Shimbunsha, 1988). As the main purpose of this activism was to improve the livelihoods of its members, the rationale behind their demands was dominantly economic. Overall, the ultimate purpose of this activism was the reinstatement of the pre-1945 local economic zone that included eastern Hokkaido and the southern part of the Kurile chain. The existence of this economic zone which had Nemuro as its center, was interrupted by the Soviet occupation as well as the imposition of the so-called 'MacArthur line' that severely restricted the areas where Japanese fishermen could engage in fishing activities. Thus the

early petitions submitted to the Occupation Authorities emphasized the economic importance of the waters adjacent to the Soviet occupied islands and urged the authorities to place them under the US occupation (Nemuro City Office, 1997).

Similarly to the later discourse on the Northern Territories, the petitions submitted by the Commission did champion the return of the four islands of Habomai, Shikotan, Kunashiri and Etorofu by appealing to historical facts and international justice. The petitions also argued for a deep national (*minzokuteki*) connection of the islands to the city of Nemuro. In their attempt to attract attention they positioned the territorial issue within the broader question of postwar national revival (Nemuro City Office, 1997). Importantly however, these arguments can be seen as means in mobilizing governmental and public support for the irredentist cause and providing it with broad legitimacy rather than ends in themselves. As the main parts of the petitions as well as the internal debates of the Commission show, the return of the islands was seen as a matter of economic life or death for the city of Nemuro and hence carried a local and pragmatic agenda (Nemuro City Office, 1997).

To summarize the information above, the movement for the return of the Soviet occupied islands in Nemuro was propelled by the severe aggravation of the local economy caused by the disruption in the economic zone of eastern Hokkaido. Thus it can be argued that the perceived value of the islands was dominantly economic and appeals to history and references to the nation in the early discourse were made based on strategic calculations in an attempt to draw a broad public and official support to their cause.

The Commission was not the only citizens group that sought the return of the Soviet occupied islands. Other groups formed by the former residents and local fishermen also pursued a pragmatic agenda that reflected their economic interests and the feasibility of their demands based on their interpretation of broader political issues that shaped Japan-USSR relations. In 1953, another significant grassroots group was formed in Nemuro. The group was called the 'Nemuro Area Peace Preservation Economic Revival Alliance' (*Nemuro chihō heiwa iji keizai fukkō dōmei*) and its members were mainly local fishermen and common residents. Headed by Togashi Mamoru who later became one of the local leaders of the left leaning civil movement protesting US war in Vietnam and Japan's complicity in it (Honda, 2006), this Economic Revival Alliance championed the return of only two islands, perceived as the most pragmatic solution to the territorial dispute and subsequent alleviation of local fishermen livelihoods (Matsuura, 1954).

### Dokdo

The first organized citizen's group devoted to the 'return of Takeshima' emerged

only in 2004 and will be discussed in the final section of this article. However civil activism did exist in Shimane Prefecture starting from the early 1950s. Before proceeding further with analyzing the causes of this activism, it is important to briefly outline the international situation in the early 1950s in relation to Dokdo.

The Dokdo islets were incorporated into Japan's Shimane Prefecture in 1905. The rocks did not have any permanent residents but administratively they became part of Goka village located on the Shimane Prefecture's Oki Island. After Japan's defeat, the above-mentioned MacArthur Line imposed by the Occupation Authorities precluded Japanese vessels from engaging in fishing activities in waters adjacent to the islets. In July 1952 due to its location and lack of permanent residents, the islets were designated by the US-Japan Joint Commission in charge of implementing the security arrangements as a special area used as bombing target practice area for US aircrafts engaged in the Korean War. Thus, while certain individual fishermen conducted trips to Dokdo and adjacent waters, officially, Japanese fishing and other vessels were prohibited from approaching the islets until March 1953. However in January 1952, South Korea's Syngman Rhee government issued a 'Presidential Proclamation of Sovereignty over the Adjacent Seas' under which Korea declared national sovereignty over the seas within the designated line, known as the Peace Line or Rhee Line. The purpose of the line was to replace the Mac Arthur Line and establish Korean sovereignty over what the Rhee government saw as Korean territorial waters. This move by the Korean government significantly increased the tensions in Japan's relations with its neighbor, led to heated diplomatic exchanges, seizures of Japanese fishing vessels and clashes between Japanese and Korean fishermen.

Already in the summer of 1951, however, representatives of the Oki fishing unions submitted two petitions, one to the Prefectural Assembly and another to the central government. Both of the petitions argued that resulting from the massive repatriation of soldiers and civilians to Japan's mainland from former colonies that followed Japan's defeat, Oki has experienced a sudden increase in overall population and in the number of fishermen (Oki Fishing Union, 1951). This, the petitions argued, brought the urgent need to develop new fishing areas in order to be able to sustain the economy of the island that was completely dependent on maritime products. The petitions argued that the MacArthur Line restrictions aggravated the economic situation on the island and asked for the 'removal of restrictions on fishing activities in waters surrounding Takeshima' (Oki Fishing Union, 1951). The conclusion of the San Francisco Treaty in September of the same year and the subsequent abolition of the MacArthur Line were met with high expectations by the local residents and manifested in a number of festive activities celebrating the expected 'resumption of fishing on Takeshima' (Sugihara, 2011).

Thus at a first glance it may seem that the plight of Oki's fishermen was identical to that of the Nemuro area activists who sought to reestablish the local economic zone interrupted by Japan's defeat and the subsequent occupation. These parallels between the two movements can indeed be drawn, however with an important caveat. Namely, in the case of Dokdo, the Oki fishermen's view of the islets as their rightful fishing zone was not only a result from prolonged utilization of the islands but, in a somewhat paradoxical fashion, was also facilitated by the defeat, the occupation and related reforms.

This paradox can be better understood if we briefly examine the economic activities on and around the islets during the pre-1945 years. In early 20<sup>th</sup> century it was an important ground for seal hunting and to a lesser extent for abalone gathering. These two activities were monopolized by the Takeshima Fishing and Hunting Company established in 1905 and the successors of its three original owners. In 1908 the extent of Company's monopoly was extended to include fishing rights to adjacent waters. The company employed Oki locals for seal hunting and Korean female divers for abalone gathering. In the late 1920s, these exclusive rights were leased to a Japanese colonial entrepreneur based on Korean Ulleung Island who continued to monopolize the abalone gathering and fishing activities on and around Dokdo until Japan's defeat and his return to Japan proper (Hayamizu, 1954). In 1953, in line with the broad reforms initiated by the Occupation Authorities, Shimane Prefecture abolished this monopoly and granted the rights to 'fishing' (actually abalone, sea urchin and seaweed gathering and octopus catching) on and around the islets to Oki Fishing Union. Thus the celebrations of the Peace Treaty on Oki and the petitions were spurred not only by the memory of the colonial economic subzone that included Oki, Dokdo and Ulleung Island and where members of Shimane elite controlled the economic activities but also by the reforms initiated by the Occupation Authorities that enabled Oki fishermen to perceive the islets as their collective fishing grounds.

Oki fishing unions and the municipal authorities continued their petitioning activities in the 1950s and 1960s. Overall the arguments and the perceptions of the territorial issue were similar to those espoused by the prefectural authorities.

## Regional Governments

### Hokkaido Prefecture and the 'Northern Territories'

In 1950, the Hokkaido prefectural government under the leadership of the Socialist Governor Tanaka Toshifumi fully embraced the irredentist cause. Hokkaido Prefectural government under the leadership of Tanaka played an important role in

establishing another major non-governmental organization called the Alliance for Petitioning the Return of the Chishima and the Habomai islands (*Chishima oyobi Habomai henkan konsei dōmei*) (hereafter the Alliance). In an attempt to establish it as representing Hokkaido as a whole, the board of directors included the mayors of all of the main cities and towns in the prefecture. Its funding was coming mainly from the prefectural government. The active involvement of the prefectural government in the 'Northern Territories' cause and the formation of the Alliance which was dependent on the prefecture for funding signified the beginning of a process of a gradual appropriation of the cause and its institutionalization on the prefectural level.

The main explicit reason that drove Tanaka's administration to engage in the territorial issue was the fear that despite the heavy investment of resources into the development of the Kuriles since the 19<sup>th</sup> century, the central government may give up the Soviet occupied territories during the peace settlement (Tanaka, 1950). Tanaka's prior career as a public servant at the Department of Forest Management of the Hokkaido Prefecture as well as his vision for an overall development of Hokkaido also probably played an important role in arousing his interest in the islands that included the timber rich Kunashiri. At the same time however, it is important to remember that in 1950, the year the prefectural government embarked on its active participation in the 'Northern Territories' movement, Tanaka's administration engaged in a fierce conflict with the central government over the establishment of the Hokkaido Development Agency within the Cabinet Office. The rationale behind the creation of this administrative body, whose responsibilities overlap with those of the prefectural administration, was generally understood as a conservative attempt to wrestle control over Hokkaido from the influence of the Socialists and fiercely contested by Tanaka (Hanno, 2003). Thus, the irredentist cause provided another platform for Tanaka to criticize the central government and to enhance his own legitimacy in the eyes of Hokkaido residents. In line with the general focus on economic development espoused by Tanaka, his rationale for championing the return of the islands was similar to that of the grassroots organizations. Namely, the islands were argued to be the main source of protein for Japan and constituting an integral part of Hokkaido economic zone (Tanaka, 1950). Unlike the grassroots organizations that pursued an improvement of their livelihoods however, the struggle with the central government played an important role in shaping the prefectural agenda and the agenda of its affiliate, the Alliance for Petitioning the Return of the Chishima and the Habomai islands. Thus, in opposition to PM Yoshida's government which, however reluctantly, renounced Japan's rights to the Kuriles at the San-Francisco Peace Conference, Tanaka and the Alliance followed the position of Japan's Socialist Party and advocated the re-

turn of all of the Kurile chain as well as the Shikotan and the Habomais.

Thus, in the early 1950s the Hokkaido prefectural government went against the conservative government's policy and advocated the return of all of the Kuriles, Habomais and the Shikotan. Tanaka admitted the renouncement of Japan's rights to all of the Kuriles in the Peace Treaty and at the same time argued that this action did not reflect the wish of the people of Japan (Kuwabara, 1965). By following this line of argument the Alliance and Tanaka's administration engaged in an implicit critique of Yoshida's government for its lack of adherence to the democratic principles. Just like when the conservative government brought the struggle with the left to Hokkaido by establishing the Development Agency, Tanaka and his affiliates utilized the territorial dispute in their attempt to bring their struggle with the central government to Tokyo. Thus for example, a mass rally sponsored by the Hokkaido Governor, Hokkaido Assembly and the Alliance was held in Tokyo on 19<sup>th</sup> of July, 1953. The declaration issued by the rally contested the secession of the Kuriles in San-Francisco. Appealing to the 'instinctive desire' shared by all humans to protect a territory which was developed by shedding 'sweat and blood,' it called for the correction of this injustice and demanded the return of all of the Kuriles as well as the Habomais and Shikotan (Pamphlet, 1953). Bearing in mind the importance of the broader rivalry with the conservatives dominated center, it can be argued that despite the nationalistic rhetoric, the symbolic value of the islands for Tanaka's Hokkaido administration was mainly in their delegitimizing effect on the Yoshida led central government.

During the 1955-1956 peace treaty negotiations between Japan and the Soviet Union, many on Hokkaido believed that it would result in a return of at least parts of the occupied territories. In February 1956, taking advantage of this widely spread belief the prefectural administration established a new department named Headquarters for Countermeasures Related to Reversion of Territory and Fisheries within its General Affairs Division. The official purpose of this department was to collect data and to plan the reconstruction and development of the territories that will be returned by the Soviets but also to engage in 'nurturing' and 'guiding' related grassroots organizations (Hokkaido Prefecture Website, 2013). Thus this further institutionalization of the territorial cause on the prefectural level can be seen as an attempt to capitalize on the possible return of the two islands and to consolidate the local public opinion under the banner of 'return of all of the Kuriles.' Three years later, however, the Socialist candidate lost the gubernatorial elections and a former LDP Diet member Machimura Kingo, became the new Governor of Hokkaido. This meant that from now onwards, the prefectural policy on the territories will be in line with that of the state and that the various institutions established under Tanaka will now serve the policy of the central government.

### Shimane Prefecture and Dokdo

Shimane Prefecture's Dokdo related activism started in early 1950s and was spurred by petitions that emerged from Oki. On the 10<sup>th</sup> of March, 1953 a week prior to lifting of the 'special area' measures that restricted Japanese access to the islets, the Shimane Prefectural Assembly adopted a resolution on the issue. The unanimously adopted a resolution that argued that the islets are an integral part of Oki Island's Goka village administrative area and are in need of further development under the forthcoming Remote Islands Development Law. It called on the central government to 'recognize the importance of Takeshima as a fishing area and to take all possible measures to protect it' (Shimane Prefectural Assembly, 1958).

Unlike the case of Hokkaido Prefecture, the confrontation with Tokyo was not among one of the factors that spurred Shimane Prefecture's engagement with the territorial issue. There are no reasons to doubt the sincerity of the prefectural authorities' belief that the islets belong to Japan and the ownership of the rocks had little to do with Japan's colonial rule over Korea. Furthermore, Korean seizures of Japanese fishing vessels and the detainments of fishermen further prompted the prefectural authorities to engage the issue and appeal to the state to take measures. To a certain extent the importance attached to the uninhabited rocks by the prefectural authorities can be located within the context of the colonial rule and its interruption. Namely, as the result of the defeat and the loss of colonies Japanese fishermen lost access to fishing grounds in waters adjacent to the Korean Peninsula. Along with the already mentioned sudden increase in population and natural calamities in preceding years (Tamura, 1955) this was one of the factors behind Shimane Prefecture's sense of urgency to establish its rights to Dokdo and develop new fishing grounds in adjacent waters (Shimane Prefecture, 1965). Thus the initial attention paid to the issue by the prefecture stemmed directly from the collapse of the Japanese Empire.

From the early 1950s onwards, the Shimane Prefecture continuously lobbied for the government to establish territorial rights over Dokdo and to enable safe fishing conditions. During the final round of normalization negotiations between Japan and Korea in the early 1960s, the Shimane Prefectural authorities vehemently opposed the idea of joint ownership over the islets floated by one of the LDP heavyweights (Asahi Shimbun, 1963). In the same year local activists proposed to establish an Alliance for Securing the Territorial Rights to Takeshima (*takeshima ryōdoken kakuho kisei dōmei*). The purpose of the organization, which in the end was not created, was to act as an advocacy agent aimed at mobilizing residents of Shimane but also the broad public in Japan and exercise direct and indirect pressure on the government 'not to abandon territorial rights to Takeshima' in the process of negotiating with Korea (Shimane Prefectural Assembly, 1965).

After the conclusion of the Japan-Korea Treaty on Basic Relations which normalized the relations between the two countries and shelved the territorial issue, Shimane prefectural authorities continued their petitioning activities. In 1977 after over a decade of relative calm, the tensions around the territorial issue heightened again. Following the US and Soviet declarations of 200 miles exclusive fishery zones Japan and Korea declared 12 miles territorial waters and 200 miles of exclusive fishery zones. In this context the question of territorial rights to the islets surfaced again in the domestic debates in both counties and resulted in a number of heated exchanges.

During this period, the Shimane Prefecture made a number of attempts to revive the territorial issue and apply pressure on the government to bring it back to negotiations table with Korea. In April 1979, after over a quarter of a century of petitioning the central government to resolve the territorial issue, the Shimane Prefecture established an organization called the ‘Shimane Prefectural Council for Facilitating the Solution of Takeshima Problem.’ Its purpose was to coordinate the activities of the various bodies involved such as the prefecture, municipal authorities and fishing unions, and to engage in petitioning and enlightenment activities. This was the starting point for educational activities conducted by the prefecture. These activities that included publication of pamphlets and construction of road signs that called for the ‘return of Takeshima,’ were directed at the prefectural residents with the purpose of raising residents’ awareness and ‘deepening their understanding of the Takeshima problem’ (Shimane Prefecture, 1983).

What accounts for this escalation in the prefectural government’s activities and how can we explain their nature? One could argue that the damage suffered by Shimane’s fishermen as a result of the Korean policy of excluding them from the radius of 12 miles zone around the islets enhanced the sense of urgency among the prefectural authorities. In June 1978, the prefecture published a report that estimated the losses from the exclusion of Japanese fishermen from waters around the islets at three hundred and twenty million yen (cited in Fukuhara, 2012).

However, statistical data shows that during the late 1970s the actual catch did not decrease and for some kinds of fish and squid it actually increased in 1979 and 1980 (Chugoku Regional Agricultural Administration Office, 1984). It could be argued that regardless of the actual damage to Shimane’s fishing industry, simply a perception of damage drove the prefectural government towards intensification of its Dokdo related activities. To a certain extent, the perception of damage probably did play a certain role. This however does not explain the nature of the activities initiated by the prefectural authorities. In other words, one could expect enhanced demands from the central government but what is the rationale behind focusing on educating the prefectural residents about the territorial issue?

A different light can be shed on this issue if we examine the nature of the Shimane Prefectural authorities' relations with the central government in the late 1970s.

In 1972, newly appointed Prime-Minister Tanaka Kakuei published his famous 'Remodeling of Japan's Archipelago' plan which became the backbone of governmental policy under his leadership. It envisioned industrialization and economic alleviation of underdeveloped areas of Japan through improved infrastructure and connectivity. Shimane was one of these areas but the actual benefits it gained from the new plan were rather modest. One of the most important parts of the 'remodeling' plan was the construction of the San'in Shinkansen bullet train line that was supposed to connect Shimane's Matsue and other prefectures in the San'in area with Osaka. The plan however was put on hold and did not materialize.

Thus it can be argued that the territorial issue was seen as an important channel to express prefectural discontent with the overall disparity in the execution of the 'remodeling' plan and continuous economic disparity between Shimane and other regions, and simultaneously to draw the central government's attention to the economic plight of the prefecture. Furthermore, it is important to remember that from 1975 till 1987, the governor of Shimane Prefecture was Tsunematsu Seiji, a former economist and one of the most forceful advocates of domestic decentralization, arguing that regional governments should be given more independence that should eventually lead to establishing a federal system in Japan. Thus during Tsunematsu's governance, Shimane Prefecture was an integral part of 'progressive municipalities' (*kakushin jichitai*) who opposed the LDP led central government of a wide range of domestic issues. In this context, intensification in prefectural activism related to 'Takeshima' can be seen as an integral part of Tsunematsu led Shimane in legitimizing the claims about the ineffectiveness of central government and provide further support for federalism as an ideal political structure for Japan. Thus, in mid 1970s 'Takeshima' assumed a similar role in the Shimane Prefecture's politics as the 'Northern Territories' have played in Hokkaido Prefecture's confrontation with Tokyo two decades earlier.

Between the mid-1980s and mid-1990s, the Shimane Prefecture continued to submit its annual petitions to the central government but otherwise the scope of prefectural activities related to the territorial issue was rather limited. The issue flared up again in the mid 1990s, when both Korea and Japan ratified the United Nation's Convention of the Law of the Seas (UNCLOS) and engaged in prolonged and difficult negotiations aimed at amending the fishing treaty without resolving the territorial dispute. In 2005, the Shimane Prefecture passed a prefectural ordinance that designated the 22<sup>nd</sup> of February, the day the islets were officially incorporated into the Shimane Prefecture in 1905, as the prefectural Takeshima Day. The fierce reaction from Korean authorities and public as well as the subsequent

use of the territorial issue by domestic politicians swiftly elevated 'Takeshima' from virtual oblivion to one of the most important issues in Japan's debates on South Korea. Thus for example a search on one of Japan's magazine articles searching engines, *Ōya Bunko*, gives only 65 hits for a search with 'Takeshima' and 'problem' keywords for the years 1951-2003 and 539 hits for a similar search conducted for the years 2004-2012. This intense media attention played an important role in the public's interest of the issues. For example, in a poll conducted by *Yomiuri Shim-bun* in 2006, 59% of the respondents said that they are interested in the 'Takeshima problem'-this while four years earlier only 13% believed that the territorial dispute is an important problem in bilateral relations (Nakajima, 2007, p. 23). There is little doubt that intensification in Japan's territorial dispute with China over the Senkaku/Diyaoyu islands played an important role in drawing public attention to Dokdo. At the same time the role of the Shimane Prefecture's 'Takeshima Day' ordinance should not be forgotten. Thus, while not ignoring other factors, we can plausibly argue that after over half-century of activism the Shimane Prefecture managed to elevate 'Takeshima' from obscurity to the fore of the public discourse.

## 'Nationalization' of Territorial Disputes

### Northern Territories

'Nationalization' meaning the incorporation of the 'Northern Territories' dispute into national identity discourse, was achieved through intentional efforts of the LDP led government in a process that started in the late 1960s. In the 1950s and 1960s, both the Hokkaido based grassroots organizations and the Hokkaido Prefectural government failed in their attempts to spark a nationwide interest in the 'Northern Territories' issue and to draw attention to the plight of former residents and others affected by the dispute. In the mid 1960s, even on Hokkaido the interest in the territorial dispute was minimal. For example, a public opinion poll conducted on Hokkaido in 1966 shows that around 40% of the respondents did not know the geographical scope of 'Northern Territories,' more than half of the respondents did not know the historical justification for Japan's claims to the islands and less than 10% chose the 'Northern Territories' as an issue of interest among other international issues directly or indirectly related to Japan (Hoppō-ryōdo fukki kisei dōmei, 1966).

It must be noted that the government did not completely ignore the plight of the former residents and fishermen and did take a number of measures aimed at addressing their material needs in the 1950s and early 1960s. Government's interest in the dispute however, and in particular its domestic aspects increased

dramatically in the late 1960s. In 1969, the Association for Countermeasures related to the Northern Territories (*hoppōryōdo mondai taisaku kyōkai*), a new quasi-governmental agency in charge of the domestic activities related to the 'Northern Territories' was established. One of the main purposes of this organization has been to enhance and spread the knowledge of the territorial issue (meaning Japan's official interpretations of the history of the dispute and various documents that justify its claims) among the Japanese people.

There is no definite answer regarding the factors that caused the LDP led government to change its policy towards the fully fledged embracement and support of the 'Northern Territories' cause. The timing of this policy change however suggests that domestic political calculations played an important if not a decisive role in bringing it about. Namely, it has been argued that the rise in the LDP's interest in the 'Northern Territories' was directly related to Japan-US negotiations regarding the reversion of Okinawa. Japan's main opposition party, the Socialist Party of Japan, opposed the reversion of Okinawa with American bases and the ruling LDP was hoping to divert public attention away from Okinawa by intensifying its 'Northern Territories' related domestic campaign (Ikeda, 2003). The symbolic meaning of the 'Northern Territories' resided mainly in the association of the islets with the Soviet Union and by default with the domestic progressive forces that included the socialists and the communists. Importantly, in pursuing its goal of consolidating the nation under the 'Northern Territories' banner, the government embraced the terminology and the techniques deployed by the grassroots organizations. Government sponsored publications on the issue adopted such strongly nationalistic terms such as 'our inherent territory' and 'land inherited from our ancestors' (e.g. MOFA, 1978) that were initially introduced by the Hokkaido based movement. Furthermore, the enlightenment strategies such as distributing pamphlets, organizing 'people's rallies' and public events became an integral part of the government led campaign. The drive to 'enlighten' the public quickly spread in the society. Newspapers, magazines and even department stores quickly became mouthpieces of the 'Northern Territories' cause (Stephan, 1974).

Along with the process of nationalization of the cause, the domestic discourse on the lost territories and related events gradually became homogenized. In a somewhat ironic fashion, the institutionalization of the 'Northern Territories' activities on Hokkaido initiated by Governor Tanaka in the early 1950s as a tool of struggle with the central government came to serve the interests of his foes after the conservative victory in the 1959 gubernatorial elections. Along with the general demise in public activism in Japan, the abovementioned 'Nemuro Area Peace Preservation Economic Revival Alliance' which belonged to the progressive grassroots activism and received no support from the government, faded into

oblivion. Those organizations that survived till the present day are fully dependent on governmental assistance. The institutionalization of the activism both on the grassroots and prefectural levels contributes to the continuous reproduction of the illusion of a synergetic relationship among the central government, Hokkaido prefectural administration and the people. This creates a certain illusion of the governmental position on the islands as being dependent on public opinion or of a certain interest group. Today however the non-compromising stance can hardly be traced to any particular interests.

### Dokdo

The process of nationalization of ‘Takeshima’ is strikingly different from the one described above. While nationalization of ‘Northern Territories’ can be attributed to the efforts of the LDP pursuing their domestic political goals, the emergence of ‘Takeshima’ as one of the central points of reference in Japan’s domestic discourse on South Korea can be traced to the collapse of the LDP’s internal control mechanisms. Before proceeding further however it is important to outline the LDP’s long standing position on Dokdo.

In the early 1950s, the Japanese government vehemently protested the Korean de facto control of the islets and the territorial issue was one of the main stumbling stones in bilateral normalization negotiations. The situation however changed after the 1961 *coup d’etat* that brought Park Chung Hee to power. Park viewed Japan’s financial assistance as vital to Korean development and he embarked on developing closer ties with Japan soon after seizing power. On the Japanese side, the rapprochement was driven by the so-called ‘Korean lobby’-loose association of business executives and strongly anti-communist conservative politicians that formed around one of the LDP bosses, Kishi Nobusuke (Roh, 2008).

The negotiations eventually led to the conclusion of the Japan-Korea Treaty on Basic Relations that normalized the relations between the two neighbors and a fishing agreement that enabled the two governments to shelve the question of the territorial rights to Dokdo. According to Daniel Roh (2008), the two governments reached a secret pact according to which status quo will be maintained and domestically both sides will continue to make claims of sovereignty but will not contest the other side’s claims internationally.

Roh does not provide any hard evidence in his book but Japan/LDP policy related to the dispute indirectly supports his argument. Throughout the years, references to the dispute in governmental and party publications were kept to a minimum or were simply omitted (e.g. Nanpō dōhō engokai, 1965). In the Diet interpolations in 1964 and 1965 that preceded the conclusion of the Basic Relations Treaty none of the LDP MPs, including those elected by the Shimane constit-

uency, raised the 'Takeshima question.' With only a limited number of exceptions, this policy of keeping the territorial issue on the back burner of domestic politics was maintained by the LDP throughout its years in power. This continued regardless of the changes in power relations among various fractions the LDP.

What enabled then Shimane Prefectural Assembly dominated by the LDP members to pass an ordinance that went against the will of LDP heavyweights? Arguably, the political mechanisms that enabled the passage of the ordinance can be attributed to the collapse of the LDP's internal power relations that resulted from PM Koizumi's reforms.

Basically, until the election of Koizumi Junichiro as the chairman of the LDP in 2001, the power within the LDP rested with the Keiseikai faction. Keiseikai to which many members of the abovementioned 'Korean lobby' belonged, perceived good relations with South Korea as more important than the pursuit of the Dokdo islets. Thus it tried to keep the latter on the backburner of domestic politics and to maintain the status quo. This can be witnessed in the policies pursued by the faction's leaders. For example, its leader in the late 1980s and early 1990s was Takeshita Noboru, a native of and elected from Shimane. He was also one of the heavyweights in the so-called 'Korean lobby,' which attributed more importance to maintaining good relations with Korea over demanding the return of the uninhabited rocks. Takeshita's reluctance to engage in the territorial dispute and to follow the arrangements of the 'secret pact' discussed above can be seen in his attitude to the dispute in the Diet. During the four decades of his political carrier he referred to the dispute only twice and very briefly during the parliamentary interpolations-once as the Minister of Finance during discussions of the fishing issues between Japan and USSR in 1987 and once during his questioning over the Sagawa Kyubin bribing incident in 1992 (Diet Interpolations at National Diet Library, 1987 and 1992).

There is no direct evidence that *Keiseikai* leaders directly obstructed any Dokdo related initiatives of the Shimane prefectural assembly members prior to 2004. At the same time it can be argued that the emphasis on solidarity and strict top-down relations that characterized *Keiseikai* (Ferkov, 1997) as well as the importance of the party in mobilizing funding for politicians made an emergence of any local level initiative that went against its policy structurally impossible.

The rise of Koizumi Junichiro to chairmanship of the LDP and subsequently to premiership in 2001 however dealt an invincible blow to the internal governance of the LDP which was still dominated by the successors of *Keiseikai*. Besides coming from a rival faction (*Seiwakai*/Fukuda faction), Koizumi saw it as his mission to destroy the LDP which for him was synonymous with the dominance of *Keiseikai*. The concentration of policy-making in the Prime-Minister's Office (as opposed to the previous center of gravity that rested with the faction's leaders)

and the split of the old LDP during the debates over privatization of the postal service that culminated in the ‘postal elections’ of 2005 had probably its merits for Japan’s politics but from the perspective of intra-party governance it eroded if not completely destroyed the existing mechanisms. Arguably this collapse of the intra-party governance can be seen as the key factor that enabled a group of Shimane prefectural lawmakers dominated by LDP members to pass an ordinance that went against the existing party policy and despite strong suggestions not to enact it that were given by a number of powerful party members.

The passage of the ordinance was mainly an act of rebellion against the central government and thus its broad implications were not anticipated by the prefectural assembly members that initiated the move (Nakai, 2012). The Korean side fiercely reacted to the ordinance, perceiving it as having central government backing. The exchange of rhetoric that followed, the symbolic gestures such as lifting the ban on domestic tourism to the islets by the Korean authorities and symbolic retaliations, the possibility of clash between the two countries’ navies after Japan’s decision to send survey ships in 2006 as well as the political usage of the territorial issue by both Japanese and Korean politicians, attracted intense attention from the media and propelled ‘Takeshima’ to the center of Japan’s debates on Korea.

Nationalization of ‘Takeshima’ was further enhanced by a newly established citizen’s group, called the ‘Group to Protect Prefectural Territory-Takeshima’ (*kendo takeshima o mamoru kai*). The Matsue (Shimane’s administrative center) based group was established in May 2004, in the midst of exchanges between the Prefecture and the central government regarding the enactment of ‘Takeshima Day.’ The core of the group is comprised of local activists that initially became acquainted when collecting signatures for petitions related to people abducted by North Korea and it is headed by one of the local Shinto priests. The group is the first and only grassroots organization dedicated to the ‘return of Takeshima.’<sup>1</sup> Since the rise in the domestic interest in the issue, this group which according to their own estimates, has about 1000 supporters nationwide, has played an important role in organizing related events and attracting local and national level politicians to participate in these events.<sup>2</sup> Initially largely unnoted, over the years the activities of the Group came to be covered by major newspapers and thus its existence became quite important in creating the semblance of a widespread citizens’ interest in Dokdo.

1 For the purposes of this paper, I exclude the ultra right-wing organizations (*uyoku*) that have continuously used all of the issues (including territorial disputes) that exist between Japan and its neighbors when advocating their militant agenda.

2 Interview with Kajitani Mariko, Secretary General of ‘Group to Protect Prefectural Territory-Takeshima’ conducted on the 16<sup>th</sup> of December, 2012 Matsue, Shimane Prefecture

## Conclusion

Today both 'Northern Territories' and 'Takeshima' function as important symbols in the construction of Japan's national identity. Through interpretations of the history of Japan's possession of the islands and the history of the dispute, personal stories and depictions of the actions of the Korean and Soviet/Russian 'others,' they unite the central government, the prefectures and the people of Japan in a national story of victimhood.

Focusing on the non-state and sub-state actors, this paper has argued that despite the similarity of the final discursive products, the processes that led to their emergence were fundamentally different in the two cases. Furthermore, it showed that during the formative years of the disputes, the non-state and sub-state were driven either by material or political interests but not by nationalism or other ideational factors. Over the years however both of the disputes turned into important symbols in Japan's nationalism. The processes that enabled this transformation however have been fundamentally different in the two cases. In the case of the 'Northern Territories,' the 'nationalization' of the dispute took place as part of an intentional policy of the LDP aimed at diverting Japanese national sentiments away from the US and its continuous military dominance on Okinawa towards the Soviet Union. In the process however, the LDP led government adopted the strategies originally developed by the grassroots organizations and Hokkaido prefectural authorities. Furthermore, the existence of these organizations and their selective nurturing enabled the prevalence of the semblance of a national mission with both the government and the people working towards achieving one goal. Contrastingly, in the case of Dokdo, the 'nationalization' of the dispute occurred against the intentions of the LDP and can be attributed to the collapse in its internal governance that resulted from Koizumi's reforms.

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## REVIEW

**A Genealogy of Territory à la Foucault**

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Elden, Stuart (2013). *The birth of territory*. Chicago, IL: University of Chicago Press

Territorial disputes exist in all international regions. In East Asia, for instance, territorial disputes function as an obstacle that slows down deeper regional integration and greater prosperity. Moreover, territorial disputes even survive economic integration and cooperation promoted by free trade agreements. There still are at least five unsolved territorial disputes between the United States and Canada, who arguably share the most peaceful, demilitarized boundary in the world.

Despite the continued relevance and urgency of territorial disputes, territory as a concept *per se* largely remains undisputed and unquestioned unlike other concepts of international relations, most notably the state and sovereignty. This is a puzzle considering that the state, sovereignty, and territory are a conceptual trinity: the state exercises sovereignty over territory.

Such observation is the motivation behind *The Birth of Territory*, which was awarded the Association of American Geographers Meridian Book Award for Outstanding Scholarly Work in Geography in March 2014. The author, Stuart Elden, is a Professor of Political Theory and Geography at the University of Warwick. However, the book, a remarkable feat of a transdisciplinary approach, defies the academic division of labor. Although politics and geography are central to the book's narrative, texts that are analyzed in their time and space contexts are drawn from philosophy, history, law, religion, and literature.

## A Challenge to the Anomaly of Relative Inattention to Territory

The book cites the definition of the state by Max Weber (1864-1920) to support the argument that the neglect of territory is an anomaly: “The state is that human community, which within a certain area or territory has a monopoly of legitimate physical violence.” According to the author, eliminating the anomaly calls for a challenge to the view that a territory is “self-evident in meaning, and that its particular manifestations ... can be studied without theoretical reflection on *territory* itself.” Thus, the book purports to make us realize that territory—commonly understood since the late 17<sup>th</sup> century as “a bounded space under the control of a group of people, with fixed boundaries, exclusive internal sovereignty, and equal external status”—should not be taken for granted. Readers may even conclude that the book calls for a transformation of territory into a contested concept that will trigger productive debates in relevant fields.

The book cites the 1659 Treaty of the Pyrenees between Spain and France as the origin of the “first official boundary in the modern sense.” A boundary is therefore relatively young; a territory is much older. The roots of what a territory is began to grow with the beginning of written history. Applying a method inspired by “genealogical account” developed by Michel Foucault (1926-1984), the book makes a chronological, 10-chapter presentation on the evolution of the relationship between territory—and their cognates as well as related terms—and politics in the West from the Greco-Roman era to the 17<sup>th</sup> century.

## A Conceptual History of the West with a Focus on Territory

The book serves as a useful compendium of individuals and ideas that have shaped the evolution of what a territory is. In the index, we find 366 proper nouns—mostly historians, poets, theologians, secular thinkers, and people of action—and 35 common nouns, which are close and distant relatives of territory.

It is with the common nouns (place, boundary, *polis*, *khora*, *imperium*, *territorium*, etc.) and the proper nouns (Homer, Shakespeare, Leibniz, the Donation of Constantine, etc.) that Elden writes *The Birth of Territory*, which can be described as “a conceptual history of the West with a focus on territory.” The logic of choosing history as the structure that binds texts from different disciplinary sources together is provided by the author as the following: “[T]erritory is a word, a concept, and a practice, and the relations between these can only be grasped historically.”

A remarkable contribution of the book consists in highlighting the importance of relatively unknown thinkers and periods. According to Elden, the Italian

jurists Bartolus of Sassoferrato (1313-1357) and Baldus of Ubaldis (1327-1400) played critical roles for the emergence of the modern understanding of territory as they “crucially made the argument that *territorium* and jurisdiction went together.” The book also relocates the Middle Ages to its proper status in the history of territory. An extensive treatment of the period is made in Chapters 3-6, which amounts to over half of the book.

Elden stuns the readers with interesting connections that he makes. Generally unsuspected but real linkages are uncovered. For instance, he argues that space as a three-dimensional way of making sense of the world is a product of the scientific revolution and that territory is its political counterpart. He also adroitly links Shakespeare’s plays with the question of territory. The author, however, refrains from making a sweeping generalization and readers of the book may at times feel that the pleasure of “connecting the dots” is theirs. “Connecting the dots,” however, may be a burden to a sizeable number of readers, who enjoy reacting to a book’s arguments rather than devising them themselves by processing a book’s contents.

The book’s genealogical account of the birth of territory ends rather abruptly with Gottfried Wilhelm Leibniz (1646-1716). As a result, the narrative does not deal with new interactions between the state and territories that have evolved over three centuries. Some important newcomers to the scene can be mentioned. First, democratization of politics has reshuffled the relationship between the state, people and territories. Second, imperialism and post-imperialism have changed the meaning of territory in expansionist projects of states. Third, “spheres of influence” managed by superpowers and “mini-spheres of influence” sought by regional powers have reconfigured the territorial dimension of international politics. Fourth, territorial waters as defined by the 1982 United Nations Convention on the Law of the Sea expanded our notion of territory.

### The Question of Territory’s Death *via* Post-Maturity Phase

In the last chapter of the book—“CODA: Territory as a Political Technology”—the author reintroduces the distinction between territory, land, and terrain that he made in the introduction. In the CODA, he says the following:

Technology should be understood as a political technology, or perhaps better as a bundle of political technologies. Territory is not simply land, in the political-economic sense of rights of use, appropriation, and possession attached to a place; nor is it a narrowly political-strategic question that is closer

to a notion of terrain. Territory comprises techniques for measuring land and controlling terrain. Measure and control—the technical and the legal—need to be thought alongside land and terrain.

Of the three aspects of territory, territory as technology is probably the most stable. Territory as land and terrain are not. Including prospects of the future of territory—from its current maturity to obsolescence or renewal—may have added another insightful dimension to Elden’s presentation.

Territory may have already entered a post-maturity phase. International relations as inter-state relations—centered on sovereignty and territory—is not *replaced*. The recent annexation of Crimea is a good example. Furthermore, space exploration will one day stimulate discussions on the territorial dimension of the extraterrestrial bodies. Indeed, international relations still largely remains a function of place and power. However, traditional international relations have been *supplemented* by an international politics of hegemony and hegemonic rivalry, which are markedly non-territorial in comparison with the politics of imperialism of the 19<sup>th</sup> century.

According to the author, “capitalism emerged in a territorially pre-figured states-system.” Capitalism, however, has outgrown its origin that was demarcated by territorial states-system. The coming of post-maturity in the evolution of territory under the impact of ever-changing capitalism is demonstrated by at least two examples. First, a large portion of the international political economy is operating outside of territorial boundaries. Second, non-sovereign and non-territorial international actors—international governmental organizations and transnational business organizations—are increasingly more prominent

The very title of the book, *The Birth of Territory*, sends the message that territory, which was “born,” cannot escape the fate of growth, maturity, and ultimate obsolescence. The shadow of the death of territory is apparent in the concluding remarks of the book: “[Territory] had reached maturity. Whether it is now into its old age is a topic for another place, but reports of its demise are likely to have been exaggerated.”

After all, the emergence of non-territorial politics is hinted by an observation that Elden makes in his book: “Despite how Machiavelli is often read, and translated, he did not have a concept of territory and did not see political power as preeminently related to land.” Did Machiavelli leave out something very important? The truth may be that neither the state, sovereignty, nor territory are perennially essential elements of politics.

## Toward a Comparative History of Territory

Unfortunately, non-Western views of territory including those from China and India are excluded from the scope of this book. The global diffusion of the Western idea of territory and interactions between the West and the Rest amid the diffusion is probably the subject of another book by Elden. *The Birth of Territory* belongs to a wider project of Elden who has embarked on writing a “history of the present.” In the meanwhile, *The Birth of Territory* may turn out to be the second book of a trilogy or even quadrilogy produced by the author, who has already published another award-winning book—*Terror and Territory: The Spatial Extent of Sovereignty* (University of Minnesota Press)—in 2009.

Meanwhile, *The Birth of Territory* can serve as the basis of a research agenda: a global and comparative history of territory. The book in fact provides a methodological model for writing *The Birth of Territory in China* and *The Birth of Territory in India*. The “genealogical account” could be applied to make a narrative about the evolution of territory in China from its rise in ancient China to its perfection in the form of “the-all-under-Heaven” concept before the impact of the West. Similarly, a historical review of the evolution of territory in India will yield interesting insights. For instance, the historical meaning of the ancient term *janapada*—a compound word composed of *janas* “people” or “subject” and *pada* “foot”—could be analyzed. *Janapada* is particularly intriguing as a concept because it has had a double meaning of “realm, territory” and “subject population.”

The three books—respectively on the rise of territory in the West, China, and India—will provide the building blocks necessarily for engaging in a comparative history of territory, which will reveal or highlight the idiosyncratic aspects of the Western-turned-contemporary understanding of territory including church-state relations and the re-reading of classical Roman law. If a new definition of territory is necessarily, conclusions from the comparative history of territory could serve as a reference storehouse in making the definition.

What would be the practical relevance of the comparative history of territory? The degree of relevance would depend on the nature of the restructured world. It would be safe to predict that a new great power relations, practiced in the context of a truly global multipolar system, may emerge whether China promotes it or not. Unlike in the European multipolar system in the 19<sup>th</sup> century, the coming multipolar system may not be blessed by a common understanding of territory. The most critical question to ask may be the following: Does the emergence of China and India mean that their non-Western concept of territory, would affect current understanding of territory? If the answer is an emphatic no, we may be tempted to conclude that territory would remain uncontested. It is because the

Western understanding is sufficiently embedded in the Chinese and Indian world views. Saying no to the question assumes that China and India are already too irreversibly westernized to attempt a revision of the territory concept.

Regardless of what happens in the real or academic world, *The Birth of Territory* is likely to remain a widely recognized foundational work for any discussion for past, present, and future transformation of territory.

## REVIEW

**Cultural Context of the U.S./Mexico Border**

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Bonansinga, Kate (2014). *Curating at the edge: Artists respond to the U.S./Mexico border*. Austin, TX: University of Texas Press.

Anzaldúa, Gloria (2007). *Borderlands/La Frontera: The new Mestiza* (3<sup>rd</sup> ed.). San Francisco, CA: Aunt Lute Books.

Borders divide political or geographical areas, especially countries. Nations clarify border lines in order to protect their territories and to prevent disputes, and the ways in which borders are controlled determine the cultural possibilities. The long history of the U.S./Mexico border has cultivated a unique cultural landscape arising from a multitude of challenges, ranging from political strategies to bilingual adaptation. Spanning four U.S. states and six Mexican states, this border region is home to a multitude of communities that are now rebuilding and expanding through economic and cultural synergy.

The U.S./Mexico border produces a form of cultural practice which has been derived from complexity and diversity. Circumstances of the border neighborhood, including drug-use, illegal migration, violence, and linguistic collision, bring about the question of identifying borderlands. In regard to border identification, *Curating at the Edge* and *Borderlands/La Frontera* share the concept of cross-border cultural exchange in visual terms. Kate Bonansinga from *Curating at the Edge* illustrates how art attributes to personal, social, and physical context on the borderland. She stated, “One of the unique opportunities provided by Rubin’s border location is the potential for cross-border programming.” The exhibitions during her term consistently challenged the critical points compounded in politi-

cal strategy and cross-cultural identification. *Borderlands/La Frontera* by Gloria Anzaldúa approaches more fundamental ideas of borderlands between the U.S. and Mexico including an invisible border which naturally created two different cultures.

These two publications meet common ground in defining the U.S./Mexico border as a frontier nation of multi-cultural practice. The border is a microcosm of the asymmetry in life quality between the U.S. and Mexico. It is an outgrowth of various conflicts from two different environments. On the other hand, the combination of independent national policies and binational identities represents potential opportunities for transformation through the embrace of cultural background. *Curating at the Edge* artistically speaks for the cultural context of the borderlands examining all levels of cross-border problems: land use, feminism, identity, natural resources, destruction, and political power. It shows how a visualized statement in multiform impacts ideas and the border community. *Borderlands/La Frontera* challenges a precarious solution for both individuals and communities in border regions, exclusively in the U.S./Mexico border. The author, a Chicano native of Texas, implants perspectives of history, race, homeland, and language to compromise living in the borderland.

### Border in Visual Terms

Currently existing borders address a transitional space of harmony in political, ethnic, or cultural differences. Among them, the U.S./Mexico border has strived to coordinate binational links in intense social contexts. It seeks for a quality of life that will operate effectively with sustainable challenges. In the publication of *Curating at the Edge*, the author, Kate Bonansinga, shows how art as human activity can be visually powerful in understanding the past and present border. Interpretation of border complexity in visual terms suggests a platform to promote malleable formation of border regions and corresponds to essential components in border management.

Kate Bonansinga is the founding director of the Stanlee and Gerald Rubin Center for the Visual Arts at the University of Texas, El Paso. The Texas section of the U.S./Mexico border is longer than that of any other U.S. state, and accounts for four Mexican states: Tamaulipas, Nuevo León, Coahuila, and Chihuahua, and the Rubin Center is located in the Chihuahuan desert on the U.S./Mexico border. In *Curating at the Edge*, Bonansinga introduces new and broad approaches to border identification through the lens of her collaboration with artists who specialize in “border art.” Each of the twelve artists brings to the table a different perspective

on the interplay of social dynamics and border art. Each artist features his/her self-contained work chronologically in twelve chapters.

Under the paradigm shift for the University of Texas, El Paso, Bonansinga agrees on re-identifying the museum as a globalized communication center. The meaning of center fulfills a wide range of multi-purposes art practices with visual and historical exhibitions. Her curatorial decision for the twelve artists proves her understanding and support addressing the world's ongoing transitional borderland: the U.S./Mexico border. Each of the artists covers various stages of the U.S./Mexico border conflicts. Some of the artists live in Mexico, and some live in the U.S. The connection between the artists is the nationality and mutual interests of issues concerned with the border situation. Their works include installation, performance, photography, sculpture, and video.

Gradually, the Rubin's program presents and delivers controversial subjects and images reflecting the tensions of border communities. In chapter 8, Tania Candiani, the artist from the Rubin exhibition of *Battleground* in 2009, focuses on the interaction performance which was conducted in El Paso-Juárez. This borderland, also known as Juárez-El Paso, is the second largest binational region (after San Diego-Tijuana) on the U.S./Mexico border. Candiani's interest created interactive participation over the physical divide. She interviewed victims of violence and shared fact-finding moments exposing political tension regarding the placement of homes. Candiani's exhibition at Rubin proposed the human body as an instrument for social action and a symbol of dissent. "Tania Candiani's concern with women's work is applied to political tensions on the U.S./Mexico border in her 2009 exhibition *Battleground*."

In the 2011 exhibition *Lines of Division*, Enrique Ježik from chapter 11 worked as a performer and destroyer at the same time. He defined conflict and tension with two types of works: videos and the carved tabletops. He conveyed consequent messages of violence and destruction and abuse of political power. His videos consisted of five screens, which he appropriated and edited the footage from the Internet, primarily YouTube. The images included the Afghanistan/Pakistan footage, video surveillance images of U.S./Mexico, Colombia/Venezuela, and Israel/Palestine border conflict, and documentation of North Korea and South Korea. For the Koreas, the part of North Korea was from a propaganda footage showing a marching military parade, and the part of South Korea was about political persuasion in a time frame including the Korean War. Ježik's intention was to add broader meaning by changing the context or narrative for this type of information. He regarded YouTube as a highly democratic tool in which any person has the potential to disperse political persuasion or ideology intentionally in a context of visual language. His second work was the U.S./Mexico border map carved

on a wooden table. He performed the action of drawing a line with a chainsaw. What he did was quick and not repairable once executed. His videos made audiences learn that severe violence occurs in different border areas. Meanwhile, he demonstrated the quick response to destruction by cracking the tabletops at the exhibition. Visualizing violence on the screen and experiencing destruction in action help people imagine both the consequences of violence and destruction and the abuse of political power. Bonansinga goes on to say the artist's intention seamlessly connected to his portrayal of national borders, such as that between the U.S. and Mexico, and the tensions that surrounded their creation still surrounded their patrol. Ježik challenges the questions as to why borders stand for aggressive and political power dealing with death and destruction. "In this action, Ježik was both a graceful performer and unforgiving destroyer."

*Light Line* in the last chapter, a work by Atherton Keener, countered Ježik's work in chapter 11. Atherton Keener offered relieving gestures of the current harsh border reality. This group of an artist and architect proposed the overview of how architects and artists have manipulated light throughout history. They believe light is eligible to connect environmental conditions with interior space without physical interruption, expanding the idea of cohesion by joining landscape to room to self. According to their plan, the gallery was to be reshaped with walkways made from a yet-to-be-determined material suspended from the ceiling. Light reflected from mirrors, which were installed in the landscape surrounding the building, would be directed through the windows of the gallery. They designated that one mirror should be installed in Juárez in order to embrace and involve our cross-border community. The quality of light lines varies depending on weather conditions or various atmospheres. Lines are used in three ways: one for cutting, one for folding, and one for hanging. "The concept of rupture also linked to the border as an artificial and political divide, one currently in need of healing." The whole concept of *Light Lines* from Rubin to Juárez is to represent borderlessness. Light lines reflected from each mirror installed in different sites peacefully unite art and institution, gallery and landscape, air and light crossing over borderlands. The author suggests the Ruben is not the place of museum-as-escape; most of the exhibitions advocate pressing issues in society and politics. *Light Lines* minimizes the risk of activism, and instead it requires people to pay attention to the light as it shifts. Following its subtleties and various points of connected lines, this new form of art fulfills the mission of responding to the desert environment on the edge of two nations. The size and scale of lined landscape bring one unified form of borderlands.

The U.S. and Mexico have confronted an inevitable dark side in their relationship in terms of their border areas. Through contemporary art at the multi-

disciplinary site, Bonansinga accelerates pending cross-border issues. Through the combination of art and activism, contemporary art practice possibly alleviates the long-standing tension and flourishes distinctive cross-border culture in the U.S./Mexico border.

### Multi-disciplinary Border: The U.S./Mexico Border

Borders exist to perform two sides of good and bad, safety and danger, by building up cultural flexibility. People at the U.S./Mexico border have long-lived within the tension and conflict conditions of races, regional division, and political influence. Gloria Anzaldúa, who is the writer of *Borderlands/La Frontera* and one of the descendants from the borderlands between the U.S. and Mexico, explores the borderlands to the point where it extends senses of geographical, cultural, spiritual, and linguistic zone. “In fact, the Borderlands are physically present wherever two or more cultures edge each other, where people of different races occupy the same territory, where under, lower, middle and upper classes touch, where the space between two individuals shrinks with intimacy.”

“Border” is not simply divided in places. It cultivates distinction which serves social position, cultural mix, ethnic unification, and linguistic change. *Borderlands/La Frontera* redirects the fundamental understanding of “border.” The U.S./Mexico border as fatalistic culture production has carried out current reality and future potential measurement. It responds to geographical and psychological fluxes.

Anzaldúa undergoes oppression and seeks a new identity as a member of the multi-cultural generation in the border region. She is very stubborn in preserving her own culture, yet she is very patient in agreeing with the interaction and diversity on the border area. The first chapter describes the homeland of Anzaldúa, which was changeable in history. Providing brief history gives an idea of how Mexico started, how Spaniards invaded Mexico, and who migrated to her homeland. Anzaldúa describes the details of the Mexican-American war, which explains the process of the takeover and how natives became foreigners. The war showed the relationship between Mexico and the U.S. It was the beginning of the migration of many illegal migrants into the U.S. They had to make a choice to pursue better lives. However, illegal migration brought about more dangerous circumstances through the unprotected law system and linguistic barriers. Specifically, women were exposed to very unsafe conditions: abuse and rape. Illegal migrants were inadequately treated in the U.S., and also had to suffer through the language barrier to live there. “Border” urges people to make the “choice” entailing unavoidable suffering beyond geographical separation.

The U.S./Mexico border implicates the “choice” functioning as the multi-disciplinary site. Anzaldúa struggled against her culture. In her culture, the male population held the authoritative role within households while the women maintained submissive positions. She decided to leave home for the U.S. as the first migrant in her family of six generations. She explains how difficult it was to adhere to her “home” culture and follow the rules that were required her. She was raised Catholic, but she came to terms with her lesbian identity. She was questioned the issue of “choice.” She realized that some things were genetically inherited and were not put in an absolute position of making the “choice.” For some, groups will conform to social norms to be accepted and wanted in a culture. Those who go against these norms have a much harder time being a part of the group. Borders, where alienated culture struggles to blend with a dominating culture, are not about making the “choice.” The “choice” identifies the land and culture.

Placed in two different nations, borders tackle the ineluctable situation of linguistic barriers. Languages are frequently used as a tool in the culture in which people belong to. Recalling her childhood memories in *Borderlands/La Frontera*, she recalls being punished at school for speaking Spanish while she was not allowed to speak English with a Mexican accent in her own home. Getting rid of her wild tongue, she attempted to assimilate into American culture. Because language is used to show a person’s identity and make them capable of communication, she repeatedly repressed her wild tongue, and she decided to be a broader woman by identifying herself as Chicano. Language is a key to identify culture from the homeland. Chicanos created several forms of language, through “Spanglish.” She listed Chicano languages: standard English, working class and slang English, standard Spanish, standard Mexican Spanish, North Mexican Spanish dialect, Chicano Spanish, Tex-Mex, and Pachuco. As stated in this chapter, speaking the Spanish language locates women in a dispersed level. Sometimes Chicanos are ashamed of speaking Chicano Spanish. They do not want to accept legitimacy of the language such as if they do not approve the legitimacy of their culture and themselves. Anzaldúa further argues that repeatedly attacking our native tongue diminishes our sense of self. “We used words borrowed from English.” She continuously embraces her language to identify her distinct culture. Linguistic conflicts among the border are necessary in implementing a border culture as an individual sector. Being a part of the culture in the borderlands should bring the harmony of various forms of one’s home culture without finding faults or betrayal in their culture.

Finally, *Borderlands/La Frontera* deals with race, ethnicity, and culture through “cosmic race,” one that comes from all races, or intermixed species that have similarities with the ones inhabiting in border region. The border provides an extraordinarily difficult mixture of various cultures, races, ethnicities, and languages. It is

hard to find harmony within the specific-conditional zone. People tend to believe in what they have believed. Indicating different directions challenges people's static ideology originating from where they come from. It is not a question of right or wrong. All different ideas should coexist in the same stage simply alongside each other in harmony. Strengthening equity on borderlands might cause intense and competitive actions. In building an efficient border, people can learn tolerance and acceptance without opposing race, ethnicity, and language. Borders by all meanings are connected with identical notion.

### Cultural Compatibility in the U.S./ Mexico Border

The U.S./Mexico border is an exceptional terrain in sharing ethics and cultural bonds. It is no longer valid in applying a traditional standard of border management. Bonansinga in *Curating at the Edge* thoroughly studied the artists who participated in the exhibition at the Rubin center. She communicated with the artists to create the best solution in approaching the attentive stage in border conflict issues. "Although each chapter is meant to be self-contained and meaningful on its own, each also connects to the others and creates a crescendo of the body of exhibitions that came together to form a curatorial program during the institution's first seven years."

*Borderlands/La Frontera* is written in a multi-lingual form through the writer's intention. Speaking a multi-lingual deals with race, ethnicity, and culture. Border provokes constant frustration and struggle in identifying multiform of cultural environment. She claims that no one is safe from oppression, regardless of location. The U.S./Mexico border is a great challenge in indicating future trends of the best method in creating comprehensive land for "cosmic race." This potential border presents the quality of life from private public actions, which serves education, economy, safety, and equity. Maintaining a sense of unity provides not only the creation of mutual culture but also a new scheme of borderlands.



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