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Unsustainable Chinese “Continental Shelf” Theory

By YUSHITA Hiroyuki

Depicted at one time as “cold politics-hot economy,” Sino-Japanese relations experienced a politically chilly period. However, recent relations between the two countries have been improving rapidly, which is a very welcome development. Through a long history, both countries have been mutually important actors, and friendly relations between them are not only very significant for each other, but also desired by neighboring countries. Following the respective visits of Chinese Premier WEN Jiabao and Prime Minister FUKUDA Yasuo last year, with another scheduled visit to Japan by Chinese President HU Jintao and the deepening Japanese interest in China as the Beijing Olympics draw near, stronger friendship and cooperation between the two countries are highly anticipated.

On the other hand, there are still some problems between Japan and China. At present, an outstanding problem which immediately needs to be addressed and resolved is the dispute concerning the development of the East China Sea gas fields. The media reports that both countries are trying to settle the dispute by the time of Chinese President HU Jintao's visit to Japan. This dispute over the development of the East China Sea gas fields directly relates to the delimitation of the Exclusive Economic Zone (EEZ) between the two countries. I would like to point out one aspect of which I feel strange vis-à-vis Japanese media on this EEZ boundary issue.

Regarding this dispute, the media reports that Japan asserts the “equidistant median line” theory, whereas China insists on the “Okinawa Trough” approach based on the “continental shelf” theory. In this respect, I wonder why the Japanese media has not raised any doubt.

The EEZ was adopted in 1982 under the United Nations Convention on the Law of the Sea (UNCLOS) which entered into force in 1994. The UNCLOS allows coastal states to have sovereign rights for managing the natural resources of the waters superjacent to the seabed, and of the seabed and its subsoil in the EEZ, extending 200 nautical miles off their coasts regardless of the shape of the seabed. When the boundaries of the EEZs overlap like the case of the East China Sea gas fields, Article 74 of the UNCLOS stipulates that the delimitation of the EEZs between the two states should be implemented by agreement on the basis of international law in order to achieve an equitable solution.

International law of the sea had evolved over the years since the end of World War II, and the adoption of the UNCLOS achieved a final settlement. Before World War II, while international law

limited sovereign rights to territorial water extending three nautical miles from a nation's coastlines, all nations could freely explore and exploit natural resources within waters and in the seabed beyond this national boundary which were considered open to all. However, numerous laws and institutions were established after the war. One of them was the system of continental shelf in which a coastal state had sole exploitation rights over all natural resources in the seabed within the depth of 200 meters from the coastline. Even if this depth exceeded 200 meters, the coastal state had the right to exploit natural resources within its continental shelf.

China claims that it has exploitation rights around the disputed waters because the eastern end of the Chinese continental shelf reaches the Okinawa Trough. This argument could have been effectual under the above-mentioned continental shelf law which was valid before the establishment of the EEZ system. However, under the UNCLOS, the Chinese claim is not acceptable any more. Exploitation of natural resources in the sea and seabed beyond three nautical miles from the coast line of a state used to be justifiable because outer areas of territorial waters were considered as open to all. However, this argument is no longer acceptable in international society under the present law. Neither is the Chinese continental shelf theory. The relevant law has changed under the UNCLOS.

Instead of providing proper knowledge of international law, the Japanese media reports the Chinese claim, namely the "Okinawa Trough" approach, as if it is still sustainable. I do believe this situation will mislead public opinion, benefit China unfairly in negotiations, and jeopardize Japanese national interest.

(This is the English translation of an article by Mr. YUSHITA Hiroyuki, Visiting Professor of Kyorin University, which originally appeared on the BBS "Giron-Hyakushutsu" of GFJ on January 29, 2008.)