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THE EAST CHINA SEA DISPUTE: GENESIS, LEGAL ISSUES AND NEW DEVELOPMENTS

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ABSTRACT:

The East China Sea is a marginal sea. It is surrounded by China, Japan and Taiwan from different directions. In 1968, a United Nations survey reported that the East China Seabed has lots of unexplored resources of oil and gas. Notably, these resources are located where the water becomes deeper at Okinawa Trough. As per the above picture, Okinawa is far away from China's continental shelf and it is situated near the Ryukyu Island. But due to conflicting claims over the boundaries, the use of its resources has been prevented. This dispute is adversely affecting the relations between the countries involved in it. Although the principle of joint development has been proposed by Japan, Taiwan and South Korea, but that is also uncertain as how effectively it will work because it has been opposed by China. China and Japan have distinct but overlapping claims including where to set the limits of the sea boundary and sovereignty over some islands. On the other hand, China and Taiwan uphold corresponding titles regarding the islands. The present article will highlight the background of the dispute, the present situation and its implication on the relations between the involved countries. Most importantly, this paper will focus on what needs to be done in order to maintain international peace and security.

Key Words; International Law, South China Sea, Continental shelf, International Disputes over territory International peace.

INTRODUCTION

Ocean and Seas across the globe contain vast amounts of minerals and natural resources. In the past 50 years, the interest of mankind in exploring and exploiting these resources has increased tremendously. The East China Sea Dispute involves tension among different countries including China, Taiwan and Japan mainly over the extent of exclusive economic zone. It also involves the exploitation of fishing and natural resources (oil and gas). In 1995, China found oil and gas fields in Okinawa Trough.¹ Other countries have made their claim to these resources as well. Struggle between China and Japan for gas resources in the East China Sea is escalating and hindering bilateral relations.² The tension among different countries is increasing since 1972. Both China and Japan have signed and ratified the 1982 United Nations Convention on the Law of the Sea (also known as UNCLOS). Furthermore, China has also submitted its claim titled regarding the external borders of the Continental Shelf beyond 200 nautical miles in part of the East China Sea to the Commission on the Limits of the Continental Shelf (CLCS) under UNCLOS. Therefore, its position is that the natural extent of the continental shelf of China in the East China Sea spreads to the Okinawa Trough and outside 200 nautical miles from the baselines from which the breadth of the territorial sea of China is measured. Difference in their political system is also increasing the gap. Whereas the Japan has democratic society and the China has authoritarian type structure. The conflict related to the island depicts the national identities of different nations. Earlier the countries were busy in the war. In spite of wars, China and Japan share the cultural similarities. But, later the disputes resulted into this form. The present situation creates tension and there is fear for outbreak of war. United States is supporting Japan and both have security-agreement as well. Although, United States has mentioned that it is the observer in the East China Sea dispute.² Thus, in such a situation there cannot be any quick solution but the countries need to understand this in order to retain peace. Even the time has changed a lot and even the needs of the person have changed but the dependency of humans over natural resources will remain forever. It is thus necessary to maintain the usage of such resources. The international relations among different nations must be peaceful and that can be maintained only by resolving the disputes between them.

GENESIS OF THE EAST CHINA SEA DISPUTE

The dispute is going on between China and Japan related to East China Sea. Japan detained the Chinese fishing boat captain for striking a ship. The dispute arises from this incident. Later, further differences grew among the nations. Both the nations are claiming their rights over the islands namely Senkaku and Diaoyu, also three barren rocks. China asserts the contested islands on authentic grounds. It attests that the Ming Dynasty attached these islands as ahead of schedule as in the year 1403 as a component of its oceanic region. Qing tradition went further also, set it under the locale of Taiwan, which was an aspect of the Chinese Empire. Since ancient times, China is claiming its right over the island. But Japan annexed the island through the treaty of Shimonoseki. China considers this to be the unequal as forcibly enforced by the foreign powers. There was a declaration in the year 1943 that the Japan was supposed to return

¹ East China Sea Dispute; Available at: <https://www.eapasi.com/east-china-sea.html> (visited on: October 4, 2022) ²The East China Sea dispute: Context, claims, issues, and possible solutions; Available at: https://www.researchgate.net/publication/242364817_The_East_China_Sea_dispute_Context_claims_issues_and_possible_solutions (Last updated on May 4, 2023)

² Clash of National identities; Available at: https://www.wilsoncenter.org/sites/default/files/media/documents/publication/asia_china_seas_web.pdf (visited on: June 2, 2023)

the island but not done so. Therefore, China considers illegal control over islands. US is also involved into it. This is because US-Japan entered into an agreement and US exercised full control over both the islands. US also returned along with Okinawa Island to Japan in the year 1972. At later point of time, Japanese government purchased three Islands from private Japanese owner which again resulted into conflict between Japan and China.³ The province of Taiwan administered that Islands were part of it since ancient times. Taiwan was returned under the treaty then China claimed the islands as well.⁴ Taiwan, China and Japan are claiming the Islands. This dispute is increasing day by day. The US alliance with Japan is causing threat to China. With this, risk of crisis is also rising with time. The condition is not stable among both the nations.⁵ It is also mentioned that although this victory of having control over the island can be of short term by the country but it can bring the disturbances for long run. Thus, there is still hope that the dispute gets resolved soon and the peace should be maintained.⁶ Therefore, the rise in crisis needs to be managed so that international relations can be maintained and any kind of war like situation could be prevented.

LEGAL ISSUES IN THE EAST CHINA SEA DISPUTE

On 23 November 2013, China declared the foundation of an Air-Defense Identification Zone (ADIZ) in the East China Sea. The Chinese ADIZ expanded well into what Japan considers to be its public select airspace and incorporates an uninhabited archipelago referred to in Japan as the Senkaku Islands and in China as the Diaoyu Islands. Beijing's choice speaks to the most recent advancement in an extended debate between China also, Japan over the control of these islands and the close by waters in the East China Sea. UNCLOS broadened the greatest expansiveness of the regional ocean to 12 nm. It likewise set the greatest augmentation of the touching zone at 24 nm,⁷ and presented the idea of the selective monetary zone (EEZ), the greatest expansiveness of which was set at 200 nm. Further, in 1984 the UN Food and Agriculture Organization (FAO) assessed that 90% of marine fish and shellfish were gotten inside 200 nm of the coast. Additionally, it was assessed that 87 % of the world's realized submarine oil stores would fall inside the 200 nm- broadness zones of purview. The presentation of 200 nm-broadness EEZs dramatically affected the degree of sea space getting subject to the sea cases of seaside states, and speaks to a significant reallocation of asset rights from global to public locale. It is important to mention here that China and Japan have covering oceanic cases over the East China Sea furthermore, have not discovered a concurrence on the delimitation of their individual EEZs and the escalation of the mainland shelf. Japan requests the utilization of the equidistance (middle line) approach, though China demands the utilization of the guideline of normal prolongation of the mainland rack. In view of the last methodology, which permits guarantees up to 350 nm from the coast, China asserts a territory stretching out from its coast up to the Okinawa Trough (around 2000 m top to bottom), which is inside the 350 nm limit set by UNCLOS.⁸ Thus, China and Japan are claiming the disputed islands. In recent years, China

³ A dangerous escalation in the East China Sea; Available at: <https://www.crisisgroup.org/asia/northeast-asia/chinajapan/dangerous-escalation-east-china-sea> (visited on: May 25, 2023)

⁴ Senkaku Islands; Available at: <https://www.drishtias.com/daily-updates/daily-news-analysis/senkakuislands> (visited on: June 2, 2023)

⁵ The east china sea dispute: context, claims, issues and possible solutions; Available at: <https://www.jstor.org/stable/42704579?seq=1> (visited on: May 26, 2023)

⁶ The East China Dispute: Short term victory and long term loss for China; Available at: <https://www.brookings.edu/research/the-east-china-sea-dispute-short-term-victory-and-long-term-loss-for-china/> (visited on June 1, 2023)

⁷ Meaning of "coterminous zone": a sea zone adjoining the regional ocean that may not reach out past 24 nm from the baselines from which the broadness of the regional ocean is estimated. Inside the bordering zone the waterfront state may practice the control important to forestall and rebuff encroachment of its traditions, financial, movement, or sterile laws and guidelines inside its region or Regional Ocean. In all different regards the adjacent zone is a territory dependent upon high oceans opportunity of route, overflight and related opportunities, for example, the lead of military activities.

⁸ The struggle for control of East China Sea by Roberto Bendini; Available at: [https://www.europarl.europa.eu/RegData/etudes/IDAN/2014/536398/EXPO_IDA\(2014\)536398_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2014/536398/EXPO_IDA(2014)536398_EN.pdf) (visited on May 31, 2023)

has changed its approach but Japan is not ready to accept the claim of China over the islands. The countries need to understand the situation and reach at certain agreement.

DISPUTE RELATED TO FISHING AND OTHER RESOURCES IN EAST CHINA SEA: MAIN CONCERN

Oil and Gas Resources: The unexplored area is situated which is abundant in the natural resources. One of the utmost concerning latest trends in the East China Sea is the growing number of Chinese oil and gas search and drilling gears in the area. Previously, the case in 2010 when a Chinese angler purposefully slammed into Japanese coast sea vessels. The subsequent contest had a huge influence in worsening strains in the East China Sea, so such a situation could indeed represent a genuine danger to territorial security. Japan's claiming ranges from the Ryukyu Islands to what it attests is the middle line between the Chinese and Japanese mainland racks in the East China Sea. China and Taiwan, nonetheless, keep up the entirety of the East China Sea, given their broad mainland rock claims. The crisis is increasing between China and Japan over the islands. They are claiming the disputed islands. Earlier, the same was not explored for a long time but now the situation is sensitive over the claim of such islands.

Fishing Crisis: Fishing have been ordinary in the South China Sea, yet Beijing has seemed to endeavor to control these occurrences as of late in the East China Sea. All things considered, a genuine conflict among fishing and coast watch vessels appears to be unavoidable, except if the area's oceanic debates are completely settled. The Chinese government limits fishing inside the majority of the East China Sea for a significant part of the year. The yearly finish of the fishing boycott ordinarily brings about huge quantities of Chinese fishing teams wandering into the East China Sea, including into the adjacent zone and Regional Ocean around the Senkaku Islands. Fishing conflicts are main concerns, not just on the grounds that the fishing groups themselves could be harmed and require crisis reactions, which leads local governments to see fishing questions through a nationalistic focal point. China has an expected 50,000 or more fishing vessels, a considerable lot of which are maritime, with a few hundred regularly showing up in the East China Sea toward the finish of the yearly fishing boycott. In spite of the fact that these numbers diminished in 2017, the desire is that Chinese fishing and coast watch vessels will expand their essence in the contested segments of the East China Sea in the years ahead.⁹

MILITARY INVOLVEMENT AND THE ROLE OF USA IN DISPUTE

Military Involvement: The another important thing that could lead to greater than before tensions in the East China Sea is a military escalation involving more than one unmanned systems. Use of such system both in air and sea is creating tension. Chinese force once captured the unmanned submersible operated by US Navy but that was returned at later point of time. But this kind of actions are increasing tensions in different nations.¹⁰ The most outrageous opportunities for demeanor of the title contest over the Senkaku Islands and for settlement of the covering claims to the mainland rack would be resort to furnished clash. In such manner, it is informative to take note of that China gambled war with the Soviet Association over the little, uninhabited island of Chen Pao Tao in the Ussuri River among China and Russia, despite the fact that the monetary and key estimation of the island seemed negligible, best case scenario. Besides, China has enthusiastically fought that Japan's cases in the East China Sea are essential

⁹ Asia Maritime transparency initiative by Zack cooper; Available at: <https://amti.csis.org/flashpoint-eastchina-sea-potential-shocks/> (Last updated on: April 27, 2018)

¹⁰ Ibid

for an industrialist plot.¹¹ It is significant to mention here that the East China Sea is a portion of the Pacific Ocean. Therefore, it is a marginal sea in the east of China. This water body covers an area of roughly 1,249,000 square kilometers. Towards the east of this sea situated the Japanese islands known as Kyushu and the Ryukyu Islands. Thus, recently the tensions between China and Japan have escalated over the questioned Senkaku/Diaoyu islands that lies in this sea and together nations have raised as spreads into the disputed waters. Both countries have augmented their military competences, mainly their radar and missile systems in their region.¹³

Role of United States: It is pertinent to mention here that US-Japan has security agreement. This agreement is basically stating that it will help Japan in any kind of conflict. This treaty covers all the area of Japan. It has been stated by US that they will help Japan surely. Also, US will help Japan in monitoring the Chinese incursion.¹² The involvement of US in the conflict is raising more tension for China. United States has clearly mentioned that they will support Japan in any kind of

situation.¹³ Thus the worrisome situation is there. This could result into a serious conflict as well. Both Japan and United States share common goals related to Indo-Pacific region. Also, to prevent any kind of aggression from countries like China, Russia etc. Japan also participated in peacekeeping operation led by United Nations. In the recent years, Japan gave certain boats and other help, similarly United States did same in order to help. United States has committed as per the alliance to help with approximately 55,000 military forces. It is however, expected that the dispute should be settled soon. Instead of ruining the relations between them, both the countries are expected to cooperate with each other so that the matter could be solved.

NEW DEVELOPMENTS IN EAST CHINA SEA

Recently, both the countries China and Japan agreed upon the usage of natural resources. Well, they have agreed to cooperate with each other related to development of natural resources lying in the East China Sea. Delimitation has not been set yet for The Exclusive Economic Zone (EEZ). Japan is stating that the delimitation of the maritime must be done on the basis of geographical line between Japan and China. Adversely, China is advancing unilateral development which is not acceptable.¹⁶ Although the countries are putting effort to cooperate but it does not seem that the situation has improved. But the tension is rising day by day. This topic is really crucial and could lead to tension and even war like situation in Asia. Still the tensions nearby the East China Sea around 1,200 miles (1,900 kilometers) southwest of Tokyo, have been overflowing for years. With both countries are claiming rights over the islands for hundreds of years, neither Japan and China is predictable to pull their pole down over the territory which is considered “a national birthright” in both Beijing and Tokyo. Neither the country is putting their thought down. To decrease the conflict, one must quit. If both will keep on competing then the dispute will never end. As mentioned above, the countries agreed to cooperate with each other. This is a great move for maintaining the peace. However, the international relations must be maintained. If the dispute continues, then of course the international relation will get ruined. The present situation in the country will lead to war in Asia. There is need to prevent the crisis from happening. Further, will discuss how to prevent the conflict from happening.

¹¹ East china Sea: Role of international law in settlement of dispute; Available at: <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2453&context=dlj> (visited on: June 3, 2023) ¹³ East China Sea; Available at: <https://timesofindia.indiatimes.com/topic/East-China-Sea> (visited on: May 11, 2023)

¹² East China Sea; Available at: <https://economictimes.indiatimes.com/topic/East-China-Sea> (visited on May 29,2023)

¹³ The U.S. Japan Alliance; Available at: <https://fas.org/sgp/crs/row/RL33740.pdf> (visited on: June 3, 2023) ¹⁶ The Current Status of China’s Unilateral Development of Natural Resources in the East China Sea; Available at: https://www.mofa.go.jp/a_o/c_m1/page3e_000356.html (Last updated on September 30, 2022)

PREVENTING CONFLICT FROM HAPPENING IN EAST CHINA SEA

Presently, East China Sea is a critical stretch of argument between China and Japan and certain other innovations and disputed assertions over the Senkaku/Diaoyu islands could trigger a new political strain in Asia. Both countries are claiming right over the unoccupied islands, known as the Diaoyu in China and the island Senkaku in Japan. In fact, Japan has controlled the area since the year 1972. Now, if Japan reacts, that could cause a huge conflict in the area which will also involve in the United States. This is because Washington is owing a favor to protect Tokyo due to a defence agreement between the two countries if an external power outbreaks Japan or even any of its territories.¹⁴ The present situation in China and Japan is unstable due to the dispute over East China Sea. Ryan Hass from Brookings has mentioned that the dispute between Japan and China is having more risk of an international conflict than the South China Sea. There is repetition of close encounters between Chinese and Japanese vessels which could result into conflict. The Chinese and Japanese forces which are working in East China Sea carries risk of conflict between them. It is true that Japan is close ally to Unites States. US has also declared to help Japan in any situation as there is security agreement in both the nations. If the conflict arises, then the world's largest economy will also come into picture in order to protect allies. Barack Obama the ex-president of United States mentioned that U.S.-Japan security treaty covers the East China Sea dispute. Kyodo news agency stated that China and Japan agreed to set up communication to prevent any conflict of East China Sea.¹⁵ Then, the two sides are upgrading their military capacities in the East China Sea. China is growing its maritime and air tasks further into untamed waters in an offer to stretch out its sea impression toward the Western Pacific, and Japan is supporting the protections of its south-western island chain accordingly. China ought to delink the subject from the political relationship and sovereignty questions: an impromptu conflict with Japan would neither advantage its objective of accomplishing fringe strength nor defend its privileges. Japan should proceed to draw in and evade incendiary comments that expansion political dangers for moderates in China.¹⁶

Both the countries should discuss the matter and reach to certain agreement. Such actions must be refrained which could result into crisis. As the alliance is strengthening between US and Japan which is becoming threat to China.¹⁷ The proper training must be given to the forces working on frontline as they can contribute in preventing any kind of conflict. Instead of arguing the matters in media, the meetings should be conducted which could bring peace among both the nations. Parties together should come on for discussion upon the crisis management. Initiative taken by both the countries will help in settling the dispute. There is need to maintain peace at international level. Thus, if the countries are having healthy international relations then only it can contribute towards the development, peace and security. Therefore, the dispute must be settled at its earliest.

CONCLUSION:

From the above discussion it can be concluded that the East China Sea dispute is affecting the international relations of different countries. The dispute involves the islands over which China and Japan are claiming their rights. The tension is rising and could worsen the relation. There is military

¹⁴ China teases Japan in East China Sea, sends 67 ships near Tokyo-controlled Senkaku islands since April: Report; Available at: <https://www.timesnownews.com/international/article/china-teases-japan-in-east-chinasea-sends-67-ships-near-tokyo-controlled-senkaku-islands-since-april-report/610438> (Last updated on: May 23, 2023)

¹⁵ A second territorial dispute in Asia could be more dangerous than the South China Sea; Available at: <https://www.cnbc.com/2017/12/20/east-china-sea-could-be-riskier-than-south-china-sea.html> (Last updated on December 21, 2017)

¹⁶ East China Sea: Preventing clashes from becoming crisis; Available at: <https://www.crisisgroup.org/asia/north-east-asia/china/east-china-sea-preventing-clashes-becoming-crises> (visited on: May 5, 2023)

¹⁷ U.S.-Japan Alliance Increasingly Strengthened Since End of WWII; Available at: <https://www.defense.gov/Explore/Features/Story/Article/2306658/us-japan-alliance-increasingly-strengthened-since-end-of-wwii/> (last updated on August 14, 2020)

involvement in both the nations. The conflict is rising and needs to be controlled. The crisis management states that there is need to prevent the clashes from turning it into crisis. The government of the involved nations must try to reach at certain agreement to end this conflict and bring peace at international level. This is merely affecting their international relations. The dispute also involves the use of natural resources mainly oil and gas. Another main concern is related to fishing which is creating tension among China and Japan. There is also involvement of the military in this dispute. It is therefore, suggested that such conflicts are only destroying the relation between different nations. There is a need to settle the dispute so that peace could be established. There are some actions taken by the countries against other which increases the tension between them. Thus, such activities must be refrained. If a dispute arises between two different parties then that can only be controlled if one party puts step forward to compromise. Similarly, the China and Japan are at dispute, it could only be resolved if either the party will try to solve it. As discussed above, the US is also in the picture as per the treaty signed between US and Japan. That is mentioning to help Japan in any kind of conflict.

SUGGESTIONS:

In order to settle the East China Sea Dispute, the countries involved into it must setback from getting engage into the dispute. There is need to control the tension which is rising. The countries who are claiming their rights in the maritime must propose their interest as per the UNCLOS articles. Such proposal must be as per the law. In case, the countries does not follow the provisions then that would lead to violation of International law. It is thus suggested that countries must cooperate with each other to bring peace and harmony. As the concept of joint development was proposed, that will help in mutually sharing resources. Joint cooperation must also be adopted and followed fairly by the countries. Overall, the aim is to maintain peace at world level. The countries should settle their dispute and cooperate with each other to prevent any kind of further crisis. The present situation is really need to be controlled in order to prevent any kind of war to happen in the future. International relations matters a lot during emergency situations. Countries must understand that they should endeavor to maintain the healthy international relations with the other countries.

“Peace cannot be kept by force, it can only be achieved by understanding.”

-Albert Einstein