

## Solving and Resolving the East China Sea Dispute: Beijing's Options

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### Abstract

*In early 2005, the East China Sea (ECS) became a hotly-disputed area—mainly between the People's Republic of China (PRC) and Japan—especially in view of the fact that in August 2005, for the first time in history, the price of light, sweet crude oil futures for October 2005 delivery on the New York Mercantile Exchange (NYMEX) crossed the US\$70 per barrel mark.*

*This paper explores what Beijing would likely do to solve or resolve its dispute with Tokyo, if not Taipei as well. It suggests, as a first step, the creation of a series of either international or bicoastal regimes, including between mainland China and Taiwan, which should be able to reduce tension between all the parties. By examining the PRC's past words and deeds, the author has inductively pointed out options that mainland China can choose from to handle the dispute, such as dragging on as well as making compromises or adopting a fifty-fifty formula. Arguably, the PRC will try to solve or resolve the dispute in a peaceful way. In other words, it may first provoke, but not by firing the first shot. The Chinese Communist leaders are still adhering to their "paramount leader," Deng Xiaoping's strategy of peace and development. In short, Beijing may have to make some concessions to Japan and/or Taipei for the sake of all concerned.*

Over the past several years, the East China Sea (ECS) has never been seriously regarded as a flashpoint in Asia by the seemingly neutral United States until July 2004, when it urged the People's Republic of China (PRC) and Japan to come up with an equidistant median line satisfactory to both sides.<sup>1</sup> Geographically speaking, it lies between mainland China and Japan's Ryukyu Islands, with its northern part adjoining the Korean peninsula. Its widest breadth between east and west is 360 nautical miles (n.m.) and only 167 n.m. between the two nearest points. On average, the ECS width between mainland China's coast and Japan is only a little more than 210 n.m.

Although not directly related to the long-festering territorial disputes in the ECS, it seems appropriate for us at the outset to first say something about Heixiazi Island / Bolshoi Ussuriiskiy Island / Bear Island. It is composed of several islets located in Heilongjiang Province, PRC, and it is at the junction of the Russian Federation, China, and Outer Mongolia. Moreover, the island is a main source of drinking water supply to the city of Krasnokamensk in Russia's Chita region, which produces 90 percent of the country's entire uranium output.

In August 1929, the Soviet Union announced the breaking of diplomatic relations with the Republic of China (ROC). Later in the same year, with the help of the Chinese Communists in the Zhongdonglu Incident, the Soviet Russians as a consequence occupied Heixiazi Island, and have remained there ever since. In June 2005, when the Chinese and Russian Foreign Ministers exchanged the instruments of ratification for the status of this island and another island, Yinlong Island / Tarabarov Island, which is located at the confluence of the Heilongjiang / Amur and Ussuri Rivers, it marked the final settlement of the longest 4,272-kilometer land frontier in the world.

For the record, the PRC has 14 neighbors, giving it 22,000 kilometers of land boundaries. It is a country with the world's longest land borders and the largest number of neighbors. However, to date, it has signed border treaties or agreements with 12 of these neighboring countries, demarcating 90 percent of the land boundaries.<sup>2</sup>

1 See *Hua Daily News* (Sarawak, Malaysia), July 25, 2005, p. A24.

2 [http://english.people.com.cn/200509/27/eng20050927\\_211187.html](http://english.people.com.cn/200509/27/eng20050927_211187.html), accessed on Sept. 27, 2005. In June 2003, the Chinese and Indian prime ministers

The negotiation process over Heixiazi Island began in February 1964, whereby the officials of the two sides held detailed and extensive negotiations in Beijing for six months, followed by the exchange of maps and documents in April of the same year.<sup>3</sup> To remind, the September 1689 Sino-Russian Treaty of Nerchinsk for the very first time divided the Qing Dynasty and Czarist Russia by the Gorbitsa River. It is the only equal treaty with a foreign power that China acknowledges that it recognizes.<sup>4</sup> The name of the document first signed in October 2004 was the Supplementary Agreement on the Eastern Section of the China-Russia Boundary Line.<sup>5</sup> It covered two percent of the lingering

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appointed special representatives to explore guiding principles and framework on the settlement of the China-India boundary issue. "After five rounds of meetings, the two countries signed an agreement on political guidelines for the demarcation in April 2005.

- 3 In July 1986, Mikhail S. Gorbachev, in his Vladivostok Initiative, outlined a new direction for Soviet-Asian policy, which included demilitarization and an end to nuclear weapons development. He also mentioned the Thalweg or mid-channel principle and stated that "the Union of Soviet Socialist Republics (USSR) is prepared, at any time and at any level, to discuss with China questions of additional measures for creating an atmosphere of good neighborliness. We hope that the border dividing us will become a line of peace and friendship in the near future. . . We do not want the Amur river to be viewed as a 'water obstacle.' Let the basin of this mighty river unite the efforts of the Chinese and the Soviet peoples in using for mutual benefit the rich resources available there and for building water-management projects. An inter-governmental agreement on this account is being jointly worked out and the official border might run along the main shipping channel." See *United Daily News*, Oct. 18, 1995, p. 10. Relations between the two countries were normalized in May 1989.
- 4 More than 1.5 million square kilometers were seized by Czarist Russia. However, some academics pointed out that there was a difference in the Chinese, Manchurian, and the Russian language versions of the treaty.
- 5 There are two related border documents on the eastern and western sections of the line signed in May 1991 and September 1994, respectively. In the former Agreement on the Eastern Section of the Boundary between the People's Republic of China (PRC) and the USSR, which affirmed 98 percent of the border, it was stated that Zhenbao Island belongs to the PRC. The latter document is called Agreement on the Western Section of the Boundary between the PRC and the Russian Federation. In April 1999, both sides reached a breakthrough on how to resolve the sovereignty issue along the Heilongjiang River and other waterways. In December 1999, Jiang Zemin and Boris N. Yeltsin signed the

border issue. *Jiefangjunbao* (Liberation Army Daily), citing a remark made by a State Council researcher, reported that “[it] is really a defining event to have recovered more than 100 square kilometers of our formerly lost land. In the old days, China was always losing territory and never once reclaimed even a small piece by legal means. This was the first time.”<sup>6</sup>

According to a high-ranking official of the PRC who did not wish to be identified, the Chinese Communist side considered the following four options in resolving the Heixiazi Island issue: *wuliduohui* (using armed forces to get it back), *tuo* (dragging on), *jiaohuan* (making exchanges), as well as *tuoxie* and *duibanfen* (making compromises and adopting a fifty-fifty formula).<sup>7</sup> Judging from the *Jiefangjunbao* edition mentioned above, the PRC finally chose the fourth option. In the words of *Beijing Review*, the “successful settlement of Sino-Russian border disputes provides a model for solving other border problems.”<sup>8</sup> In other words, the spirit of making compromise and adopting a fifty-fifty formula on other issues is still much alive today. In short, the options can serve as a reference when we look at the unresolved issues such as the ECS and the South China Sea (SCS).

However, according to Hong Kong-based *Yazhouzoukan* (YZZK), the Chinese People’s Liberation Army (PLA) at one point in time also contemplated choosing the first option after getting back Zhenbao

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Narrative Protocol on Eastern and Western Sections of the China–Russia Boundary between the Government of the People’s Republic of China and the Government of the Russian Federation. Many Chinese said Jiang betrayed China, calling it an ignoble treaty and pointing out that Article 52 of the May 1969 Vienna Convention on the Law of Treaties dictates that any treaty “concluded under the threat or use of force” is invalid. Besides, Moscow originally had planned to divide Heixiazi Island into four zones: an ecological zone, a farming zone, a sporting and recreation zone, and a residential zone. The part returned to mainland China was what Russia had planned as a least habitable ecological zone.

6 *Jiefangjunbao* [Liberation Army Daily], Beijing, June 3, 2005, p. 1.

7 <http://by106fd.bay106.hotmail.com.msn.com/cgi-bin/getmsg?msg=AB93Ao1E-5A75-4C4D-9CAB>, accessed on June 6, 2005. The Russians said the border was divided “almost equally” and all of Yinlong Island was handed over to Beijing.

8 [http://www.bjreview.cm.cn/en-2005/05-28\\_e/w-3.htm](http://www.bjreview.cm.cn/en-2005/05-28_e/w-3.htm).

Island/Damansky Island in March 1969, which is 500 times smaller than Heixiazi Island.<sup>9</sup> As to the second option, Beijing wanted to wait until it becomes more powerful, so as to be able to settle the dispute, tilting at least a little bit to its advantage. However, if it were to drag on, there could be more Russians living in the Far East. In other words, it would be more difficult for Beijing to solve the migration problem in the future. Last but not least, China was thinking of surrendering Heixiazi Island to the Russians in exchange for getting, for example, a port for its Jilin Province. Some critics also posed the following question: Did Beijing offer to trade the island for petroleum with Moscow? In December 1999, the two governments concluded a five-year agreement on joint economic use of the island after the border has been determined and the adjacent area of the border river Argun. In the document, Beijing agreed to allow the population of the Russian border areas to engage in haymaking and fisheries in the four defined sectors. Russia and mainland China also planned to establish a procedure for the official transfer of the island to the latter. In this way, the transfer of this particular island to Beijing can avoid dislocating for the local Russian citizens.<sup>10</sup>

There are other options, some of which were couched in different words, as pointed out by a U.S.-based mainland China academic, Yu Bin: negotiation, subversion, military conquest, and demographic swamping. Negotiation overlaps with Beijing’s third and fourth options, as mentioned above. Subversion and demographic swamping are two new options, while military conquest is similar to the first PRC option.

In my study of the Japanese handling of its territorial disputes with other countries, I had listed other options:<sup>11</sup> To resolve the disputes in terms of numbers or formulae; to resolve the disputes in terms of per-

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9 <http://by106fd.bay106.hotmail.com.msn.com/cgi-bin/getmsg?msg=AB93A01E-5A75-4C4D-9CAB>, accessed on June 6, 2005. Heixiazi Island is 4.5 times the size of Hong Kong. The Chinese People’s Liberation Army (PLA) began to deploy troops on Oct. 1, 2005.

10 *Boundary and Security Bulletin*, Vol. 8, No. 2 (Summer 2000), p. 51.

11 This is a book chapter, to be published in James C. Hsiung, ed., *China and Japan at Odds* (New York: Palgrave-Macmillan, October 2006). The title of my chapter is; *The Taipei Factor in Tokyo’s Options to Resolve its Territorial Disputes with Beijing*.

centage; to resolve the disputes by providing foreign aid; to resort to arbitral or judicial authorities like the International Court of Justice (ICJ) or the International Tribunal for the Law of the Sea (ITLS); to resolve the disputes by leveling the islands with bombs; and to share the profits in accordance with the population of each country or political entity.

This paper will deal with each one of the options from the PRC perspective.

## The Options

At the outset, it should be pointed out that 80 years is the limit of oil and natural gas reserves in the ECS that can be used by the PRC. As for Japan, it is 100 years. According to an official survey, the disputed fields contain an estimated 7 trillion cubic feet of natural gas and up to 100 billion barrels of oil. In this connection, when we study the ECS, we should take the Diaoyutai/Senkaku Islands into serious consideration. If Tokyo can have unchallenged sovereignty (as opposed to legislation, jurisdiction, and administration) over what its Japan Coast Guard (JCG) called the inherent Japanese territory of Senkakus,<sup>12</sup> it can possess a major portion of the ECS. Translated, this means a lot of tangible and intangible resources. Perceiving reality in the ECS five or 10 years from now, I would like to categorize Beijing's possible 12 options in ascending order of importance:

### I. Solving the ECS by itself.

- 1) Using armed force to preserve Chinese sovereignty, the implication of which is to be ready for fighting a bloody war;
- 2) Leveling the islands, including Diaoyutai, and oil and natural gas fields with bombs;
- 3) Swamping the disputed areas with human waves;
- 4) Engaging in subversion;
- 5) Providing foreign aid; and
- 6) Dragging on;

12 [http://english.people.com.cn//200507/21/eng20050721\\_197493.html](http://english.people.com.cn//200507/21/eng20050721_197493.html), accessed on July 21, 2005.

### II. Resolving the ECS with Others

- 1) Resorting to arbitral or judicial authorities;
- 2) Sharing the profits in accordance with the population of each country or political entity;
- 3) Making exchanges;
- 4) Resolving the disputes in terms of numbers or formulae;
- 5) Resolving the disputes in terms of percentage; and
- 6) Making compromises and adopting a fifty-fifty formula.

Of course, there could be more options, if one thinks creatively. For example, I will suggest the creation of as many international regimes and regimes between mainland China and Taiwan as possible in the ECS, a point to be elaborated in the last section. I will discuss the above mentioned options accordingly.

I.1) Since its creation, the PRC has fought many wars on land and at sea. In December 2004, Japan identified mainland China as a potential security threat in its National Defense Program Guidelines/Outline, and, in February 2005, the United States and Japan issued a Joint Statement of the U.S.-Japan Security Consultative Committee statement that designated the Taiwan Strait dispute as a "common strategic objective."

Politics and military affairs are usually interrelated. Politically, in April 2005, the PRC for the first time warned the Japanese not to grant the private Teikoku Oil Company the concession rights to test-drill the ECS, or else it would be responsible for the consequences, because it would be tantamount to a severe provocation.<sup>13</sup> Nevertheless, the Japanese government went ahead with its decision on April 13, 2005, sparking massive anti-Japanese protests on the mainland three days later, which was the worst outpouring of such animosities in over 30 years.<sup>14</sup>

Militarily, to protect its national interests, Beijing in January 2005 dispatched for the very first time two *Xiandai*/Sovremenny-class guided-missile destroyers to cruise in the vicinity of its Chunxiao field in the ECS.<sup>15</sup> Since February 2005, the marine patrol boat, Haixun-31, of the

13 *China Times* (Taipei), April 14, 2005, p. A11.

14 On Jan. 26, 2005, *People's Daily Online* reported that the mainland including Hong Kong officially became Japan's largest trading partner for the first time since records began in 1947.

Maritime Safety Administration (MSA) under the PRC's Ministry of Communications (MOC), joining other patrol fleets, has been carrying out its inspections on international navigation routes, maritime construction and production sites, oil and gas platforms and maritime ship-to-ship transfer operations in the contiguous zones and EEZs in the ECS, in addition to the SCS and Yellow Sea. In September 2005, several naval ships, including one *Xiandai*-class destroyer, were spotted by the Japanese. Under mounting pressure, its MOFA spokesman explained that it was a routine military exercise.<sup>16</sup> In this connection, a Chinese PLA official said that, in the near future, he did not perceive military conflicts between the two sides.<sup>17</sup> To be sure, the mission of the maritime inspection ship, Haixun-31, is equivalent to JCG [as opposed to Japan's Self-Defense Forces (JSDF)'s ships]. It is the first Chinese civilian vessel to have been seen cruising the contiguous zones and EEZs.<sup>18</sup> This should somewhat allay Tokyo's fears. On the other hand, in December 2004, Tokyo mapped out a plan to defend a chain of its southernmost islands in the ECS, calling for the dispatch of 55,000 troops as well as warplanes, destroyers, and submarines from Japan's main islands.<sup>19</sup> Out of those troops, 9,000 will be assigned to directly recapture invaded islands, with the rest providing logistic support for them. Japan's ships and airplanes have also been carrying out reconnaissance and surveillance activities in the ECS. In September 2005, a ranking Japanese official of the Ministry of Economy, Trade and Industry (METI) said Japan should pass a law permitting its JSDF vessels to patrol the ECS waters.<sup>20</sup> Some Japan-watchers are pessimistic, saying armed conflict cannot be

15 <http://www.zaobao.com/special/newspapers/2005/01/xmrb260105c.html>, accessed on Jan. 27, 2005. It was a mistake for many newspapers to report that September 2005 was the first time. See CT, Sept. 10, 2005, p. A10.

16 <http://www.zaobao.com/specil/newspapers/2005/09/others050916.html>, dated Sept. 19, 2005.

17 *Hua Daily News*, July 18, 2005, p. 3.

18 [http://english.people.com.cn//200507/15/eng20050715\\_196345.html](http://english.people.com.cn//200507/15/eng20050715_196345.html), accessed on July 15, 2005.

19 [http://english.people.com.cn/200501/17/print20050117\\_170869.html](http://english.people.com.cn/200501/17/print20050117_170869.html), accessed on Jan. 17, 2005.

20 <http://www.mpinews.com/newsletter.cfm?newsis=200509231419ta51419w>, accessed on Sept. 23, 2005.

avoided between the two claimants.<sup>21</sup> From April to October 2005, Japan said its jet fighters had to deter PRC jet fighters on 30 occasions, approaching the airspace of the former.<sup>22</sup>

However, the probability for the PRC to militarily attack the Japanese armed forces first in the ECS is slim, for the following major reasons. First, in November 2003, after a long period of silence, the PRC for the first time put forward the "peaceful rise" theory, which is aimed at countering the "China threat" theory, which has caught much world attention since the collapse of the Soviet Union, a country, which bogged down by its internal economic problems, cannot threaten countries like the United States in the foreseeable future. Second, in September 2005, the Chinese PLA held a one-day military exercise code-named "North Sword 2005," involving approximately 16,000 soldiers, and it invited the largest number of foreign observers since the founding of the PRC. A major general of the Chinese PLA said "[the] Chinese army is becoming more open and transparent."<sup>23</sup> Third, before May 2009, each coastal country is supposed to deposit its geographic continental shelf coordinates with the United Nations (UN). Some countries may not be able to hand in on time. Others will simply ignore the UN request. Still others would probably play games. In addition, it may take a long period of time for the UN to be able to resolve the differences among the disputants. In spite of these negative possibilities, both Beijing and Tokyo will likely fulfill the requirement, simply because there is an urgent need to find new oil and natural gas fields and to peacefully develop them. Without petroleum, it would be hard to develop and to sustain a country's economy, unless an alternative source of energy has been found, or is ready for use. Fourth, we can highlight the two Zhenbao Island armed clashes between the PRC and the then Soviet Union in March 1969, which "[could have sparked] widespread conventional, or even nuclear, war."<sup>24</sup> Inferring from those

21 <http://www.zaobao.com/special/newspapers/2005/09/homeway050929b.html>, accessed on Sept. 29, 2005.

22 [http://www.worldjournal.cm/wj-ch.news.php?nt\\_seq\\_id=1263911&sc\\_seq\\_id=3](http://www.worldjournal.cm/wj-ch.news.php?nt_seq_id=1263911&sc_seq_id=3), accessed on Nov. 10, 2005.

23 [http://english.people.com.cn//200509/28/eng20050928\\_211252.html](http://english.people.com.cn//200509/28/eng20050928_211252.html), accessed on Sept. 28, 2005.

24 <http://www.cnn.com/SPECIALS/cold.war/episodes/15/spotlight>.

bloody incidents, Beijing in the ECS will unlikely fire the first shot, even if there were isolated, armed skirmishes in the ECS. We can infer this educated guess from the Zhenbao border conflict. In November 2003, *The Moscow News* reported that it was Yuri Babansky, who was a sergeant at the time as well as who in violation of standing orders commanded that troops open fire and fired the first shot himself.<sup>25</sup> The probability of a military conflict in the ECS could be further reduced if Japan also showed its restraint by not firing the first shot.<sup>26</sup> We must not forget that between them, a hotline has been in operation since October 10, 2000. Fifth, it is unlikely that the Chinese PLA will use force to drive away the Japanese fishing boats in the ECS, especially in the Diaoyutai waters. This can be inferred from Beijing's condemnation of Jakarta's abuse of its military force in September 2005.<sup>27</sup> To elaborate, an Indonesian navy warship fired on a PRC 10-man fishing boat allegedly poaching in the Arafura Sea off the Papua Island and about 3,800 kilometers east of the capital, killing one man and wounding two crewmembers. Last but not least, it is virtually certain that Japan does not want to see an armed conflict in the ESC, because around 300 of its ships pass through the Taiwan Strait every day.<sup>28</sup>

25 <http://english.mn.ru/english/issue.php?2003-11-12>. *China Times* in its Aug. 4, 1995 edition on page 23 also raised the same question. But, the report said each side accused the other of firing the first shot. The former Soviet Union, in a report sent to the former German Democratic Republic (GDR), described its version of the March 2, 1969 incident, saying its border guards "were insidiously shot without any warning." See <http://www.cnn.com/SPECIALS/cold.war/episodes/15/spotlight>. The Americans had a "series of satellite pictures showing the horrible massacre of Chinese soldiers. . . ." But, the report did not say who fired the first shot. It only mentioned that the Soviets surrounded "the island and opened a salvo." See <http://www.centurychina.com/wiihist/japsayno/japsayno.14.html>. On March 2, 2004, Pravda reported that "[on] March 2, 1969, Chinese guards killed first lieutenant Ivan Strelnikov, who commanded the Nizhne-Mikhaiovka outpost. . . ." See <http://newsfrom-russia.com/main/2004/03/02/52585.html>. The long-simmering tensions over there lasted until September of the same year.

26 See my article, "Sino-Japanese Contention Over the Diaoyu Islands/Senkakus," *Pacific Focus*, Vol. XX, No. 1 (Spring 2005), pp. 285–314.

27 [http://english.people.com.cn//200509/22/eng20050922\\_210200.html](http://english.people.com.cn//200509/22/eng20050922_210200.html), accessed on Sept. 22, 2005.

I.2) The second option is to bombard the islands and the oil-gas fields, so as to settle the dispute(s) once and for all. However, ample evidence points to the contrary. On the one hand, in August 2003, the PRC signed five contracts with Royal Dutch/Shell and United States oil company, Unocal, to begin to conduct exploration of oil and natural gas in the southernmost Chunxiao field in the Xihu depression/sag/trough, which is 370 kilometers from Okinawa and three other fields in the same depression—namely, Canxue, Duanqiao, and Tianwaitian. According to the Australian Bureau of Agricultural and Research Economics, the PRC has prioritized the use of liquefied natural gas (LNG) as an alternative to the use of pollution-causing coal.<sup>29</sup> In September of the following year, two foreign companies pulled out from the project, citing commercial reasons. In May 2005, Chunxiao began to operate an exploration facility/drilling platform/rig. In October 2005, it began to transfer gas to Chunxiao Town (*zhen*), Ningbo City, Zhejiang Province, which is well known for its oil-processing capabilities.

On the other hand, in July 2004, Japan started exploring its own Exclusive Economic Zone (EEZ) in the ECS Sea for natural gas. In July 2005, Tokyo gave Japanese names to the Chunxiao, that is, Shirakaba/White Birch; Duanqiao, to wit, Kusunoki; and Lengquan oil-gas fields and granted the Teikoku Oil Company the concession rights to test drilling the three sites. In September of the same year, it gave a Japanese name, Kashi/Oak, to another oil-gas field, Tianwaitian.

I.3) Swamping the disputed areas with Chinese people is one tactic that cannot be ruled out. Beijing has not really prohibited its citizens and fishermen to sail to the Diaoyutai Islands. The December 1982 UN Convention on the Law of the Sea (UNCLOS) also allows countries to build artificial islands within their jurisdiction. Other things could also be done, if one thinks creatively.

I.4) Subversion can be ruled out in the foreseeable future. First, there are no permanent Japanese inhabitants in the Senkakus. The Japanese ultra-nationalists or rightists only visit the Senkakus once in a

28 [http://english.people.com.cn//200510/16/eng20051016\\_214601.html](http://english.people.com.cn//200510/16/eng20051016_214601.html), accessed on Oct. 16, 2005.

29 <http://www.atimes.com.atims/China/FK02Ad01.html>, accessed on Nov. 2, 2004.

while. After handing the privately-owned lighthouse over to the Japanese government in February 2005, it is doubtful that they will make many more trips. In other words, Beijing has nobody to subvert. It may only confront the Japan Maritime Safety Agency (JMSA), which is in charge of maintaining the lighthouse. Second, Japanese government officials have become tougher and more assertive vis-à-vis the PRC officials. They have had enough of making repeated apologies to Beijing leaders for what the Imperial Japanese did to the Chinese, especially during the Second World War. Thus, despite heavy criticism, Prime Minister Junichiro Koizumi still dared to visit the Yasukuni Temple/Shrine in October 2005, for the fifth time since becoming Prime Minister in April 2001. However, permitting former ROC President Lee Teng-hui to visit Japan, after he stepped down as president in May 2000, was a positive sign.

I.5) Since the early 1990s, the PRC's economy has been robust. It has accumulated the world's largest foreign exchange reserves, without even counting those reserves held in Hong Kong and Macao. Japan, on the other hand, has decided to gradually reduce the amount of foreign aid under its Overseas Development Assistance (ODA) to the PRC, since it started in April 1979. In short, it seems that in the foreseeable future foreign aid cannot change the attitude, mindset, etc. of the officials on both sides, unless natural disasters such as tsunamis or earthquakes strike either one of them.

I.6) As pointed out by one academic, the UNCLOS cannot solve all of the ECS issues, since it does not address historical claims, and its lack of clear definitions makes it difficult to judge how to apply some of the provisions on the EEZ and continental shelf.<sup>30</sup> In addition, as noted earlier, UN member states should also submit scientific research data, including submarine landforms and geology, geomagnetism, as well as gravity in order to claim the continental shelf. The world body has until May 2009 to rule on the continental shelf—worldwide. Even when both parties have done so, it may take several years for them to agree upon the final UN decision. It is doubtful that the sovereignty

30 Reinhard Drifte, "Japan's Energy Policy in Asia: Cooperation, Competition, Territorial Disputes," accessed on <http://www.dundee.ac.uk/cepmlp/journal/html/vol11/article11-3.html>.

issue of the Diaoyu Islands can be settled within 10 years, even though one political observer in the ROC proposed an exchange; namely that Japan should return the Diaoyudao, whereas the PRC would give up Chiweiyu/Kyuba Jima/Kumeski Shima. A very brief look at the history of the islands is called for.

After carrying out a series of geological surveys in the Yellow Sea and ECS in the period from October to November 1968, under the auspices of the Committee for Coordination of Joint Prospecting for Mineral Resources in Asian Offshore Areas (CCJPMRAOA) of the UN Economic Commission for Asia and the Far East (UNECAFE), promising signs of oil reserves were reported around the Diaoyu Islands' waters. Yet, nothing has been done in the Senkakus' waters, even by Japan. The matter is still very sensitive, because, as early as December 4, 1970, the PRC protested when Japan, the ROK, and the ROC were having talks as to how the maritime boundaries should be delimited in the ECS.<sup>31</sup>

Of course, having an incentive is also very important. It should be noted that most of the PRC fields yield only natural gas finds, and, since there are plenty of natural gas suppliers in Asia, the incentive for Japanese investment is not high.<sup>32</sup>

After having discussed the first category, it is appropriate for us to discuss the second category.

II.1) It takes two to tango. Japan has shown interest in allowing the international courts to resolve the disputes. One of the examples has to do with the Dokdo islets, even knowing that the Republic of Korea (ROK) will protest its legal possession of the territory. However, if the court were to make a judgment on the Diaoyutai/Senkakus, both parties may have to think twice or thrice. This is because those islands have a great impact on the future relations between mainland China and Japan, if not Taiwan as well. The first option in the second category could also mean complying with the UN on the issue of the continental shelf.

II.2) Sharing profits is the second option. There should be not much

31 Miyoshi Masahiro, "Seabed Petroleum in the East China Sea," no date, Faculty of Law, Aichi University, Japan, p. 3.

32 Ibid., p. 6 and Drifte (note 30).

controversy if it is shared only between Beijing and Tokyo. However, we should consider other parties. First, would the ROC be able to share the profits in the ECS? In April 2005, or on other occasions, its Coast Guard ships sailed to the ECS but stayed within its EEZ to gather intelligence.<sup>33</sup> What would be the reaction of Japan? One Japanese academic pointed out that if Taipei were to cooperate with Beijing, Tokyo would be caught in a dilemma.<sup>34</sup> This is not impossible, because the ROC Coast Guard maintains its temporary enforcement line for dividing the ROC and Japan's EEZs. As a reminder, the line was first approved by the ROC Executive Yuan (Branch) in November 2003 and made known to the Japanese government for the very first time in the July 2005 fishery talks. Later, in August 2005, the ROC fishermen for the first time received such a maritime map.<sup>35</sup> To be sure, the temporary ROC EEZ covers a joint development area between China and Japan, which was proposed by the PRC in mid-1987<sup>36</sup> and which will be elaborated on later. Second, should Beijing invite Seoul, because the latter also relies upon the natural prolongation doctrine? Third, in October 2004, for example, a 10,000-ton Norwegian research, seismic vessel, *Ramform Victory*, permitted and commissioned by Japan, was spotted by a global affairs columnist of *Asahi Shimbun*, trying to gather data on oil and gas reserves in a band of sea about 30 kilometers wide on the eastern side of the Japan-China median line that marks the limit of the EEZ claimed by Japan.<sup>37</sup> The question that arises is whether Norway should be involved in one way or another? Last, but not least, would the United States want its slice of the cake?<sup>38</sup> In July 2005, strategic experts from the PRC,

33 <http://by106fd.bay106.hotmail.msn.com/cgi-bin/getmsg?msg=5EE6BCC0-4D72-4666-B2A5-7341371D>, accessed on April 22, 2005 and *China Times*, May 14, 2005, p. A8.

34 *Hua Daily News*, July 25, 2005, p. A24 and *China Times*, Sept. 27, 2005, p. A13.

35 *China Times*, Aug. 30, 2005, p. A13. Beijing, as of June 2005, had not yet publicized its coordinates for the East China Sea. Based on E-mail from James C. Hsiung, who met some Beijing academics and experts, dated Sept. 6, 2005.

36 See Susumu Yarita, "Toward Cooperation in the East China Sea," available at [www.wilsoncenter.org/topics/pub/Asia-petroleum.pdf](http://www.wilsoncenter.org/topics/pub/Asia-petroleum.pdf), undated, p. 10. Yarita is the managing director of UREC, p. 3. The same article can be found in Selig S. Harrison, *Seabed Petroleum in Northeast Asia: Conflict of Cooperation* (Washington, DC: Woodrow Wilson International Center for Scholars, 2005).

37 <http://japanfocus.org/article.asp?id=163>.

the United States, and Japan gathered for the first time in Beijing to discuss strategic issues concerning energy resources within the ECS. These three nations plan to hold another round of the second channel diplomacy in the first half of 2006 to continue the discussions, bearing in mind the need to close the gaps among the three countries.<sup>39</sup> Whatever happens, Beijing should know that the PRC and Washington have different interpretations on the following UNCLOS provisions: those governing the right to draw straight baselines from which the breadth of the territorial sea is measured; the right to exercise innocent passage through the territorial sea by foreign naval ships, and the right to conduct military surveillance activities in the EEZ.<sup>40</sup>

II.3) Beijing considered exchanges with Moscow when negotiating over Heixiazhi Island. This possibility that certainly cannot be ruled out is whether the PRC would conduct exchanges with the ECS. However, what can the PRC offer Japan? Thus, what can be ruled out are the eight islets of Diaoyutai and the recognition of the Japanese unilateral equidistant median line, which was drawn during the period from March 1969 to September 1970.<sup>41</sup> Since Japan needs oil, would it thus be possible for the PRC to invite its neighbor to jointly explore and exploit the resources in the SCS? Of course, what needs to be taken into account is what Beijing can get in return—perhaps getting back at least the Diaoyu Island/Uotsuri Island, as opposed to the Diaoyu Islands.

II.4) and 5) Options 4 and 5 are quite similar. This is because they are not mutually exclusive. For example, in April 1999, Beijing and Moscow reached a breakthrough in talks to map out their common border, ending a three-century-old dispute on who has sovereignty over 2,444 uninhabited islands along the Heilongjiang River and other waterways. According to a Russian diplomat, "[the] islands have been

38 For a general understanding of the differences between them, see Yann-huei Song, "Declarations and Statements with Respect to the 1982 UNCLOS: Potential Legal Disputes between the United States and China After U.S. Accession to the Convention," *Ocean Development & International Law*, Vol. 36, No. 3 (July–September 2005), pp. 261–89.

39 [http://english.people.com.cn//200507/23/eng20050723\\_197815.html](http://english.people.com.cn//200507/23/eng20050723_197815.html), accessed on July 23, 2005.

40 Song, "Declarations and Statements with Respect to the 1982 UNCLOS," p. 262.

41 Harison, *Seabed Petroleum in Northeast Asia*, p. 18.

divided half and half in number and size."<sup>42</sup> However, the catch is that Beijing gets 1,281 islands, while the remaining 1,163 islands belong to Moscow.<sup>43</sup> In other words, if one halves 2,444, each side should only get 1,222 islands. Needless to say, some islands could be larger in size or have more natural resources than others. If we were to discuss the ECS, we will face a similar problem regarding, for example, the Diaoyutai/Senkaku.

II.6) It is almost certain that the PRC would find the sixth option more attractive, and the history of it should therefore first be highlighted. In August 1990, the PRC ranking official, Li Peng, while in the Republic of Singapore (ROS), said his government is "putting aside disputes and seeking common development" in the SCS. He was actually in line with the Deng Xiaoping principle of maintaining Chinese sovereignty over those disputed places.<sup>44</sup> This proposal also applies to the ECS. The probability for the mainland to compromise and to adopt a "50-50" formula is greater, as in the case of Heixiazi Island.<sup>45</sup> This is because, if Beijing can make compromises to its giant neighbor in the North, it can do the same to its Japanese neighbor. To be sure, *Jiefangjunbao* mentioned that, in the case of Heixiazi Island, each side is getting about half of the deal.<sup>46</sup> As early as October 1980, Chinese Deputy Premier Yao Yilin proposed joint oil development with Japan around the Diaoyutai, which could also include the United States.<sup>47</sup>

Another source said that in the mid-1980s, Japan Petroleum Exploration Company (JAPEX), which was established by the Japanese government in December 1955,<sup>48</sup> and mainland China were discussing the concept of joint operations in the ECS. Its web pages provided the following description: In the 1970s and 1980s, it "[played] a main operational role in government-led projects in Sakhalin, China and Canada

42 *Straits Times*, Singapore, April 29, 1999, p. 25.

43 Ibid.

44 <http://www.takungpao.com/news/2005-8-5/zm-437908.htm>, accessed on Aug. 5, 2005.

45 <http://udn.com/NEWS/WORLD/WOR1/2295237.shtml>, accessed on Oct. 15, 2004.

46 See note 6.

47 Reinhard Drifte, "Japan's Energy Policy in Asia."

48 Later, the government only controlled 49.9% of the company.

and participated in another in Abu Dhabi. . . ."<sup>49</sup> In mid-1986, Beijing proposed that the joint area must be the southern part of the ECS where its paramount leader, Deng Xiaoping, had once envisaged a possible joint development area.<sup>50</sup> In the late 1986, the Chinese side said it was not ready to discuss joint development in areas north of Diaoyutai, which the Japanese side insisted should be included in the joint area.<sup>51</sup> In the mid-1987, China National Oil Corporation (CNOOC) proposed to Uruma Resources Exploration Company (UREC) the specific latitudes and longitudes within which a joint development area could be created, which is to the east of the median line: E124'00"; E125'00"; N26'20"; N27'50."<sup>52</sup> In the mid-1988, JAPEX and Japan National Oil Corporation (JNOC) proposed a division of the joint area into blocs, with joint exploration work conducted gradually on a 50-50 basis, while the CNOOC expressed that the following measures should be taken to avoid possible arguments over the ownership of the Diaoyu Islands: "China would float a tender for the areas located to the west of the median line where they have envisaged joint operations. Japanese participation in such a tender would be most welcome" and "[the] disputed area based on the Japanese-claimed EEZ would be suitable for joint operations."<sup>53</sup>

In recent years, Beijing has reiterated that it is willing to resolve the thorny ECS issues between the two countries through dialogue or both equal-footed consultation and dialogue, which are "the only correct choice for resolving the questions," as stated in October 2004 by Zhang Qiyue, spokesperson of the PRC's Ministry of Foreign Affairs (MOFA). On other occasions, for example, in July 2005, the MOFA mentioned the term, "diplomatic negotiation."<sup>54</sup>

The PRC and Japan began to discuss maritime jurisdiction division, when the PRC ratified the UNCLOS on June 7, 1996, to be followed by Japan on June 20. In October 2004, Beijing and Tokyo held the first

49 <http://www.japex.co.jp/en/company/history.html>.

50 Susumu Yarita, "Toward Cooperation in the East China Sea," p. 3.

51 Ibid., p. 3.

52 Ibid.

53 Ibid., p. 4.

54 [http://english.people.com.cn//200507/05/eng20050705\\_194248.html](http://english.people.com.cn//200507/05/eng20050705_194248.html), accessed on July 5, 2005.

round of consultations over the dispute. In May 2005, the second round was held. The two sides in late September and early October 2005 consulted with each other for the third time. On October 1, 2005, Tokyo for the first time proposed to jointly develop the oil-gas fields close to the equidistant median line, as declared by it. The Japanese Foreign Minister said, “[we] agree on the principle to make [the ECS] not into the ocean of conflict, but into the ocean of cooperation, so we will discuss how we could jointly develop reserves.”<sup>55</sup>

There are some major issues, which remain to be resolved: boundary demarcation, especially regarding where the equidistant median line should be; EEZ; continental shelf; joint development after the border is determined; the Okinawa oceanic trough/trench, etc.

Before discussing each, it should be first noted that, in February 1992, the PRC’s National People’s Congress (NPC) passed the Law of the PRC on its Territorial Waters and their Contiguous Areas that included not only the Diaoyu Islands but also the SCS. Beijing also observes the October 1958 Geneva Convention of the Continental Shelf (GCCS) and upholds the doctrine of natural prolongation of land territory into and under the sea, which is close to the Japanese shoreline of Okinawa Prefecture. To be certain, Beijing stated that its natural gas exploration activities are carried out in mainland China’s offshore area but not in the disputed area. For these reasons, a MOFA ranking official said the PRC “will never recognize the [unilateral, Japanese equidistant median] line.”<sup>56</sup> Here, we must point out that, when Tokyo in October 2005 said that it can jointly develop the oil-gas resources close to the equidistant median line, many observers questioned this, by asking whether or not this meant it wants Beijing to indirectly recognize the line.

As to the EEZ, Beijing is certainly aware of Japan’s declaration of its geographic coordinates in June 1996 around the Senkaku Islands and its non-denial of the relevance of historical grounds.<sup>57</sup> Between them, there is also the Fisheries Agreement of November 1997, which entered into force in June 2001, whereby a provisional measures zone

55 *Taipei Times*, Oct. 1, 2005, p. 1.

56 [http://english.people.com.cn//200507/15/eng20050715\\_196329.html](http://english.people.com.cn//200507/15/eng20050715_196329.html), accessed on July 15, 2005.

57 Miyoshi Masahiro, “Seabed Petroleum in the East China Sea,” p. 4.

was devised in which the parties may take appropriate conservation measures and quantitative management measures to ensure that excessive development activities will not threaten the maintenance of marine living resources in the non-Diaoyutai/Senkakus sea areas. In other words, enforcement in the joint resource management area is to be carried out by the flag state of each fishing vessel. It should also be noted that, on December 25, 2000, Beijing and Hanoi signed the Sino-Vietnamese Agreement on Demarcation of Territorial Waters, Exclusive Economic Zone and Continental Shelf in the Beibu Gulf and the Agreement on Fisheries Cooperation in the Beibu Gulf, which came into force on June 30, 2004. In November 2005, it was reported that both sides would open talks and hopefully finish them around 2008 on the demarcation of the sea areas beyond the mouth of Beibu Bay.<sup>58</sup> To be sure, the latter agreement is the first one in East Asia that establishes a cooperative fisheries management program within demarcated maritime zones. In this connection, in February 2001, the mainland and Japan agreed to give each other two months’ prior notification with regard to maritime scientific research activities in waters around them.

Another issue has to do with the clash of views over the continental shelf and the EEZ. On the one hand, Beijing proposes that equitable principles be adopted, while Japan insists the equidistant median line be taken, which runs between its northern islets and the Senkaku Islands. If this line were to be adopted, the area of sea under Japanese control would be 160,000 square kilometers larger than it should be in the spirit of the principle of natural extension of the continental shelf, as stated in the UNCLOS. In the opinion of Susumu Yarita, who worked for the Uruma Resources Exploration Company (UREC), he hopes that “. . . each country can have an EEZ extending up to 200 nautical miles and that this concept shall supersede the continental shelf concept.”<sup>59</sup> Susumu noted the conflicting concepts of joint development between the two parties: “Japanese concept: The joint area should be an area which includes areas on both sides of the median line. In the western part, China would hold a 51 percent stake and Japan 49 percent. In the

58 [http://www.worldjournal.com.tw/wj-ch-news.php?nt\\_seq\\_id=1258671](http://www.worldjournal.com.tw/wj-ch-news.php?nt_seq_id=1258671), accessed on Oct. 31, 2005.

59 Susumu Yarita, “Toward Cooperation in the East China Sea,” p. 10.

eastern part, China would hold a 49 percent stake and Japan 51 percent. Chinese law shall apply in the west and Japanese law in the east." As to the Chinese concept, it is that "China and Japan should each hold an undivided 50 percent interest in the overall area covering both sides of the median line. Neither Chinese nor Japanese law shall apply in this area. Both governments shall agree on new governing rules to be applied to the joint operations."<sup>60</sup> Needless to say, each side had reservations regarding what the other side had stated.<sup>61</sup> Tokyo rebutted by making the following statements: "The Japanese stand that Chinese law shall apply in the western area and Japanese law in the eastern area would lead to arguments over where each law shall apply because the demarcation of the two areas could well become a subject of contention, given the unresolved territorial issue." On the Chinese side, they said that "[even] though the Chinese concept envisages a joint area covering both sides of the median line, in which neither Chinese nor Japanese law shall apply, China wants Japanese companies to secure exploration rights under Japanese mining laws as a prerequisite for participation in joint operations. China also wants Japan to enact new laws stipulating that Japanese laws are not applicable in the joint areas."

In areas where there are disputes, the PRC is willing to jointly develop the area. It is interesting to learn that in March 1998, Beijing proposed the waters including Diaoyutai. But, Tokyo did not respond. In any case, Tokyo has also not ruled out such a possibility.<sup>62</sup> In June 2004, however, Tokyo refused Beijing's proposal of "shelving disputes for joint development." The main reason is that, unless Japan has received technical, seismic data from the PRC, it believes that while the exploitation may be made on the western side of the equidistant median line, there is still a possibility of the siphoning off of those resources which actually lie on the eastern side of the median line. In any case, there is no resolution in sight for joint development after the border is determined.

However, one thing is for sure. Japan will continue to negotiate with the PRC, as, in April 2005, Koizumi said the talks were aimed to

60 Ibid., p. 7.

61 Ibid., pp. 7-8.

62 <http://www.libertytimes.com.tw>, accessed on Sept. 21, 2005.

"turn the sea of conflict into a sea of co-ordination." Later, the July 16, 2005 editorial of *Asahi Shimbun* in Tokyo said that "the granting of exploratory drilling rights to the Japanese company, [Teikoku Oil Company,] was a necessary step to build a foothold for negotiations with China on an equal footing."<sup>63</sup> However, later Japanese officials said oil exploration by Teikoku Oil Company was unlikely until at least summer 2006, citing technical and bureaucratic reasons.<sup>64</sup> In November 2005, this company signed an agreement with another Japanese company, INPEX Corporation, on the establishment of a joint-holding company in April 2006.

Another issue has to do with the legal status of the Okinawa oceanic trough. The mainland claims the trough, reaching 2,719 meters deep in the southern part, can be regarded as the point that divides the continental shelf with Japan. At the same time, Beijing agrees to take other factors into consideration in the division. Nonetheless, Tokyo refuses to recognize this. "It is an international practice that small, uninhabited islands that are disputed should not be used as baselines for sea border demarcation," Gao Jianjun, a maritime law expert at the China University of Politics and Law, pointed out. Experts said they believe that by putting forward the "equidistant median line" principle, the Japanese Government has demonstrated its explicit intention to include the Diaoyu Islands on its territorial map and expand its maritime territory into Chinese waters."<sup>65</sup>

As to the siphoning off the Japanese oil and gas, the PRC's oil experts explained that the continental shelf slope favors the Japanese, because the natural prolongation of its land territory to the outer edge of the continental margin is higher in the west and lower in the east, meaning that a lot of oil and gas could have gone to the Japanese side.<sup>66</sup>

63 [http://www.fpajjp/e/mres/japanbrief/jb\\_522.html](http://www.fpajjp/e/mres/japanbrief/jb_522.html), accessed on July 18, 2005.

In the late 1960s, this company and three other Japanese oil companies applied for permission to test-drill for oil and natural gas in the ECS. But, due to the sensitive nature of the matter, Japan did not grant them the permission to do so.

64 *China Post*, Taipei, Oct. 23, 2005, p.11.

65 [http://news.xinhuanet.com/english/2005-07/28/vontent\\_3277215.htm](http://news.xinhuanet.com/english/2005-07/28/vontent_3277215.htm), accessed on July 28, 2005.

66 [http://www.zaobao.com/special/forum/pages1/forum\\_jp050711.html](http://www.zaobao.com/special/forum/pages1/forum_jp050711.html),

In this connection, “[to] extract natural gas from Japan’s claimed side of the median line would require a completely separate drilling.”<sup>67</sup> Therefore, they had refused to provide the secret, technical, seismic gas field data to their Japanese counterparts. Besides, the equidistant median line is yet to be mutually decided. In any case, if it were publicized, the Chunxiao field is still under PRC jurisdiction.

### Concluding Remarks

Beijing leaders often remind their Japanese counterparts that they wish to develop long-term, friendly, and cooperative relations with each other, in line with the principle of “taking history as a mirror and looking forward to the future.” The Chinese usually mean what they say.

Tokyo should bear in mind that Beijing would like it to adhere to the principles as contained in the three political documents signed by the PRC and Japan; to wit, the September 1972 Sino-Japanese Joint Statement, the August 1978 Sino-Japanese Peace and Friendship Treaty, and the November 1998 Sino-Japanese Joint Declaration.

As early as January 1974, Tokyo and Seoul, without touching upon the sovereignty issue, signed an agreement for joint exploitation of disputed areas that could serve as a model for other similar problems, although the former under pressure from the PRC did not ratify the Japan/ROK Joint Development Zone until June 1977. If the two rivals can reach an agreement, why cannot Tokyo and Beijing?

In this paper, I have discussed many options. However, many of them are not applicable to the ECS issue. It seems that one of the best resolutions is to first set up as many international regimes as possible for the ECS. Between Beijing and Taipei, we may give the following term—the “bicoastal Chinese regimes”—given that the PRC and Taiwan have been politically-divided since the late 1940s. Regimes require international as well as bicoastal Chinese cooperation.<sup>68</sup> Once becom-

accessed on July 11, 2005.

67 [http://english.people.com.cn/200505/29/print20050529\\_187328.html](http://english.people.com.cn/200505/29/print20050529_187328.html), accessed on May 29, 2005.

ing a party of a regime, each country or political entity has to play by its rules and regulations, or all of them will face negative consequences or even suffer together. A regime, which can make sure that commercial and non-commercial operations at sea are transparent, should be created. And, each party that has an interest in the ECS certainly wants to keep the ECS peaceful and tranquil. Here, a code of conduct should be drafted as soon as possible. As such, the probability of conflict between the parties involved in the ECS can be drastically reduced. If the creation of regimes can become the grand strategy of Beijing, Japan, and possibly Taipei, they can, as a next step, put forward relevant policies.

For the record, in May 2004, a PRC patrol ship, the Haixun 21, participated in a joint exercise conducted by the JCG and focused on counter-terrorism, piracy, and smuggling. For this reason, it is this author’s belief that Beijing will choose to compromise and split the profits with Tokyo. Of course, to foster Chinese reunification, Beijing will likely welcome Taiwan to jointly explore and exploit the ECS resources in areas that are not under dispute, if the latter were to at least accept the late 1992 consensus (as opposed to the One China principle) or its equivalency.<sup>69</sup> So far, it has only signed oil contracts with Taipei in the Taiwan Strait.

In sum, the ECS is complicated but not as complicated as the SCS.<sup>70</sup> Many issues need to be solved and resolved. However, the chance of armed conflict seems quite remote in the foreseeable future.<sup>71</sup>

68 Some academics have written on the regimes. See Mark J. Valencia, “Regional Maritime Regime Building: Prospects in Northeast and Southeast Asia,” *Ocean Development & International Law*, Vol. 31, No. 3 (July 2000), pp. 223–47 and Valencia, Mark J. and Yoshihisa Amae, “Regime Building in the East China Sea,” *Ocean Development & International Law*, Vol. 34, No. 2 (April–June 2003), pp. 189–208.

69 See Peter Kieng-hon Yu, *Hu Jintao and the Ascendancy of China* (Singapore: Marshall Cavendish International Academic Publishing, 2005).

70 See Peter Kieng-hon Yu, “Issues on the South China Sea: A Case Study,” *Chinese Yearbook on International Law and Affairs*, No. 11 (1991–1992), pp. 138–200 and “The Chinese (Broken) U-shaped Line in the South China Sea: Points, Lines, and Zones,” *Contemporary Southeast Asia*, Vol. 25, No. 3 (2003), pp. 405–30.

71 In Chinese history, the Chinese dynasties had fought against Imperial Japan five times, and the score was 3 to 2 in favor of the former.