CHRONICLE

CHRONICLE OF EVENTS AND INCIDENTS RELATING TO ASIA WITH RELEVANCE TO INTERNATIONAL LAW

July 2004 – June 2005

Ko Swan Sik*

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* Member of the Editorial Board. For the considerations underlying the Chronicle, *see* the "Editorial Introduction" in 1 Asian YIL (1991) 265.

AFGHANISTAN

Role of foreign forces

According to data available in mid-2004 there was a 20,000-man US-led combat force and a 6,500-strong NATO-led peace-keeping force ("International Security Assistance Force", later re-established as a NATO mission in August 2003) in the country (*see also* 10 Asian YIL 335-336), while NATO on 29 June 2004 pledged to increase its force by 1,500 (Afghanistan had been asking for even more). (IHT 01-07-04)

In February 2005 NATO and the US agreed to merge their separate missions, giving NATO command of an operation combining "counter-terrorism" and "peacekeeping" activities. The NATO Secretary General said that this implied that NATO would be in Afghanistan for a long time.

Yet uncertainty appeared to remain about how the merged mission would function, especially whether the NATO forces or the US would be in charge of "counter-terrorism" operations (called by the US "Operation Enduring Freedom"). The NATO mission on its part was supposed to participate in training a new Afghan army and to assist in achieving its reform and modernization, as well as extending security and stability outside Kabul. Under the arrangement the country would be divided into four zones, with Germany commanding the north; Italy and Spain, the east; Britain, the south, and the US, the east. (IHT 11-02-05)

ASSOCIATION OF SOUTH EAST ASIAN NATIONS (ASEAN)

ASEAN – China

See: Inter-state relations

East Asia Summit

The Fifth Meeting of the ASEAN foreign ministers with those of China, Japan and South Korea ("ASEAN Ministerial Meeting + 3") was held on 1 July 2004 at Jakarta. The meeting discussed, *inter alia*, the possibility of the formation of an East Asia Community that was to result from an intensified cooperation of ASEAN+3. It "recognized the potential value of an East Asia Summit at an appropriate time".

This was followed by the announcement, at the tenth ASEAN Summit in November 2004 at Vientiane, that an ASEAN consensus had been reached on the launch of a first East Asian Summit (EAS) towards the end of 2005 in Malaysia. Consensus was achieved after Indonesia formally accepted the idea of transforming the ASEAN+3 framework into the EAS, with the possibility of additional countries being invited to join the new grouping.

Subsequently, a "retreat meeting" of the ASEAN foreign ministers, held in April 2005 at Cebu in the Philippines, agreed on the prospective EAS to be of an "inclusive" nature. It seemed that consensus was yet to be achieved on a number of issues, such as which other countries should be invited to join the EAS apart from ASEAN+3. In any case other countries would be eligible for invitation only if they

fulfil three conditions: being a full ASEAN dialogue partner, having a substantive level of relationship with ASEAN, and willing to adhere to the 1976 Treaty of Amity and Cooperation. The agreement achieved at Cebu was to be formally affirmed by the formal Foreign Ministers Meeting at Vientiane later in the year (July 2005).

Japan, supported by Indonesia, endorsed the idea of inviting Australia, New Zealand and India to join. (IHT 13-04-05)

ASEAN Chairmanship and Myanmar

Increasing concern had arisen within ASEAN about the prospect of Myanmar's assuming the rotating Chairmanship of ASEAN in 2006, in view of the absence of the promised political reforms in that country. Strict maintenance of the non-intervention principle and of "constructive engagement" was considered to hold potential damage to the reputation and credibility of ASEAN with key "dialogue partners" such as the US and the EU.

Malaysia, which had actively sponsored Myanmar's admission into ASEAN in 1997, in particular, was reported to have been explicit in its opposition to its Chairmanship, and in late March 2005 the prime minister of Singapore delivered a message to Myanmar to the effect that while political development and democratization in Myanmar were a matter only Myanmar could decide, "in an interdependent world developments in one country could impact on ASEAN as a whole". On the other hand, Thailand was reported as avoiding aligning itself with demands to block Myanmar's Chairmanship because of Thailand's significant business ties.

The message was mooted for discussion at an informal ASEAN foreign ministers meeting in the Philippines on 10 April 2005. Rumours referred to a divide between the older members, on the one hand, and those such as Cambodia, Laos and Vietnam, which joined ASEAN at the same time as Myanmar, on the other. (IHT 01-04-05)

ASYLUM

See: Refugees

BORDERS, BORDER DISPUTES AND BORDER INCIDENTS

Afghanistan – Tajikistan

Under agreements signed on 16 October 2004 between Tajikistan and Russia the latter was to hand over complete control of the Tajik-Afghan border by 2006. (IHT 18-10-04)

China – India

See: Inter-state relations: China-India

China – Japan

See: Exclusive Economic Zone: China-Japan

China – Kyrgyzstan

It was reported in September 2004 that the two countries had signed an agreement on the demarcation of their common border. Under the agreement, territory that had been a matter of dispute between China and the former Soviet Union was awarded to Kyrgyzstan. (FEER 30–09-04)

China – Russia

An agreement was signed on 14 October 2004 during a visit by the Russian president to Beijing, settling the last border dispute that had remained between China and Russia. It concerned a stretch of river and islands along the most north-easterly tip of China. While no details of the agreement were released at the time, it turned out later that with regard to the disputed three river islands one was allocated to China, one to Russia, while the third and largest was divided, with a half to each nation. Consequently, the agreement included the cession by Russia to China of the western half of *Bolshoi Ussuriiskii* Island (Chin.: *Heixiazi*) and the adjacent *Tarabarov* Island (Chin.: *Yinshe*), both located between the *Amur* (*Heilong Jiang*) and *Ussuri* (*Wusuli Jiang*) rivers where these two rivers converge near the city of Khabarovsk. (IHT 15-10-04, 22/23-01-05)

Border negotiations between China and the former Soviet Union had been resumed in the late 1980s after having been frozen as a result of military clashes between the two countries at about a hundred miles' distance south of the above-mentioned location, at *Damansky* (Chin.: *Zhen Bao*) Island on the *Ussuri* River in the late 1960s.

On 16 May 1991 an agreement was reached on the alignment of the eastern section of the boundary line with some exceptions relating to the stretch from the Sino-Russian-Korean triangular border point on the *Tumen* (*Tuman*) River to the Sino-Russian-Mongolian triangular border point (see Asian YIL Vol.1:275, Vol.7:400). This excluded the so-called “three islands issue” which constituted the subject of the October 2004 agreement. Another agreement followed on 3 September 1994, dealing with the western section of the boundary (see Asian YIL Vol.4:418, Vol.6:347).

After various problems regarding the demarcation issue, a joint declaration in 1997 (see 8 Asian YIL 258) announced the successful completion of Sino-Russian eastern border demarcation work. Accordingly, two Protocols were concluded on 9 December 1999 sanctioning the demarcation of the boundary line in each of the sections to the extent covered by the 1991 and 1994 agreements.

Finally, the agreement of October 2004 completed the regulation of the whole Sino-Russian boundary. The instruments of ratification were exchanged at Vladivostok on 2 June 2005.

DIVIDED STATES: CHINA

See also: Embargo; Inter-state relations (China-Japan, China-Japan-US)

US military representatives in Taiwan

It was reported that the US would assign military officers to its *de facto* embassy in Taiwan, the so-called American Institute in Taiwan, for the first time in 25 years, reversing a long-standing policy of using civilian contractors. (IHT 22-12-04)

Anti-secession Act

As part of its efforts towards reunification the National People's Congress of China enacted an Anti-Secession Act on 14 March 2005. (For text *see* 11 Asian YIL 347) In commenting on the law the Chinese prime minister recalled that the US Congress passed similar resolutions in 1861 with the intent to stave off civil war. (IHT 15-03-05)

Whereas Article 8 of the Law contains the "non-peaceful means" clause, Article 7 affirms that "the state stands for the achievement of peaceful reunification through consultations and negotiations on an equal footing between the two sides of the Taiwan Strait", while these consultations and negotiations "may be conducted in steps and phases and with flexible and varied modalities". (IHT 30-03-05)

Mainland – Taiwan contacts

The chairman of the leading Taiwan opposition party (the Kuomintang, which governed China before the establishment of the People's Republic in 1949) visited China in late April 2005. Discussions with the Chinese president led to a common opinion in favour of reviving the rapprochement begun in 1992.

The resulting joint communiqué of 29 April 2005 read, *inter alia*: "The parties reached a common understanding on upholding the '92 consensus, opposing Taiwanese independence and striving for peace and stability in the Taiwan Sea." (*cf.* 3 Asian YIL 366, 491) According to the communiqué the two sides would work to open China's market more broadly to Taiwanese goods, sign a formal peace agreement, and establish military-to-military ties. The two sides would allow Taiwan to join some international bodies, such as the WHO. (IHT 27-04, 01-05-05)

Another Taiwan politician, the leader of the "People First" Party, which favours an eventual reunification of Taiwan with the mainland, visited the mainland in May 2005. In a meeting with the Chinese president on 12 May agreement was reached on a slightly changed linguistic formula to describe relations between the mainland and Taiwan as "[the] two sides of the Strait, one China". The phrase was immediately rejected by the Taiwanese president. (IHT 03-05, 13-05-05)

EAST ASIA COMMUNITY

See: Association of South East Asian Nations

ECONOMIC COOPERATION

Sea port project under the auspices of the Bangladesh-India-Myanmar-Sri Lanka- Thailand Economic Grouping (BIMST-EC)

In the framework of BIMST-EC (www.bimst-ec.org) a project was set up for the building of a deep-sea port in *Dawei* in south Myanmar, which would be connected to *Kanchanaburi* in Thailand by a new highway. This would considerably shorten between India and Thailand cargo transport that at present has to go around the Malayan peninsula. (AToL 12-04-05)

EMBARGO

EU embargo against China on arms sales and US views on its lifting

On 17 December 2004 the European Union reaffirmed its intention to “continue to work” toward lifting the embargo that was imposed after the 1989 Tianenmen Square incident (on the basis of a non-binding resolution) and to decide on the issue during the following six months. France later urged the other EU states to act accordingly, but some EU states were backing US objections to the lifting. According to these objections a lifting could lead to increased Chinese intimidation of Taiwan, undermine stability in East Asia, and even threaten US troops in the region, as well as harming efforts to improve human rights in China.

On 2 February 2005 the US House of Representatives approved a resolution condemning the EU plans for lifting the embargo. The resolution stated that lifting of the embargo would be “inconsistent with the concept of mutual security interests that lies at the heart of US laws for trans-Atlantic defense cooperation”. The resolution also noted that China had been engaged in an extensive military build-up, including the deployment of a great number of ballistic missiles near the Taiwan Straits, and alleged that China’s military-industrial complex was involved in the transfer of military technology to Iran. Concerning Taiwan the resolution stated that “[t]he EU is directly undermining the security of one of Asia’s most vibrant democracies – our close ally Taiwan”.

During his European visit the US president on 22 February 2005 noted “deep concern” in the US that a lifting of the embargo would change the balance of relations between China and Taiwan and would imply transfer of technology, allowing China to modernize its military and upset the military balance of power in Asia. The US Secretary of State furthermore on 15 March 2005 expressed the hope that the recently adopted Chinese Anti-Secession Law (*see supra* at 267) would dissuade Europe from resuming arms sales to China.

The EU plans included the strengthening of an existing, formally not legally binding 1998 EU code of conduct in order to prevent a flood of arms into China. The code lists criteria on which export licencing decisions should be based. It also called on member states to ensure that the weapons sold would not be used for internal repression, would not prolong or provoke armed conflicts, and would not be used

“aggressively against another country to assert by force a territorial claim”. (IHT 08-10-04, 04-02, 09-02, 23-02, 09-03, 16-03-05)

The European plans to lift the embargo appeared to collapse in late March 2005 after months of intense lobbying by the US and a negative reaction to the recent Chinese Anti-Secession Act (*see supra* at 267). (IHT 23-03-05)

Besides, Japan too expressed its concern in January 2005. It later expressed its strong objection to the lifting when the prime minister met the French president on 27 March 2005 and did so once again later to the EU presidency. (IHT 28-03, 03-05-05; JT 15-01-05)

US embargo on use of mapping technology

The US Defense Department denied the use of advanced mapping technology by its Australian licence holder in the latter's search for mineral deposits in China. The “Falcon technology” was originally designed as a navigation system for US submarines to avoid undersea mountain ranges. It has been called “the holy grail of the exploration industry”. (IHT 2/3-04-05)

ENVIRONMENTAL PROTECTION

Ban on commercial whaling

The International Whaling Commission voted on 21 June 2005 to uphold the current ban on commercial whaling dating from 1986, contrary to Japanese wishes. The 66-member Commission voted against a Japanese proposal for regulated commercial whaling which needed a three-quarters majority to pass.

However, Japan said it would, *inter alia*, increase its annual catch of minke whales from 440 to 935. This is done under a six-year “research” whaling programme, extending a previous one started in 1987. (IHT 22-06-05, JT 22-06, 23-06-05)

EXCLUSIVE ECONOMIC ZONE

China – Japan

(*see also* 11 Asian YIL 288)

The two countries disagree on the boundary line between their exclusive economic zones in the East China Sea in an area where the sub-soil is thought to contain huge quantities of oil and gas, although there is as yet no proof of existing or profitable natural gas veins.

In February 2001 the two sides agreed on a mutual prior notification system. Under this agreement each party must inform the other before entering waters near the other country if these are in an area in which that country “takes interest”.

In April 2002 China resumed its surveys in the disputed areas while meeting the notification obligation. Japan protested, however, when in August 2003 China reached agreement with a number of Chinese and Western companies on the development

of the gas fields and granted concessions (“*Chunxiao*” gas field) in areas on the Japanese side of the Japan-claimed boundary line (the “intermediate line”) and when drilling started in 2004 near the boundary line claimed by Japan. The latter held itself entitled to claim its share if resources in the Chinese EEZ are found to straddle the boundary line.

While protesting, Japan asked China to provide drilling data, but in vain. Japan itself in July 2004 started considering to allow companies to drill on Japan’s side of its claimed boundary, in its turn giving rise to Chinese protests to the effect that the Japanese actions were infringing upon China’s interests and sovereignty, and to Chinese calls for Japan to negotiate a settlement instead of acting unilaterally.

On 13 April 2005 Japan announced that it would grant exploratory drilling rights in waters claimed by China, and would review oil company applications for exploration drilling. (IHT 24-02, 14-04-05; JT 07-07, 09-07, 18-10, 19-10, 27-10, 19-12-04, 17-01, 29-03, 02-04, 31-05-05)

Dozens of Taiwanese fishing boats massed in the East China Sea on 9 June 2005 to protest Japan’s claim to an EEZ close to *Diaoyu* (*Senkaku*) Islands claimed by both Japan and China (as well as by Taiwan). The boats were expelled by the Japanese, after which China lodged a complaint claiming that the expulsion of the fishing boats violated China’s sovereignty. (AToL 10-06, 11-06-05)

EXTRADITION

The Fujimori case

Having failed to obtain the extradition of its former president from Japan (*see* 11 Asian YIL 289) Peru made a second request in October 2004 on the basis of corruption charges and alleged irregular payments. (Mainichi Shimbun 17-10-04, JT 17-10-04)

FOREIGN ASSISTANCE

US assistance to Asian countries

It was reported in September 2004 that the US Senate Appropriations Committee voted in the 2005 Foreign Operations Bill to provide assistance to Indonesia, Cambodia and Thailand for various security and democracy *qua* human rights purposes. (FEER 30-09-04)

FOREIGN FORCES IN ASIA

See also: Afghanistan; Military cooperation

Kyrgyzstan

Since the war in Afghanistan, there had been 1,000 US and 800 NATO troops deployed in Kyrgyzstan in support of that war. Yet it was reported that the foreign

minister disclosed in February 2005 that Kyrgyzstan had rejected requests by the US and NATO to deploy surveillance aircraft in the country and that Kyrgyzstan was increasingly looking north and east in its foreign policy priorities, referring to the Collective Security Treaty and the Shanghai Cooperation Organization. (IHT 03-03-05)

FOREIGN INVESTMENT

Chinese bid for US oil company

One of the largest Chinese state-controlled oil companies, the China National Offshore Oil Corporation (CNOOC), made a bid for the US Californian oil company Unocal on 23 June 2005, two months after Unocal had agreed to be sold to (US) Chevron. Twenty-seven per cent of Unocal's proven oil reserves and seventy-three per cent of its proven natural gas reserves are in Asia. The US Treasury Secretary announced that a review on national security grounds would be likely. (IHT 24-06-05)

HUMANITARIAN AID

Food aid to North Korea

It was reported in late 2004 that Japan planned to give five billion Yen-worth of food and medical aid by the end of 2004 as part of a promise made during a visit by the Japanese prime minister to Pyongyang in May 2004 (*see* 11 Asian YIL 301). (JT)

The US government announced in June 2005 that it would provide 50,000 tons of food to North Korea. The donation was made in response to an appeal by the World Food Programme and was unrelated to the efforts to persuade North Korea to return to the six-party talks on its nuclear programme.

In 2003 the US provided 100,000 tons of food aid to North Korea, and 50,000 in 2004. (IHT 23-06-05)

Thai position towards foreign humanitarian aid

In the aftermath of the Tsunami disaster of December 2004 Thailand in January 2005 declined a Japanese aid offer of \$20 million, saying it had come to grips with the situation and that the aid should go to countries with greater need of aid. (JT 10-01-05)

INSURGENTS

Aceh, Indonesia

An Indonesian government delegation and representatives of the *Free Aceh Movement* (GAM: *Gerakan Aceh Merdeka*) met in Helsinki, Finland, on 28-29 January

2005. The talks were held under the auspices of the Crisis Management Initiative (CMI) group under the leadership of the former Finnish president Martti Ahtisaari (see www.cmi.fi). The realization of the meeting between the two parties was facilitated by the Tsunami disaster on 26 December 2004, which pressed the parties to work together in overcoming the catastrophe. A further meeting took place in February, and a third in April 2005. (IHT 24-01, 27-01-05; Kompas 11-04-05)

INTERNATIONAL CRIMINAL LAW

Indonesia – East Timor: international or municipal adjudication

(See also: Inter-state relations: East Timor – Indonesia)

It was reported in December 2004 that the Indonesian government had rejected UN plans for the establishment of a Commission of Experts to review Indonesian efforts to try persons responsible for alleged human rights abuses in East Timor in 1999 and, eventually, to recommend the establishment of an international tribunal. Indonesia classified the idea as redundant in view of Indonesian-East Timorese plans to set up a bilateral Commission of Truth and Friendship (CTF).

The East Timorese government first seemed to share a negative view on a Commission of Experts when the East Timorese foreign minister said, *inter alia*: “We prefer focusing on a better relationship between Indonesia and East Timor. The current situation is far more important than what happened in the past”. However, the East Timorese president later said that his government accepted a UN commission that could complement the CTF.

The UN-sponsored Special Crimes Unit set up in Dili for the detection of suspected Indonesian soldiers and Timorese militiamen had jailed seventy-four suspects, yet it was powerless in respect of the extradition of Indonesian military officers. Meanwhile, Indonesian courts had charged eighteen persons, of whom twelve were acquitted and five had their sentences overturned on appeal. (Tempo 16-08-04; JP 24-12-04, 10-03-05)

Cambodia

A donor conference in late March 2005 pledged the funds necessary for the establishment of the projected tribunal for the adjudication of Khmer Rouge crimes (see 10 Asian YIL 357).

The tribunal agreement with the UN of 2003 (*via* www.cambodia.gov.kh) was ratified by Cambodia in October 2004. The agreed tribunal structure is that of “Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea”. It includes, *inter alia*, a balance between a numerical majority of Cambodian judges and a numerical minority of international judges, with a “super-majority” mechanism of the necessary vote of at least one international judge. (IHT 2/3-04-05)

INTERNATIONAL ECONOMIC AND TRADE RELATIONS

See also: Inter-state relations (ASEAN-China); World Trade Organization

Japan – Mexico

The Japan-Mexican agreement of 17 September 2004 was Japan's first comprehensive bilateral free trade agreement after that with Singapore of January 2002. It was expected that it would provide momentum to efforts to conclude similar agreements with South Korea, Malaysia, the Philippines, and Thailand. (JT 19-09-04)

Japan – Malaysia

The Japanese and Malaysian prime ministers reached agreement in May 2005 on a bilateral free trade agreement, the first for Malaysia, including the abolition of most tariffs in 2015. Significantly, custom duties on most finished motor vehicles would be removed gradually, but within a shorter period for larger cars than those for smaller cars. Signature was scheduled for later in the year.

The Japanese government in late December 2004 approved a basic plan of promoting (bilateral) free trade agreements with priority to agreements with Asian countries in accordance with the efforts toward an (East) Asian Community. (JT 22-12-04, 26-05-05)

Japan – Philippines

On the sidelines of the ASEAN summit meeting at Vientiane in late November 2004 the two countries agreed to cut tariffs on various goods starting in 2006, thus opening the way for a later economic cooperation accord. (IHT 30-11-04)

Singapore – Korea (South)

On the same occasion the two countries concluded negotiations on a free-trade agreement that would serve as a model for similar agreements between South Korea and other Southeast Asian countries. (IHT 30-11-04)

INTER-STATE RELATIONS: GENERAL ASPECTS

Afghanistan – US

The president of Afghanistan announced on 13 April 2005 that he would send a formal request to the US president seeking a long-term, strategic relationship between the two countries, including economic assistance as well as security guarantees and military cooperation. He referred to the US as the foreign power that had restored sovereignty to the Afghan people and that was already at the forefront of assistance to rebuild Afghanistan's security and economy, and defined the intended strategic security as enabling Afghanistan to defend itself and to continue to prosper, and stop the possibility of interferences in Afghanistan. (IHT 14-04-05)

ASEAN – China

On the occasion of the ASEAN summit meeting in November 2004 at Vientiane the ASEAN member states and China signed a free-trade agreement.

Under the agreement tariff and non-tariff barriers will be reduced and a mechanism to settle disputes was set up. The six more economically advanced ASEAN member states (Brunei, Indonesia, Malaysia, The Philippines, Singapore and Thailand) and China would begin cutting tariffs on 1 July 2005 with the aim of reducing duties on 4,000 categories of goods to between 5 per cent and zero by 2010, while the other member states will have until 2015 to comply with the target. Meanwhile each party to the agreement may nominate up to 400 goods as “sensitive goods” for which the tariffs will not be reduced below 20 per cent until 2012.

At the meeting China also signed a strategic declaration committing China to good behaviour in Southeast Asia, including the contentious area of the South China Sea. (WSWS 20-12-04; IHT 29-11, 30-11-04)

Asian-African Conference, “New Asian-African Strategic Partnership”

The fiftieth anniversary of the 1955 Asian African Conference was commemorated on 22-24 April 2005 by representatives of ninety Asian and African countries at Bandung, Indonesia, the place where the original conference of twenty-nine countries was held. The gathering resulted in the signing of an accord of “New Asian-African Strategic Partnership”.

The participants agreed to meet again in South Africa in 2009, hoping that the Asian-African Summit would become a regular event. (IHT 25-04-05)

[Many of the countries that attended the Bandung summit in 1955 convened in Belgrade in 1961 at the initiative of Yugoslavia and Egypt to create the Non-aligned Movement.]

China – European Union

See: Embargo

China – India

China and India signed an agreement for a “strategic partnership for peace and prosperity” on 11 April 2005, during a visit to India by the Chinese prime minister. Furthermore, the two countries signed a series of agreements on improving economic ties and on resolving the decades-old dispute over their 3,500-kilometre Himalayan border. The latter did not contain a definitive settlement and was more a kind of (three-stage) roadmap, merely emphasizing that the two countries would make “meaningful and mutually acceptable adjustments to their respective positions”. It stressed, however, that the border issue would not be permitted to sour broader relations between the two countries. (IHT 12-04-05)

China – Japan

Japanese visa for former Taiwan president

Japan in December 2004 issued a tourist visa to the former Taiwan president Lee Teng-hui despite renewed Chinese appeals for Japan not to do so, adding a major irritant to Japan's already-tense relations with China. China opposes contact between Taiwan leaders, and former leaders, and other countries. However, the Japanese prime minister said that as the person concerned wanted to travel as a private citizen, there was no reason to turn down his visa application. (IHT 22-12-04)

Anti-Japanese demonstrations

Relations between the two countries deteriorated sharply in March 2005, caused by a combination of several factors, such as a dispute about the delineation of the border line between their exclusive economic zone in the East China Sea (Sea of Japan) (*see supra* at 269), the presentation in recent Japanese history textbooks of Japan's role in the Second World War including Japan's failure to atone for its war crimes in World War II (*see infra*), and the Japanese participation in US plans concerning the defence of Taiwan (*see infra*: China-Japan-US, and at 283).

On the weekends of 9-10 and 16-17 April 2005 further waves of mass protest erupted in several places in China although the government tried to ease the tensions with Japan. In Guangzhou where demonstrators gathered near the Japanese consulate, police blocked them from getting close to the building. In Shanghai and Shenyang protesters also marched on and attacked the Japanese consulate. In Beijing where demonstrators tried to storm the residence of the Japanese ambassador, riot police broke up the confrontation.

The Japanese foreign minister summoned the Chinese ambassador and protested at the demonstrations. He demanded an apology from China and also compensation. The ambassador did not apologize, but said that the Chinese government condemned the demonstrations. The Chinese foreign ministry issued a statement chiding the protesters though avoiding apologies, while the spokesman actually said that Japan was to blame for the anti-Japanese violence and stressed that Japan should expect no apology. It was reported that China later did pay compensation for the damage caused at the Japanese embassy and the ambassador's residence.

The Japanese foreign minister visited China on 18 April in an effort to ease friction between the two countries. In discussing steps to improve relations the Japanese side proposed setting up a group of experts to study the history of Sino-Japanese relations. On his renewed demand for an apology and compensation for the damage done, the Chinese minister was reported to have said that "the Chinese government has never done anything for which it has to apologize to the Japanese people". On the other hand, he said Japan was to blame for "a series of things that have hurt the feelings of the Chinese people" over issues such as relations with Taiwan and "the subject of history". However, the Chinese authorities did call for a stop of the riots, and China seemed to soften its stance toward Japan when it declared on 22 April it would no longer tolerate anti-Japanese protests, warning that "unauthorized marches" were illegal and that the police would take strong measures against those vandalizing

property. The Chinese president and the Japanese prime minister met at the fringes of the Commemorative Bandung Summit (*see supra*) to ease existing strains (*see infra: Japan - Asia*). (IHT 11-04, 12-04, 18-04, 21-04, 23/24-04, 25-04-05, JT 10-04, 11-04, 13-04, 18-04, 17-06-05)

In May 2005 the Chinese deputy prime minister, who visited Japan mainly for trade purposes, unexpectedly and abruptly cancelled a scheduled meeting with the Japanese prime minister that she had requested, a few hours before it was to take place. It was initially suggested that this might have been related to urgent matters in China, but the following day the spokesman of the Chinese foreign ministry said that China was extremely dissatisfied that during the stay of the Chinese minister in Japan suggestions were raised in Japanese circles on the possibility of the Japanese prime minister's visit to the controversial Yasukuni shrine and that "clearly, in these circumstances there was not the necessary atmosphere for a meeting between the two leaders". (IHT 24-05, 25-05-05, JT 24-05, 25-05-05)

China – Japan / US

Japan and the US issued a joint statement on 20 February 2005, which contained a list of "common strategic objectives" among which was "encouraging the peaceful resolution of issues concerning the Taiwan Strait". It also recognized Taiwan as a "mutual security concern". China issued a denunciation of the declaration, opposing it since it concerned Taiwan as part of China and meddled in the internal affairs of China and hurt Chinese sovereignty.

The statement represented a departure from the previous military cooperation statement of 1997, which called for the two countries to work together in the "area surrounding Japan" (*see* 7 Asian YIL 458). The Taiwanese chief representative in Japan said the new policy statement represented a very important gain for Taiwan. A 1960 US-Japanese security pact simply called for joint cooperation on "Far East" regional security. (IHT 21-02-05, ATOL 23-02-05)

China – Korea (Republic of)

A dispute emerged between the two countries about the position and boundaries of the ancient Korean kingdom of *Koguryo* that ruled much of present-day North Korea and Manchuria from 37 BC to 668 AD when it was conquered by the unifying southern kingdom of *Shilla* (which, together with *Koguryo* and *Paekje*, constituted Korea's three founding kingdoms).

Koguryo is seen by Koreans as the forerunner of their nation, but around late July or early August 2004 the Chinese foreign ministry deleted references to *Koguryo* from the Korean history section of its website. Besides an official Chinese study group issued academic papers bolstering the position that *Koguryo* was in fact merely a Chinese vassal state. The population of North-east China consists of, among others, about two million ethnic Koreans.

On 24 August 2004 the South Korean foreign ministry announced a five-point "understanding", which referred to the *Koguryo* question as a pending issue between the two countries and which apparently implied the absence of Chinese intention to claim the kingdom as part of its history. The understanding also called for efforts

to prevent the dispute from turning into a political issue, and for academic exchanges on the matter. North Korea remained silent on the dispute.

UNESCO accepted applications of both North Korea and China to have Koguryo tombs, murals and other cultural items on each side of the *Yula (Amok)* River registered as World Heritage sites of their own country. It avoided, however, indicating the national parentage of the ancient kingdom. (IHT 25-08-04, ATOL 11-08-04)

China – Russia

During a visit by the Russian president in mid-October 2004 the two countries signed 13 agreements, including a boundary treaty (*see supra* at 266), but no mention was made of a prospective oil pipeline from Siberia to China (*see* 11 Asian YIL 326, and *infra* at 294).

Among the agreements was a joint declaration supporting a common position against terrorism. The declaration explicitly mentioned the rebels in Chechnya and in Xinjiang province as “part of international terrorism” who “should become a target of the joint antiterrorist struggle by the international community”. (IHT 15-10-04)

China – US

See also: Divided states, Embargo; *supra* (China-Japan-US), Monetary matters

During a visit by the US national security adviser to China in early July 2004 the Chinese leadership warned that continued US sales of high-tech weapons to Taiwan would increase the chances of conflict and was contrary to a Sino-US agreement that the weapons sales would be gradually phased out. On her part the US official emphasized that the US did not support Taiwan independence but that the weapons sales were an obligation under the (US) Taiwan Relations Act. (IHT 09-07-04)

China – Vatican

Upon the election of a new Roman Catholic Pope in April 2005 China reiterated its position that the Vatican and China could establish formal relations only if the Vatican dissolved its diplomatic links with the authorities in Taiwan and promised not to interfere in China’s internal affairs.

Starting in early 2004 there had been several indirect, unofficial and exploratory meetings in Rome and Beijing between representatives of both sides, indicating increased willingness to yield on the differences. Relations reached a low point in 2000 when the Pope canonized 120 Chinese Catholics as martyrs on 1 October, the anniversary of the Chinese Communist revolution.

The official (state-controlled) Chinese Catholic church accepts the Pope as a spiritual leader but not as the organizational head of the Chinese church, and consequently the latter condition denies a formal role for the Vatican in the appointment of clergy. In Vietnam the government appoints the bishops on the recommendation of the Pope. (IHT 21-04, 17-05-05)

East Timor – Indonesia

In March 2005 the two countries reached agreement on setting up a Commission of Truth and Friendship (CTF) to deal with human rights atrocities committed by pro-Indonesian militia in the wake of the 1999 vote for independence in East Timor. The Commission is to function for a two-year period and would have neither political nor judicial power. It would only make recommendations to the responsible national institutions, such as parliaments, as a basis for decision-making. It was to consist of five Indonesian and five Timorese members, appointed by the respective governments. (JP 10-03-05)

India – EU

India and the EU signed a “strategic partnership” agreement on 8 November 2004, aimed at tightening economic and political ties. (IHT 09-11-04)

India – Pakistan

In April 2005 the Pakistani president (who was born in Delhi) visited India and met the Indian prime minister (who was born in the present-day Pakistani province of Punjab) amid signs of warming relations between the two countries. (IHT 18-04-05)

India – US

During her visit to India in March 2005 the US Secretary of State warned India about US concerns over plans for a gas pipeline running between India and Iran (*see*: Oil and gas, *infra* at 295). The pipeline would extend 2,775 kilometres, a quarter of which through Pakistani territory, and was tentatively scheduled for completion by 2009. (IHT 17-03-05)

In late June 2005 the two countries signed a ten-year defence agreement, titled “New Framework for the US-India Defence Relationship”. India was thus the only country to have concluded a strategic defence partnership with both the US and Russia. (AToL 01-07-05)

Iran – Iraq

The two countries re-established diplomatic relations in September 2004, but many issues, including a peace treaty following the 1980-1988 war, had yet remained unresolved.

In May 2005 the Iranian foreign minister visited Iraq. On that occasion he assured his counterpart that Iran would not interfere in its neighbour’s affairs: “Iraqis are in charge of their own affairs. Any interference would be an insult to the Iraqi people.” (IHT 18-05-05)

Iran – UK

In connection with the 21 June 2004 incident when UK boats were arrested on the Shatt-al-Arab for entering Iranian territorial waters (*see* 11 Asian YIL 298-299) the British crewmen insisted that they were “forcibly escorted” over the border. The

UK foreign secretary urged Iran on 1 July to return navigational equipment taken from the sailors. (IHT 02-07-04)

Iran – US

It was reported that the US had been conducting secret reconnaissance missions inside Iran at least since summer 2004 aiming at identifying targets that could be destroyed by precision strikes and short-term commando raids. While the US Defense Department rejected the report, the US president said in an interview on 17 January 2005 he could not rule out a resort to military action if the US failed to persuade Iran to abandon a nuclear energy programme that the US considered a cover for developing nuclear weapons. (IHT 19-01-05)

The newly elected president of Iran said in his first press conference, *inter alia*: “Our nation is continuing on the path of progress and on this path has no significant need for the United States.

... We would like to have relations with any country that does not have hostile relations (*sic*) toward us. ...” (IHT 27-06-05)

Iran – UK / US

The US president in his “State of the Union” address on 2 February 2005 accused Iran of being “the world’s primary state sponsor of terror, pursuing nuclear weapons while depriving its people of the freedom they seek and deserve.” The spokesman of Iran’s foreign ministry responded by saying that the remarks were “a repetition of his former groundless claims and accusations”.

The US accusation was echoed by the UK prime minister, who several days later said: “It [Iran] certainly does sponsor terrorism. There’s no doubt about that at all.” (IHT 04-02, 09-02-05)

Japan – Asia

The textbook issue

The Japanese ministry of education on 5 April 2005 approved one hundred and three textbooks for use in junior high schools, including a revised edition of a contentious history book criticized for glossing over Japan’s wartime aggression. The Japanese foreign ministry emphasized that the officially approved books did not necessarily reflect Japanese policy. [In 2001 the first edition of one of the books raised tensions with China and South Korea, *see* 10 Asian YIL 373.]

On the same day the Chinese embassy in Japan filed a protest for the alleged alteration of historical facts, damaging public sentiment of Asian nations who had been victims of Japanese aggression. (JT 06-04-05)

Japanese apologies

Using the occasion of the fiftieth anniversary of the Asian-African Conference at Bandung (*see supra* at 274) and speaking to the representatives of more than hundred

countries, the Japanese prime minister on 22 April 2005 made a public apology for Japan's aggression in the Second World War:

"In the past, Japan, through its colonial rule and aggression, caused tremendous damage and suffering to the people of many countries, particularly to those of Asian nations. ... Japan squarely faces these facts of history in a spirit of humility. ... With feelings of deep remorse and heartfelt apology always engraved in mind, Japan has resolutely maintained ... its principle of resolving all matters by peaceful means, without recourse to use of force."

[The last time a Japanese prime minister made such a declaration was in 1991 in a speech in Singapore.] (IHT 23/24-04-05, JT 23-04-05)

Japan – Korea (North)

There was continuous squabbling between the two countries on the matter of actual or alleged abductions of Japanese nationals by North Korea in past years and the abductees' whereabouts. In 2002 North Korea had admitted to the abductions and had apologized for the abduction of thirteen persons in the period between 1977 till 1982. They said eight of them had died and the other five were returned to Japan in 2002 (*see* 11 Asian YIL 300) The Japanese list, however, comprised seventeen names.

In July 2004 Japan demanded a report, earlier promised by North Korea, about eight allegedly deceased abductees and two others who, according to the North Korean side, had never been in North Korea. North Korea provided medical records pertaining to two of the eight persons. In December 2004 the Japanese prime minister declared that the North Korean explanations were unsatisfactory. In the case of *Yokota Megumi*, abducted from Japan in 1977 as a 13-year old schoolgirl, it was said that the cremated human remains presented as evidence of her death did in fact not belong to the person concerned, although doubts later arose about the correctness of the methods used in the DNA analysis. Later, North Korea said the talks on the fate of Japanese abductees were no longer meaningful as Japan was criticizing the results of North Korean investigations.

By way of sanction in retaliation of the unsatisfactory and incomplete settlement of the issue of North Korean abductions of Japanese nationals Japan in early 2005 introduced an insurance obligation for certain categories of North Korean ships calling at Japanese ports (*see the Mangyongbong incident*, 11 Asian YIL 301). (JT 23-07, 03-11-04, 01-01, 02-03-05, ATOL 23-06-05)

Separate from that of the abductees, there was the issue of a group of four Japanese former members of the "Red Army Faction", who had been involved in the hijacking of a Japan Airlines plane on 31 March 1970. They were living in North Korea and Japan had repeatedly demanded their extradition. They themselves expressed their wish to return to Japan; the North Korean government did not raise objections (Of the initial nine hijackers three had since died and two others had returned to Japan earlier). (JT 06-07-04)

Japan – Korea (South)

The South Korean president and the Japanese prime minister met on 20 June 2005. They failed to resolve their differences over Japan's militaristic past and remained far apart on how to chart their future together in Northeast Asia. The meeting ended with two low-level agreements. They would conduct a second joint study of interpretations of history and Japan would study a Korean suggestion that Japan build a national memorial for the war dead without including Yasukuni's war criminals. [A joint history study group had actually already been agreed in principle at a summit meeting of the two countries' presidents in October 2001.] (IHT 21-06-05)

Korea (North) – US

In late October 2004 the US together with its allies conducted joint exercises in the Sea of Japan, named "Team Samurai" and the twelfth in the framework of the Proliferation Security Initiative, a programme designed to block illicit cargoes from an unnamed country (*see* 11 Asian YIL 287). North Korea in a letter to the UN Secretary-General warned that the exercise "constitutes a breach of the UN Charter, international law and order and a dangerous act that could entail global instability". (IHT 24-08, 29-10-04)

Meanwhile, the US Secretary of State in January 2005 referred to North Korea as an "outpost of tyranny". (IHT 11-02-05)

Pakistan – US

The US announced in March 2005 that it would sell F-16 fighter planes to Pakistan. This had no connection with the issue of the thirty-two F-16 planes which were ordered and paid fifteen years earlier but were never delivered (*see* Asian YIL Vol.1:271, Vol.2:286, Vol.4:508). These planes were sold to third countries and Pakistan was reimbursed the amount paid. (IHT 18-04-05, ATOL 29-03-05)

(NON-)INTERVENTION

See: Association of South East Asian Nations (Chairmanship of Myanmar), Inter-state relations (Iran-Iraq)

IRAQ WAR

South Korean military contribution

It was reported that South Korea planned to send an additional 3,000 troops to join the 660 already in Iraq. The first deployment was comprised of military engineers and doctors, but this time it was said that the government planned to send combat troops, making the South Korean contingent the third largest behind the US and Britain. (IHT 01-07-04)

Japanese military contribution

It was reported that Japan had decided to keep its forces stationed in Iraq as participants in the multi-national force (*see* 11 Asian YIL 306) following the hand-over of formal sovereignty to an Iraqi government. (JT 06-07-04)

Japan and the question of the legitimacy of the war

In an interview on 15 September 2004 the UN Secretary-General said that permission from the UN Security Council was needed for the war in Iraq and that consequently from the point of view of the UN Charter the war was illegal.

Resolution 1441 of the UN Security Council, adopted in November 2002, contained the warning of “serious consequences” if Iraq were found to be in breach of earlier resolutions. According to the UN Secretary-General it had been “up to the Security Council to approve or determine what those consequences should be”.

In contrast to this comment the governments of the countries that supported the US-led war, insisted that the war was justified under international law. According to them, despite the absence of a UN resolution explicitly permitting the invasion, the action was justified because Iraq had failed to comply with previous resolutions requiring the country to disarm and, specifically, to abandon its programs for acquiring weapons of mass destruction and long-range missiles.

The Japanese chief cabinet secretary, the main Japanese spokesman, said that the Secretary-General’s remarks had been “unclear” and that Japanese officials would make inquiries about his “real meaning”. The Japanese troops sent to Iraq in December 2003 on a non-combat, humanitarian mission, constituted the first Japanese military deployment since the Second World War in a country where fighting was under way. On 9 December 2004 the Japanese government decided to extend the mission of the Japanese troops beyond its expiration that month. The Japanese prime minister motivated the decision by saying: “Japan’s foreign policy is based on the Japan-US alliance and international cooperation.. As an ally, we need to carry out as much as possible humanitarian activity that is suitable for Japan, and it is also necessary as a country to attach importance to international cooperation that meets our national interests.”

Japan also indicated that it was not yet convinced of the absence of weapons of mass destruction. Upon an admission by the US Secretary of State at a hearing of the US Senate that WMD were unlikely to be found in Iraq the Japanese Chief Cabinet Secretary said that it was unclear if the US Secretary was saying the US had failed to discover WMD despite its all-out search, or that US intelligence about Iraq’s WMD programme was flawed from the start. Since it was the US that had been conducting the investigation in Iraq, it was not possible for Japan to say on its own if such weapons existed: “It is not appropriate to give clear comments of our view at this stage”. Also, one day before the first anniversary of the beginning of the war the prime minister said “I still believe [weapons of mass destruction] exist. I believe it was a right war.” (IHT 17-09, 10-12-04, JT 15-09, 16-09-04)

JAPAN'S MILITARY ROLE

See also: Iraq War

New military policy

In a break with its pacifist tradition Japan on 10 December 2004 announced plans (the National Defence Programme Outline) to shift its military focus to guarding against North Korean missiles or Chinese incursions on Japan's southernmost islands, remotely located off Kyushu and Okinawa. In another break with the past, the plan called for selectively ending Japan's long-standing ban on arms exports. The export of components to the US would be part of the joint development of a missile defence system with the US. Paradoxically the plans implied a budget reduction. Japan is able to keep its defence spending low because of its security alliance with the US. China immediately expressed its concern about the Japanese policy alteration. (IHT 11/12-12-04; JT 16-01-05; JT 12-12-04)

Overseas military operation

The Japanese relief efforts in Indonesia after the Tsunami disaster of December 2004 were classified as the largest Japanese overseas military operation since World War II. (IHT 28-01-05)

JURISDICTION

See: Insurgents

LAW OF THE SEA

Submarine passage through territorial waters

A Chinese nuclear-powered submarine on 10 November 2004 passed through Japanese territorial waters between two Japanese islands, about 400 kilometres southwest from Okinawa near the Sakishima Islands, failing to identify itself by raising its national flag as required by international law, and without surfacing. The following day it had returned to international waters west of Okinawa.

Japan lodged a protest and demanded an apology for the two-hour intrusion. China later admitted the incident and called it "regrettable", blaming "technical errors". (IHT 11/12-12-04; JT 12-11, 13-11, 17-11-04; AToL 17-11-04)

MIGRANT WORKERS

Foreign workers in and from Southeast Asia

About 400,000 undocumented Indonesian workers in Malaysia were facing prison and lash penalties if they had not left the country by a twice-extended deadline of 1 March 2005.

Malaysia had a workforce of around eleven million and, in addition, half a million legal and, initially, an estimated one million illegal foreign workers (estimates differ) of whom roughly half had left the country following an amnesty. Most of the foreign workers in Malaysia were from Indonesia, next to large numbers from the Philippines, Bangladesh and India. In its efforts to keep illegal workers away Malaysia had built a concrete wall along part of its border with Thailand, and since 2002 it had arrested more than 18,000 illegal foreigners. With regard to Indonesians it was considered questionable whether it would be possible to break time-honoured migration patterns from Indonesia (Sumatra) across the strait to the Malay Peninsula.

In Singapore there were approximately 150,000 foreign domestic servants, mostly from Indonesia.

The Philippines is second to Indonesia as labour supplier within ASEAN, while Thailand was described as both a supplier of labour, mainly to Northeast Asia and the Gulf, and a recipient of more than one million mostly illegal ("undocumented") workers from Myanmar and Cambodia.

Japan announced in early April 2005 it would increase its intake of foreign workers to make up for an anticipated labour shortfall (IHT 16-02, 05-04-05)

MILITARY ALLIANCES

See: Iraq War

MILITARY COOPERATION

Central Asia – Russia

See also: Borders

Under an agreement of 16 October 2004 Russia obtained a permanent military base in Tajikistan, after having obtained a similar facility in Kyrgyzstan in 2003. The Russian moves followed an increased US military profile in Central Asia since the 11 September attacks in the US, which served its operations in Afghanistan..

In exchange Russia agreed to forgive part of existing Tajik debts to Russia and pledges for some \$2 billion in investments over the next five years. (IHT 18-10-04)

India – Sri Lanka

It was reported in late October 2004 that the two countries had finalized a draft bilateral defence cooperation agreement. The proposed agreement was described as general in nature, falling in the category of a standard agreement, formalizing existing cooperation and providing a framework for cooperation in the future. (AtoL 27-10-04) [Previously an agreement of 1987 aimed at resolving the ethnic conflict at Sri Lanka, leading to Indian troops being deployed in northwest Sri Lanka in the period October 1987 - March 1990.]

Indonesia – US

The US Congress, concerned about Indonesia's human rights record, curbed military ties in 1992, and cut them back further in 2000 because of the East Timor dispute. In early 2005 it was reported that the US had moved to restart US training of Indonesian officers, which includes modern warfare methods, the American system of civilian control over the military, accountability and human rights issues (other Asian military receiving this training programme included those of Thailand, Malaysia, India and Pakistan).

However, US Congressional approval was needed for actual resumption. This approval was made conditional upon Indonesian cooperation in an FBI investigation into the killing in 2002 of two American schoolteachers in the Indonesian province of Papua. Such cooperation was allegedly blocked by the Indonesian army, while there were suspicions of involvement by elements of the Indonesian military.

While dispatching spare parts for the aged Indonesian fleet of military transport planes the US did not yet plan to remove its ban on the sale of weapons. (IHT 08-02-05)

MINORITIES

Muslims in Southern Thailand

A riot erupted in the southern Thai province of Naratiwat on 25 October 2004 (the "Tak Bai riot") when a crowd gathered outside a police station to demand the release of six men arrested on suspicion of stealing weapons from a military base earlier in the year and distributing them to Islamic militants. After the riot 78 persons died, most of them by suffocation, when the army and police loaded 1,300 persons arrested in the course of the violence into overloaded army trucks. Besides, six persons were reportedly shot and killed by the army.

The casualties were the latest of more than 300 who had died in violence in south Thailand in 2004. The prime minister described those involved in the riots as supporting separatism. Among the international response Malaysia and Indonesia called for an inquiry.

[Thailand's three southern, mainly Muslim, provinces once formed the Sultanate of Pattani. In the early 20th century the three sultanates of Kedah, Perlis and Terengganu, presently part of Malaysia, were annexed by the British, yet Pattani, which remained part of Thailand, was not. Muslims account for ten per cent of the 63 million population of Thailand.] (IHT 27-10, 28-10-04)

MONETARY MATTERS

Asian monetary arrangements

On the fringes of the annual meeting of the Asian Development Bank in Istanbul in May 2005 Asian finance ministers took another step toward creating a set of confidence-building measures that might eventually develop into some sort of Asian

monetary fund (cf. the abortive efforts in 1997, 8 Asian YIL 294). The finance ministers of thirteen Asian countries agreed to enhance the modest mechanism that was first set up in Chiang Mai in 2000 (*see* 9 Asian YIL 409) and that allows countries to swap their foreign reserves to ease liquidity problems on a bilateral basis. The bilateral basis was to be transformed into a single multilateral process by increasing the size of the swaps and developing a surveillance mechanism similar to that currently applied by the IMF. The process was started by a system of bilateral mutual swap agreements among South Korea, Japan and China. (IHT 13-05-05, JT 29-05-05)

US warning on Chinese currency

The US semi-annual Currency Report warned China to move to a more flexible exchange rate for its currency within six months or, alternatively, be formally designated by the US Treasury Department under US law as a currency manipulating country. Such finding would trigger bilateral negotiations on the exchange rate and possible retaliatory action.

The report read, *inter alia*: “The fixed exchange rate that China now maintains is a substantial distortion to world markets, blocking the price mechanism and impeding adjustment of international imbalances”. (IHT 18-05-05)

IMF voting system

It was reported that, in an effort to keep (Asian) states tied to the IMF system of international currency regulation (“preserving the centrality of the IMF in the global financial system”), the US was pushing a change of the IMF voting system by enhancing the voting power of Asian states with rising economic power. (AToL 11-06-05)

NUCLEAR ENERGY ISSUES

Joint nuclear fusion reactor project

An “International Thermo-nuclear Experimental Reactor” (ITER) project to emulate the sun’s nuclear fusion had been set up in 1992 and was to be jointly funded by the US, Russia, Japan, South Korea, China, and the EU.

There were competing bids from France and Japan to host the reactor. Japan was backed by the US and South Korea, France by China and Russia. Later Japan consented to give up its bid in return of substantial compensation by a much lower financial contribution, the construction of the project’s main research facility in Japan and twenty per cent of the jobs at the head office including the top post of the organization. The consortium also promised Japan that any subsequent fusion reactor would be built there. It was reported that China and South Korea were not happy with the concessions granted to Japan that were seen as preferential treatment. (IHT 03-05, 23-06, 28-06, 29-06-05, JT 26-06-05)

[Nuclear fusion is the process by which the atomic nuclei are forced together, releasing huge amounts of energy, as with the sun or the hydrogen bomb. In contradistinction to nuclear fission, it does not produce radioactive waste.]

Review of Non-Proliferation Treaty

A conference on the review of the 1970 Nuclear Non-Proliferation Treaty was held in May 2005 yet did not produce a new action plan. (IHT 28/29-05-05)

Iran

See also: Inter-state relations (Iran-US)

Western objections against Iran's nuclear ambitions

Iran announced on 13 July 2004 that it would resume negotiations with the three EU countries over its disputed nuclear program. Iran was angered in June 2004 when it was rebuked for poor cooperation by a tough IAEA resolution (*see* 11 Asian YIL 317). It accused the European countries of not fulfilling their promise to close Iran's nuclear dossier and, in response, had resumed its programme of building centrifuges (though not its enrichment programme), considering its suspension under an October 2003 agreement as a temporary one (*see* 11 Asian YIL 316). It referred to its contracts with Russia on the building of several nuclear reactors for the production of electricity.

Talks between officials from the three EU countries and Iran late July in Paris produced "no substantial progress". The EU countries wanted Iran to stop its activity on the nuclear fuel cycle as the US suspected Iran of using a civilian nuclear programme as a cover for a secret nuclear weapons project. (IHT 14-07, 28-07, 02-08, 23-08-04)

News reports early September 2004 referred to an IAEA report which mentioned the Iranian intention to terminate the suspension of its enrichment processes and to re-start the conversion of forty tons of raw uranium in mineral form ("yellow cake") into uranium hexafluoride. [Spun in centrifuges uranium hexafluoride produces enriched uranium that in turn can be used to generate power or make nuclear war-heads, depending on the degree of enrichment. The phrase "nuclear fuel cycle" refers to everything from mining uranium ore to reprocessing nuclear waste]. (IHT 02-09-04)

On 12 September 2004 Iran said that abandonment of uranium enrichment and of carrying out the nuclear fuel cycle, a technology it already possessed, was out of the question, calling enrichment a legitimate right of all IAEA members. It was, however, ready to give any sort of guarantees within the framework of the "additional protocol" (*see* 11 Asian YIL 316) that it would only make peaceful use of nuclear energy. (IHT 13-09-04)

On his part the IAEA director-general called on Iran to fully suspend its enrichment programme and to do its utmost to build the required confidence until the agency was able to assure the world that Iran had no covert weapons program. The European strategy was said to consist of, essentially, trying to persuade Iran to give up nuclear fuel-making capabilities in exchange for a guarantee that it would be enabled to run a peaceful nuclear programme. On the other hand the US held that Iran had forfeited its right to any nuclear programme by concealing its enrichment for nearly two decades. (IHT 14-09, 17-09, 18/19-09-04)

On 18 September 2004 the IAEA Board of Governors adopted a resolution (GOV/2004/79) which, in its preambular paragraphs, noted the Director General's

assessment of the Agency's "steady progress towards understanding Iran's nuclear programmes", and "recognise[d] the right of states to the development and practical application of atomic energy for peaceful purposes ... consistent with their Treaty obligations, with due consideration for the needs of the developing countries". In its first operative paragraph the resolution "strongly urge[d]" Iran, *inter alia*, "to take all steps within its power to clarify the outstanding issues before the Board's 25 November meeting, specifically including the sources and reasons for enriched uranium contamination, and the import, manufacture, and use of centrifuges". This demand referred, *inter alia*, to the discovery, by the agency, of contamination by highly enriched uranium at two sites in Iran that, as an IAEA report said, "may not have resulted from the enrichment of uranium at these locations" but had come from imported equipment.

With regard to the enrichment procedure the resolution in its preambular part "not[ed] with serious concern" that Iran had not suspended "all enrichment-related and reprocessing activities" as notified to the IAEA on 29 December 2003 and 24 February 2004 (*see* 11 Asian YIL 316).

["Reprocessing" is the conversion of uranium into uranium hexafluoride and constitutes a stage preceding enrichment. "Enrichment" *expressis verbis* refers to the concentrating of the 235 isotope in the gas with high-speed centrifuges, which may result in "low-enriched uranium", a 3.5 per cent concentration for use in nuclear power plants. On the other hand, "high-enrichment" results in high concentrations of the isotope necessary for a nuclear weapon. Iran reportedly possessed less than thousand centrifuges. Reprocessing did not explicitly fall under the Iranian suspension commitment, and enrichment *per se* is not prohibited by the Non-proliferation Treaty.]

In paragraph 3 of its operative part the resolution "stresses that such suspension would provide the Board with additional confidence in Iran's future activities". It therefore "consider[ed] it necessary, to promote confidence, that Iran immediately suspend all enrichment-related activities, including the manufacture or import of centrifuge components, the assembly and testing of centrifuges". The resolution in its operative paragraph 4 also "[c]all[ed] again on Iran, as a further confidence-building measure, voluntarily to reconsider its decision to start construction of a research reactor moderated by heavy water".

Iran rejected the call for further suspension of enrichment-related activities and on 21 September announced it had started the conversion process. Besides, there were voices from the Iranian parliament calling for non-ratification of the additional protocol and even for withdrawal from the Non-Proliferation Treaty. (IHT 02-09, 20-09, 22-09-04)

In October 2004 the three EU members France, Germany and the UK (the "EU-3") made an offer to Iran consisting of technology for the building of light-water reactor systems in exchange for an indefinite suspension of the latter's uranium enrichment programme and related activities such as reprocessing uranium and the building of a heavy-water research reactor. The offer also included the resumption of talks on a trade pact (with an eye to Iran's entry into the WTO), guarantees of Russian nuclear fuel, and assistance on a range of "political and security issues" such as treating the Iranian resistance group "People's Mujahadeen" as a "terrorist organization". Iran

considered the offer, and then rejected it, urging a “more balanced” proposal. (IHT 22-10, 25-10-04)

A preliminary draft agreement was after all worked out on 7 November (IHT 09-11-04) to which Iran responded on 11 November. Iran wanted the suspension to be limited to six months and to still be allowed to conduct certain enrichment activities (*see infra*). (IHT 13/14-11-04) On 14 November Iran informed the IAEA that it was prepared to suspend its uranium enrichment activities as part of a deal with the EU and that the suspension would remain in place as long as the talks with the EU regarding a final solution would last. These talks were later estimated to be completed within a few months after their projected start in January 2005. Iran repeated its emphasis on the temporary character of its freeze on uranium enrichment as late as the end of January 2005. The tentative agreement was confirmed by the European side although it kept awaiting further official Iranian approval. There was also (*see supra*) the Iranian request for an exemption from the suspension of its enrichment programme for a limited number (twenty) of centrifuges for research purposes. It linked its demand with its consent for IAEA monitoring of the centrifuges.

The agreement between Iran and the EU-3 related exclusively to uranium enrichment and was not concerned with the different process of production of plutonium by heavy-water reactors. Plutonium is often preferred over enriched uranium for compact warheads. It was said that the EU-3 gave priority to the uranium issue as more pressing compared with that of plutonium production, then considered to be years away. On the other hand it seemed that the main US concern was the site at *Arak* (see 11 Asian YIL 314), where Iran had started work on a 40-megawatt heavy water reactor that, in US eyes, was likely to have the purpose of the production of plutonium for nuclear weapons. The reactors use natural uranium rather than its enriched form. (IHT 15-11, 16-11, 22-11, 23-11, 25-11, 26-11, 27/28-11, 01-12-04; 01-02-05)

The IAEA Governing Board met on 25 November 2004. The EU-3 circulated a draft resolution which qualified as “essential” that Iran keep all parts of its enrichment programme suspended in order to have its case resolved “within the framework of the Agency”. Iran rejected the text. On its part the US raised the objection that the text did not contain a “trigger” clause that would automatically refer the case to the UN Security Council if Iran resumed any enrichment-related activity. The board on 29 November 2004 finally adopted by consensus a mildly worded resolution (GOV/2004/90) (*via* www.iaea.org/Publications) whereupon the US accused Iran of deceit and the IAEA board of irresponsibility.

The resolution “welcomes the fact that Iran has decided to continue and extend its suspension of all enrichment-related and reprocessing activities”, classifying the suspension as “a voluntary, non-legally-binding, confidence-building measure”. The resolution noted Iran’s right to develop peaceful nuclear energy programs by “[r]ecognizing the right of states to the development and practical application of atomic energy for peaceful purposes, including the production of electric power”, although it criticized Iran for failing to cooperate fully with the Agency and seemed to have left open the possibility that Iran might have an “undeclared” nuclear programme that could be used to make nuclear weapons by “[reaffirming] its strong concern that Iran’s policy of concealment up to October 2003 has resulted in many breaches of

Iran's obligations to comply with its NPT Safeguards Agreement". The compromise on the resolution was reached after Iran in a letter to the IAEA had stated rather ambiguously that in exchange it would give up its demand for partial exemption; the ambiguity was affirmed when the head of the Iranian delegation afterwards refused to confirm explicitly that Iran had indeed so agreed. (IHT 25-11, 26-11, 29-11, 30-11-04) On the other hand, the Iranian negotiator later said in a newspaper interview that taking the issue to the UN Security Council for eventual sanctions would turn the issue into a "North-South question". (IHT 26/27-02-05)

After the above developments the IAEA started trying to get access to two military sites where, according to various intelligence reports and allegations by the Iranian opposition group *Mujahadeen Khalq*, Iran might conduct activities related to the pursuit of nuclear weapons, such as the research on and the development and production of ammunition, missiles and high explosives that could, among other things, be used to detonate nuclear weapons ("dual use" equipment). The two sites were *Parchin*, southeast of Tehran and *Lavisan II*, in the north-eastern section of Tehran. The procurement records on which the suspicions were based contained equipment that had plausible uses for both nuclear and non-nuclear programmes. Military facilities, however, fall outside the scope of the Agency's monitoring competence, which is limited to civilian programmes. The complex was not considered a nuclear-related site and, consequently, the Agency could only ask for access on a voluntary basis. Iran agreed to access to part of the Parchin site in January 2005 (IHT 03-12-04, 06-01-05) but refused a new request for access to another part in early March 2005. (IHT 02-03-05)

The EU-3 restarted negotiations with Iran in December 2004 on a longer-term arrangement. In February 2005 Iran rejected a European demand that it stop building a heavy-water nuclear reactor (*see above* for this process) near the city of Arak, in exchange for assistance in building a less threatening light-water reactor.

Meanwhile, US pressure on Iran appeared to have grown sharply and there were reports of pilotless US drones flying over Iran. However, in March 2005 the US agreed on a joint approach with Europe and announced that it would drop objections to Iran's eventual membership of the WTO and allow some sales of civilian aircraft parts as an economic incentive. In return the Europeans agreed to take the Iranian issue to the UN Security Council if negotiations failed. The incentives were meant to make Iran give up its enrichment activities to which it was entitled under current law.

While it was said that the talks would be to determine "that Iran's nuclear programme can only be used for peaceful purposes", this precisely underlined the difficulty of the task. It was considered not practically possible to monitor those activities reliably enough to ensure that they do not lead to the production of bomb-grade uranium. The US was also described as having "taken the position that a country like Iran is too dangerous to be allowed the technology to produce nuclear material for electricity, even if the treaty itself does not explicitly ban it." (IHT 14-12-04, 22/23-01, 14-02, 04-03, 12/13-03, 23-03-05)

The "EU3" states and Iran met again on 23 March 2005 to review their three months' negotiations toward a permanent settlement. Iran said that if there had been

tangible and specific progress in the talks, it would continue the talks for three more months, but that it would consider breaking off if the conclusion about their results were negative. At the meeting the Iranian side presented proposals including enhanced monitoring and the technical guarantees designed to allow Iran to engage in uranium enrichment, but the Europeans rejected that approach. The two sides basically repeated their fixed positions with regard to the November 2004 preliminary agreement when Iran had pledged to give “objective guarantees”, but the two sides disagreed on its meaning. According to the European interpretation Iran would have to permanently stop enrichment, whereas Iran emphasized its sovereign right to conduct all nuclear activities that are not bomb-related. At the review conference of the NPT the Iranian foreign minister repeated Iran’s willingness to provide guarantees of its peaceful intent, but harshly criticized the demands being made which were “arbitrary and self-serving criteria and thresholds regarding proliferation-proof and proliferation-prone technologies”. (IHT 23-03, 24-03, 04-05-05)

The two sides met again when an EU-Iran working group began talks in April 2005. The Iranian side said that “Iran will definitely resume a part of its enrichment activities but we are still discussing its conditions and the time of restarting the activities.” On 11 May 2005 the EU-3 responded by writing a letter, warning that any resumption of nuclear work “would bring the negotiating process to an end” and “would be a clear breach” of earlier agreements. According to unofficial sources the compromises proposed by Iran included the right to run a small plant for uranium enrichment and the option of adding a great number of centrifuges to produce enriched uranium fuel on an industrial scale. The compromise would also include turning the *Natanz* uranium enrichment plant into a joint venture under multinational ownership. (IHT 21-04, 13-05-05) According to the Iranian side it had proposed reaching a complete enrichment cycle in four phases over two years in order for the West to grow confident that Iran was not attempting to build nuclear weapons. In exchange Iran would expect a major package of incentives involving its security and economic development (Before the Islamic Revolution the US had offered some 23 nuclear power plants, Germany was building the Bushehr plant, and France had signed a contract about the supply of nuclear fuel.) (19-05-05)

The Iranian parliament on 15 May 2005 added weight to the Iranian position by approving a bill that read, *inter alia*, “The government of the Islamic Republic of Iran is required to pursue peaceful use of nuclear energy, including the cycle of nuclear fuel.” (16-05-05)

At the negotiations between the EU-3 and Iran in late May 2005 Iran agreed to postpone the resumption of its nuclear activities in anticipation of detailed European proposals by early August on the implementation of the provisional agreement of 14 November 2004. (IHT 19-05, 26-05-05)

Meanwhile another idea was raised involving Iranian-Russian cooperation. According to this idea Iran would be allowed to resume the production of the intermediate uranium hexafluoride gas which would then be shipped to Russia for further enrichment there after which the enriched material would be brought back to Iran for use. (IHT 25-05-05)

The Russian-built nuclear plant at Bushehr

The two countries on 27 February 2005 concluded an agreement under which Russia would supply nuclear fuel for the nuclear plant at Bushehr (*see* 5 Asian YIL 477) while Iran would return the spent fuel after use, thus preventing it from reprocessing the material into plutonium. (IHT 26/27-02, 28-02-05)

North Korea

North Korea on 24 July 2004 rejected a US offer made in June 2004 consisting of a gradual lifting of sanctions and the offer of economic aid from neighbouring countries in return for a rapid dismantlement of North Korea's nuclear weapons programme. The offer required the dismantlement and submission to intrusive (IAEA) inspections before the implementation of the economic concessions. North Korea on the other hand insisted on returning to a "freeze" like the one in effect between 1994 and 2002. (IHT 26-07-04)

A new round of six-nation talks was in fact planned for September or October 2004 but North Korea seemed to prefer to wait and see the results of the upcoming US presidential election. Besides it announced on 16 September 2004 that it would not attend further talks until the disclosures about nuclear experiments in South Korea (*see infra*) had been fully explained. (IHT 24-08, 17-09-04)

In April 2005 the US suggested discussing the option of referring the North Korean issue to the UN Security Council if North Korea refused to return to the talks, but this was rejected by South Korea as "inappropriate". The US was considering a UN resolution empowering all states to intercept shipments into or out of North Korea that might contain nuclear materials or components, effectively amounting to a quarantine of North Korea. The latter had always said that it would consider sanctions to be a declaration of war. (IHT 21-04, 26-04-05)

In a comment of 10 May 2005 the Chinese foreign ministry spokesman said that China's strategy remains basically unchanged and that it had urged North Korea to return to the six-party talks as being the right channel for addressing the pending issues, instead of referring the case to the UN Security Council. China ruled out applying economic or political sanctions. He emphasized, in response to US insistence to cut off fuel shipments to North Korea to signal displeasure, that Chinese oil and food shipments were part of its normal trade and should be separated from the nuclear problem. (IHT 11-05-05)

In December 2004 the IAEA director general said in an interview that he assumed North Korea had by then completed the conversion of its stockpile of spent nuclear fuel that was previously monitored by the IAEA, thus having at its disposal fuel for four to six nuclear bombs. His assessment was based on the Agency's knowledge of North Korea's abilities and the amount of time that had passed since North Korea had ejected the IAEA inspectors and had begun removing the 8,000 spent nuclear fuel rods (*see* 11 Asian YIL 318-319). (IHT 07-12-04) The reactor was restarted in February 2003 (*see* 11 Asian YIL 319). The North Korean side on 11 May 2005 confirmed suspicions that it had unloaded the spent fuel rods, which after a few weeks of cooling could be reprocessed to produce plutonium. (IHT 19-04, 12-05-05)

On 10 February 2005 the North Korean government declared publicly for the first time that North Korea had “manufactured nuclear weapons for self-defence” and that it would “bolster its nuclear weapons arsenal”. The statement also said: “We are compelled to suspend our participation in the talks for an indefinite period” and that North Korea would return only when “there are ample conditions and atmosphere to expect positive results from the talks”. Yet analysts were not certain about the real meaning of the North Korean declaration, coming as it did from “a country prone to making dramatic statements aimed at intimidating its interlocutors”. The South Korean foreign minister said that North Korea might be bluffing, and the minister of unification noted that North Korea had made similar assertions at least ten times since 2003. He said: “We see it as a claim to own nuclear weapons, not an official statement of being a nuclear weapons state”. This, however, seemed to contradict a South Korean Defence White Paper, according to which North Korea might have assembled one or two nuclear weapons and was believed to have conducted an aerial blast test, which could precede an actual nuclear weapons test. (IHT 11-02, 16-02-05)

On 31 March 2005 North Korea issued a statement, repeating its declaration of being a nuclear power and demanded that talks on reducing weapons on the Korean Peninsula occur between North Korea and the US on equal terms. According to unconfirmed reports in April North Korea had taken the position that the US must pledge to respect North Korean sovereignty and territorial integrity before the issue of a freeze of its nuclear programme could be discussed. This was said to be a hardening shift of policy since the previous year.

On its part the US rejected preconditions for resuming negotiations. In May 2005 it deployed so-called “stealth” fighter planes to South Korea which the US Defense Department said were meant to assure the safety of US troops in the “uncertain environment created by North Korea’s unwillingness to participate in the six-party talks”. However, according to newspaper reports US officials visited the North Korean UN delegation on 13 May, passing on the message that the US had no plans to invade North Korea and urging it to return to the negotiating table. (IHT 11-04, 31-05, 06-06-05-05)

The attitudes of the several countries involved in the North Korean issue were also discussed at a hearing of the US Senate Foreign Relations Committee in June 2005. The top US negotiators with North Korea, an assistant secretary of state and a special envoy said they harboured increasing doubts that North Korea was ready to give up its nuclear weapons programme in return for security guarantees and economic incentives. The assistant secretary of state said, *inter alia*, that “I agree with you that China has been reluctant to use the full range of leverage that we believe China has”. He noted that China’s and South Korea’s trade and investment with North Korea had actually gone up in recent years. He also acknowledged that without support from these two countries it would be very difficult to impose economic or political penalties on North Korea. (IHT 16-06-05)

On 17 June 2005 the North Korean leader told the visiting South Korean minister of unification that if the US firmly recognized North Korea as a partner and respects it, the latter could return to the six-party talks as early as July 2005. He also said

that if the nuclear crisis was resolved, North Korea was prepared to rejoin the NPT and allow international nuclear inspectors into the country. (IHT 18/19-06-05)

South Korea

South Korea issued a statement on 23 August 2004 admitting that a group of government scientists had, without government knowledge, enriched a small quantity of uranium in 2000 to a level beyond that needed for civilian purposes but not pure enough for a nuclear weapon.

South Korea began a nuclear weapon programme in the 1970s that was abandoned in the late 1970s under US pressure. It has signed the Nuclear Non-proliferation Treaty and an Additional Protocol (*see* 11 Asian YIL 315). It is also bound by a thirteen-year-old bilateral treaty with North Korea (*see* 2 Asian YIL 411). (IHT 03-09, 04/05-09, 06-09-04)

On 9 September 2004 the South Korean government disclosed that in the early 1980s (1979 to 1981) South Korean scientists had conducted an experiment in plutonium extraction at a state-run research facility. (IHT 10-09-04) These experiments had been covered up and were not reported to the IAEA in accordance with South Korea's obligations under the Non-Proliferation Treaty (which went into force for South Korea in 1975, cf. 6 Asian YIL 282). However, at the IAEA board meeting in November 2004 South Korea stated that it had adopted a new policy of transparency and pledged to never develop or own nuclear weapons. The IAEA Director General considered the failure to report the activities in accordance with the applicable safeguards agreement to be "of serious concern" but the Agency also said that the quantities of nuclear material had been insignificant and that there was no indication that the experiments had continued. (IHT 27/28-11-04)

OIL AND GAS

See also: Exclusive economic zone; Inter-state relations (China – Russia); Territorial claims and disputes

China – Japan

China was laying a 450-500 km gas line to offshore deposits, but Japan complained that China would consequently tap into a 246 billion cubic-metre gas field that is allegedly partly Japanese (*see* Exclusive economic zone, *supra* at 269). Talks in October 2004 resulted in a stalemate. (IHT 4/5-09, 04-11-04)

China / Japan – Russia

On the issue of whether an oil pipeline from Siberia to the east would go to Daqing in North-Eastern China or to Nakhodka on the Sea of Japan (*see* 11 Asian YIL 326), Russia apparently took a decision in favour of Nakhodka, partly, possibly, as a result of a Japanese offer of financial assistance. However, subsequent inconsistent and contradictory reports from Russia said the new pipeline would deliver oil to China first and only later to Japan, although according to some reports this oil would be transported not by a special China spur pipeline, but by rail from the Russian pipeline

terminal at Skorovodino which is located much further to the north and east of the initially planned Angarsk – Daqing route. (IHT 04-11-04, AToL 29-04-05, JT 21-04, 29-04-05)

China – Kazakhstan

It was reported that under an agreement of 1997 a pipeline was projected from the Kazakh oil terminal of Atasu to the Chinese railway station of Alashankou, crossing Russian territory. Building would start in 2005. (AToL 09-02-05)

China – Vietnam

A partnership of oil companies from Vietnam, Malaysia, Singapore and the US announced in October 2004 the discovery of a new offshore oilfield at the *Yen Tu* field, about 70 kilometres east of the port of Haiphong, and west of Hainan Island.

The Chinese foreign ministry reacted by raising concerns, invoking the 2002 Declaration on the Conduct of Parties in the South China Sea. In 2003 China and Vietnam had agreed to keep the status quo in the region and abide by the Declaration. The Chinese reaction called on Vietnam to “cease to adopt any unilateral action that would complicate or give rise to further expansion of the disputes”, and called on oil companies to “cease to do anything that would impair China’s sovereign rights and maritime rights and interests”. (AToL 27-10-04)

India – Iran - Pakistan

See also: Inter-state relations (India-US)

India had been busy securing oil and natural gas supplies. Among the materialized deals three government-controlled Indian energy companies, among which Oil & Natural Gas Corp. (ONGC), had concluded a \$40 billion deal on 7 January 2005 to buy liquefied natural gas from Iran over the next 25 years and invest in gas fields in that country. Iran also granted ONGC a twenty per cent stake in its *Yadavaran* oil field. Further, plans existed for a gas pipeline to be built from Iran through Pakistan to India. The pipeline would originate in the South Pars gas field in Iran and traverse southwest Pakistan to the Indian border. (IHT 17-01-05)

India – Myanmar - Bangladesh

It was reported that agreement in principle was reached among the three countries in January 2005 on the construction and operation of a pipeline to transport gas from Myanmar across Bangladesh to India. The pipeline would run from Rakhine and Arakan state in North Myanmar through the Indian states of Nizoram and Tripura, into Bangladesh and crossing back into India. (IHT 19-04-05; AToL 12-04-05)

Iran – China - Japan

An agreement was concluded in October 2004 under which Iran committed itself to supply China with natural gas over thirty years and granted a fifty per cent stake in the *Yadavaran* oil field to the Chinese company Sinopec.

Equally, in 2004 Iran granted a development contract for the *Azadegan* oil field to the Japanese company Inpex. (IHT 20-04-05)

North Korea

It was reported that the Anglo-Irish oil company Animex had signed a 20-year deal to develop North Korea's oil industry under which Animex would receive certain royalties. (FEER 20-09-04)

PIRACY

Strait of Malacca

The passage is 600 miles long and just over a mile wide at one point. It is used annually by approximately 50,000 ships, which carry a third of the goods involved in international commerce and half of the crude oil transported by sea.

In spite of a 27 per cent global decline in the number of pirate attacks in 2004 (according to the annual report by the International Maritime Bureau of the International Chamber of Commerce), the number of raids in the Malacca Strait increased from 28 in 2003 to 37 in 2004. There was evidence of involvement of the Free Aceh Movement (*see supra*, Insurgents) in many of these raids. Piracy in Asia as a whole, though still accounting for roughly half of all cases worldwide, fell from 262 in 2000 to 171 in 2004.

In one case in March 2003 the pirates were less interested in robbery than in taking turns steering the ship down the congested waterway, giving rise to the possible scenario of an attack for the purposely grounding of a very large carrier at a very narrow part of the strait, thereby closing the waterway indefinitely. (IHT 23-02-05, JT 16-03-05)

REFUGEES

US legislation in support of North Korean refugees

The US House of Representatives passed the "North Korean Human Rights Act of 2004" in July 2004, aiming at, *inter alia*, supporting North Korean refugees.

North Korean asylum seekers in China

Forty-four North Koreans who entered the Canadian embassy in Beijing in September 2004 had been allowed in December 2004 to leave China for a third country. A group of North Koreans entered the premises of the Japanese School at Beijing on 1 September 2004. They were later moved to the main compound of the Japanese embassy and part of them later left China for a third country. Most of the hundreds of North Koreans who had sought asylum in embassies, schools and other foreign offices in Beijing over the past three years eventually had gone to South Korea, usually through a third country.

Under a Sino-North Korean treaty China is obligated to send North Korean asylum seekers home, but it had not done so in cases that had become public. China rejected appeals to treat these people as refugees, classifying them as economic migrants and illegal border-crossers instead. Most of the asylum seekers had been allowed to leave China within a few days. (*inter alia*, JT 02-09, 06-09, 03-12-04)

North Korean asylum seekers in Vietnam

Vietnam had denied that it was involved in the secret airlift of more than 460 North Korean refugees to South Korea in July 2004, but North Korea criticized Vietnam by name, accusing it of conspiracy.

It was reported in December 2004 that North Koreans had entered the French embassy and the Swedish diplomatic mission at Hanoi. (IHT 24/25/26-12-04)

Japanese policy on refugees

Japan in January 2005 deported two Kurds to Turkey although they were recognized as refugees by the Office of the UN High Commissioner for Refugees (the *Kazankiran* case). The Japanese Ministry of Justice held the opinion that a UNHCR decree classifying a person as refugee (so-called “mandate refugees”) is not binding and that the conditions under which the UNHCR granted refugee mandate differed from the 1951 Convention on the Status of Refugees. The designation as refugee by the UNHCR was considered the expression of the Office’s opinion that the person was in need of humanitarian support.

The deportation meant that Japan did not consider the persons to be in danger of persecution in their home country, the criterion contained in the 1951 Convention. Yet, the UNHCR described the deportation as “contrary to Japan’s obligations under international law”.

On 25 January 2005 the Minister of Justice announced the possible deportation of another five Kurdish “mandate refugees”, to a third country.

According to the ministry Japan in 2004 granted refugee status to 15 persons among whom fourteen from Myanmar, against twenty in 2003. There were 426 applications in 2004, among which from Myanmar, Turkey and Bangladesh. Unofficial sources differed slightly. . (JT 19-01, 21-01, 26-01, 25-02-05)

RIVERS

See also: Borders

India – Pakistan: the Baglihar Dam

A dispute had arisen concerning the building of a dam by India on the *Chenab* River, one of five rivers that were the object of the Indo-Pakistani Indus Water Treaty of 1960. Pakistan contended that the Indian plans, dating from 1992 violated the Treaty since the dam would severely reduce water supplies to Pakistan, adversely affecting agricultural lands.

The Treaty classifies disagreements between the parties into three categories: “questions”, “differences” and “disputes”, to be dealt with by the Permanent Indus Commission, a Neutral Expert and a Court of Arbitration, respectively.

Pakistan had asked the World Bank to intervene in the conflict, which the Bank refused to effect as it is not a guarantor of the treaty. The Bank is admittedly a signatory of the treaty, but only for certain specific purposes, many of which had already been completed. One of the remaining responsibilities of the World Bank was the appointment of a Neutral Expert, the only thing the Bank could do on request of a party to the Treaty, after failure of a settlement by the Commission. (AToL 09-02-05)

SANCTIONS

US sanctions against Chinese companies
(*See also infra*: US sanctions against Iran)

The US invoked trade sanctions against the North China Industries Corp. (Norinco) on 19 September 2003 for weapons proliferation, although immediately waived them for a year. In September 2004 it was decided to continue the waiver until March 2005. The sanctions would block up to \$12 billion in annual Chinese exports to the US. (FEER 30-09-04)

It was reported that in implementing sanctions against Chinese companies the US did also formally apply them to the subsidiaries of these companies but did not harm them as these subsidiaries, while fulfilling the conditions for the sanctions, did little or no business with the US. On the other hand it was said that in many cases the sanctions were not being applied to the parent company as the latter is liable under the (US) sanctions law only if it has “knowingly” assisted the subsidiary, implying a burden of proof that the US is not always willing to undertake. It was suspected that the reason might be unwillingness to hurt the financial interests of American firms that do business with the parent company. (IHT 26/27-02-05)

US sanctions relating to Chinese currency rate
See: Monetary matters

US sanctions against Iran

The US imposed penalties in January 2005 on some large Chinese companies for aiding Iranian efforts to improve its ballistic missiles by exporting certain technology the nature of which was kept classified. The penalties barred the companies from doing business with the US government and also prevent them from obtaining export licences that would allow them to purchase controlled technologies from US companies. The previous set of US penalties on Chinese sales to Iran was announced in July 2003 (see also 11 Asian YIL 330) (IHT 19-01-05)

[The penalties were imposed under the (US) “Iran Non-proliferation Act of 2000”.]

SETTLEMENT OF DISPUTES

See: Rivers

SINO-JAPANESE WAR

Demolition of chemical weapons

Two Sino-Japanese joint studies in 2003 and 2004 led to a joint project for the search and demolition of an estimated 700,000 chemical projectiles that had been abandoned by the Japanese army in China after the end of the war. The project started in September 2004 and had led to the recovery of more than 1,000 wartime weapons in North China.

It was the fifth such mission undertaken by Japan since 2000. China had started asking Japan to carry out clean-up operation in 1990, to which Japan formally agreed in 1995 after having ratified the Chemical Weapons Convention. (JT 25-09-04)

SOUTH ASIA ASSOCIATION FOR REGIONAL COOPERATION (SAARC)

Cancellation of summit meeting

A SAARC summit meeting that was due to be held in early February 2005 at Dhaka was cancelled because India declined to attend for “security considerations”. However, according to news reports the real reason lay in the existing tensions between India and the Bangladeshi government over various issues, such as the refusal to sell natural gas to India, the Ganges waters, Bangladeshi illegal immigration to India, trans-border smuggling of goods and the use of Bangladesh as a scapegoat for insurgency and security problems in India’s north-eastern states. (IHT 08-02-05)

SPECIFIC TERRITORIES WITHIN A STATE: KASHMIR

See also: Inter-state relations (India-Pakistan)

Indo-Pakistani efforts

The two countries in November 2004 proceeded with their discussions on prime-minister level concerning Kashmir. There had been some flare-up resulting from remarks made by the Pakistani president in which he raised the possibility of parts of Kashmir being made independent, or placed under joint Indian-Pakistani control, or put under the administration of the UN. Nevertheless, India announced that it would begin pulling about 20,000 troops out of Kashmir.

The prime ministerial meeting gave rise, *inter alia*, to an agreement under which the two countries would reopen branches of state banks in each other’s country. These branches were closed as a result of the 1965 Kashmir War. (IHT 17-11, 26-11-04)

In early 2005 the two countries reached agreement on re-establishing a bus service between the two parts of the disputed territory of Kashmir, which the Indian foreign

minister called “the mother of all confidence-building measures”, crediting “people power” for the warming of relations. (IHT 26/27-02-05)

TERRITORIAL CLAIMS AND DISPUTES

See also: Exclusive Economic Zone

China – Philippines

The two countries agreed in September 2004 to make a “pre-exploration study” on potential oil deposits in the South China Sea as part of a three-year research project. Research agreements like this were permitted by the 2002 Declaration on the Conduct of Parties in the South China Sea (*see* 11 Asian YIL 281), in contradistinction to actual exploration.

Under the Declaration the building of installations and structures on or near the atolls are banned until the territorial conflicts have been settled. However, most claimant states had already violated the Code by having military garrisons or tourism facilities or monitoring stations under the guise of “bird-watching towers” or “weather huts”.

[Paragraph 6 of the Declaration reads: “Pending a comprehensive and durable settlement of the disputes, the Parties concerned may explore or undertake cooperative activities. These may include the following: ... (b) marine scientific research ...”] (AToL 04-09-04)

China – Russia

See: Borders

East Timor – Indonesia

It was reported that the East Timorese foreign minister had acknowledged during a meeting on border issues with Indonesian authorities in August 2004 that *Batek* Island, located north of the East Timorese enclave *Oecusi*, is not East Timorese territory. This acknowledgement was contrary to earlier claims. (Tempo 19-08-04)

Indonesia – Malaysia

A dispute had erupted in 2005 over a sea(-bed) territory near the northwest corner of the Island of Borneo. The Indonesian foreign minister said that Indonesia based its claim to the area on the country’s status as an archipelagic state.

In March 2005 the Indonesian president and the Malaysian prime minister agreed to avoid open conflict and to have it solved on the basis of technical talks between the foreign ministers. The dialogue took place in March and was to be resumed in early May.

Tension between the two states emerged when the Malaysian state-owned oil company Petronas granted contracts to Shell Oil in February 2005 for the exploration of two deep-water blocks (Malaysian N6 block) that overlap the maritime area of (Indonesian) *Ambalat*. Shell had previously held a concession from the Indonesian

government for exploration and exploitation in the same area. These rights were transferred to ENI (Italy) in 2001.

As tension mounted anti-Malaysian rallies took place in various Indonesian cities, while Indonesia started to construct a lighthouse in the area. (JP 8-3, 24-03-05, Tempo 14-03-05)

Japan – Korea

In 2004 a gas exploration project had started southwest of *Dokdo (Takeshima)* Island east of the Korean peninsula. A second oil and gas exploration was to start north of Dokdo in 2005 by a Korean-Australian consortium while a third, South Korean state-led, project was starting a survey of marine and mineral resources around Dokdo.

In 1905 Dokdo was the first Korean territory annexed during the Japanese conquest. The Japanese claim on the island was, therefore, seen by the South Korean National Security Council as a denial of the history of Korean national liberation, as well as a justification of aggression (*see* Asian YIL Vol.6:460, Vol.7:482). (IHT 06-05-05)

Japan – Russia

With reference to the dispute between the two countries concerning four Kurile Islands (*see* Asian YIL Vol.1:346, Vol.2:376, Vol.3:448, Vol.4:512, Vol.5:499, Vol.6:461, Vol.7:482, Vol.8:310) the Russian president promised in December 2004 to return the two smallest Kurile islands to Japan, but the Japanese prime minister was holding out for all four islands. (IHT 22/23-01-05)

TERRORISM

See: Inter-state relations (China - Russia, Iran – US), Piracy

UNITED NATIONS

Response to Japanese endeavours toward permanent membership of Security Council

Japan was among several states that were candidates for permanent membership in case of an eventual restructuring and expansion of the UN Security Council. Japan has the second largest economy of the world and is one of the largest financial contributors to the UN (For an indication of the yearly regular contributions of Asian countries, *see* 5 Asian YIL 502).

It was reported in early April 2005 that a grass-roots campaign in China had been started for a petition to prevent Japan from being elected. Although the Chinese authorities did not explicitly endorse the petition, there were instances of supportive comments. Initially China remained officially neutral although the foreign ministry spokesman seemed to have said that the effort reflected rising alarm about Japan's treatment of history, and that China believed the UN overhaul should mainly focus on increasing the power of developing countries rather than rich, industrialized ones. On 12 April 2005, however, the Chinese prime minister explicitly said that Japan

was not ready for a permanent seat until it faced up to its history of aggression and won its neighbours' trust.

North and South Korea also opposed Japan's candidacy. They argued that Japan had not done as much as Germany to atone for its past misconduct and that it could not become a leading member of the international community unless it addressed the legacy of mistrust among its neighbours. It was not clear to what extent the Korean position resulted from the designation, by a Japanese prefectural assembly, of the date of 27 February as "Takeshima Day", referring to the disputed island. (IHT 01-04, 13-04-05, JT 02-04-05)

On the other hand the US announced on 16 June 2005 that it would propose the addition of the Security Council membership with two permanent members, one of which would be Japan. In defending Japanese membership it was noted that Japan was second to the US only in its financial contribution to the UN and was a major provider of military supplies for peacekeeping operations. (IHT 17-06-05)

Other attitudes towards revision of Security Council membership

Through the speaking of a State Councillor in October 2004 China expressed its support for the bid by India for a permanent seat in the Security Council. Thus, four out of the five current permanent members (with the exception of the US) supported India's claim.

Pakistan opposed India's claim and insisted that the question of Kashmir should first be resolved.

A group of like-minded "Uniting for Consensus" countries, among which South Korea and Pakistan, opposed any increase in the number of permanent members and, instead, backed an increase in non-permanent members. (AToL 26-10-04, 14-04-05)

WORLD TRADE ORGANIZATION (WTO)

Cambodia's and Nepal's entry

The Cambodian legislature on 31 August 2004 gave final approval to Cambodia's entry into the WTO. This step was more or less forced by the impending termination of the Multi-Fibre Agreement on 1 January 2005 which included the proviso that quotas would remain in place for exports from countries that are not members of WTO (this is to be distinguished from the proviso of so-called safeguard quotas which would apply if, after the expiration of MFA, imports soar in particular categories of garments or textiles).

Cambodia became the second country (after Nepal in April 2004) to enter the WTO under new procedures to help least developed countries join it more quickly. (IHT 01-09-04)

China – US / EU

China warned on 8 September 2004 that it had the right to challenge any limitation of its textile exports to the US when all global, 30-year-old quotas on textile and apparel would be lifted on 1 January 2005. The elimination of the quota system was

a key demand of developing states in talks leading to the establishment of the WTO. Anticipating a Western backlash to a very strong increase in Chinese textile imports, China had already decided to introduce export duties on 1 January 2005 with respect to many textile products in an effort to pre-empt retaliation. Consequently, China, at least initially, rejected suggestions by the US in the first half of 2005 that China should accept voluntarily restrictions or caps on the amount of clothing it exports to the US (cf. the so-called “voluntary” restrictions of Japanese auto exports in the 1980s and 1990s, *see* Asian YIL Vol.1:321, Vol.3:409). However, the US textile industry started to petition the US government, claiming that China was giving its industries unfair subsidies and was profiting from currency manipulation and was therefore breaking the WTO rules. On 4 April 2005 the US Commerce Department announced it would start an investigation into the need to re-impose trade quotas.

On 13 May 2005 the US Department of Commerce announced that it would impose “safeguard measures” in the form of new quotas on China-made garments. The quotas would take effect fifteen days after the start of the WTO-required 30-day period of formal consultations at the WTO if China failed to take action to meet the objections raised. The Chinese government called the quotas a “betrayal of the fundamental spirit of trade liberalization espoused by the WTO” and “reserves the right to adopt further measures under the WTO framework”. It said the Western governments had failed to prepare their domestic manufacturers for the removal of quotas on 1 January 2005 and, instead, had kept most of their quotas until the last moment. Yet, on 20 May 2005 China decided to raise the export tariffs on many of its textile and apparel exports in an attempt to ease Western concerns. However, later dissatisfaction with the attitude of the US and the EU led to the complete lifting of tariffs on those categories threatened by US and EU quotas. On the other hand the US was likely to ultimately accept a deal such as the one made between China and Europe (*see infra*).

With regard to the intended EU investigation into whether the surge of textile imports from China had distorted markets, China said it would “resolutely oppose any developed countries attempting to re-apply restrictions” on imports that would limit Chinese exports. Following the US re-introduction of quotas the EU Trade Commissioner on 17 May 2005 called for China to curb exports of two important textile products. With regard to these two textile categories the EU would cut short its 60-day preliminary investigation and would, instead, request immediate emergency talks with China.

Apparently not satisfied by the Chinese offer of additional export tariffs, the EU decided on 25 May to cut short the talks and to start formal consultations at the WTO. Hoping to ease tensions China agreed on 10 June 2005 on voluntary limits of ten per cent annually through 2008 to the growth of certain categories of its textile and apparel exports to Europe.

(IHT 09-09, 14-12-04, 06-04, 26-04, 16-05, 18-05, 21/22-05, 26-05, 30-05, 31-05, 11/12-06, 18/19-06-05)

[- The system of quotas limiting the international trade in textiles and apparel for decades under the so-called Multi-Fibre Arrangement expired on 1 January 2005, under an agreement worked out in 1993 as part of the creation of the WTO.
 - China had agreed to a “safeguard clause” under its WTO accession agreement in 2001, allowing other WTO members, until the end of 2008, to safeguard their own textile industries with trade restrictions in the event of a sustained surge in Chinese imports causing irrevocable harm to local producers.]

The EU expressed its worries in early June 2005 about the sudden rise in imports of Chinese shoes. In contradistinction to textiles, the Chinese accession agreement did not contain special rules allowing the EU to allow safeguards in the case of shoes. (IHT 09-06-05)

Iranian membership

By way of incentive for Iran to accept the West’s demands on the cessation of its nuclear ambitions the US said it would drop its objection to Iran’s eventual membership of the WTO. (IHT 12/13-03-05)

Iran had applied for membership in 1996. The WTO announced on 26 May 2005 that it would start talks to admit Iran as a member. (IHT 27-05-05)

WORLD WAR II

See also: Sino-Japanese War

Japanese court decisions on liability for forced labour during wartime

The *Hiroshima High Court* on 9 July 2004 overturned a ruling by the Hiroshima District Court of July 2002 and for the first time in a series of lawsuits awarded damages to the (Chinese) plaintiffs who had claimed to have been forced during the war to work under severe conditions at a working site in Japan.

Mirroring the District Court’s decision the High Court considered that the defendant’s (a Japanese construction firm) actions in forcibly bringing the plaintiffs to Japan and making them work under severe conditions resulted from a dovetailing of government policy and the company’s desire to make a profit. Whereas the lower court ruled that damages could not be claimed because the plaintiffs’ rights to compensation had expired under the statute of limitations, the High Court said: “Forcibly taking people to Japan and making them work is a serious violation of human rights, and the argument that brings up the statute of limitations runs counter to (the course of) justice.”

Yet, regarding compensation for the illegal act of forcibly bringing the workers to Japan, the High Court ruled that there was no reason to disregard the 20-year statute of limitations and awarded no damages. (JT 10-07-04)

On 23 June 2005 it was the appeal court, the *Tokyo High Court*, which denied compensation to the family (who took over the lawsuit after the original plaintiff’s death) of a Chinese slave labourer, overturning a decision of the Tokyo District Court of July 2001. This latter decision had ruled in favour of the claimant and had

sentenced the Japanese state to pay compensation for negligence, being the first time that a Japanese court held the state responsible for forcibly bringing persons to Japan to work as forced labourers during the war.

The High Court ruled that the Japanese state bore no responsibility in terms of paying damages because there was no mutual assurance between China and Japan to pay state compensation; nor was there responsibility of the Japanese state for the abduction and the slave labour because the (Meiji) Constitution, in effect at the time, absolved the state from liability for damages. Furthermore, the Chinese plaintiffs had no right to demand payment, due to the signing of the Sino-Japanese Joint Communiqué in 1972 (containing the Japanese recognition of the People's Republic's government), and the China-Japan Peace and Friendship Treaty in 1978.

In a similar case before the *Osaka High Court* with the wartime employer (a stainless steel producing company) and the Japanese government as defendants a settlement was reached on 29 September 2004 between the plaintiffs and the employer. The case would continue between the plaintiffs and the Japanese state, which had invoked the statute of limitations.

It was reported that the *Kyoto District Court* ruled in January 2003 that the Japanese government and the wartime employer had acted illegally in abducting the plaintiffs to Japan and forcibly putting them to work without pay, yet rejecting the claim to compensation on the basis of the statute of limitations.
(JT 10-07, 30-09-04, 24-06-05)