Northeast Asia has seen the flowering of great civilizations, outstanding cultural creations, vibrant political communities, and stubborn conflicts among its neighbors. The residents of the heavily-populated land areas of this region have always looked to the sea for resources, sustenance, and trade, and their quest for the sea’s bounty has inevitably led to conflicts among them. This paper focuses on these conflicts, examining their dimensions and explaining the creative efforts to resolve them or at least reduce the tension they create. The paper also looks at an outside power -- the United States -- to examine its unique role in providing balance and promoting stability in Northeast Asia.

The countries of Northeast Asia are proceeding through a transitional phase in their maritime relationships as they transform their relationships to conform to rules agreed upon in the 1982 United Nations Law of the Sea Convention,² which all except North Korea have recently ratified. This complicated region includes the country with the most population on the planet -- China; the world’s second-largest economy -- Japan; a lively and emergent economic “tiger” -- South Korea; the reclusive but slowly emerging “Hermit Kingdom” of North Korea; and the slumbering but potentially resource-rich Russian Far East. Also in the mix on some issues are the hard-to-classify political entity of Taiwan, the resource-laden land-locked country of Mongolia, the important economies of Southeast Asia, and outside powers like the United States and Europe.³

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The Conflicts

The central maritime conflicts of Northeast Asia concern navigational routes and the important offshore resources of fish and hydrocarbons. The quest for these resources has led to disputes over sovereignty of tiny offshore islands and over the delimitation of extended maritime zones. The sovereignty and delimitation disputes have a long history, and much has been written about them. This section will survey these controversies and offer some perspective on how they might be resolved.

Sovereignty Conflicts Over Disputed Islands.

The Senkakus/Diaoyu Dao Islands. These eight uninhabitable features northeast of Taiwan in the East China Sea (five uninhabited islets and three barren rocks) are disputed between China and Japan, because of their symbolic and historical importance as well as their potential to generate continental shelves and exclusive economic zones. Once their sovereignty is determined, it then needs to be decided whether these tiny islets should be allowed to generate extended maritime zones or whether, on the other hand, they should be allowed to generate only a territorial sea because they are “rocks” under Article 121(3) of the 1982 United Nations Law of the Sea Convention, which defines “rocks” as those features that “cannot sustain human habitation or economic life of their own.” These tiny features have never been inhabited. The largest (Diaoyu Dao/Uotsuri Shima) has an area of 4.3 square kilometers, with two peaks rising to about 1100 feet, but with no anchorages for any but the smallest ships to use for landings. Historically, these outcroppings have been used only as navigational aids.

Japan has dominated the tiny islets since 1895 when Japan formally incorporated them into its national territory. A Japanese citizen -- Tatsushiro Koga -- attempted economic activity such as fish- and bird-canning and the


collection of birds’ feathers and guano between 1896 and his death in 1918, but these activities ultimately failed. The United States administered the islands after World War II until 1972, when they were returned to Japan. China argues that it exercised sovereignty over the islets until 1895, when they were ceded to Japan after losing a war, and that they should have been returned to China pursuant to the 1951 peace treaty formally ending World War II.6

China’s 1992 territorial-sea legislation asserts control over the islets and claims territorial seas around them. China contends that the islets do not have the capacity to create continental shelves or exclusive economic zones, because they are “rocks” under Article 121(3) of the Law of the Sea Convention, but Japan takes the position that they are “islands” that are entitled to generate such zones, and it apparently claimed an EEZ around the islets in its 1996 declaration.7 The language in Article 121(3) does not appear to support a claim of an EEZ around these disputed islets, because they have never been inhabited, and the United Kingdom has recently renounced any claim to an EEZ or continental shelf around its barren granite feature named Rockall which juts out of the ocean northwest of Scotland. But other countries have been expansive in claiming extended maritime space around features that are clearly rocks, and the legitimacy of such claims remains in dispute.

Tok-Do/Takeshima. These two tiny uninhabitable rocky islets situated midway between the main land areas of Japan and Korea have a combined land area of 0.23 square kilometers or 58 acres.8 They have limited water sources, and have been uninhabited historically. But since 1954 about 45 South Korean marine police have been stationed there (and one family stays there in the summer) in order to support Korea’s claim to sovereignty over the islets. Their location in the middle of the East Sea/Sea of Japan -- 50 miles east of Korea’s Ullung-do and 90 miles northwest of Japan’s Oki Islands -- means that their sovereignty may have a significant effect on the delimitation of

6 For an insightful analysis of the sovereignty dispute over these islands suggesting the possibility that they may be jointly developed by China and Japan, see Unryu Suganuma, *Sovereign Rights and Territorial Space in Sino-Japanese Relations: Irredentism and the Diaoyu/Senkaku Islands* (2000).

7 See infra note 34.

8 For a detailed description and pictorial display of these islets, see Ministry of Maritime Affairs and Fisheries (Republic of Korea), *Beautiful Island, Dokdo* (2000).
marine space between Korea and Japan. They have served as a fishing station for harvesting abalone and seaweed and hunting seals, and they are near rich fishing grounds.

Korea’s claim to sovereignty over the islets appears to be stronger than that Japan, based on the historical evidence of the exercise of sovereignty and the principle of contiguity (because the islets are closer to Korea’s Ullong-do than to Japan’s Oki Islands), but most importantly because of Korea’s actual physical control of the islets during the past half century. All judicial and arbitral decisions regarding sovereignty disputes over islands since World War II have focused on which country has exercised actual governmental control over the features during the previous century, rather than on earlier historical records. Korea was not in a position to exercise control during the first part of the twentieth century, because it had been annexed by Japan, but as soon as it regained its independence it asserted control over Tok-do, and has continued to exercise sovereignty over the islets since then. In July 2001, the South Korean National Maritime Police Agency announced it would commission a 5,000-ton-class vessel carrying a crew of 97 – entitled the Sambong, the name of Tok-do during the Choson Dynasty – to patrol the waters around Tok-do beginning in February 2002.

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10 See generally Valencia, Van Dyke, and Ludwig, supra note 5, at 17-19.

Among the key decisions that provide guidance regarding the rules that govern the ability of a nation to claim ownership of isolated uninhabited island features are the Minquiers and Ecrehos Case (France/United Kingdom), 1953 I.C.J. 47, 57 (“What is of decisive importance, in the opinion of the Court, is not indirect presumptions deduced from events in the Middle Ages, but the evidence which relates directly to the possession of the Ecrehos and Minquiers groups” (emphasis added)); the Land, Island and Maritime Frontier Dispute (El Salvador/Honduras; Nicaragua intervening), 1992 I.C.J. 351 (focusing on evidence of actual recent occupation and acquiescence by other countries to determine title to disputed islets); and the recent arbitral decisions in the Eritrea-Yemen Arbitration, <http://www.pca-cpa.org>, 1998 Award, para. 239 (relying explicitly on the Minquiers and Ecrehos judgment for the proposition that it is the relatively recent history of use and possession of the islets that is most instructive in determining sovereignty and that the historical-title claims offered by each side were not ultimately helpful in resolving the dispute” “The modern international law of acquisition (or attribution) of territory generally requires that there be: an intentional display of power and authority over the territory, by the exercise of jurisdiction and state functions, on a continuous and peaceful basis.”).

Because these islets are physically large “rocks,” which have not been inhabited in a continuous fashion until the recent military-type occupation, under the rule laid down in Article 121(3) of the Law of the Sea Convention they probably should not be entitled to generate an exclusive economic zone or a continental shelf, and their maritime zone should thus be limited to a 12-nautical-mile territorial sea enclave.\textsuperscript{12} Except for their own territorial-sea enclave, therefore, they probably should not affect the delimitation of the exclusive economic zone and continental shelf between South Korea and Japan.

**The Disputed “Northern Territories” North of Japan.** One of the most contentious and festering of Northeast Asia’s disputes concerns the small islands north of Hokkaido controlled by Russia but claimed by Japan as an essential part of its core national territory. These islands -- usually called the “Northern Territories” -- include the Habomai group, Shikotan, Kunashir (Kunashiri in Japanese), and Iturup (Etorofu), and they contain a combined land area of 5,000 square kilometers. The Soviet Union took these islands from Japan after World War II,\textsuperscript{13} and expelled the 17,000 Japanese residents. Russia now claims title based on the language in the 1951 San Francisco Peace Treaty, in which Japan “renounced all right and title to the Kuril Islands.” But Japan argues that these islands are not covered by this phrase, because they were not among the islands Japan had acquired in 1875 in exchange for Sakhalin, and that historically they have always been part of Japan.\textsuperscript{14} In July 2001, Japan announced that the status of all the islands in the Northern Territories must be addressed and resolved together, rejecting the “double-framework” approach that had previously been advocated by former Prime Minister Yoshiro Mori, which had


\textsuperscript{13} According to Article 2 of the Peace Treaty of 1951, Japan renounced all claims to the Kurile Islands and to that part of Sakhalin and its adjacent islands that it had obtained in 1905.

separated the problem into two separate groups – (1) Shikotan and the Habomai Islands and (2) the Etorofu (Iturup) and Kunashiri (Kunashir) Islands.\textsuperscript{15}

The fishing resources around these islands are productive and intensively utilized, and include Pacific saury, Japanese anchovy, Japanese flying squid, pink salmon, Pacific cod, Alaska pollack, Pacific herring, and Japanese sardines.\textsuperscript{16} In the summer of 2001, Japan denounced South Korean fishing in this area, asserting that the fishing zones “are within the exclusive economic zone and under Japan’s sovereignty.”\textsuperscript{17} South Korea contended that it had been given permission to fish there by Russia,\textsuperscript{18} but to retaliate against the South Korean activity, Japan banned South Korean fishing off the Pacific coast areas of Aomori, Iwate, and Miyagi Prefectures on the west coast of Honshu Island.\textsuperscript{19} The South Koreans continued to harvest saury around the Northern Territories during the fall of 2001, but negotiations during this period between Japan and Russia led to Russia’s agreement to bar foreign fishing around the Northern Territories in the future, in exchange for financial assistance from Japan and Japanese agreement to control the smuggling of crabs into Japan from the Pacific waters adjacent to Russia.\textsuperscript{20}

\textbf{Conflicts Related to Maritime Boundary Delimitations.}

\textbf{Baselines.} The straight-baseline claims of Northeast Asian countries have been controversial and significant (1) because the waters landward of these lines are “inland waters,” which are totally controlled by the coastal country; (2) because the next 12 nautical miles are territorial seas, which are sovereign territory, through which vessels can


\textsuperscript{16} \textit{Id.}

\textsuperscript{17} \textit{Japan: Limits on South Korean Fishing}, N.Y. Times, June 21, 2001, at A8, col 5 (nat’l ed.).

\textsuperscript{18} On December 10, 2000, South Korea reached an agreement with Russia, paying $850,000 for permission for 26 boats to fish for 15,000 tons of saury around the southern Kuriles from July 15 to November 15, 2001. Russia also granted North Korea permission to bring seven fishing vessels into this region to catch 8,000 tons of saury in the same disputed area, and granted Ukraine permission to harvest 15,000 tons, of which the rights to 12,400 tons were sold to Taiwan.


\textsuperscript{20} \textit{Japan, Russia Sign Memorandum on Reduced Fishing Quotas Off Disputed Isles}, BBC Monitoring Asia Pacific – Political, Nov. 26, 2001.
exercise the right of innocent passage; and (3) because any median or equidistance line that might be drawn to divide maritime zones would start from the baselines. China’s use of a high-tide elevation about 70 nautical miles off Shanghai called Dongdao (Barren Island) as a basepoint for its baselines is of dubious legitimacy and has been challenged by its neighbors. China has also used some low-tide elevations as basepoints for its baselines. These basepoints are proper under Article 7(4) of the Law of the Sea Convention only if the low-tide elevations have lighthouses or other permanent fixtures on them. Under Article 7(1) of the Convention, the use of straight baselines in general is legitimate only in coastlines that are “deeply indented” or have fringing islands along them, and under Article 7(3) the baselines must not depart appreciably from the general direction of the coast. China’s coast south of the Yangtze estuary is deeply indented, but the coastline north of the Yangtze appears to be more regular and the use of baselines there is questionable.  

North Korea’s use of baselines on its east coast also appears to exceed the permissible limits established by the Law of the Sea Convention, and they are not recognized as legitimate by the United States. One long line is used to connect the southern and northern borders of North Korea along a coast that is not particularly deeply indented and does not have any fringing islands. 

When South Korea established straight baselines on part of the Korean Peninsula in 1965 and later in 1977 when it enacted the Territorial Sea Act of Korea in 1977, it consulted extensively with Japan. South Korea has a somewhat irregular west coast and fringing islands along some areas, so that its baseline claims are generally thought to be consistent with the Law of the Sea Convention. 

Japan’s baseline claims in some locations is less well accepted. These baselines connect remote tiny islands

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21 See, e.g., U.S. State Dept. Bureau of Oceans and International Environmental and Scientific Affairs, Straight Baseline Claim (Limits in the Sea No. 117, 1996), at 3 (“Much of China’s coastline does not meet either of the two LOS Convention geographic conditions required for applying straight baselines,” i.e., a deeply indented coastline or a fringe of islands along the coast). 

far from the main islands, and some are more than 50 miles long. The longest Japanese baseline is 62.26 nautical miles in the area west of Kyushu. Japan’s coastline is not generally viewed as being “deeply indented” nor does it have “fringing islands.” Japan’s first effort at baseline delimitation occurred in 1977 in its Law on the Territorial Sea (Law No. 30), which went into effect on July 1, 1977. This law drew baselines closing the three entrances to the Seto Inland Sea, “which had been established as Japan’s internal waters under international customary law.” Japan has claimed a territorial sea of only three-nautical-miles around the Tsushima Islands in order to preserve navigational freedoms in the adjacent straits.24

**Historic Waters.** China has always claimed the large Bohai Bay just below Korea as a historic bay. The Republic of Korea understands the claim, but has never acknowledged its legitimacy. Japan has raised reservations about the claim.25

The Soviet Union claimed the waters in Peter the Great Bay as internal waters in 1957.26 A number of countries, including Japan, the United States, the United Kingdom, France, Canada, Sweden, Germany, and the Netherlands, have protested this claim.27 In 1984, the Soviet Union drew a straight baseline across Peter the Great Bay,28 but did not specifically refer to it as historic waters, which “might suggest that Peter the Great Bay was not considered a historic bay under the 1984 Decision.”29

23 Tsuneo Akaha, *Japan in Ocean Global Politics* 140 (1985)


29 Id. at 318.
Japan claims that its inland sea of Seto Naikai has the status of internal waters. This waterway might arguably be considered to be an international strait capable and appropriate for passage between one exclusive economic zone and another (or alternatively an area where archipelagic sea lanes passage would be appropriate). But because the route between Shikoku and Kyushu Islands is equally convenient for international transit, the inland sea is probably protected from international strait status.

**Exclusive Economic Zones.** North Korea was the first country in the region to declare an exclusive economic zone on June 21, 1977, apparently utilizing a median line to draw the boundary between North and South Korea, and it also declared a 50-mile Military Boundary Zone on August 1, 1977, which has a dubious status under international law. That same year, Japan followed the lead of other countries, and declared an extended fishing zone around its islands, but explicitly exempted Korean and Chinese fishing vessels from the application of this new Fishing Zone (Japan provided this exemption because “Japanese fishing in [the coastal waters of its neighbors] was much more extensive than South Korean or Chinese fishing in Japanese coastal waters,” and hence Japan feared “South Korea and China would likely retaliate by extending their jurisdiction to the same distance from their coasts.”) Japan and South Korea declared exclusive economic zones in 1996, at the time they ratified the 1982 United Nations Law of the Sea Convention. China declared its EEZ on June 26, 1998. The Soviet Union first

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30 See Law of the Sea Convention, supra note 2, art. 38(1)(stating that the right of transit passage does not apply to straits “formed by an island of State bordering the strait and its mainland...if there exists seaward of the island a route through the high seas or through an exclusive economic zone of similar convenience with respect to navigational and hydrographical characteristics”).


32 Law on the Provisional Measures Relating to the Fishing Zone (Law No.31), May 2, 1977.

33 Akaha, supra note 23, at 130-49.

34 The exact extent of the Japanese EEZ remains unclear. A Japanese foundation has published a map that draws 200-nautical-mile zones around every Japanese islet, no matter how small and uninhabitable, but the Japanese government has never produced a map showing the full extent of its claim. For an example of what Japan’s EEZ would look like if it were claimed around every Japanese islet, see Mark J. Valencia, Domestic Politics Fuels Northeast Asian Maritime Disputes 2 (AsiaPacific Issues No. 43, East-West Center, April 2000). A claim of an EEZ around every islet would appear to be contrary to Article 121(3) of the 1982 Law of the Sea Convention, supra note 2; see generally Van Dyke, Morgan, and Gurish, supra note 5.
declared a fishery zone on Dec. 10, 1976, which took effect on March 1, 1977, and replaced it with an EEZ in 1984 (both zones include the waters around the disputed Northern Territories).

**Archipelagic Waters.** Japan’s islands have a geographical configuration that would allow it to claim the status of an archipelagic state, and it thus could claim that at least some of the waters connecting some of its many islands would be “archipelagic waters.”35 Because of Japan’s many small and distant islands, it would not be able to claim all the waters connecting these islands as archipelagic waters, and, if it wanted to pursue this approach, it would have to decide how it wanted to define its archipelago.

**The Delimitation Claims.**36 China has always argued that the “natural prolongation” approach should be used in both the Yellow Sea/West Sea and the East China Sea, which, according to China’s theory, would give China more continental shelf than its neighbors South Korea and Japan, and would permit China to claim the continental shelf to the Okinawa Trough, which is just west of Japan’s small southern islands.37 This claim includes most, if not all, of the Japanese-Korean Joint Development Zone, which China has consistently denounced as a violation of its rights. Even if the Diaoyu Dao/Senkaku islets are ignored, Japan and China have potential conflicts in maritime delimitation, because the coasts of mainland China and Taiwan are within 400 nautical miles of undisputed Japanese islands. Japan recognizes the median line between the Ryukyu Islands and the Chinese mainland as a provisional EEZ boundary, but China rejects this approach and claims that the whole continental shelf of the Yellow Sea/West Sea belongs to China on the basis of the natural prolongation theory.

The unresolved continental shelf boundary between China and Japan became an issue in early 2002 when Japan wanted to raise the sunken “mystery ship,” apparently of North Korean origins, which had been pursued and

35 See Law of the Sea Convention, supra note 2, arts. 46-54.


sunk by Japanese vessels after it was spotted racing toward the Japanese coast. China initially protested Japanese efforts to examine and salvage the ship, which was on the Chinese side of the median line between the two countries, but eventually acquiesced in the Japanese efforts.

Japan and the Republic of Korea have had difficulty delimiting their continental shelf boundaries because of their dispute over Tok-Do/Takeshima and also because they disagree on the ability of tiny islands to generate zones. Should Tok-Do/Takeshima be given full effect, half effect, or no effect? Korea argues that neither the tiny Japanese islet of Danjo Gunto nor Tok-Do/Torishima should generate an EEZ or continental zone because they are uninhabitable rocks and thus do not qualify for such zones under Article 121(3) of the Law of the Sea Convention. South Korea has sought to utilize the median-line principle in the Yellow Sea/West Sea, but has favored the natural-prolongation approach in the East China Sea.39

In 1974, Japan and South Korea reached two agreements, delimiting the continental shelf40 and establishing a joint development zone over one of their disputed areas.41 The continental shelf agreement utilized the equidistant approach for areas where the baseline starting points are undisputed, but left unresolved those areas where the role of islands raised problems, and also left unresolved the question of the proper role that should be given to the Okinawa Trough. South Korea argued that the natural-prolongation principle should lead to the result that its boundary should extend to the Trough, but, because Japan disagreed, a joint development zone was created in the disputed area.

38 Japanese pursued this ship on December 22, 2001, thinking that it was engaged in drug trafficking or spying. (U.S. satellites photographed the ship leaving a port in southern North Korea.) The ship fled at high speed, four Japanese coast guard vessels caught up to it and surrounded it and then fired a shot across the bow. After the mystery vessel fired back, the Japanese fired directly at the ship, crippling its engine room and sinking the ship. Japanese divers eventually recovered two badly composed bodies from the sunken ship plus a rocket-propelled grenade launcher. Spy Ship Theory Gains Weight: Sunken Vessel May Have Been Engaged in Drug Trafficking, The Daily Yomiuri, May 5, 2002; Faster SDF Response on Seas Urged, The Daily Yomiuri, April 12, 2002.


China and the Republic of Korea have overlapping claims, because of their disagreement over whether Dongdao (a barren islet about 70 nautical miles east of Shanghai) can properly be used as a basepoint. The overlapping claims cover about 24 square kilometers (nine square miles). China disputes the western boundaries of all South Korean leases in the Yellow/West Sea and in the East China Sea.

South Korea and North Korea have extensive delimitation problems because of the South Korean islands that hug the North Korean coast on the west coast of the peninsula, and because of the disputed status and location of the “Northern Limit Line.” South Korea controls the islands of Paengyong, Taechong, Sochong, Yongpyong, and Woo which are only a few miles off the western North Korean coast, and South Korea views the maritime boundary between the two countries as the median line between these islands and the North Korean coast, based on a line that had been drawn by the United Nations Command a month after the Armistice Agreement of July 27, 1953, leaving very little ocean space for North Korea. In September 1999, North Korea unilaterally announced that it had redrawn the line so that would extend from the land boundary perpendicular from the coastline into the Yellow Sea/West Sea, and was prepared to enforce this line “by various means.” The immediate cause of this dispute was apparently a concentration of crabs south of the Northern Limit Line and efforts by North Korean vessels to harvest these crustaceans.

Incidents are not uncommon in this area, and a South Korean fishing vessel strayed into North Korean waters on May 27, 2001, drawing fire from a North Korean patrol boat. Then on June 24, 2001, the South Korean Navy fired warning shots with blank ammunition against a North Korean vessel which had entered waters that South

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42 See, e.g., Oude Elferink, supra note 12, at 313-14.


Korea viewed as its waters 4.5 miles northwest of Paengyong Island in the Yellow Sea/West Sea. On April 22, 2002, two North Korean patrol boats crossed the Northern Limit Line apparently to observe Chinese fishing vessels in the area, and then withdrew after about 40 minutes. On the east coast of the Korean peninsula, North Korea claims a maritime area that may be larger than it is entitled to, because of its unwarranted baseline claims and because its claim does not give appropriate weight to the South Korean island of Ullong Do.

North Korea and Russia entered into a Maritime Boundary Agreement in 1986, drawing a delimitation line that is basically the equidistant line between the two countries, adjusted northward slightly to give North Korea a little more territory, perhaps out of a recognition that the Russian baseline across Peter the Great Bay may not be altogether legitimate under governing principles in the Law of the Sea Convention.

Japan and Russia have never entered into negotiations regarding their maritime boundaries because of “the dispute between Japan and the Russian Federation over the Northern Territories.”

**The Straits.** Both the Republic of Korea and Japan have limited their territorial-sea claims around the land areas adjacent to the Korean Strait to three nautical miles, in order to permit unimpeded passage through this area. Japan has also frozen or limited the breadth of the territorial sea in the five Japanese international straits at three nautical miles “for the time being” in order to leave the rest of the waters free for unimpeded navigation.

Passage through the Cheju Strait is also somewhat ambiguous. Korea claims a 12-nautical-mile territorial

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47 Yonhap News Agency, Two North Patrol Boats Cross South Sea Border, BBC Monitoring Asia Pacific – Political, April 22, 2002.


51 *Id.* at 310.

sea there, which puts the entire strait within Korea’s territorial sea. “The ROK has never recognized the Cheju Strait as an international strait, and instead considers it to be a part of the territorial sea.”

The Cheju Strait may not be subject to transit passage under the regime established by the Law of the Sea Convention, in any event, because of the “Messina exception” in Article 38(1) of the Law of the Sea Convention. It may be, therefore, that passage rights in the Cheju Strait are limited to “innocent passage.”

**Passage Rights and Other Navigational Freedoms.** Passage rights in East Asia are crucial to trade and economic development, as well as security interests, and all nations of this region are focused on keeping trade routes open. The term “sea lanes of communication” or “SLOC” is widely used in the region to emphasize the importance of free passage. “The sea lanes of communication (SLOC) are a matter of life and death for the Asian Pacific countries, and SLOC security has been a fundamental factor contributing to Asian Pacific economic development.”

The dispute over the South China Sea is, in large part, a dispute regarding the rights of free passage through this important waterway where 41,000 ships cross each year. As mentioned above, both South Korea and Japan have limited their territorial-sea claims to three nautical miles around their lands bordering straits in order to permit free passage through these areas.

China has a law requiring foreign military vessels to obtain permission before entering China’s territorial waters, as does North Korea. And South Korea “requires foreign warships or government-owned non-commercial vessels to provide three days prior notification in advance of passage.” This law has been challenged by the United

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54 The language of Article 38(1) is quoted supra in note 30.


States and other maritime powers as violating the right of innocent passage protected in Articles 17-20 of the Law of the Sea Convention.

**The Accomplishments -- Incremental Regime Building**

All the countries of Northeast Asia except North Korea have ratified the 1982 United Nations Law of the Sea Convention, so it exists as a background set of rules to guide conflict resolution. Particularly in the important area of fishing disputes, the countries of Northeast Asia have successfully negotiated *ad hoc* fishing arrangements to allow their citizens to share in the exploitation of the living resources of their seas.

**Fishery Agreements.**

**China - Japan.** The first post-war fisheries agreement between these important powers was the 1955 Agreement on Fisheries in the Yellow/West and East China Seas, negotiated by “private” fisheries groups in each country because of the absence of formal diplomatic dealings between the two countries. This Agreement established six fishing zones and several no-fishing zones, and served to reduce the confrontation and ship seizures that preceded the agreement. It lasted until 1958, and then in 1963 a new Agreement was adopted, based in large part on the earlier 1955 Agreement. This “private” Agreement was modified once again in 1965, giving slightly greater attention to environmental concerns, lasting until 1970.

Formal diplomatic relations were established between the countries in 1972, and governmental negotiations led to the first formal China-Japan Fisheries Agreement in 1975. China insisted on designating an area as a “military warning zone” and another area as a “zone of no-motorboat-trawlnet-fishing,” and also warned Japan against fishing in the waters around Taiwan. As mentioned above, the fisheries zone that Japan declared in 1977, explicitly exempted Korean and Chinese fishing vessels from its application.\(^{59}\) The Korean and Chinese fishing vessels increased in size, however, and pressure on Japanese fisheries also increased. “[F]oreign fishing, particularly South Korean fishing, continued to expand just outside the 12-mile limit and caused extensive damage to Japanese fishing. South Korean fishing in the area employed fishing gear and techniques that were prohibited for Japanese fishing for

\(^{59}\) Law on the Provisional Measures Relating to the Fishing Zone (Law No.31), May 2,1977.
the protection of fishery resources."\textsuperscript{60}

In 1992, China issued its Law on the Territorial Sea and Contiguous Zone, and included claims around the Diaoyu Dao/Senkaku Islands, which the Japanese had long claimed and controlled. Then, in 1996, both China and Japan ratified the Law of the Sea Convention. The following year, they revised their 1975 agreement to address the issues raised by the Convention and by the recognition of the exclusive-economic-zone concept by both countries.\textsuperscript{61}

The 1997 Agreement recognizes that within the first 52 nautical miles from their respective baselines in the area between 27 degrees and 30 degrees 40 minutes north latitude, the fishers from the coastal nation have exclusive rights to the fishing resources. If the fishers of the coastal nation cannot harvest all the available fish, taking into account the recommendations of the China-Japan Joint Fisheries Commission, then the fishers of the other nation will be allowed to take a quota determined annually. Although the broad contours of this new agreement were established in 1997, the details have remained controversial, and the two countries have continued to meet on the final aspects, reaching tentative agreements periodically. On May 18, 2000, for instance, the two countries agreed that between June 1 and December 31, 2000, 1122 Chinese vessels could operate in Japan’s 52-nautical-mile coastal zone, in search primarily for squid, and 710 Japanese vessels could similarly operate in China’s 52-nautical-mile coastal zone, each harvesting up to 70,000 tons of seafood.\textsuperscript{62} It proved harder to reach an agreement for 2001, and none had been reached for these coastal areas as the year began.\textsuperscript{63}

The most significant innovation of this 1997 agreement is the establishment of a “Provisional Measures Zone” where the vessels of each nation can fish, and where each country exercises jurisdiction over its own flag vessels, pending the ultimate delimitation of their disputed maritime boundaries. This zone is in the shape of a parallelogram, beginning 52 nautical miles from the coastal baselines of each nation, and covers the area between 27


\textsuperscript{63} Japan, \textit{China Fail to Agree on 2001 Fishing Quotas}, BBC Monitoring Asia Pacific – Political, Jan. 16, 2001.
degrees and 30 degrees 40 minutes north latitudes in the East China Sea. Although the principle of flag-state jurisdiction prevails, meaning that the parties cannot punish a vessel of the other party for violations, they can identify the transgression and tell the wrong-doing vessel about its violation. No formal dispute resolution procedure is included in the agreement. The area south of 27 degrees north latitude, including the disputed area around the disputed Senkakus/Diaoyu Dao remains as unregulated international waters. Also unresolved are the interests of South Korea, which has a claim for an exclusive economic zone that overlaps part of the area covered by the China-Japan fisheries agreement, but it is expected that South Korea will be able to continue its fishing activities in the joint management area and the area north of 30 degrees 40 minutes north latitude.

**Japan and South Korea.** These two neighbors maintain an awkward relationship, but have been able to cooperate with regard to many key fishing issues. The Japan-South Korea Fisheries Agreement of 1965 was entered into as part of the process of normalizing relations between the two countries, and was designed to reduce the tension that resulted from seizures of vessels and confrontations between the two countries, leading to the arrest and even deaths of Japanese fishers operating near the South Korean coasts. In this agreement, each side recognized the other’s right to an exclusive fishery zone 12 nautical miles from its coasts. Beyond these 12-mile coastal zones, a “joint regulation zone” was established, for the purpose of protecting fishery resources.

The 1965 Agreement was replaced in 1998 by a new agreement which introduced two “provisional zones” in disputed areas, where fishing vessels from each country can operate, and also included a commitment by both countries to reduce their overall catch. One shared zone is in the Sea of Japan/East Sea near the disputed islets of Tok-Do/Takeshima and the other is in the East China Sea just north of the Japan-China Provisional Measure Zone.

In June 1997, a South Korean captain was arrested by the Japanese Maritime Safety Agency for violating the Japanese “Law concerning Regulation of Fishing Activities by Foreigners,” which prohibits foreign fishing in Japan’s

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64 Akaha, *Japanese-South Korea Fishery Agreement, supra* note 60, at 249-50.

65 Id.

territorial sea. His vessel was 18.9 miles off the coast of Hamada, Shimane Prefecture, but was deemed by Japan to be within its territorial waters because of its baseline claims. Japan had adopted its baselines without consultation or acquiescence by South Korea, and in apparent violation of the 1965 Fishery Treaty between the two countries, which required such consultations. 67 Japanese courts at first reached inconsistent conclusions on the legal issues raised by this and other arrests, but they eventually concluded that Japan had the unilateral right to declare and define its territorial sea and could exercise exclusive jurisdiction in that area. 68

The 1998 Treaty established a compromise joint-use zone around the Tok-Do/Takeshima islets, and carefully regulated how much fish of each species could be caught within the zone, and in the adjacent national-jurisdiction zones. The agreement had the effect of reducing South Korean fishing in Japanese waters, but South Korea did retain access to part of the productive Yamato Bank, where some 1,000 South Korean vessels had been catching about 25,000 metric tons of squid each year (but the Korean catch was to be gradually reduced to the same level as that of the Japanese vessels). First-time offenders are to be prohibited from fishing for two months, and second offenders will lose their fishing licenses. The joint fishing committee established under the 1965 Agreement continues, with the duty to protect marine resources, and it makes recommendations regarding fishing in shared and overlapping areas. It remains somewhat unclear whether fishing vessels from other countries can operate in the joint-use zone, but apparently they can if they conform to the Korean and Japanese laws and regulations that apply respectively on each side of a hypothetical median line drawn through this zone. The 1998 agreement was so unpopular in South Korea, that the Minister of Maritime Affairs and Fisheries Kim Sun-kil and the Vice-Minister Chun Sung-kyu were both fired after its details became public. 69 The agreement was also unpopular in China, which

67 Akaha, Japan-South Korea Fishery Agreement, supra note 60, at 253-54.


denounced it as an infringement on China’s sovereign rights to an exclusive economic zone in the East China Sea and called for talks among the countries to resolve their maritime boundary disputes.\(^{70}\)

Regular subsidiary agreements are reached to permit fishing by the vessels of these two neighbors. In 1999, Japan was given the right to send up to 30 boats to catch swellfish in Korean waters and 48 dragnet fishing boats in the waters around Cheju Island, with 80 dragnet Korean boats allowed in Japanese waters.\(^{71}\) South Korea’s annual quota in Japan’s EEZ was reduced from 207,000 tons to 149,800 tons, and the number of its deep-net boats was reduced from 337 to 192.\(^{72}\) An accord reached in 2001 allowed 26 South Korean boats to catch 9,000 tons of saury between August 20, and late November 2001 off the Sanriku Pacific coast of Japan. Japan threatened to scuttle this agreement during June of 2001, however, because of South Korean fishing around the Northern Territories islands claimed by Japan.

**China-South Korea.** Until recently, China and South Korea have had no formal arrangements governing fishing in the Yellow Sea/West Sea, and the overexploitation of the resources there has emerged as a major concern, particularly in South Korea. The two countries normalized their diplomatic relationship in 1992, and began discussing fishing issues in 1993. Their conflicting positions came into focus after South Korea proclaimed its exclusive economic zone in 1996, and China took the same step in 1998. These claims overlap, and China’s straight baseline claim,\(^{73}\) which South Korea officially protested as incompatible with the Law of the Sea Convention, also has created difficulties. The countries are also divided regarding the principles that should be used to delimit their EEZ and continental shelf boundaries, with South Korea favoring an equidistance or median-line approach, while China has argued in favor of a natural-prolongation or equitable approach that would recognize the size of its land

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\(^{71}\) Yonhap News Agency, *South Korea Fails to Win Major Changes in Fisheries Treaty with Japan*, March 17, 1999.


\(^{73}\) *See supra* text accompanying note 21.
mass, the length of its coastlines, and the existence of its offshore islands.

In 1997-98, the two countries finally agreed to recognize coastal EEZ areas where each country could exercise sovereign rights over the resources (which extends 80 nautical miles from Korea’s western coast); to establish a joint fishing area in the area where their claimed EEZs overlap, where they will exercise equal rights; and to create a transitional area extending 20 miles in both directions from the joint fishing area, where the resources will be shared for four years, but which will thereafter become part of each countries coastal EEZ, under exclusive coastal state control. They established a Joint Fisheries Commission to recommend measures for conserving and managing the resources. And, very significantly, they agreed to conduct joint surveillance operations – with authorities of both countries physically present on the patrol boats – to monitor and control illegal and indiscriminate fishing activities.

After further discussions, the countries agreed that Korean vessels would be restricted from the mouth of the Yangtze for two-three months each year, and Chinese boats would have to stay away from the Korean coast for a similar period, and also stay clear of the Northern Limit Line dividing North and South Korea for security reasons. Under an agreement reached in 2001, South Korea can send 1,402 fishing boats into China’s exclusive economic zone to catch up to 90,000 tons of fish, and 2,796 Chinese fishing vessels can catch up to 164,400 tons in South Korea’s EEZ.\(^74\)

**South Korea - Russia.** As explained above,\(^75\) these two countries entered into a controversial agreement that allowed Korean fishing vessels during the summer and fall of 2001 to harvest saury in the waters off the disputed Northern Territories islands controlled by Russia, but claimed by Japan. Because of intense Japanese pressure and economic incentives offered to Russia, this agreement apparently will not be renewed in the near future.

**Japan - Russia.** In the Japanese-Soviet Agreement on Offshore Fisheries of 7 December 1984, the two countries agreed to allow the fishing vessels of the other country to fish in their 200-nautical-mile zones.

**Japan – North Korea.** A nongovernmental agreement has been established that is administered by the

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\(^{74}\) Yonhap News Agency, *South Korea, China Fishing Agreement to Go into Effect 30 June*, June 27, 2001.

\(^{75}\) See supra text accompanying notes 16-20.
Democratic People’s Republic of Korea-Japan Joint Fisheries Cooperative Committee. This agreement permits – for a fee – Japanese vessels to harvest squid, salmon, and crabs in the EEZ of North Korea.\footnote{Mark J. Valencia, Sea Links: Ways and Means of North-South Korea Fisheries Co-operation, at 10.}

**South Korea – North Korea.** In February 2000, nongovernmental fisheries associations in North and South Korea negotiated an agreement that allows South Korean vessels to fish in North Korea’s EEZ in the East Sea until 2005, with profits to be shared between the two countries.\footnote{Agence France Presse, *South-North Korean Fishermen’s Accord in Troubled Waters*, Feb. 28, 2000.} About 400 South Korean squid vessels are expected to take advantage of this arrangement.

**China – North Korea.** Chinese officials reported in 1987 that two agreements existed between these two countries regarding the resources of the Yellow/West Sea, but no details are available regarding these agreements or their current status.\footnote{Valencia, *Sea Links*, supra note 76.}

**North Korea - Russia.** These two countries have an agreement establishing reciprocal fishing rights in each other’s waters, with details worked out at annual meetings, but the details of the agreement have never been released.\footnote{Id.}

**Joint Development Zones Related to Nonliving Resources.**

It is somewhat remarkable that the nations of Northeast Asia have dealt with their serious sovereignty conflicts by joining together in a number of bilateral arrangements that have created joint development resource zones. Japan and the Republic of Korea delimited part of their continental shelf boundary in an agreement signed January 30, 1974, which went into effect June 22, 1978, but they were not able to complete the task because of their dispute over overlapping claims, and their conflicting views whether the natural-prolongation or median-line principle should define continental-shelf boundaries. In light of this controversy, the two countries established a joint development zone in the disputed territory, but no resource extraction has yet occurred in this zone.\footnote{Agreement Concerning Joint Development of the Continental Shelf between Japan and Korea, Jan. 30, 1978, reprinted in Choon-Ho Park, *Joint Development of Mineral Resources in Disputed Waters: The Case of Japan and
agreement will stay in force until 2028, after which date either country can give a three-year notice to terminate it. Although this arrangement applies primarily to mineral and other nonliving resources of the seabed and subsoil, Article 5(1) of the Joint Development Agreement says that each operating agreement should accommodate the fishing interests of the concerned countries.

The other shared zones are the fishery zones between Japan and South Korea and between Japan and China. These zones are also innovative and important, and offer a logical and pragmatic solution to the continuing disputes over sovereignty of islets.

**Environmental Issues.**

Pollution of the marine environment is a major problem throughout Northeast Asia, but it has not been effectively tackled at this time. Land-based pollution is pervasive in the region. The Russian tanker *Nakhodka* recently broke in two in the East Sea/Sea of Japan, spilling 19,000 tons of fuel oil on the southwest coast of Honshu. Russia dumped 18 nuclear reactors and 13,150 containers of radioactive waste from 1978 to 1993, mostly in the Sea of Japan/East Sea. These degradations cause grave damage to the ability of citizens to enjoy their coastal areas and reduce tourist potential, as well as causing problems for the region’s fisheries.

A first step toward environmental cooperation has occurred with the establishment of a Regional Seas Programme for the North-West Pacific, and the subsequent establishment of the Northwest Pacific Region Environmental Cooperation Center at Toyama, Japan, and a comparable center at established at Pusan, South Korea. This arrangement connects North and South Korea, Russia, Japan, and China. When the first contact meetings occurred, it was said that it was “the first time that Government representatives of the two Koreas have sat down around the same table -- as distinct from opposite each other -- and certainly [was] their first known contacts on

environmental issues.” The centers have a relatively modest but still important research agenda, focusing on the exchange of information, and data collection on ocean pollution and its effect on sea animals.82

Perhaps even more significantly, the environment ministers of China, Japan, and South Korea met in Seoul in January 1999 and in Beijing in February 2000. China and South Korea have made initial efforts to coordinate efforts to protect the marine ecosystem of the Yellow/West Sea.

**Military Cooperation.**

Although tensions in Northeast Asia remain high,83 some efforts at military cooperation occur. Japan and South Korea have had dialogues with the United States on sea power and maritime issues, and these discussions may tend to ease the historical tensions between these two neighbors. Other cooperative activities during recent years have been summarized as follows:

Russia staged a search-and-rescue drill with Japan in 1998. Japanese and South Korean naval vessels staged a search-and-rescue operation in the East China Sea last year. Last October Russia and China announced joint-naval maneuvers. South Korea has proposed joint-maritime search-and-rescue missions with China as well as an exchange of visits by naval ships, and has asked Russia to join a naval exercise.

Meanwhile, the United States has proposed that a search-and-rescue training exercise with Malaysia include China and Japan. Japan and China have resumed a security dialogue, while Russia and North Korea have signed a new treaty of friendship.84

**The Role of the United States.**

The United States is an outside power, but it plays an active military, diplomatic, and economic role in Northeast Asia. The U.S.-flag islands of Guam and the 14 islands of the Commonwealth of the Northern Mariana are physically near Northeast Asia, and the exclusive

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81 BSAP and NOWPAP -- Now We Are 12, The Siren (UNEP’s Oceans and Coastal Areas Program), No. 43, at 1 (Dec. 1991).


83 The continued growth of naval fleets in East Asia is described in Anthony Bergin, *East Asian Naval Developments – Sailing into Rough Seas*, 26 Marine Policy 121 (2002).

economic zone of the Commonwealth of the Northern Marianas overlaps with that of Japan. Also, three island countries that are “freely associated” with the United States (the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands) span the western and central Pacific Ocean.

The United States has formal military alliances with South Korea and Japan and it maintains 37,000 troops in South Korea, 47,000 troops in Japan (two-thirds of whom are in Okinawa, including the largest contingent of U.S. Marines outside the United States), a significant base in Guam, and the possibility of a base in Tinian in the Northern Marianas, all backed by the major naval base at Pearl Harbor in Hawai’i. The United States engaged in naval demonstrations in the Taiwan Strait in 1996, it has gained new base facilities for its vessels at Changi in Singapore, and in 1998 it established a visiting-forces agreement with the Philippines. The U.S. Navy also has access rights in Thailand (U Tapao), Malaysia (Lumut), Indonesia (Surabaya), and Australia. In July 2001, the U.S. military vessels the USS Guardian and the USS Patriot visited Hong Kong, with the permission of the People’s Republic of China, on routine port calls. As of 1998, the U.S. Pacific Fleet contained 193 vessels, including six aircraft carriers, 14 cruisers, 24 destroyers, 18 frigates, 30 nonnuclear-missile submarines, and 1,432 aircraft. The United States is thus the largest naval power in the region, it takes opportunities to demonstrate its technological supremacy, and it is an active player in regional affairs.

What precisely are the primary goals and interests of the United States in this region? The U.S. goals are stability, economic development, free trade, protection of its markets and investments, promotion of democracy, and protection of human rights. Stability is achieved by

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maintaining a balance among the frequently unfriendly neighbors in the region, and strategically placed U.S. forces can play a role in promoting such a balance. Stability is also achieved by promoting representative democracy, because it has been established that established democracies do not engage in military conflicts with each other but instead solve their differences through peaceful means. The United States has a particular concern about the potential threat posed by North Korea’s efforts to develop a nuclear capability and its missile program which, according to Admiral Dennis Blair (commander-in-chief of the U.S. Pacific Command), “poses a direct threat to both the citizens of South Korea and U.S. forces.”

It must also be acknowledged that another aspect of the United States’s military role is to balance the military forces of China, which are seen by some as posing threats to the representative democracies in the region -- Japan, South Korea, and Taiwan -- and to the nations of Southeast Asia.

Ocean issues are a concern for the United States because they are among the most intractable of the regional conflicts, and because they also relate to the free movement of ships and goods, which is essential for trade, naval flexibility, and military balance. Environmental issues are also important for the United States, because a healthy and productive ocean environment is essential to maintain the fishing industry which is so important for this region, and also for tourism, which is economically important along some of the Northeast Asian coastlines.

The United States has had a presence in Northeast Asia for a long time, playing a variety of roles historically. Perhaps most significant for present purposes was the U.S. occupation of Japan after World War II, and its role in the 1951 San Francisco Peace Treaty. The terms of that treaty are still disputed, particularly with regard to sovereignty over the Senkaku/Diaoyu Dao Islands between China and Japan and over the Northern Territories between Russia and Japan.

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88 Associated Press, *U.S. to Retain Size of Asia Forces*, Honolulu Advertiser, July 20, 2001. Admiral Blair also stated that “North Korea has the capability to fit [its missiles] with weapons of mass destruction warheads as well as with conventional warheads.” *Id.*

89 See Jean-Marc F. Blanchard, *The U.S. Role in the Sino-Japanese Dispute over the Diaoyu (Senkaku) Islands*,
The United States has and will continue to play an important, and perhaps crucial role, in the effort to lure North Korea out from its isolation and promote Korean reunification. The Bush Administration has been trying to determine how to approach this challenge. Some observers have suggested that the Bush efforts to distance the United States from discussions with North Korea and to discourage talk of reunification, and even contacts between the South and the North, has been designed to promote support for its missile defense shield, which needs some potential enemies to justify the vast expenditures involved. But other Bush advisers are arguing against that approach, saying that promoting peace in the Korean peninsula is more important than the missile-defense agenda. In June 2001, for instance, former U.S. Ambassador to South Korea Donald P. Gregg, said that it was important to mute criticism of North Korea and to resume the dialogue with them that had been developed during the Clinton Administration: “We need to stop demonizing the North Koreans.”

The other confrontational military dispute in the region concerns Taiwan. The United States has a significant interest in maintaining peace between China and Taiwan, and devotes considerable resources and energy to that controversy. China has between 300 and 400 CSS-6 and CSS-7 missiles with the range to blanket Taiwan, and also has 4,000 warplanes, including at least some that qualify as modern fighters. Concern about China’s military capabilities and intentions is one of the central U.S. justifications for its spy missions along China’s coast to observe China’s military actions, such as the EP-3E intelligence plane that collided with a Chinese plane on April 1, 2001 and was forced to land on Hainan Island. Later that same month, the United States agreed to


91 With Its Buildup, China Aims to Rattle Taiwan and Deter U.S. Role, N.Y. Times, April 8, 2001, at A8, cols. 1-2 (nat’l ed.).

92 See, e.g., Ralph Cossa, Do We Need So Many Surveillance Flights? Honolulu Star-Bulletin, April 18, 2001, at A21, col.1.
sell to Taiwan four Kidd-class destroyers, up to eight diesel submarines, 12 P-e anti-submarine aircraft, helicopters, assault vehicles, and other arms.\textsuperscript{93} As explained above, all of these issues relate back to navigational freedoms, and the United States has a central interest in keeping sea lanes open for military as well as civilian vessels.

**Conclusion**

Northeast Asia contains strong-willed and powerful countries with a long history of animosity toward each other. They have three significant conflicts over the sovereignty of islands and confrontational military situations in the Korean Peninsula and the Taiwan Strait. They have been slow to cooperate in maritime affairs, but they have reached pragmatic solutions to their differences when necessary to exploit the rich fisheries of the region and to search for hydrocarbon resources. As a practical matter, the United States should probably be viewed as a \textit{de facto} member of this region, because of its enormous military presence and its acceptance by the countries of the region as providing a necessary balance.

Although it would be overly optimistic to say that the countries of this region have established a functioning maritime regime,\textsuperscript{94} nonetheless they have addressed their differences in a conscientious fashion and have solved many of them. Real maritime cooperation to address the significant environmental problems of the region remains elusive, but significant steps have been taken toward reducing tension and promoting trust.

To maintain this momentum, the countries of Northeast Asia should concentrate on issues of common concern like pollution of the marine environment, biodiversity, regional effects of

\textsuperscript{93} Carolyn Skorneck, \textit{China Protests Sale of Arms to Taiwan}, Honolulu Star-Bulletin, April 24, 2001, at A12, col.2.

\textsuperscript{94} For a survey of maritime regimes around the globe and lessons learned from them that might be applied to Northeast Asia, see Mark J. Valencia (ed.), \textit{Maritime Regime Building: Lessons Learned and Their Relevance for Northeast Asia} (2001); see also Mark J. Valencia, \textit{Regional Maritime Regime Building: Prospects in Northeast and Southeast Asia}, 31 Ocean Development & International Law 223 (2000).
global climate change, and, most importantly, maintaining the sustainability of regional fisheries.

Eventually, they must also address and resolve their three difficult confrontations over the sovereignty of disputed islands, and the maritime boundary delimitations linked to these sovereignty conflicts. The tradition and practice in Northeast Asia has been to resolve disputes through direct face-to-face negotiations rather than through third-party dispute-settlement mechanisms using judicial or arbitral tribunals. But because it is politically impossible for any of the countries’ leaders to agree to give up sovereignty claims over any territory, they appear, as a practical matter, to require outside help.

An analogy might be found in the Gulf of Maine maritime boundary dispute between the United States and Canada in the 1970s and 1980s. The treaty negotiated by the countries’ diplomats was roundly denounced by fishing interests on both sides, and neither country’s legislature would ratify it. The diplomats decided that further negotiation would be fruitless and that the matter could be resolved only by an outside body immune from the political process. So they submitted the dispute to a chamber of the International Court of Justice. Although the Court’s judgment was also unpopular in both countries (because it was basically a compromise between the positions of the two sides), both sides accepted the judgment as final. The problem was thus resolved, and the two countries could proceed to work together amicably on other issues of mutual interest. An unsatisfactory resolution of a dispute may be better than no resolution, because it removes a festering sore and allows the neighbors to move from confrontation to cooperation.

As explained above, the United States is an active partner in Northeast Asian matters, particularly those concerning maritime affairs. Through its activities during and after World War II, the United States has played a historically significant role in some of the unresolved territorial disputes, but it is now disinterested in the specific outcome of any of them. U.S. officials may therefore be able to play a constructive role in addressing and resolving these disputes, by providing “good offices” to bring the disputing parties together, by serving as a mediator, or by

95 See supra text and notes accompanying notes 4-20.
helping to facilitate the establishment of an arbitral panel to examine the competing claims and bring a final closure to these island-sovereignty controversies.

Northeast Asia is likely to continue to be a region of dynamic economic growth and cultural flowering, with the region’s maritime resources playing a key role in ensuring the prosperity of the countries of this region. But these neighbors will find it to be much easier to realize this potential if they can find a way to work together as partners rather than as adversaries whose relationships are poisoned by unresolved conflicts.