



# SPECPOL

SPECIAL POLITICAL AND DECOLONIZATION COMMITTEE



# Shishukunj Model United Nations Conference 2015 Committee: Special Political and Decolonization Committee

Shishukunj Model United Nations 2015  
Conference

## SPECPOL

**Study Guide**

Agenda: The East China Sea Dispute

**Executive Board**

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## Letter from the Executive Board

Dear delegates,

it is an honor to be your Executive Board for the Shishukunj MUN 2015. SPECPOL is a very interesting committee. What makes it so interesting is that it deals with very complicated agendas. After a lot of research, we have found a topic which is so unpredictable that it can cause very seriously the next world war.

Now what we think, believe and observe.

We have seen MUN changing lives of those who take it seriously, we have observed that the one who puts his or his/her heart, mind and soul into the agenda enjoys the most, and we think that the only way to change the three days of October into a lifelong memory is to interact with fellow delegates, debate and be prepared. If you do all of this, then the nervousness for this MUN will be overpowered by the feeling of excitement the moment you enter our campus. A special message for the first timers, don't get intimidated by this study guide, there is absolutely no need to memorize the names, facts and figures in this guide. It's just for your help.

Also, I hope you have got a good idea on this issue after reading this study guide but reading this document is not all that you have to do. It will be appreciated if you are brimming with ample research and it would be redundant if you quote points from the study guide. Respect your fellow delegates in the committee and remember, we are here to debate and not combat. Always keep in mind the mandate of SPECPOL. Make use of appropriate language in the committee and act like diplomats. And please, never ever go against your foreign policy. And there is nothing more that we like than a heated debate.

Feel free to contact us at [specpol@shishukunjmun.com](mailto:specpol@shishukunjmun.com)

With best wishes,

Executive Board

Special Political and Decolonization Committee

Chairperson – Mohammed Alavi

Vice – Chairperson – Nakul Goel

Rapporteur – Rashmeet Kaur Muchhal



## The Committee

The Special Political and Decolonization committee, originally the special committee on decolonization is the 4th committee of the United Nations General Assembly. Formed back in the year 1945, the committee was majorly focused upon resolving issues of colonization. However now, with independence having been granted to most States, the jurisdiction of the committee has expanded and now includes dealing with Palestinian Refugees, university for peace, outer space, public information among several others.

As all other GA committees, its membership stands at 193 states. Over the years, one cannot underestimate the role the committee has played with around 80 percent of states having been decolonized after the war in 1945.

Furthermore, in a landmark resolution passed by the committee in 1960, 'The declaration of the granting of independence to colonial countries and peoples', it proclaimed all peoples' right to self- determination and stated that colonialism be brought to a necessary end.

Among other committees of the UN, the SPECPOL too is a recommendatory body. It represents the general will of the states at large. That being said, its resolutions are not legally or strictly binding upon member states. It possesses the power to pass resolutions, and also make recommendations to other GA committees as well as the Security Council.



## Country Matrix

- |   |                              |                |                 |
|---|------------------------------|----------------|-----------------|
| 1. China                                    | 11. Indonesia                | 21. Maldives   | 31. Iraq        |
| 2. Malaysia                                 | 12. Singapore                | 22. Myanmar    | 32. Sri Lanka   |
| 3. Democratic People's<br>Republic of Korea | 13. Thailand                 | 23. Bangladesh | 33. Belarus     |
| 4. The Russian<br>Federation                | 14. Pakistan                 | 24. Brazil     | 34. Spain       |
| 5. The United States of<br>America          | 15. Germany                  | 25. Italy      | 35. Poland      |
| 6. Japan                                    | 16. South Africa             | 26. Sweden     | 36. Belgium     |
| 7. The United Kingdom                       | 17. Brunei                   | 27. Algeria    | 37. South Sudan |
| 8. Republic of Korea                        | 18. France                   | 28. Nigeria    | 38. Switzerland |
| 9. India                                    | 19. Philippines              | 29. Greece     | 39. New Zealand |
| 10. Vietnam                                 | 20. Republic of<br>China (O) | 30. Australia  | 40. Armenia     |



## Agenda Statement

Over 1,400 years have gone by since Japan sent its first mission of elites across the choppy waters of the East China Sea. Its objective was to learn about government, medicine, art, literature, and religion from China's best minds. Since then, China and Japan share a cultural bond that has spanned over the centuries, in spite of their many wars and conflicts. Yet tensions between the two sides today over a handful of islets in the East China Sea are showing no signs of abating. In fact, so tense is the situation over ownership of the territories that some analysts fear outbreak of World War 3.

Such a view may still be in the minority. Nevertheless, friction between two of Asia's biggest powers is undoubtedly posing a threat to the Asia-Pacific region at large. **Moreover, U.S. commitment to its security alliance with Japan has increased concerns that mounting friction between China and Japan could have global implications.**

Ownership of the five uninhabited islands located west of Japan's Okinawa islands and east of China, came into the public limelight following the discovery of petroleum reserves in 1968. Still, sovereignty of the territories did not capture public attention on both sides until a Chinese fishing trawler collided with two Japanese Coast Guard vessels in September 2010. Since then, neither side has been able to agree on the ownership of the islands, known as the **Senkaku** in Japan and the **Diaoyu** in China.

## History of Senkaku and Diaoyu Islands.

The Senkaku (Pinnacle) Islands (known as the Diaoyu Islands in Chinese and the Diaoyutai Islands in Taiwanese) consist of five uninhabited islets and three barren rocks, with a total surface area of about 7 km. The archipelago lies about 120 nautical miles (170 km) from both Ishigaki, one of the Ryukyu Islands in the Prefecture of Okinawa (and the nearest undisputed Japanese land), and Taiwan.

The archipelago, a barren and desolate set of islets and rocks, was generally considered to be unable to sustain human life for more than a short period of time. In the past, the islands' potential economic value was also rather limited. In these conditions, it is not surprising that the international community



manifested so little interest in the islands' status that almost no specific reference has been found in any international documents. According to Beijing, Chinese historical records mention the discovery – with a succinct geographical description – of the Diaoyu (Senkaku) Islands as early as 1372. At that time the islands were used as navigational aid and a temporary operational base for Chinese fishermen. China claims it incorporated the islands into its maritime defence in 1556. However, China never established a permanent settlement of civilians or military personnel on the islets, and there is no evidence that it maintained permanent naval forces in adjacent waters. Later, an imperial decree – dated 1893 – issued by Dowager Empress Cixi gave a Chinese businessman the right to access the islands and gather medicinal herbs. The islands came to be of interest to Japan after one of its subjects, Tatsushiro Koga, 'discovered' them and made a request to the local government of Okinawa for their commercial exploitation.

From 1885, the Government of Japan, through the agencies of the Okinawa Prefecture and other means, started to carry out surveys of the Senkaku/Diaoyu Islands. These surveys confirmed that the islands had not only been uninhabited but showed no trace of having been under the control of China's Qing Dynasty.

The following timeline highlights the main events throughout the course of the dispute's history.

### **Sino-Japanese War 1894-1895:**

Japan argues that the islands were 'terra nullius' before 1895 (i.e. islands that no nation claimed sovereignty over) and "showed no trace of having been under the control of China". Furthermore, to support its claim, Tokyo points out that a fisherman from Okinawa Prefecture made an application for the lease of the islands in 1884. For Japan, the island's sovereignty starts in 1895 when its government adopted a Cabinet Decision on January 14th to formally incorporate the islands into the territory of Japan. This decision was taken a few weeks before the end of the first Sino-Japanese War and the signing of the Treaty of Shimonoseki. However a look through historical evidence from a Chinese perspective would find that before 1885 there were no Japanese records of the Diaoyu islands as being under Japanese control. On this ground, China reject Japan's terra nullius claim.

### **July 1945:**





In the Potsdam Declaration, the US, UK and China agree on the terms of a Japanese surrender. It is agreed that Japan must return all the territories it had occupied in China (such as Manchuria, Taiwan and the Pescadores Islands) after the Allied victory. The Senkaku Islands are not specifically mentioned.

**September 1951:**

The Treaty of San Francisco, which officially ends the occupation of Japan by the victorious powers and returns sovereignty to Japan, does not mention the Senkaku Islands. The People's Republic of China, the Soviet Union and India refuse to sign the document. Like Okinawa, the Senkaku Islands are initially administered in trust by the US. The United States pays rent to a private owner, as it uses the islands for target practice for bombers. This is an implicit US recognition of Japanese sovereignty over the islands.

**May 1969:**

Okinawa prefecture erects a marker on the main island of the Senkaku group to emphasize Japan's territorial claims. Neither the People's Republic of China nor the Republic of China (Taiwan) protests. China only lodges claims when Japanese scientists discover an underwater oil field in the vicinity of the islands.

**1972:**

Washington returns Okinawa and the south-western islands, including the Senkaku Islands, to Japan. Since the Nixon administration is also negotiating with China at this time, the US is noncommittal on the status of the islands, leaving the question of ownership open.

**1978:**

In negotiations on a peace treaty between Japan and China, both sides agree, as in 1972, to set aside the question of the islands.

**April 1978:**

Between 80 and 140 partly armed Chinese fishing boats enter the disputed waters of the Senkaku Islands. The Chinese fishermen display posters that express a claim to the islands.

**1996:**

China and Japan join the United Nations Convention on the Law of the Sea (UNCLOS). Japan's nationalist youth organization builds a lighthouse on one of



the disputed Senkaku Islands. A group of Chinese people departs Hong Kong to tear it down. When the captain of the ship reverses course because of an approaching storm, some activists jump overboard. A young man drowns and is the first "martyr" of the island dispute.

**January 2004:**

Japanese security forces fire water cannon on Chinese fishermen near the Senkaku Islands, injuring one.

**September 2005:**

A Chinese warship is discovered near a disputed gas field. A vessel of the Japan Coast Guard finds two Chinese patrol boats that have spent more than nine hours in Japanese waters. At the controversial Chunxiao gas field northeast of the Senkaku Islands, Japanese planes spot five Chinese vessels, among which is a destroyer.

**October 2006:**

A submarine of the People's Liberation Army of China pursues the US aircraft carrier Kitty Hawk in the East China Sea.

**April 2010:**

Ten Chinese warships carry out a naval exercise to ward off submarines in the Strait of Miyako, northeast of the Senkaku Islands.

**September 2010:**

A Chinese fishing boat rams a Japan Coast Guard boat.

**March 2011:**

A helicopter of the Chinese fishery authorities buzzes and obstructs a Japanese destroyer near a disputed gas field.

**August 2011:**

Chinese fishery patrol boats penetrate the 12 nautical mile zone surrounding an island in the Senkaku group claimed by Japan.

**November 2011:**

The Japan Coast Guard arrests a Chinese fishing boat captain after a pursuit in the Goto Islands, south of the main Japanese island Kyushu.



**March 2012:**

The Japanese Parliament gives names to 39 previously nameless islands in the Senkaku group and adjacent islands. The People's Republic of China responds promptly with its own names and descriptions for a total of 70 islands in the region. Taiwan also rejects Japan's naming.

**April 2012:**

It becomes known that conservative hard-line Tokyo Governor Shintaro Ishihara is negotiating the purchase of eight of the Senkaku Islands with their private Japanese owner.

**September 2012:** The Japanese government buys three of the Senkaku Islands also claimed by China and Taiwan from their Japanese owner. It wants to forestall Ishihara's initiative and defuse the affair. Nevertheless, the move results in massive protests in China. Dozens of Taiwanese fishermen and coast guard vessels approach the Senkaku Islands in a convoy. The Japan Coast Guard uses water cannon to try to stop the fleet. The Taiwanese fleet ultimately turns around.

**December 2012:**

A Chinese surveillance aircraft enters the airspace over the Senkaku Islands. According to Japanese statements, this is the first such incident since 1958. Japan sends eight F15 fighters.

**January 2013:**

Multiple Chinese aircrafts penetrate the airspace over the Senkaku Islands.

**February 2013:**

Japan lodges a protest because a Chinese frigate has allegedly locked its fire control radar onto a ship of the Japanese Maritime Self-Defense Force. China denies the allegations.

**November 2013:**

China establishes Air Defense Identification Zone over the East China Sea. USA accuses China of altering the status quo of the East China Sea. Japan, USA, Taiwan and Japan flout the regulations proclaimed by China. Aircrafts of all these countries and the Republic of China fly through the Zone without informing China.

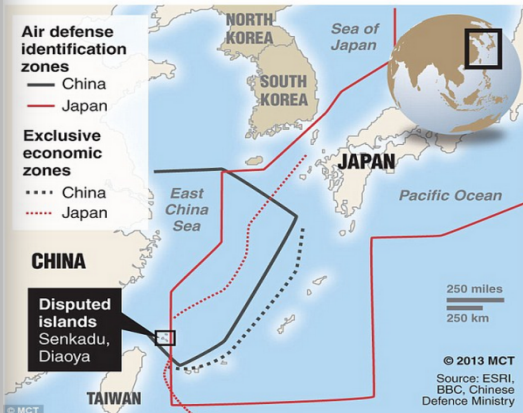
Before

After



### New air zone

*U.S. bombers and Japanese planes flew over disputed islands and through a new airspace defense zone declared by China.*



## Resources in the East China Sea

### Energy Reserves

According to the US Energy Information Administration (EIA), hydrocarbon reserves in the East China Sea are difficult to determine. The area is underexplored and the territorial disputes surrounding ownership of potentially rich oil and natural gas deposits have so far precluded further development. The EIA estimates that the East China Sea has between 60 and 100 million barrels of oil in proven and probable reserves. Chinese sources claim that undiscovered resources may run as high as 70 to 160 billion barrels of oil for the entire East China Sea, mostly in the Xihu/Okinawa Trough. However, 'undiscovered resources' do not take into account economic factors relevant to bringing them into production, unlike 'proven and probable reserves'.

China began exploration activities in the East China Sea in the 1980s, discovering the Pinghu oil and gas field in 1983. Japan co-financed two oil and gas pipelines running from the Pinghu field to Shanghai and the Ningbo onshore terminal on the Chinese mainland, through the Asian Development Bank and its own Japanese Bank of International Cooperation (JBIC). More recently, both China and Japan have concentrated their oil and gas extraction efforts on the contested Xihu/Okinawa Trough.



To date, only the Pinghu field, operational since 1998, has produced oil in significant quantities. Pinghu's production peaked at around 8000 to 10000 barrels per day (bbl/d) of oil and condensate in the late 1990s, leveling off to around 400 bbl/d in recent years. In the medium term, the East China Sea is not expected to become a significant supplier of oil.

## **Natural gas**

The EIA estimates that the East China Sea contains between 1 and 2 trillion cubic feet (TCF) of proven and probable natural gas reserves. The region may also have significant upside potential in terms of natural gas. Chinese sources point to as much as 250 TCF of undiscovered gas resources, mostly in the Xihu/Okinawa Trough.

The Chinese National Offshore Oil Corporation (CNOOC) listed its proven East China Sea gas reserves at 3200 billion cubic feet (BCF) in 2011, according to an annual report. In 2012, an independent evaluation estimated probable reserves of 119 BCF of natural gas in LS 36-1, a promising gas field north of Taiwan currently being developed as a joint venture between CNOOC and UK firm Primeline Petroleum Corp.

The uncontested Pinghu field began producing in 1998, reaching a peak of approximately 40 to 60 million cubic feet per day (Mmcf/d) in the mid-2000s and declining in recent years. Chinese companies discovered a large oil and gas field group in 1995 in the Xihu/Okinawa Trough. Chunxiao/Shirabaka is the largest gas field in this group and is used on occasion to reference all fields in the area. China began producing at the contested Tianwaitian/Kashi field in 2006, claiming it as part of its exclusive economic zone. According to industry sources, Tianwaitian/Kashi has produced between 10 and 18 Mmcf/d over the past few years. China has not released production data from the Chunxiao/Shirabaka field, citing concerns about the regional dispute.

## **Fisheries**

The East China Sea encompasses a dense system of several hundred coral reefs in what is often claimed to be the most bio diverse of the world's seas, and the Seas represents the main source of the animal protein for all the littoral states. More significantly the animal protein from fisheries is said to contribute approximately 65 % of the total animal protein consumed in states such as The Philippines and Malaysia. Moreover the need for animal protein in the region is steadily rising with population growth and urbanization. The total catch of tuna and shrimp in and around the East China Sea is amongst the



largest in the world, and thus represents a vital resource for the region both for domestic consume and export. Conclusively if vast areas of the East China Sea should fall within one of the states' national jurisdiction giving that one state exclusive rights to the resources therein, it would have enormous consequences for the other claimant states.

## UNCLOS

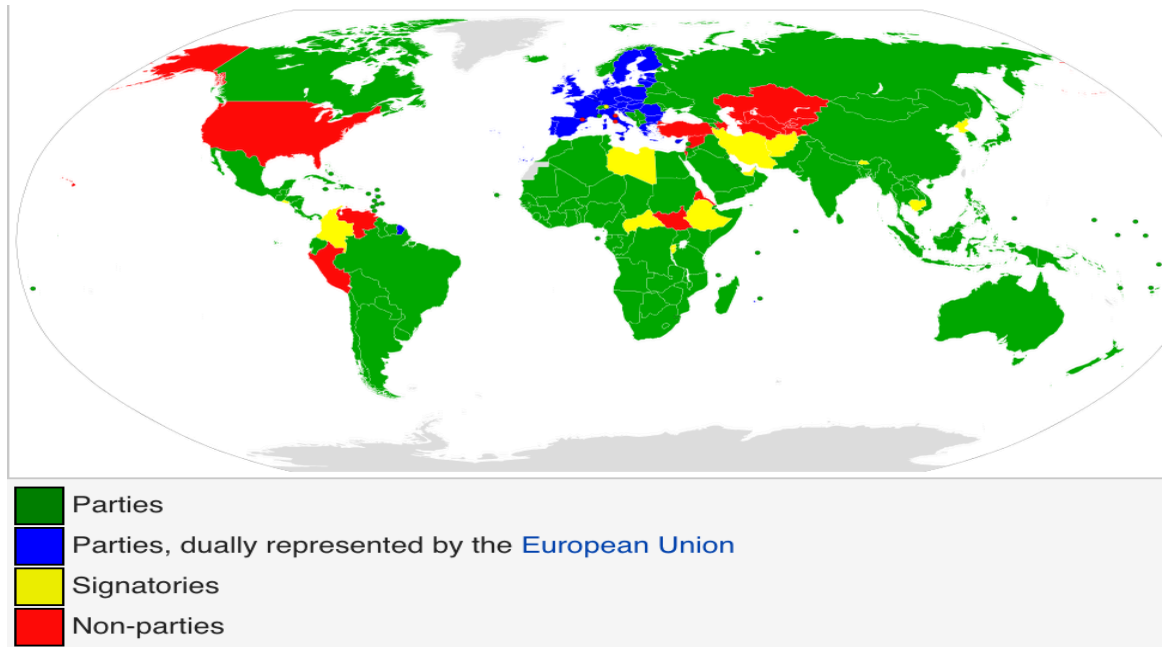
### **History**

Traditionally, the principle of freedom of the seas prevailed over the claims of coastal states to rule over the waters facing their coastline. This was not only done in the name of free trade but also resulted from the relatively poor means available to ancient countries to effectively expand their control over the seas. In 1609 the Dutch philosopher Hugo Grotius, in his work *Mare Liberum* ('The Freedom of the Seas'), argued that 'no ocean can be the property of a nation because it is impossible for any nation to take it into possession by occupation', while any such attempt would be against the laws of nature.

According to Grotius, a nation had jurisdiction over the coastal waters that could be effectively controlled from the land. Coastal states' rights were thus restricted to a narrow coastal strip that was generally assumed not to exceed 3 nautical miles (nm) offshore, in accordance with what was known as the 'cannon-shot rule'. This rule was never properly codified, and in more recent times several countries began to advance increasingly structured jurisdictional claims over waters facing their coastline.

In 1945, the US unilaterally extended its jurisdiction and control to natural resources 'of subsoil and sea bed of the continental shelf beneath the high seas but contiguous to the coast'. This move was clearly resource-oriented. The presidential proclamation (known as the Truman Proclamation) extending US maritime jurisdiction to the American continental shelf openly stated that the decision had been prompted by the need to ensure 'the conservation and prudent utilization' of natural resources (such as oil and minerals) and by the need to increase national security and, inter alia, to 'keep a close watch over activities off of its shores'. The US made it clear,

however, that the new rules did not affect the character of the high seas of such waters and ‘the right to their free and unimpeded navigation’. The Truman Proclamation is generally regarded as a major step towards the expansion of coastal states’ maritime jurisdiction further offshore.



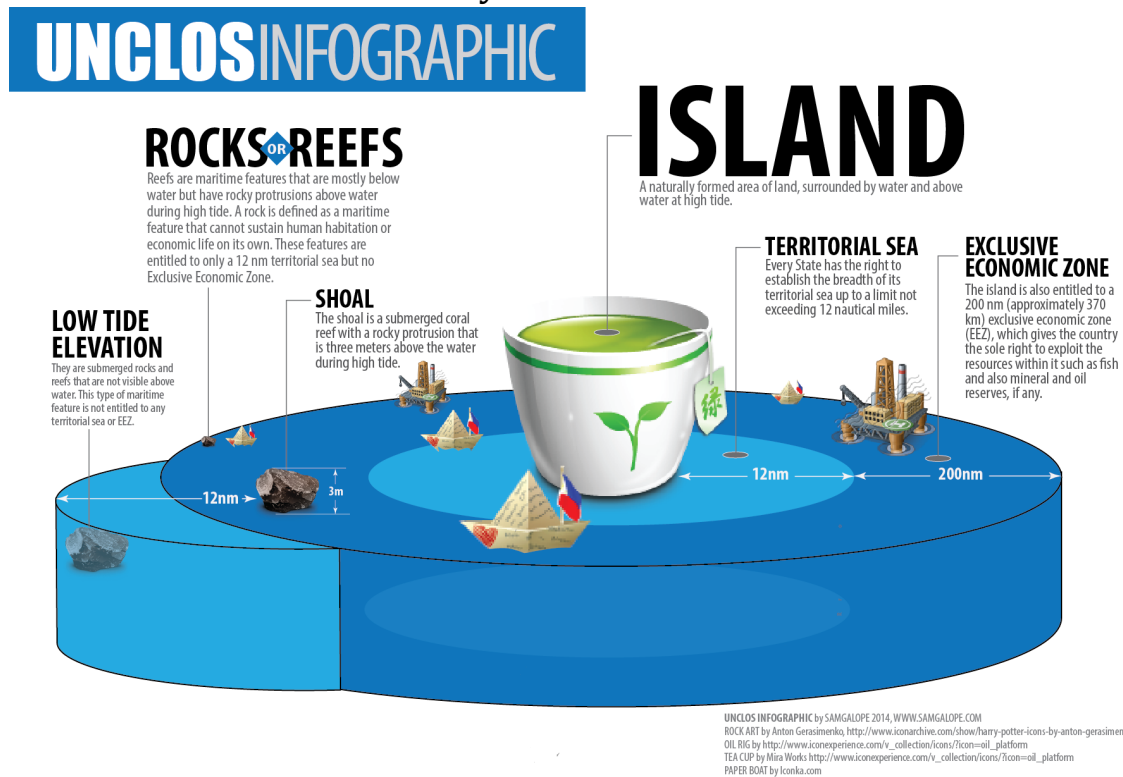
Efforts towards the codification of the law of the sea proved unsuccessful, and little progress was made until the late 1950s. However, growing interest by coastal states and improved technological resources made it impossible to defer progress on the codification of international maritime law any longer. In 1958, the first Conference on the Law of the Sea (UNCLOS I), organized under the good offices of the United Nations, gave birth to four conventions covering, inter alia, the territorial sea and the contiguous zone, the continental shelf, and the high seas. UNCLOS I was followed two years later by another conference (UNCLOS II), which extended the territorial sea to 6 nm, coupled with another 6 nm fishing zone seaward. UNCLOS II also fixed continental shelf limits at 200 nm or further, provided that exploitation of resources was possible.

Some of the UNCLOS 2 results proved unsatisfactory. The 6 nm limit on territorial waters was considered insufficient by a number of countries, while provisions on the maximum extension of the continental shelf were generally considered to be too vague and subject to unpredictable technological developments. In the light of these shortcomings, a third

conference (UNCLOS III) started in 1973. Negotiations lasted almost a decade, resulting in the UN Convention on the Law of the Sea (hereinafter ‘UNCLOS’).

The 1982 UN Convention on the Law of the Sea, which came into force on 16 November 1994, is an international treaty that lays down a regulatory framework for the use of the world’s seas and oceans, inter alia with a view to ensuring the conservation and fair exploitation of resources and the marine environment and the protection and preservation of the living resources of the sea.

UNCLOS also addresses such matters as sovereignty, rights of US in maritime zones, and navigational rights. In this respect, its major achievement was to find a consensus on a clear definition of national limits on maritime jurisdiction. As at 10 January 2014, 166 states had ratified, acceded to, or succeeded to, UNCLOS. The United States is not a member of UNCLOS, but accepts most of its provisions on the grounds that it is based on customary international law.



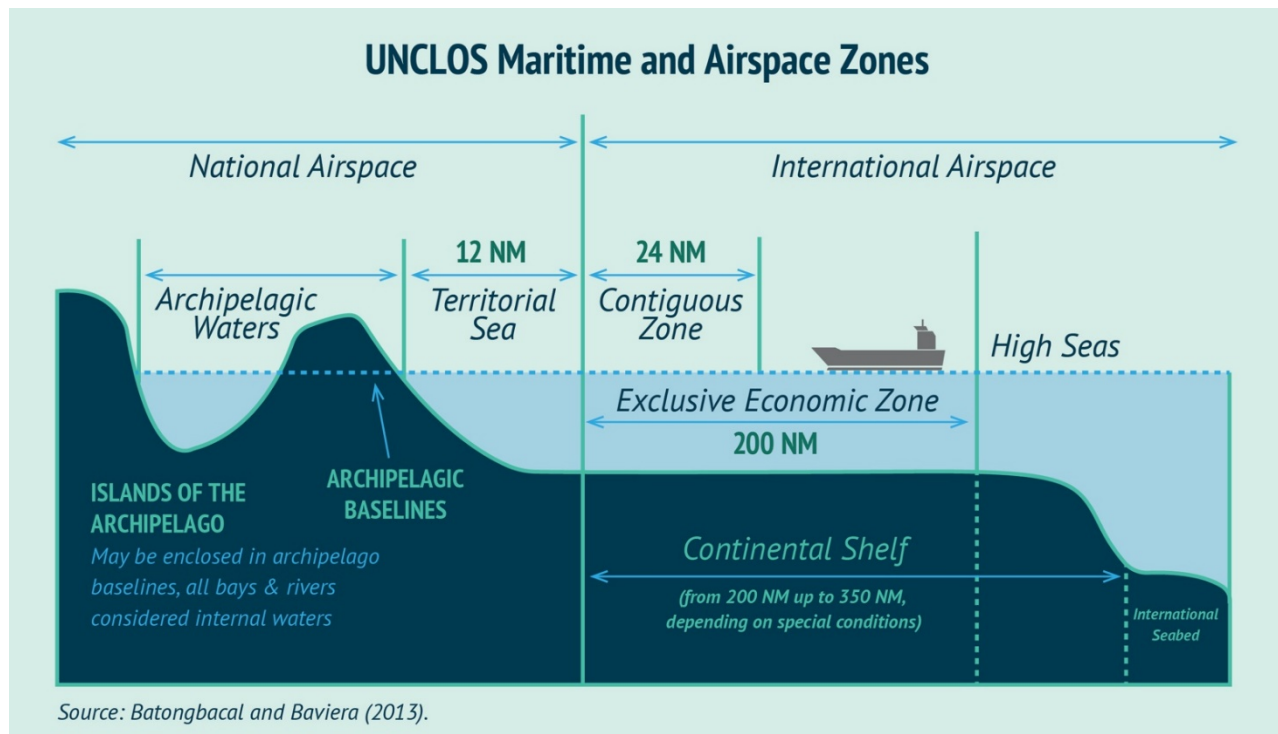
## Provisions of UNCLOS

UNCLOS extended the maximum breadth of the territorial sea to 12 nm. It



also set the maximum extension of the contiguous zone at 24 nm, and introduced the concept of the exclusive economic zone (EEZ), the maximum breadth of which was set at 200 nm (with a few exceptions).

An in-depth analysis of UNCLOS goes beyond the scope of this note. It is worth noting, however, that it provides for a special regime for islands. Article 121 defines an 'island' as 'a naturally formed area of land, surrounded by water, which is above water at high tide'. The convention also makes a distinction between 'islands' and 'rocks'. Rocks are islands which cannot sustain human habitation or economic life of their own. Unlike islands, rocks have no exclusive economic zone or continental shelf, while the territorial sea and the contiguous zone are determined in accordance with the convention provisions applicable to other land territory.



The distinction between 'islands' and 'rocks' is rather important. An island with no maritime neighbours within 400 nm is entitled to an EEZ of 125 664 nm (corresponding to 431 031 km), while a rock gives entitlement to territorial waters of only 452 nm (corresponding to 1 550 km). At the moment, there is no conclusive case law establishing a legally binding distinction between rocks and islands.

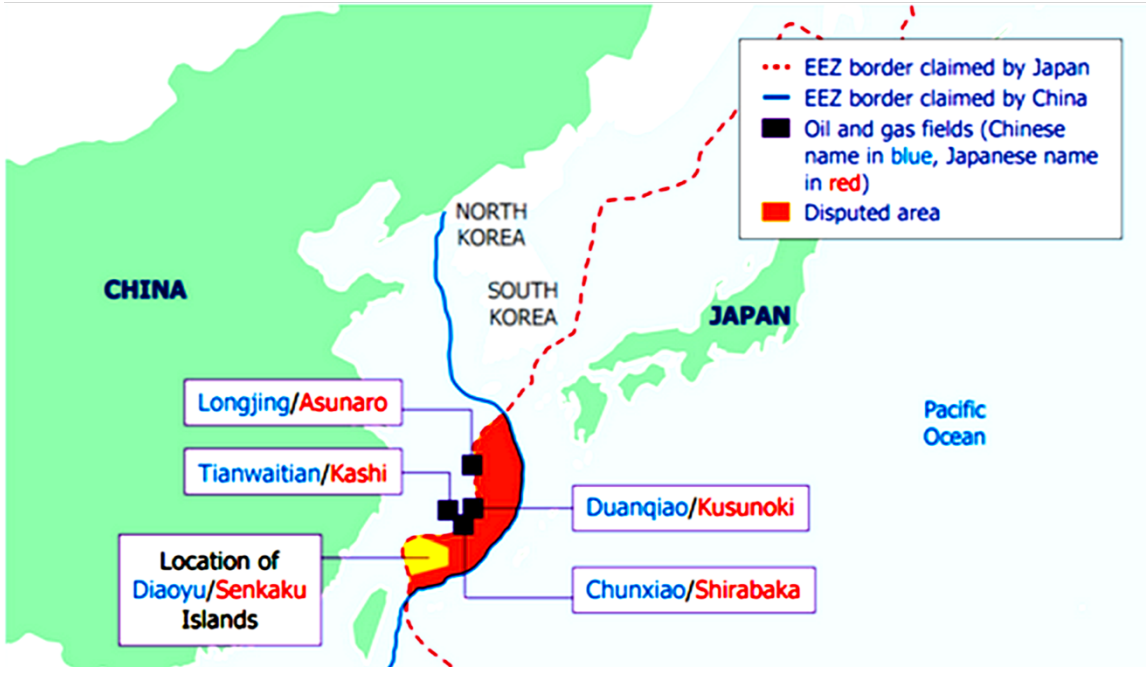
Due to UNCLOS, islets or rocks that for centuries had had limited economic



interest, or none at all, suddenly gained huge economic and strategic value, but also became the source of new disputes among maritime countries.

### Exclusive economic zones (EEZs)

Article 55 of UNCLOS defines EEZs as areas ‘beyond and adjacent to the territorial sea’, which are subject to a specific legal regime different from the one traditionally associated with territorial and high sea waters. In its EEZ, a coastal state has several sovereign rights (Article 56). The most important of these is the right of ‘exploring and exploiting, conserving and managing the natural resources’.



The importance of EEZs should not be underestimated. Generalized application of the 200 nm EEZ would encompass 43 million square nm (147 million km) of maritime space. This amounts to approximately 41 % of the surface area of the oceans or 29 % of the Earth’s surface, and roughly corresponds to the surface of the Earth covered by emerged land.

In 1984 the UN Food and Agriculture Organization (FAO) estimated that 90 % of marine fish and shellfish were caught within 200 nm of the coast. Similarly, it was estimated that 87 % of the world’s known submarine oil deposits would fall within the 200 nm-breadth zones of jurisdiction.



The introduction of 200 nm-breadth EEZs had a dramatic impact on the extent of ocean space becoming subject to the maritime claims of coastal states, and represents a profound reallocation of resource rights from international to national jurisdiction.

To date, only half of the potential maritime boundaries around the world have been delimited, while some previously concluded agreements do not include the EEZ, but only continental shelf rights.

### **Critics of the UNCLOS Regime**

Some scholars have criticized UNCLOS because they believe that some of its provisions may ignite conflicts rather than resolving long-standing maritime issues and allowing appropriate exploitation of natural resources. According to Carlos Ramos-Mrosovsky, 'the Law of the Sea Convention's general rules are not tailored to, and cannot easily accommodate, the unique political geography of the East China Sea'. He also stresses that 'by enabling whichever country has sovereignty over the Senkaku to claim exclusive rights over resources hundreds of miles offshore, the law of the sea has inflamed the dispute by vesting otherwise worthless islands with immense economic value'.

Moreover, the international customary law governing the acquisition of territory tends to encourage the 'display of sovereignty' and penalizes states for appearing to 'acquiesce' in a rival state's claim to disputed territory. In a dispute such as the one between Japan and China over the Senkaku/Diaoyu Islands, the need to demonstrate sovereignty and avoid acquiescence – or the appearance of acquiescence – in a rival's claim may inevitably result in a series of dangerous escalatory initiatives and even in an open conflict which would not only have disastrous effects on the opponents but could also undermine the global economy and stability.

Finally, the lack of clarity of customary international law encourages parties to invoke international legal norms which can almost always be construed to fit their interests, while dissuading them from trying to resolve their dispute through legal processes. This is the case with the Senkaku/Diaoyu Islands: The Japanese Government insists that there is no territorial issue to discuss, while the PRC has so far carefully avoided having the dispute discussed and adjudicated by the International Court of Justice or other international arbitration bodies as provided for in Article

287 of UNCLOS.

## Key Issues

### **Territorial Claims**

China – and Taiwan – do not agree with the interpretation of international law put forward by the Japanese Government in support of its claims over the Senkaku/Diaoyu Islands. According to Beijing some ancient Chinese records, dating back to the Ming Dynasty (1368-1644), mention the islands, while more recent documentation demonstrates that the islands were incorporated into the Ming and Qing (1644-1911) dynasties' maritime defence.



Based on this historical documentation, both the PRC and ROC (Taiwan) Governments consider that the islands were not terra nullius at the time of their incorporation by Japan in 1895. Rather, they suggest that, together with the Pescadores, the Senkaku/Diaoyu Islands were an appurtenance of the island of Formosa and thus shared the same fate. China holds that Japan's title of sovereignty over the Senkaku/Diaoyu Islands is not based on the Cabinet



decision of January 1895 but rather on the Treaty of Shimonoseki, which transferred Formosa and all its appurtenances to Japan.

For many years, however, neither of the Chinese governments made any public claim to the title of the Senkaku/Diaoyu Islands, and nor did they protest even when the islets were not returned to China as an appurtenance of Taiwan, but placed under United States trusteeship. The fact that China expressed no objection to the status of the islands as being under United States administration in accordance with Article III of the San Francisco Peace Treaty may indicate that at that time China had no outstanding claims over the Senkaku/Diaoyu Islands.

It was not until the early 1970s that the Government of China and the Taiwanese authorities began to raise questions regarding the Senkaku/Diaoyu Islands. The ROC Government decided to raise the issue of sovereignty owing to public opposition in Taiwan (and among the Chinese diaspora) to the return of islands under US trusteeship to Japan.

This decision was also prompted by the discovery of significant hydrocarbon reserves in the waters adjacent to the Senkaku/Diaoyu Islands. A geophysical survey conducted by the Committee for Coordination of Joint Prospecting for Mineral Resources in Asian Offshore Areas (CCOP), under the auspices of the UN Economic Commission for Asia and the Far East (ECAFE), indicated that the continental shelf between Taiwan and Japan was rich in oil reserves.

The PRC's public reaction was even less timely. The first official statement by the Chinese Ministry of Foreign Affairs disputing the title over the islands was only published on 30 December 1971. By contrast, China's claims to the South China Sea (the 'nine-dash line) were formalized back in 1947, although they had appeared in Chinese maps in one form or another since 1936, and were then taken over as early as 1949 by the PRC.

China contends that the Senkaku/Diaoyu Islands had been under China's administration and jurisdiction as part of Taiwan and resolutely holds that they were ceded to Japan along with Taiwan by the Treaty of Shimonoseki, which ended the 1894-1895 Sino-Japanese conflict.

China also stresses that it was not a signatory of the San Francisco Peace Treaty, and therefore considers that the deal is not legally binding. Moreover, China insists that it objected to any and every stipulation of this treaty and that there was therefore no need to expressly mention the islands in question. According



to Beijing, the islands were illegally kept under United States trusteeship and later returned to Japan, when they should naturally have been returned to China together with Taiwan.

China affirms that the islands are ‘an inseparable part of the Chinese territory. Diaoyu Dao is China’s inherent territory in all historical, geographical and legal terms, and China enjoys indisputable sovereignty over Diaoyu Dao.’ As acknowledged by The Economist, this interpretation relies on a vision of the ‘world in which status and stability in relations across Asia were regulated through a system of tributary states acknowledging Chinese centrality. Everything had its place – including the Diaoyu islands.’

Japan, on the other hand, holds that ‘there is no doubt that the Senkaku/Diaoyu Islands are clearly an inherent part of the territory of Japan, in light of historical facts and based upon international law. Indeed, the Senkaku Islands are under the valid control of Japan. There exists no issue of territorial sovereignty to be resolved concerning the Senkaku Islands.’

The EU has so far preferred to take a cautious approach and has not expressed its views on the sovereignty of the contested islands. On 25 September 2012 the EU High Representative, Catherine Ashton, called on all parties to calm the situation in East Asia’s maritime areas, using the UN Convention on the Law of the Sea (UNCLOS) and other international rules to resolve disputes.

The US has also refrained from taking a clear position on Chinese legal claims to the Senkaku/Diaoyu Islands, but has stressed on a number of occasions over the years that since the Senkaku/Diaoyu Islands are under the administration of Japan, they are ipso facto covered by the 1960 US-Japan Treaty of Mutual Cooperation and Security. During his visit to Tokyo in April 2014, US Secretary of Defense Chuck Hagel declared that there is no ‘weakness on the part of the United States as to our complete and absolute commitment to the security of Japan’. This formal commitment vis-à-vis Japan is seen as one of the main pillars of the US strategic rebalancing: the so-called ‘pivot’ towards Asia.

Apart from these two key players, Republic of Korea as well maintains its claims in the East China Sea. The claims of these 3 parties have been summarized below –

### **Republic of Korea’s Claims:**

The ROK claims the following: 1. a system of straight baselines;



2. A 12-nautical mile territorial sea (3 nautical miles in the Korea Strait), including the entire Cheju Strait;

3. A continental shelf extending throughout the natural prolongation of its land territory to the edge of the continental margin, apparently as far south as 28° 36 N latitude in the vicinity of the Okinawa Trough, over 250 miles from the nearest Korean territory;

4. A 200 nautical mile EEZ.

### **Japan's Claims:**

Japan makes the following claims:

1. A system of straight baselines;

2. A 12-nautical mile territorial sea extending from these straight baselines (but only 3 nautical miles in the Korea Strait and other straits);

3. An unspecified continental shelf;

4. A 200-nautical mile EEZ from the straight baselines, although the claim to the west and north of the Diaoyu/ Senkaku features has purposely been left vague (one option considered by Japan was to exempt waters bordering South Korea and China from its EEZ claim); and

5. Sovereignty over the Senkaku features.

### **China's Claims:**

The PRC makes the following principal claims:

1. Straight baselines connecting base-points on the mainland coast and the outermost coastal islands;

2. A territorial sea extending 12 nautical miles from these baselines and from off shore islands, including specifically the Diaoyu Islands (Diaoyutai);

3. A contiguous zone extending 12 nautical miles from the territorial sea;

4. A continental shelf extending throughout the natural prolongation of its land territory to the outer edge of the continental margin, i.e, presumably to the Okinawa Trough, although no precise limits of the claim have been published;



5. Sovereignty over the Diaoyu Islands, but not a continental shelf or EEZ extending from the features.

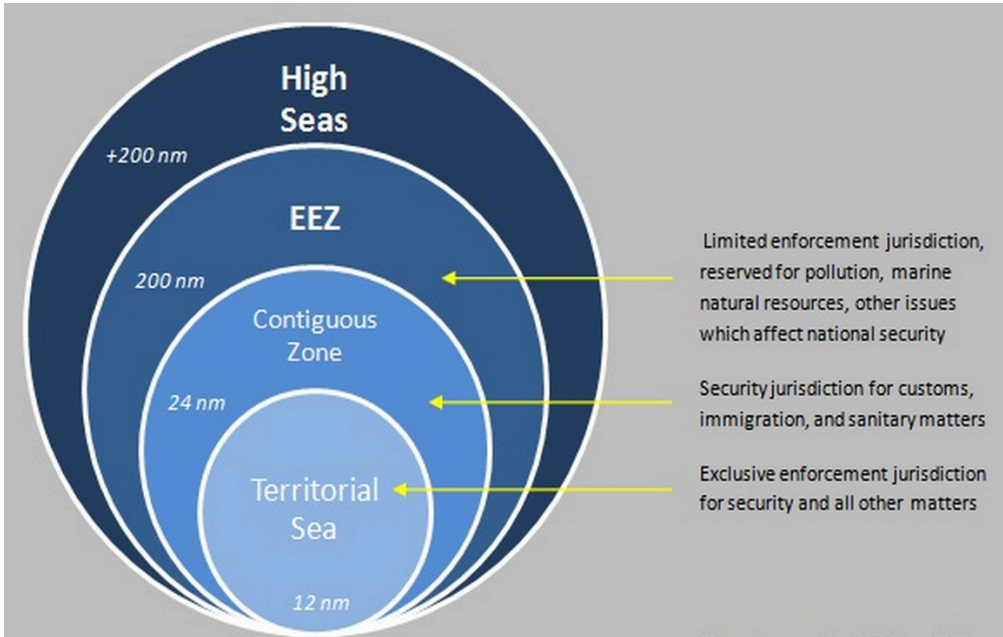
All of China’s claims apply to Taiwan since China claims Taiwan as part of China.

**Overlapping maritime claims in the East China Sea**

China and Japan have overlapping maritime claims over the East China Sea and have not found an agreement on the delimitation of their respective EEZs and the extension of the continental shelf. Japan demands the application of the equidistance (median-line) approach, whereas China insists on the application of the principle of natural prolongation of the continental shelf. Based on the latter approach, which allows claims up to 350 nm from the coast, China claims an area extending from its coast up to the Okinawa Trough (circa 2000 m in depth), which is within the 350 nm limit set by UNCLOS (Article 76).

Japan does not agree with China’s topographical interpretation, and considers that the Trough is merely a dent in the continental shelf which cannot be considered to be a physical border. Moreover, the Japanese Government considers Okinawa to be an extension of its continental shelf.

According to Japan, the East China Sea has a breadth of less than 400 nm and therefore the maritime border should be the median (or equidistant) line drawn through the overlapping area. The median-line approach is favorable to the Japanese, notably in view of its demand to draw the line westward of the Senkaku/Diaoyu Islands.







China and Japan also disagree on the nature of the Senkaku/Diaoyu Islands. Japan considers them to be 'islands' within the meaning of UNCLOS, and therefore able to generate both EEZ and continental shelf rights. Accordingly, it takes them as base points for its continental shelf and EEZ claims in the East China Sea. China disagrees with this interpretation on the grounds that the islets cannot sustain human habitation or economic life of their own and therefore are not entitled to generate a continental shelf or an EEZ. Taiwan also holds that 'the Diaoyutai Islands themselves are not entitled to have a continental shelf or EEZ, and thus have no significant legal effects on the boundary delimitation in the East China Sea.'

Should Japan's interpretation of UNCLOS be accepted, then it could claim up to an equidistant line with China. If China were granted the Senkaku/Diaoyu Islands under such conditions, it could claim a continental shelf up to the Okinawa Trough, and an EEZ to an equidistant line with the nearest undisputed Japanese island. The alternative scenario is that both countries would have an overlapping continental shelf and EEZ claims extending from their nearest undisputed territory.

The delimitation of maritime borders between Japan and China in the East China Sea is therefore inextricably intertwined with the resolution of the dispute over ownership of the Senkaku/Diaoyu Islands.

### **Establishment of the first Chinese Air-Defense Identification Zone (ADIZ)**

On 23 November 2013, China also announced the creation of a new ADIZ in the East China Sea waters facing its coastline. An ADIZ is a defined area extending beyond national territory in which unidentified aircraft are liable to be interrogated and, if necessary, intercepted for identification before they cross into sovereign airspace.

The United States was the first country to declare an ADIZ in the 1950s, during the Cold War. At that time, ADIZs were supposed to reduce the risk of a surprise attack by the Soviet Union. The United States currently has five zones (East Coast, West Coast, Alaska, Hawaii and Guam) and operates two more jointly with Canada. Other countries that maintain ADIZs include India, Japan, Norway,



Pakistan, South Korea, Taiwan and the United Kingdom. In addition to their main security purpose, ADIZs are also supposed to help reduce the risk of mid-air collisions, combat illicit drug flows, facilitate search-and-rescue missions, and reduce the need for fighter jet sorties for purposes of visual inspection.

ADIZs are not covered by binding legal agreements under international treaties. Countries can create an ADIZ simply by providing its GPS coordinates, as China did in November 2013. The new Chinese ADIZ, which also includes the Senkaku/Diaoyu waters (see picture below), goes beyond the boundary of what Japan considers to be its exclusive national airspace.

The Chinese ADIZ has certain peculiarities, however. China requires commercial aircraft flying through its ADIZ to provide advance warning even when their final destination is another country. In contrast, commercial aircraft flying through the US ADIZ are required to provide advance flight details only when they are destined to land in the US.

Japan demanded the revocation of the Chinese ADIZ, while the United States declared that it would ignore the zone and refused to comply with any Chinese regulations involving it. Most third countries criticized the Chinese move and expressed their concern about any potential restrictive reading of customary international laws.

## Questions a Resolution Must Answer

1. What steps can the international community take to reach to a peaceful, long-standing solution in the East China Sea?
2. What are the provisions of the UNCLOS which are causing overlapping claims and which necessitate discussion over modification to it or the establishment of a separate bilateral agreement between China and Japan over these islands and adjoining water bodies?
3. To what magnitude is the dispute analogous to similar territorial claims in the region on South Asia and can a convention be formulated to collectively tackle all such disputes?
4. How can the territorial claims be settled in the East China Sea and is private ownership of islands legally acceptable on an international scale?
5. How can further incidents of violence and escalated tension be prevented in



the East China Sea? Is it possible to have international observers in the region?

6. What steps can be taken to demilitarize the region?

## Conclusion

This issue is not driven solely by economic interests. The presumed oil and gas reserves in the East China Sea are certainly tempting for China and could help fuel its future economic development, but they do not explain the intensity of the emotions involved. An otherwise pragmatic Beijing has taken an uncharacteristic stance in the Senkaku/Diaoyu Islands dispute.

National honour, retribution against Japan and a clearly expressed desire to regain the centrality that Imperial China enjoyed for centuries in East Asia all lie at the heart of China's actions. Having adopted a very discreet and moderate attitude in world affairs for many years, China is now becoming increasingly assertive and willing to flex its greater economic and military muscle.

Although both Beijing and Tokyo profess their commitment to resolving the East China Sea dispute peacefully, efforts to reach a negotiated settlement have failed, and a mediated solution does not seem within reach. Potential solutions, including recourse to the International Court of Justice and the joint exploitation of natural resources in the East China Sea, have been put forward by scholars, but have apparently not been given serious consideration by the disputing parties.

Japan's confrontation with China is also radically changing Tokyo's stance. As the country is wary of China's growing economic and military power, Japan has gradually adopted 'hedging' policies – preparing for the eventuality that China's rising economic, political and military power becomes a security threat.

Japan's 'pacifist' constitution has recently been reinterpreted to allow Japan to lift the ban on 'collective self-defense', permitting Tokyo to assist allied countries under attack. Japan also plans to increase the size and operational



capacities of its military forces. This is intended to reinforce security ties with the US as China expands its armed forces and North Korea develops its nuclear capabilities. Tokyo's increased military cooperation with the US may also lead Japan to assist Taiwan in any future cross-straits confrontation.

There is a risk that the quarrel may escalate, perhaps even out of control, as a result of either a miscalculation or a deliberate attempt by one or both sides to gain domestic political advantage from the crisis. As noted by several commentators, the scenario recalls the situation in Europe before the onset of WW I in August 1914.

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