



# The Rough State of Japan–South Korea Relations: Friction and Disputes in the Maritime Domain

Terence Roehrig January 15, 2021

Relations between Japan and the Republic of Korea (ROK) have reached their lowest point in years and could get worse. In October 2018 the Supreme Court of South Korea handed down a ruling that affirmed the right of a group of ROK citizens to sue three Japanese companies for damages stemming from forced labor during the 1910–45 Japanese occupation.<sup>1</sup> Japanese officials disagree with the characterization of “forced labor” and maintain that this issue was settled with the 1965 Korea-Japan normalization treaty, where Japan agreed to provide money and loans as compensation.<sup>2</sup> For years, South Korean courts blocked lawsuits that sought damages, consistent with the wording in the treaty that the issue was “settled completely and finally.”<sup>3</sup> The 2018 ruling reversed course by asserting that the 1965 treaty was a political agreement between governments and did not preclude the rights of individuals to sue for damages. In addition, the Supreme Court ruling included a provision for seizing the assets of Japanese companies to pay for damages. There have been some signs of discussion between the two governments on this issue, but a final resolution is uncertain.<sup>4</sup>

Other issues have added fuel to the fire. During World War II, the Imperial Japanese Army coerced women and girls to serve as sex slaves, or what are euphemistically called “comfort women.” In 1993, Japanese cabinet secretary Yohei Kono acknowledged the damage done to these women and that the government offered “its sincere apologies and remorse to all those...who suffered immeasurable pain and incurable physical and psychological wounds as comfort women.”<sup>5</sup> Despite the apology, the controversy lingered, and the Japanese government continued to dispute details of the issue.<sup>6</sup>

On December 28, 2015, Japan and South Korea reached a deal that appeared to finally settle the dispute with Japan contributing \$8.3 million to the South Korean government for compensation to the victims and offering an apology. Japanese prime minister Shinzo Abe remarked that “Japan and South Korea are now entering a new era. We should

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<sup>5</sup> Yohei Kono, “Statement by the Chief Cabinet Secretary Yohei Kono on the Result of the Study on the Issue of ‘Comfort Women,’” Ministry of Foreign Affairs (Japan), August 4, 1993, <https://www.mofa.go.jp/policy/women/fund/state9308.html>.

<sup>6</sup> Ministry of Foreign Affairs (Japan), “Japan’s Efforts on the Issue of Comfort Women,” November 30, 2020, [https://www.mofa.go.jp/policy/postwar/page22e\\_000883.html](https://www.mofa.go.jp/policy/postwar/page22e_000883.html).

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<sup>1</sup> Seokwoo Lee and Seryon Lee, “Yeo Woon Taek v. New Nippon Steel Corporation,” *American Journal of International Law* 113, no. 3 (2019): 592–99.

<sup>2</sup> Ministry of Foreign Affairs (Japan), “Issue of Former Civilian Workers from the Korean Peninsula,” October 21, 2020, [https://www.mofa.go.jp/a\\_o/na/kr/page4e\\_000947.html](https://www.mofa.go.jp/a_o/na/kr/page4e_000947.html).

<sup>3</sup> “Agreement on the Settlement of Problems Concerning Property and Claims and on Economic Co-operation (with Protocols, Exchanges of Notes and Agreed Minutes),” June 22, 1965, available at <https://treaties.un.org/doc/Publication/UNTS/Volume%20583/volume-583-I-8473-English.pdf>.

<sup>4</sup> “Japan, S. Korea Senior Officials Agree to Cooperate to Mend Ties,” *Mainichi*, November 13, 2020.

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not drag the problem into the next generation.” South Korean president Park Geun-hye acknowledged that the deal was desperately needed, given the advanced age of the survivors, and expressed hope that “the mental pains of the elder comfort women will be eased.”<sup>7</sup>

Despite the sighs of relief from many and hopes that the issue might finally be put to rest, opposition to the deal in both countries arose almost immediately. Japanese conservatives believed that Abe had conceded too much, while many South Koreans argued that the surviving victims had not been sufficiently consulted before the pact was signed. In 2018 the deal fell apart when the Moon Jae-in government dissolved the foundation that was established to distribute Japanese funds. In the latest chapter, on January 8, 2021, a South Korean court ruled that the Japanese government must pay \$91,800 in reparations to each of twelve victims. The Japanese government rejected the ruling, maintaining that ROK courts have no jurisdiction over Japan and that the issue was settled in the 1965 normalization treaty.<sup>8</sup> The “comfort women” issue remains one of the chief sore spots in ROK-Japan relations.

Friction between Seoul and Tokyo has spilled over into other areas. In 2019, Japan removed South Korea from its “white list” that exempts select countries from obtaining a special license to import sensitive Japanese goods, including chemicals used for making key products such as flat-screen televisions and semiconductors. South Korea responded by taking Japan off its “white list” for fast-track trade status. That same year, Seoul threatened to withdraw from the General Security of Military Intelligence Agreement, an arrangement that facilitated intelligence-sharing between South Korea, Japan, and the United States. Japan favored keeping the agreement, and Washington placed considerable pressure on South Korea to stay in. Shortly before the

departure was to take effect, the Moon administration suspended its decision to withdraw.

All these issues provide the context for the difficult relationship between the two countries in the maritime domain. Sometimes tensions have come from unexpected sources. In October 2018, prior to a fleet review sponsored by the ROK Navy, South Korea asked Japan not to fly the Rising Sun ensign on its warships, arguing that it was a provocative symbol of World War II and the occupation. The Japanese Self-Defense Forces chief of staff Katsutoshi Kawano replied: “Hoisting of the Maritime Self-Defense Force ensign is required by law. Members take pride in the ensign, and we will never go there with the flag unhoisted.”<sup>9</sup> Indeed, Japan backed out of the fleet review.

A few months later, another incident, this time at sea, further heightened tensions. On December 21, Japanese authorities accused a ROK destroyer of locking its fire-control radar used for targeting its weapons systems on a Japanese P-1 surveillance aircraft over the Sea of Japan (known as the East Sea in South Korea). The ROK objected to the accusation, and for the next several weeks claims and counterclaims flew back and forth, further worsening strained relations.<sup>10</sup>

Though the hostility over these issues has subsided, other, more long-standing challenges in the maritime domain persist. The remainder of this essay will examine three of these issues that continue to be points of friction: the Dokdo/Takeshima dispute, the naming of the Sea of Japan/East Sea, and unsettled maritime boundaries.

## Dokdo/Takeshima Dispute

The chief maritime dispute between Japan and South Korea is over a small group of islands that the Koreans call Dokdo and the Japanese call Takeshima. The feature consists of two main islands

<sup>7</sup> “Japan and South Korea Agree WW2 ‘Comfort Women’ Deal,” BBC News, December 28, 2015, <https://www.bbc.com/news/world-asia-35188135>.

<sup>8</sup> Choe Sang-Hun, “South Korean Court Orders Japan to Pay Compensation for Wartime Sexual Slavery,” *New York Times*, January 7, 2021, <https://www.nytimes.com/2021/01/07/world/asia/south-korea-comfort-women-japan.html>; and Yosuke Onchi and Masaya Kato, “Comfort Women Ruling Frays South Korea–Japan Ties Ahead of Biden Era,” *Nikkei Asia*, January 10, 2021, <https://asia.nikkei.com/Spotlight/Japan-South-Korea-rift/Comfort-women-ruling-frays-South-Korea-japan-ties-ahead-of-Biden-era>.

<sup>9</sup> Joyce Lee and Kiyoshi Takenaka, “Japan to Skip Naval Event after South Korea Protests over ‘Rising Sun’ Flag,” Reuters, October 5, 2018, <https://www.reuters.com/article/us-southkorea-japan-flag/japan-to-skip-naval-event-after-south-korea-protests-over-rising-sun-flag-idUSKCN1MF0D7>.

<sup>10</sup> Ankit Panda, “Japan, South Korea in Row Over Alleged Radar-Lock Incident,” *Diplomat*, December 26, 2018, <https://thediplomat.com/2018/12/japan-south-korea-in-row-over-alleged-radar-lock-incident>.

and numerous rocky outcroppings that are situated approximately halfway between Japan and South Korea. The islands have economic value for the fish in adjacent waters, and there are some reports of possible oil and natural gas reserves in the area. However, the value of these islands goes far beyond economics and is an important part of Japanese and South Korean political and historical narratives.

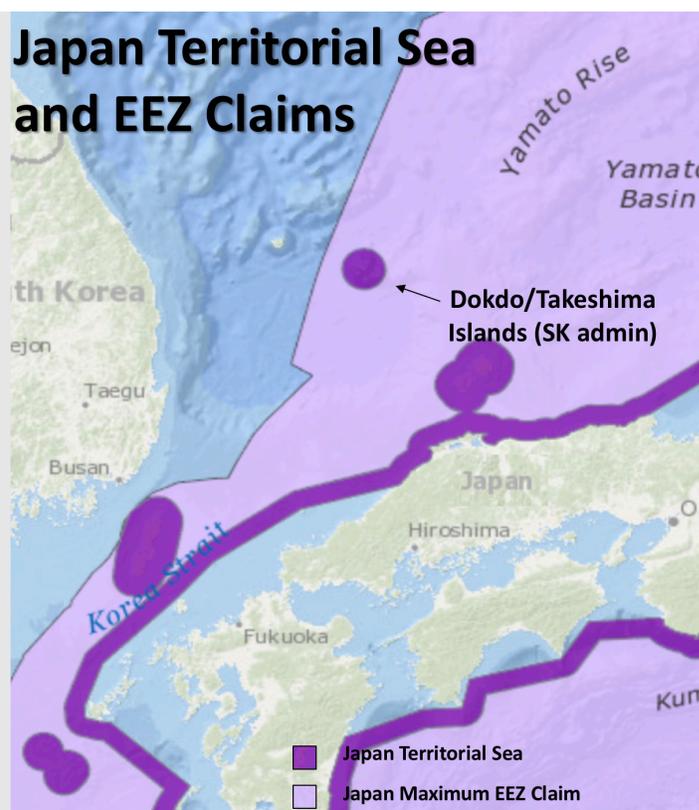
Both countries use maps and documents that precede the twentieth century to support their claims. However, the central elements of the dispute emerged at the turn of that century. In January 1905 the Japanese government made the decision to incorporate the islands and announced its decision the next month. There are two different explanations of Japan's actions. One version maintains that Japanese leaders viewed the islands as *terra nullius*, belonging to no one, and the incorporation made them Japanese territory. Moreover, incorporation occurred before Japan established its protectorate of Korea in November 1905 and completed formal annexation of the peninsula in 1910. As a result,

when this protectorate and annexation were nullified at the end of World War II, Japan did not relinquish its rights to Takeshima. A second explanation argues that the Japanese government did not claim *terra nullius* because officials believed the islands had long been part of Japan. Thus, incorporating them simply confirmed the fact of Japanese ownership.

South Korea disagrees with the Japanese position and argues that Korean sovereignty over the islands had been established long before 1905. As a result, both the incorporation and the protectorate and annexation were coerced and illegal and did not establish Japanese sovereignty.<sup>11</sup> In addition, any Japanese claims tied to the annexation document negate *terra nullius* claims because unoccupied land did not need to be included in the document.<sup>12</sup> Korean officials tried to protest Japan's claim in 1906 with the promulgation

<sup>11</sup> Ministry of Foreign Affairs (ROK), "Dokdo," <https://dokdo.mofa.go.kr/eng>.

<sup>12</sup> Sean Fern, "Tokdo or Takeshima? The International Law of Territorial Acquisition in Japan-Korea Island Dispute," *Stanford Journal of East Asian Affairs* 5, no. 1 (2005): 87.



of Directive No. III, but Tokyo ignored the statement since the protectorate had placed Korean foreign policy under Japan's control.<sup>13</sup>

When World War II ended, Japan was required to return the land it had seized, and Koreans believed this included Dokdo. As officials drafted the Treaty of San Francisco in 1951 that ended the war, different versions included Dokdo by name for return to South Korea. However, the final version of the treaty did not include the islands, leaving their status uncertain. Although there are differing explanations for the final decision to omit the islands, it appears that Washington simply did not wish to become embroiled in the dispute or believed that it lacked sufficient information to determine the islands' sovereignty.<sup>14</sup>

Despite the treaty, President Syngman Rhee announced the "Proclamation of Sovereignty over the Adjacent Seas" in 1952 that drew a line including Dokdo under South Korean control. In 1954, South Korea sought to cement its claim by occupying the islands, and over the years it has constructed a dock, lighthouse, and barracks for maritime police and coast guard personnel on Dokdo. The ROK Navy conducts exercises several times each year to demonstrate its ability and willingness to defend the islands. Rhee's occupation of Dokdo/Takeshima is a crucial piece in South Korea's claim, given that it has established formal control over the islands for more than 60 years.<sup>15</sup>

Japan, however, continues to maintain its claim and protests South Korea's occupation of Takeshima as illegal.<sup>16</sup> In 2005, in response to South Korea issuing Dokdo stamps the previous year, Shimane Prefecture—the local government in Japan that would have jurisdiction over Takeshima—designated February

22 as "Takeshima day." Both countries include assertions of their sovereignty over the islands in middle and high school curriculum, along with defense documents that proclaim the islands as an integral part of their territory. On several occasions, Japan has indicated that it would take the matter to the International Court of Justice for adjudication. However, this is a moot point because both sides must agree to have the court consider the case, which South Korea would never do. Its position is that there is no dispute to settle—Dokdo is Korean. Moreover, the current circumstances of the islands are in South Korea's favor, and thus it has little to gain by agreeing to adjudication.

The Dokdo/Takeshima dispute is part of a long, complicated history of Japan-ROK relations. Both sides have made little effort to seek a resolution as their positions remain firm. Domestic politics is a crucial element of the dispute. The positions of both governments have broad domestic support, and any leader who agrees to a compromise would likely face serious negative repercussions. In addition, Japan also has island disputes with China and Russia and likely believes that any compromise of its position with South Korea would hurt its stance in these disputes. Consequently, the stakes are high and the potential costs for seeking a negotiated solution are considerable, whereas the costs of maintaining the status quo are tolerable for both sides.<sup>17</sup> As a result, it is likely to be a long time before this dispute is settled.

## What's in a Name: Sea of Japan or East Sea?

Historical animosities have also spilled over into names. The body of water that separates Japan and the Korean Peninsula is commonly known as the Sea of Japan. However, Koreans have spent many years seeking to change its name to the East Sea, or at least to have both names included on maps.<sup>18</sup>

<sup>13</sup> Fern, "Tokdo or Takeshima?" 86.

<sup>14</sup> Terence Roehrig, "Stuck between Two Allies: The United States and the Dokdo/Takeshima Dispute," *Korean Journal of Comparative and International Law* 5, no. 2 (2017): 221–22; and Jon Van Dyke, "Legal Issues Related to Sovereignty over Dokdo and Its Maritime Boundary," *Ocean Development and International Law* 38, no. 1 (2007): 184.

<sup>15</sup> Douglas M. Johnston and Mark J. Valencia, *Pacific Ocean Boundary Problems—Status and Solutions* (London: Martinus Nijhoff, 1991), 113–15.

<sup>16</sup> Ministry of Foreign Affairs (Japan), "Japanese Territory—Takeshima," April 23, 2020, <https://www.mofa.go.jp/region/asia-paci/takeshima/index.html>.

<sup>17</sup> See Paul K. Huth, Sunwoong Kim, and Terence Roehrig, "Conclusion," in *The Dokdo/Takeshima Dispute: South Korea, Japan and the Search for a Peaceful Solution*, ed. Paul K. Huth, Sunwoong Kim, and Terence Roehrig (Leiden: Brill-Nijhoff, forthcoming).

<sup>18</sup> Ministry of Foreign Affairs (ROK), "East Sea," [http://www.mofa.go.kr/eng/wpage/m\\_5435/contents.do](http://www.mofa.go.kr/eng/wpage/m_5435/contents.do).

Japan and South Korea cite evidence that dates back centuries to support their arguments, but the story begins in 1921 with the founding of the International Hydrographic Organization (IHO), an international group that establishes uniform naming of bodies of water. In 1929 the IHO published its first version of the guide “Limits of Oceans and Seas” that used the designation “Japan Sea,” which has become Sea of Japan on most maps. A second edition was published in 1937, but Koreans argue that on both occasions, Korea was occupied by Japan and had no way to protest the decision. When a third edition of the guide was published in 1953, South Korea was consumed by the Korean War and was not in a position to object. Moreover, the country did not become a member of the IHO until 1957. For Koreans, the name implies ownership, is outdated, and is a painful reminder of the past.

The Japanese government’s position has been clear. It maintains that the name Sea of Japan has been widely used since the eighteenth and nineteenth centuries, well before colonial rule. Accordingly, the Japanese government contends “that Sea of Japan is the only name that has been established both historically and internationally to refer to the sea area concerned and that there is no need or ground for any change to be made to the practice of using the name.”<sup>19</sup> Japan does not object to Koreans using “East Sea” on their maps but opposes the use of two names by international organizations.

The two governments first sought to address the issue in 1965 while negotiating a fisheries agreement. Unable to settle on a common name, each side used its own label in its version of the agreement.<sup>20</sup> In 1991, South Korea joined the United Nations and the following year lodged its first formal protest at the Sixth UN Conference on the Standardization of Geographical Names. Although UN officials maintained that this was not the appropriate forum and rejected the request, they called on both countries

to resolve the disagreement outside the conference. Japanese officials pointed out that South Korea had never raised the issue before this time, but South Korea countered that it could not do so sooner because it was not a UN member. ROK officials petitioned the UN conference again in 2002 and in 2012 but received the same decision.

The United States weighed in on the dispute in 2012. U.S. assistant secretary of state for East Asian and Pacific affairs Kurt Campbell responded to an online petition on the White House website by stating that it was U.S. policy to use only one name for bodies of water, and this applies to two countries bordering the same water but using different names. Campbell emphasized that U.S. usage of Sea of Japan does not imply any position on related issues of sovereignty, but that Washington recognizes the sensitivity of the issue and remains committed to both alliances.<sup>21</sup> The U.S. Board on Geographic Names and the U.S. military use only Sea of Japan as well. In May 2019, President Donald Trump visited Japan and in remarks to U.S. forces used the label Sea of Japan. South Korea was quick to criticize the usage, but the State Department reiterated the U.S. position of using only one name for bodies of water.<sup>22</sup>

In 2014, Korean Americans pushed state legislatures in Virginia, New Jersey, Georgia, and New York to mandate the use of both names in textbooks and school curriculum.<sup>23</sup> There is no evidence that the ROK government was involved in these efforts, but the Japanese government responded by lobbying the state legislatures to vote down these measures.<sup>24</sup>

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<sup>21</sup> Kurt Campbell, “Response to We the People Petition on the Sea of Japan Naming Issue,” White House, June 29, 2012, <https://obamawhitehouse.archives.gov/blog/2012/06/29/response-we-people-petition-sea-japan-naming-issue>.

<sup>22</sup> “S. Korea Reiterates Stance on East Sea Naming after Trump Mentions Sea of Japan,” Yonhap, May 28, 2019, <https://en.yna.co.kr/view/AEN20190528008200325>; and “U.S. Cites One-Name Policy after Trump Mentions Sea of Japan,” *Korea Herald*, May 30, 2019, <http://www.koreaherald.com/view.php?ud=20190530000213>.

<sup>23</sup> Reid Wilson, “Korean Americans Push to Rename Sea of Japan in State Legislatures,” *Washington Post*, February 21, 2014, <https://www.washingtonpost.com/blogs/govbeat/wp/2014/02/21/korean-americans-push-to-rename-sea-of-japan-in-state-legislatures>.

<sup>24</sup> “American Textbooks Are Caught in Diplomatic Fight,” *Voice of America*, April 30, 2014, <https://learningenglish.voanews.com/a/virginia-textbooks-sea-of-japan-east-sea/1903561.html>.

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<sup>19</sup> Ministry of Foreign Affairs (Japan), “The Issue of Name ‘Sea of Japan,’” February 7, 2017, [https://www.mofa.go.jp/a\\_o/na/page1we\\_000109.html](https://www.mofa.go.jp/a_o/na/page1we_000109.html).

<sup>20</sup> Jong Seok Park, “On the Naming Dispute over the Sea between Korea and Japan,” *World Environment and Island Studies* 7, no. 4 (2017): 203.

## Overlapping Air Defense Identification Zones

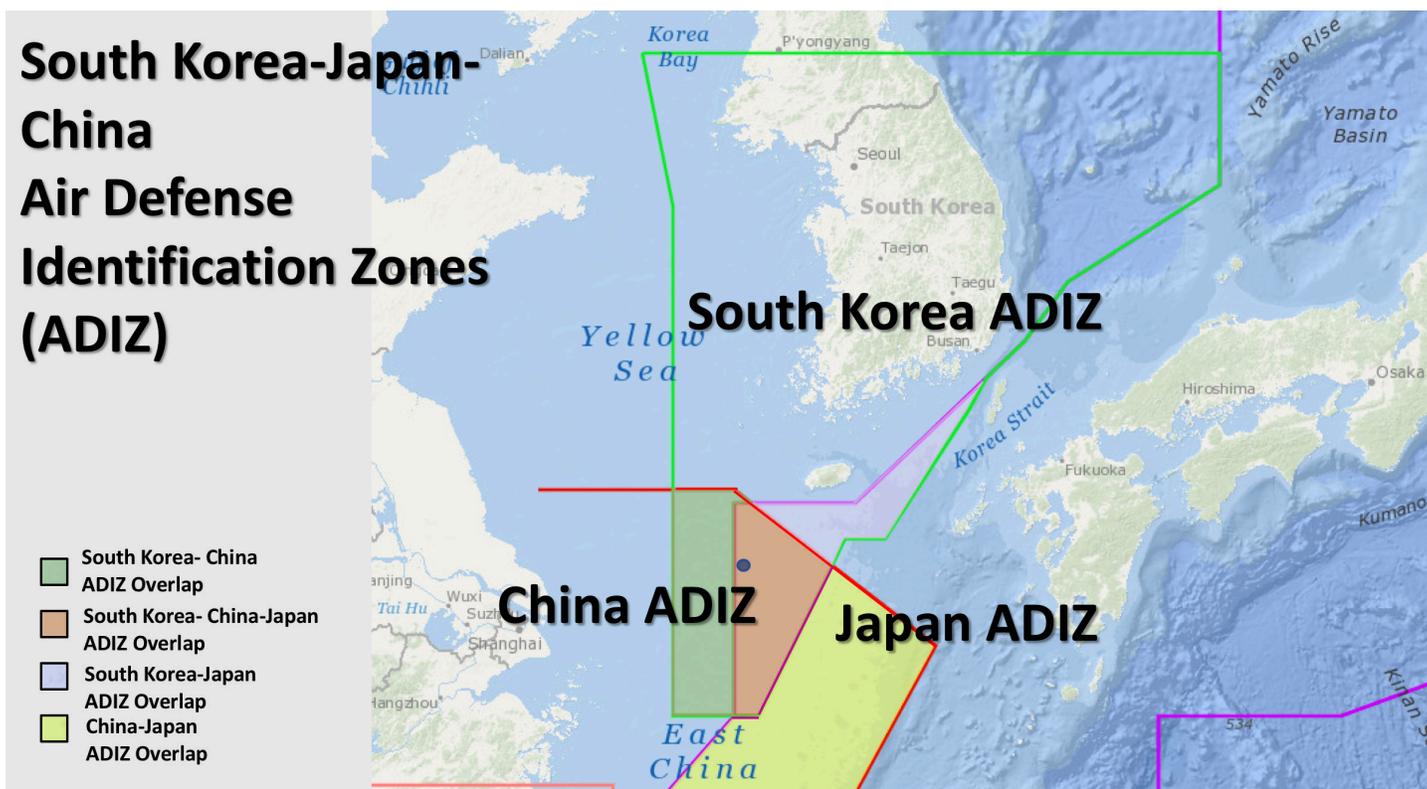
The Dokdo/Takeshima dispute is tied to another element of friction concerning the drawing of maritime boundaries. Two areas have been problematic: air defense identification zones (ADIZs) and overlapping exclusive economic zones (EEZs).

An ADIZ is a designation of airspace where countries seek to monitor air traffic for the sake of national security. These zones typically extend well beyond a state's borders to allow for identification and interception of aircraft that could be a threat before they reach its borders. ADIZs are not formally recognized in international law, but numerous countries, including the United States, China, Japan, and South Korea, have a designated ADIZ.

The designation of ADIZs in Northeast Asia originated in the wake of World War II and the Korean War and were drawn largely by the United States. For many years, there was no overlap of these regional zones, but in November 2013 China extended its zone

in the East China Sea to include the Senkaku/Diaoyu islands. Japan and China have competing claims to the islands, and the move was intended to strengthen Beijing's position. The extension also brought a group of submerged rocks that Koreans call Ieodo into China's ADIZ. South Korea responded the next month by expanding its ADIZ southward to include Ieodo. However, this move also created a southerly overlap of the South Korean and Japanese ADIZs.

The potential for friction became evident in July 2019 when a joint Russian-Chinese air exercise crossed the overlapping ADIZ, prompting both Japan and South Korea to scramble fighters in response to the incursion. The Russian and Chinese aircraft continued north with one of the Russian planes, an A-50 airborne warning and control aircraft, flying within the 12 nautical mile (nm) territorial airspace around Dokdo/Takeshima. South Korean planes fired 360 warning shots and lodged a strong objection to the incursion. Japan was equally angry at Russia's actions but also criticized South Korea for firing at the Russian plane in its airspace over



Takeshima, which it called “totally unacceptable and extremely regrettable.”<sup>25</sup> Given the state of Japan-ROK relations, Beijing and Moscow knew this exercise would inflame tensions and further drive a wedge between these two U.S. allies. In December 2020, Russian and Chinese aircraft conducted a similar exercise, though they avoided crossing into the territorial airspace of Dokdo/Takeshima.

The second area of maritime border friction is overlapping EEZ claims. Japan and South Korea have been able to successfully settle disputes over some of their adjacent maritime areas. In 1974, they signed an agreement that delimited their claims in the west channel of the Korea Strait between the peninsula and the Japanese island of Tsushima. The channel is 23 nm wide, and they agreed to a 3 nm territorial sea, with the remaining water designated as international high seas.<sup>26</sup> That same year, Japan and South Korea also signed a joint development zone agreement that went into effect in 1978. The agreement was intended to allow for joint exploration of possible oil resources in an area to the south of Japan and South Korea, but little progress has occurred.<sup>27</sup> The two countries have also been able to manage fishing issues through a series of fisheries agreements.

The area that remains unresolved is tied to the Dokdo/Takeshima dispute. The 1974 agreement drew a line that deals with a portion of the overlapping claims

north of Tsushima Island but stops before reaching Dokdo/Takeshima. Here, delimitation efforts have stalled due to the island dispute. Japan and South Korea agree that the line should be drawn according to the median line principle in Article 15 of the United Nations Convention on the Law of the Sea (UNCLOS), but they disagree on where the median line lies. Japan, which maintains that the island is Japanese, asserts that the line should be drawn midway between Takeshima and the nearest South Korean island of Ulleung. South Korea argues that the line should be drawn between Dokdo and the nearest Japanese territory of the Oki Islands.<sup>28</sup> The coast guards of both countries regularly patrol the area, and there has been no serious incident for over a decade. However, the EEZ delimitation will not occur until the Dokdo/Takeshima dispute is settled.

## Conclusion

The Japan-ROK maritime disputes are a part of a broader relationship that has many challenges, the majority of which are grounded in unresolved history. These issues are unlikely to be settled anytime soon, and many of them are linked, making incremental progress through step-by-step agreements difficult. Given this reality, it is crucial that Japan and South Korea find ways

<sup>25</sup> “Russia and South Korea Spar over Airspace ‘Intrusion,’” BBC News, July 24, 2019, <https://www.bbc.com/news/world-asia-49091523>.

<sup>26</sup> Suk Kyoon Kim, *Maritime Disputes in Northeast Asia: Regional Challenges and Cooperation* (Leiden: Brill-Nijhoff, 2017), 44.

<sup>27</sup> Jee-hyun Choi, “Korea-Japan JDZ to End in Deadlock? The Potential for Unilateral Korean Exploration and Exploitation,” *Ocean Development and International Law* 51, no. 2 (2020): 162–74.

<sup>28</sup> Kim, *Maritime Disputes in Northeast Asia*, 71-73.

Banner image source: South Korea Navy via Getty Images.

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