TOWARD COOPERATION IN THE EAST CHINA SEA

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The need to develop the hydrocarbon potential of the East China Sea is increasingly critical for both

ownership of these islands since 1971 and in 1992 promulgated the Law of the Territorial Sea, which declared the islands to be Chinese territory.

Regarding the Exclusive Economic Zone, the Japanese government claims that

In mid-1986, China proposed that the joint area must be located in the southern part of the East China Sea where Deng Xiao Peng had once envisaged a possible joint development area.

In late 1986, CNOOC proposed that if Japan agreed that the area around the Senkaku (Tiao Yu Tai) islands should be jointly developed, with territorial claims indefinitely suspended, China would be ready to discuss joint operations. But at the same time they said that they were not ready to discuss joint development in areas north of these islands, which Japan insisted should be included in the joint area.

In mid-1987, CNOOC proposed to Uruma the specific latitudes and longitudes within which a joint area could be established. However, the area proposed was to be located only to the east of the median line: i.e. E124° 00’ – E125° 00’ and N26° 20’ – N27° 50’. Uruma insisted that the joint area should include an area to the west of the median line and proposed that an expert meeting be held to discuss how to define such a joint area.

In early 1988, Uruma held discussions with CNOOC and proposed adoption of these basic concepts with respect to the proposed joint areas:

Neither should raise the issue of the ownership of the Senkaku (Taio Yu Tai) islands

Japan should not raise the issue of the median line

China should not raise the issue of the continental shelf margin as the basis for its seabed jurisdiction

China countered that the proposed joint area must be limited to an area located to the south of N28° and requested that Uruma provide the entire funding for the joint operations to be conducted.

In mid-1988, a Japanese mission consisting of representatives of Japex and the Japan National Oil Corporation (JNOC), both government-sponsored entities, met with officials of the Chinese government and of CNOOC.

The mission proposed a 100,000 km² joint area straddling both sides of the median line. The area was to be divided into blocks, with joint exploration work conducted gradually on a 50-50 basis.

China commented that both sides should invent some measures to avoid possible arguments on the ownership of the Senkaku (Tiao Yu Tai) and the EEZ. China then expressed these ideas on what such measures should be:

> 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.
>
> The “disputed area” based on the Japanese-claimed EEZ would be suitable for joint operations.

In early 1989, a CNOOC delegation visited Japan and explained that domestic problems were impeding progress on initiating joint operations. The delegation said that the Ministry of Foreign Affairs, Ministry of Geology and Mines and CNOOC had different positions on joint operations in the East China Sea. The CNOOC officials made clear that a Japanese government approach to top Chinese officials concerning joint

operations would be highly appreciated because CNOOC itself was not in a position to raise the issue with its own high-level officials.

In early 1991, Uruma officials visited Beijing and learned the following in discussions with CNOOC:

> Chinese officials and CNOOC thought that the Japanese counterparts in negotiations on joint operations should be the same as those appointed by the Japan National Oil Corporation in the 1988 negotiations and should have the appropriate high-level standing.
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> Regarding the scope of the joint area, China would still like to stick to the southern part of the East China Sea to start with.
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> Regarding the southern part, China would like to leave it untouched for about ten years.

In May, 1991, a CNOOC delegation visited Japan and met JNOC officials, who said that even if joint operations were to start from the south, there should be an understanding that the north would also be developed jointly, and that the two governments should agree on an overall framework for joint operations, including the area to be covered. CNOOC claimed that if Japan insisted on raising such basic principles once again, negotiations would be set back to where they were in 1987.

Uruma later learned that Chinese exploration and production operations in the East China Sea were being conducted at that time separately by CNOOC and the Ministry of Geology and Mines. CNOOC was responsible in the southern part and Geology and Mines in the northern part. Thus, even though China had nominated CNOOC as the

official negotiator with Japan on joint operations in the East China Sea, CNOOC did not actually have the authority to negotiate concerning the north.

Since time had been consumed without any progress in negotiations, China finally decided to act unilaterally and floated an international tender in 1992 covering part of the area that had earlier been proposed to Japan as the joint area. Japex and Teikoku Oil decided to participate in this tender and were awarded a few blocks. However, their results were miserable. There was no indication in those blocks of the existence of hydrocarbons.

After this failure, the dialogue on joint operations stopped, and both sides decided to await the outcome of official negotiations on the Senkakus (Tiao Yu Tai) and EEZ before resuming dialogue on joint operations. Japan and China have continued negotiations on these issues but with no progress.

In June, 2001, Uruma representatives met CNOOC officials in Tokyo and reopened dialogue. CNOOC claimed that the ball regarding joint operations was already in the Japanese court. Uruma found later that China had made an approach to JNOC and that JNOC, unknown to Uruma, had replied that matters in which sovereignty is involved should be handled by the two governments. This led CNOOC to give up pursuing the issue.

In October, 2001, Uruma representatives met with CNOOC in Beijing and discussed practical proposals to permit joint operations. I will outline the differing concepts in these discussions in Section 3. Despite such discussions and the best efforts of the private sector in Japan to find ways to make things move, this will take a long time

because the two governments must first decide how to handle the issues relating to territorial sovereignty.

Conflicting Concepts of Joint Development

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 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.

Chinese concept:

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.

The Japanese and Chinese Rebuttal

Japanese Rebuttal:

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.

Chinese Rebuttal:

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.

Paths to Cooperation

Taking into account the current difficulties and differences concerning joint operations, as stated above, Japan and China should nonetheless seek to find a realistic way to achieve mutual cooperation. To this end, though we can expect many problems

Workshop: After such an exchange of data, both sides should conduct independent

Although I am not an expert on international law, I sincerely hope that the UN Law of the Sea Treaty will be reactivated and put into effect on a priority basis. This would greatly facilitate the resolution of seabed jurisdictional issues in the East China Sea. We must search positively for a realistic way to solve the East China Sea dispute on a basis that might contribute to the resolution of disputes between other countries that face each other in similar geographical circumstances.

The basic concept in arriving at such a solution should be that each country can have an EEZ extending up to 200 nautical miles and that this concept shall supersede the continental shelf concept.

Three principles should then be applied to reach a solution:

1. If the distance between facing countries is less than 400 nautical miles, then the median line should be the border of the EEZ.
2. If the distance between facing countries is more than 400 nautical miles, then each facing country can have an EEZ boundary up to 200 miles from an agreed base point.
3. If the distance between facing countries is less than 650 nautical miles and both countries have a continental shelf, then the median line shall be the border of the EEZ. If one country has a continental shelf, that country shall respect the other country's 200 nautical mile limit, i.e. the EEZ of the country with the shelf shall be the balance of the area remaining between the total distance and 200 nautical miles.
4. If the distance between facing countries is more than 700 nautical miles and both have a continental shelf, each can claim up to 350 nautical miles.