

The 2008 Japan-China Agreement on Cooperation for the Development of East China Sea Resources

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Outline

- I. The 2008 Agreement (“Principled Consensus” in China)
- II. What Should be the Joint Development Area?
- III. Meaning of “Joint Development”
- IV. Legal Nature of the 2008 Agreement
- V. Final Remarks

I. The 2008 Agreement (“Principled Consensus”)

- Consists of 3 parts:
 1. Sole introductory para.
 2. Understanding on Joint Development in the ECS (4 paras.)
 3. Understanding on Development of *Shirakaba* (*Chunxiao*) Oil and Gas Field (2 paras.)

I. The 2008 Agreement (“Principled Consensus”)

1. Introductory paragraph:

- The sea boundary between Japan and China has not been delimited in the ECS;
- In order to make the ECS a “Sea of Peace, Cooperation and Friendship”, Japan and China have agreed that they cooperate, without prejudice to their legal positions, during the transitional period pending agreement on the delimitation;
- They have taken the first step; and will continue consultations.

1. The 2008 Agreement (“Principled Consensus”)

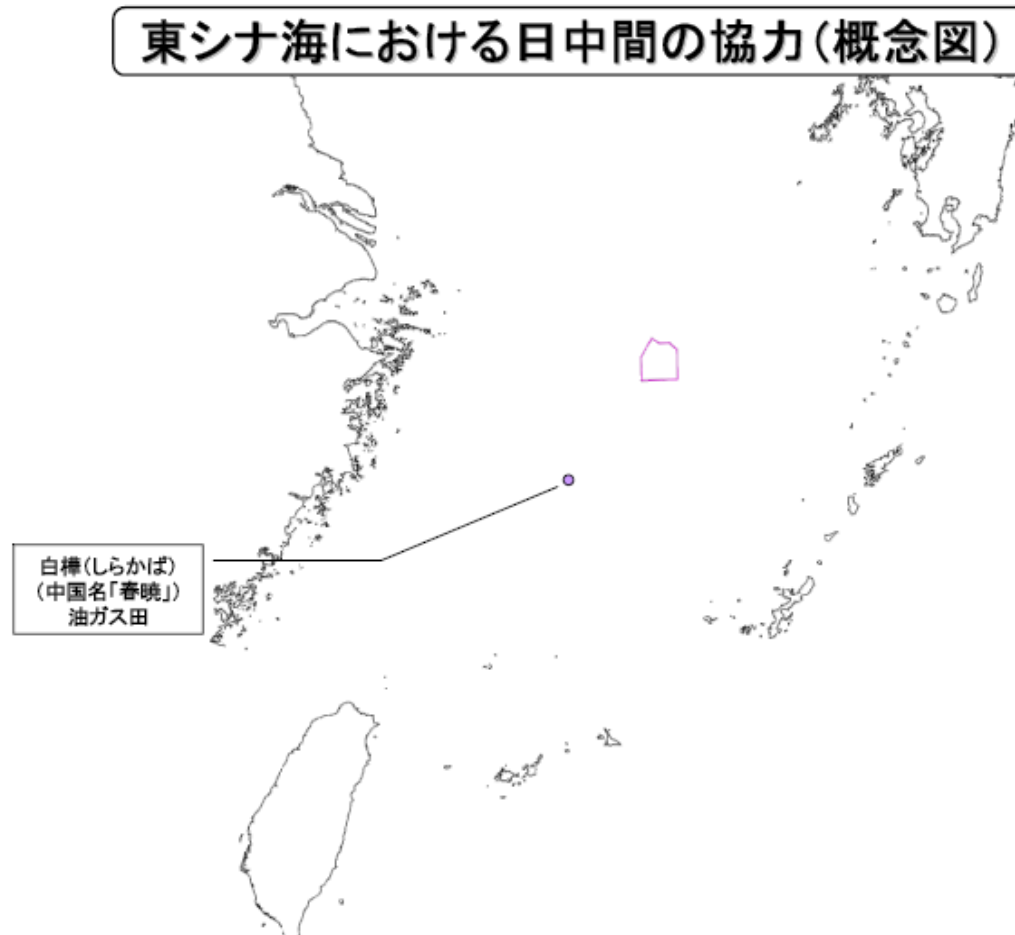
2. Understanding on Joint Development in ECS

As the first step of the joint development in the ECS, the two sides start to do the following:

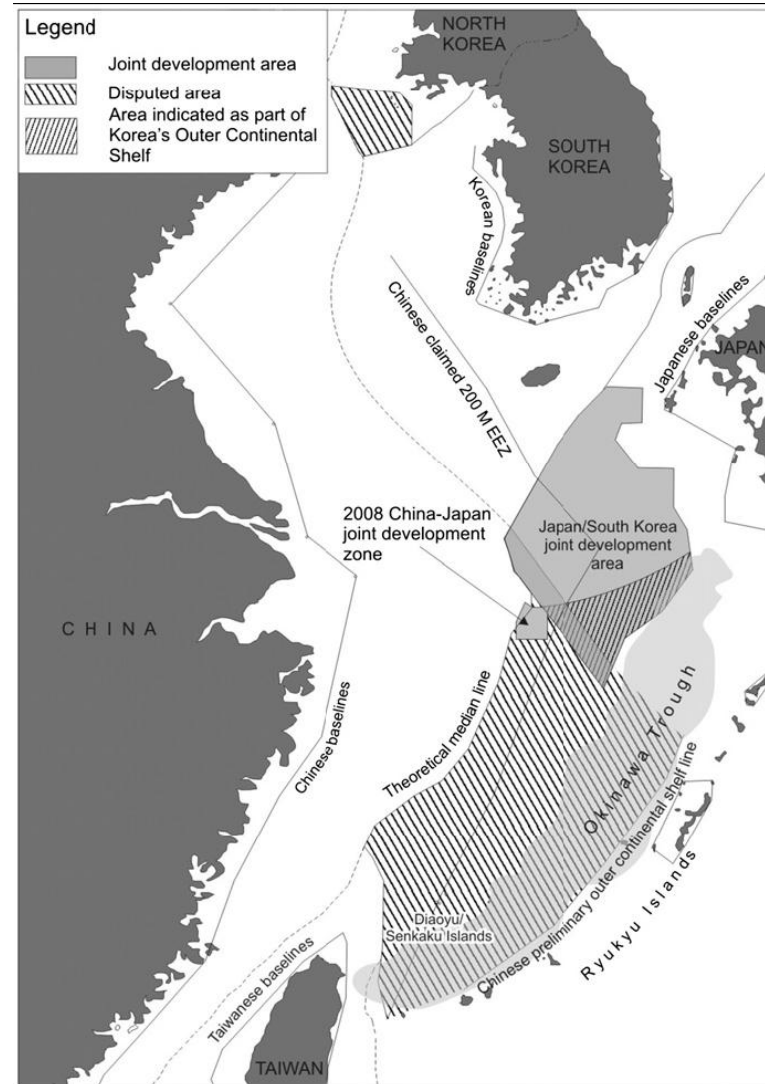
- A block for the joint development zone is identified, shown by 7 sets of geographical coordinates (Fig. 1);
- They will jointly explore and select sites for joint development, and conduct joint development for mutual benefit; they will make efforts to promptly conclude a bilateral agreement for this purpose;
- They will continue talks to attain joint development *in other waters of the ECS* as soon as possible.

I. The 2008 Agreement (“Principled Consensus”)

Fig. 1: Japan-China Cooperation in the East China Sea
(Schematic map released by For. Ministry, Japan)



C. Schofield and I. Townsend-Gault: Map showing competing claims to maritime jurisdiction in the East China Sea (*Marine Policy*, vol. 35 (2011), p. 27)



1. The 2008 Agreement (“Principled Consensus”)

3. Understanding on the Development of *Shirakaba (Chunxiao)* Oil and Gas Field

- Chinese enterprises welcome that Japanese corporation(s) will participate in the development of the existing *Shirakaba (Chunxiao)* field;
- Such participation will be in accordance with Chinese laws regarding cooperation with foreign enterprises in off-shore petroleum exploration and exploitation;
- The two Gov’ts will make efforts for early agreement on the text of Exchange of Notes.

II. What Should be the Joint Development Area?

- The Understanding on Joint Development has specified a block for joint development, and agreed to continue talks for joint development *in other waters* of the ECS.
- China's position: Existing fields where China has started working, all located on the Chinese side of the hypothetical median line claimed by Japan, are totally outside the joint development area. China does not recognize such median line. China's claim, on the basis of the natural prolongation principle, extends to the axis of the Okinawa Trough.
- Japan's position: Since China does not recognize the median line, Japan has confirmed its title to the continental shelf (and EEZ) up to 200 nm from its baselines.

II. What is the Joint Development Area?

What is the current rule of international law?

- Legal entitlement has been confirmed by the jurisprudence of especially ICJ since the establishment of EEZ regime, which entitles all coastal States to enjoy sovereign rights up to 200 nm *irrespective of geological or geomorphological features* in maritime areas where the distance between opposing coastal States is less than 400 nm . See, inter alia, the *Tunisia/Libya* and *Libya/Malta* cases.
- Since this rule applies to Japan and China, the areas to which both States have title overlap in the central part of the ECS. This is precisely the disputed area in delimitation. Since the 2008 agreement contains provisional arrangements pending delimitation under Art. 83 of UNCLOS, the whole disputed area should be considered to be the area for potential joint development.

III. Meaning of “Joint Development”

Is the development referred to in the Understanding on *Shirakaba (Chunxiao)* Field a form of joint development?

- China: No, it is the cooperation in the development of the Field being undertaken by Chinese companies through participation by Japanese corporation(s). China retains sovereign rights over the Field.
- Japan: First, “a type of joint development”. But this was denied more recently.

The Understanding is rather clear on this point; the two sides should set aside the definition and work out the details in the exchange of notes to be negotiated.

IV. Legal Nature of the 2008 Agreement

- The Agreement is unique in form:
 - No title like normal agreement or treaty
 - No signature or initial, nor clause on entry into force
 - Text announced in a “Japan-China Joint Press Statement” in the two respective languages
 - English translation by China calls the document “Principled Consensus”, whereas no equivalent term is used in the Japanese text.
- The contents and terminology are rather simple and general, lacking specific legal commitment.

IV. Legal Nature of the 2008 Agreement

- Is it a legally binding instrument?
 - Yes: Prof. Gao Jianjun
 - Not necessarily clear: Prof. Zhang Xinjung
 - No, it is a political agreement: Japanese For. Minister
- It would be more appropriate to characterize it as a political agreement or accord, recording the stage of negotiations the two parties had reached and their commitment to advance them further with a view to concluding legally binding instruments.

V. Final Remarks

- The 2008 Agreement: a significant first step for cooperation for mutual benefits in the ECS.
- A most difficult problem to be tackled: the area to be covered by further joint development.
- Further progress depends highly on bilateral political relations.