I. Introduction

It is often said that the 21st century will become an “Asian age” or “Chinese age” despite serious misgivings about the hegemonistic weltanschauung underlying such expressions. As regards the expression “Asian age,” the difficult question of how to define Asia immediately arises. Another source of skepticism about the so-called “Asian age” is that the region is still rife with disputes and controversies (which is not unique to Asia) and that it suffers from the abject lack in institutional mechanisms or arrangements to address these problems (a stark contrast with other regions such as Europe and Latin America). It is against such background that the territorial and maritime disputes in the South China Sea rage on without a prospect for an early resolution.

In this article, I will redirect attention from the South China Sea to the seas in Northeast Asia, that is, the East China Sea and the Yellow Sea, and look at some recent developments in the region. First, I will look into the joint development agreement between Korea and Japan. One has not heard much about this important agreement since its adoption in 1974. I will discuss the reasons why this agreement has remained in a “dormant” state for a long time and analyze the recent tension between the two countries surrounding the agreement. The second subject of my investigation is the 2008 agreement between China and Japan on the East China Sea. I will first conduct a comparative analysis of the two different versions of this document which was adopted in a highly peculiar and informal manner. This analysis is followed by the investigation into the legal nature and effect of the agreement. I will go on to discuss the implications of this agreement for maritime delimitation in East Asia. My third and last subject is the question of oil and gas development in the Yellow Sea, which has been rather neglected by academics. After discussing the different positions of the littoral States, I will look at the recent problems between Korea and China.

1 School of Law, Seoul National University. Professor Lee’s PowerPoint is available at <http://www.virginia.edu/colp/pdf/Bali-Lee.pdf>.
II. The 1974 Joint Development Agreement between Korea and Japan: a “Sterile Success?”

The 1974 Agreement is regarded as a “prime example” of the “system of compulsory joint ventures between the interested states and their national or other nominated oil companies in designated joint development zones.” It also served as a sort of template for the subsequent joint development agreements in other regions of the world. As a “sound compromise” to resolve the overlapping claims over the continental shelf between Korea and Japan, it contributed to the lessening of tension between the two countries much burdened by their history. However, as the late Judge Choon-Ho Park used to quip, “the 1974 Agreement has not produced a single drop of oil, but has produced a number of academic papers, including some Ph.D. dissertations.” That may be why we have not heard much about this important agreement since the 1970s. In this section, I am going to report on some recent developments about this theoretically productive, but practically barren project, and in so doing, discuss some legal questions surrounding this “dormant” joint development arrangement.

In order to better understand the recent developments relating to the 1974 Agreement between Korea and Japan, one needs to recount the history of negotiations and ratifications of the agreement. The report of the Economic Commission for Asia and the Far East (published in May 1969), offered a (overly)

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2 Its full title is “Agreement between the Republic of Korea and Japan Concerning Joint Development of the Southern Part of the Continental Shelf Adjacent to the Two Countries.”


5 Ibid., p. 155.

6 According to Takeyama, one of the reasons why the Japanese Government and Japan’s ruling party (Liberal Democratic Party) supported the ratification of the 1974 Agreement was the probable course of action to be taken in case of non-ratification, i.e., the unilateral exploration and exploitation of the zone. Within the LDP, the dominant opinion was as follows: “Unless we join this (joint development), the Korean side would arbitrarily undertake the development. Only military power could stop it. Yet, Japan, with its pacifist approach, could not do such a thing. That is why we must commit ourselves to joint development quickly.” Masayuki Takeyama, “Japan’s Foreign Negotiations over Offshore Petroleum Development: An Analysis of Decision-Making in the Japan-Korea Continental Shelf Joint Development Program,” in Robert L. Friedheim et al. (ed.), Japan and the New Ocean Regime (Westview Press, 1984), p. 303.