

**THE SUBMERGED PASSAGE OF A SUBMARINE THROUGH  
THE TERRITORIAL SEA  
—THE INCIDENT OF A CHINESE ATOMIC-POWERED SUBMARINE—**

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A recent incident of an unidentified atomic-powered submarine passing through the Japanese territorial sea raised the sensitive issue of what Japan could do, as the coastal State, in the face of a gross violation of the law. Despite being surrounded by the sea in all directions, Japan has not been prepared to react properly in such a situation since the end of the Second World War. This is primarily a matter of strategy, but this paper will focus on the legal aspects of the incident.

The paper will start with an exposition of the relevant facts, followed by some discussion of the legal issues involved therein: the status of submarines in the territorial sea, innocent passage, hot pursuit, environmental implications, etc. The paper will then conclude with some summary observations.

I. THE FACTS

On the early morning of 10 November 2004, an anti-submarine patrol aircraft (P-3C) of the Japanese Maritime Self-Defence Force detected and confirmed that an unidentified submarine was passing submerged through the territorial waters of Japan in the sea area near Sakishima-guntou. At 08:45 a.m., the Director-General of the Defence Agency, with the approval of the Prime Minister as the supreme commander of the Self-Defence Forces, issued a command of maritime security operations to the commander of the Maritime Self-Defence fleet,<sup>1</sup> with a view to demanding the submerged vessel to rise to the surface and show its flag, and that in the event of its failing to respond properly, the submarine leave the Japanese territorial waters.<sup>2</sup> The suspected submarine navigated underwater from the south towards the north in the territorial sea of Japan in the said sea area. In addition to the anti-submarine patrol aircraft, an anti-submarine helicopter (SH-601) and a major destroyer pursued it. But soon after the command of maritime security operations was issued, the vessel went out of the territorial sea, and consequently no demand was made to require it to navigate on the surface or leave the territorial sea. The pursuit of the submarine, however, did not cease until it crossed the limit of the Air Defence Identification Zone (A.D.I.Z.)<sup>3</sup> of Japan around 1 p.m. on 12 November 2004. It became clear then that the submarine had gone in the direction of north by north-west, and that it looked unlikely to come back to the Japanese territorial sea. Thereupon the Director-General of the Defence Agency issued a command to complete the maritime security operations in this incident at 3:50 p.m.<sup>4</sup>

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<sup>1</sup> Defence Operations Division, Defence Operations Bureau, Defence Agency, *Kokuseki-fumei Sensuikan Tanchi-Jian ni tsuite* (On the Case of a Detected Unidentified Submarine), mimeo., 10 November 2004, para. 1.

<sup>2</sup> *Ibid.*, para. 2.

<sup>3</sup> For more about the ADIZ, see note 21 and accompanying text.

<sup>4</sup> Cabinet Secretariat, Defence Agency and Ministry of Foreign Affairs, *Sensuikan Tanchi-Jian ni tsuite* (On the Case of a Detected Unidentified Submarine), mimeo., 12 November 2004, para. 2.

On the basis of an overall consideration of the direction in which the unidentified submarine went after leaving Japanese waters, the likelihood of it being a nuclear-powered submarine, and the other relevant pieces of information, the Japanese Government concluded that it belonged to the Chinese Navy. Thereupon the Foreign Minister summoned the Minister of the Chinese Embassy to lodge a protest against the incident.<sup>5</sup> A formal reaction from the Chinese Government arrived on the morning of 16 November. Vice-Minister Wu Dawei gave the following explanation to Japanese Ambassador Anami:

- (1) As a result of an investigation by the Chinese side into the recent submarine incident, we have confirmed that the submarine in question is a Chinese nuclear-powered submarine. It got into the Ishigaki Channel of Japan by mistake from a technical cause during its normal training course, and we on the Chinese side *regret* that the incident happened.
- (2) We on the Chinese side have no change whatsoever in the policy of building a partnership with our neighbouring countries.<sup>6</sup> (Emphasis added)

It may be seen from the diplomatic exchanges as shown above that although Japan demanded an *apology* from China, China did not accede to it but simply *regretted* what had happened. Arguably, therefore, China failed to carry out its responsibility for its incursion, if unintended, into another country's territorial waters in a manner contrary to international law.

Two months after the incident, the Japanese Government released a statement on the basis of its assessment of the incident:

The Government, in accordance with the provisions of Article 82 of the Self-Defence Forces Act (maritime security operations)<sup>7</sup> and the Cabinet Decision of 24 December 1996 ("On Coping With Foreign Submarines Navigating Submerged in the Territorial Sea and Internal Waters of Japan"),<sup>8</sup> copes with foreign submarines that navigate

<sup>5</sup> *Ibid.*, paras. 3, 4. "Foreign Minister Machimura summoned Minister Cheng Yonghua of the Chinese Embassy on the evening of 12 November, and made a representation. On the finding that the unidentified submarine which passed through the Japanese territorial sea submerged belonged to the Chinese Navy, the Foreign Minister made a strong protest against its act in violation of international law, demanded an *apology*, demanded an adequate explanation about the reason why it acted as it did, and requested the prevention of recurrence of such an act. The Chinese Minister replied that he would report the representation to his home government immediately, that the Chinese side was already making an investigation into the incident, and that as the investigation was going on, he could not accept the Japanese representation and apologize on the spot." (Emphasis added) China Division, Asia-Pacific Affairs Bureau, Ministry of Foreign Affairs, *Sensuikan Tanchi-Jian-Chugokugawa eno Kogi* (Case of a Detected Unidentified Submarine – Representation to China), 16 November 2004, mimeo., paras. 2-3.

<sup>6</sup> China Division, Asian and Pacific Affairs Bureau, Ministry of Foreign Affairs, *Chugoku Sensuikan niyoru Wagakuni Ryoukai Senkou Jijian* (Case of a Chinese Submarine Passing Submerged through the Japanese Territorial Sea), 17 November 2004, mimeo., para. 1.

<sup>7</sup> Article 82 of the Self-Defence Forces Act of 1954 provides: "The Director-General may, with the approval of the Prime Minister, order troops of the Self-Defence Forces to take necessary action at sea when there is a special need for the protection of human life or property at sea or the maintenance of public peace and order." (Unofficial translation by this author)

<sup>8</sup> The Cabinet Decision of 24 December 1996 (put into force on the same date), titled "On Coping with Foreign Submarines Navigating Submerged in the Territorial Sea and Internal Waters of Japan" states:

"1. The Defence Agency, when a foreign submarine is found navigating submerged in the Japanese territorial sea or internal waters, shall immediately notify the Ministry of Foreign Affairs and the Maritime Safety Agency of this fact, and in coping with the foreign submarine the Defence Agency, the Ministry of Foreign Affairs and the Maritime Safety Agency shall mutually and closely co-ordinate their efforts for co-operation.

2. The Prime Minister may, when asked by the Director-General of the Defence Agency in accordance with the provisions of Article 82 of the Self-Defence Forces Act for an approval of the issuance of an order to troops of the Self-Defence Forces to demand that a foreign submarine navigating submerged in the Japanese territorial sea and internal waters navigate on the surface and show its flag and that if the submarine fails to obey this order, it leave the Japanese territorial sea, approve the request if such an order is deemed necessary for the maintenance of public peace and order at sea and if the Maritime Safety Agency is considered inadequate to make such a demand by itself." (Unofficial translation by this author)

underwater in the Japanese territorial waters on the following lines:

1. Policy lines

- (1) We demand as part of our maritime security operations that submarines navigating submerged within the territorial waters navigate on the surface or leave the territorial waters;
- (2) In such an eventuality, the Director-General immediately issues a command of maritime security operations through the necessary formalities;
- (3) For this purpose, when information is received of a submarine approaching the Japanese territorial sea, the information is shared by the government agencies at an early stage;
- (4) In the event of the submarine intruding into the Japanese territorial sea, a command of maritime security operations is issued unless another measure is required by special circumstances;
- (5) After the submarine leaves the territorial sea, the maritime security operations are continued in principle to make sure of the possibility of its re-entry into the territorial sea, to identify its nationality, etc.;
- (6) Necessary measures are taken in contact with the countries concerned;
- (7) As to the circumstances of the submarines navigating underwater in the territorial waters, the government's measures, etc., the issuance of a command of maritime security operations is published without delay and an appropriate and timely explanation thereof made to the people;
- (8) In order to ensure the preceding policy lines, a necessary manual to cope with such an eventuality be shared by the government agencies concerned.

2. For the future

Energetic efforts will be made to form a conclusion at an early date as to whether there is any room for improving the way to cope with foreign submarines navigating submerged in the territorial waters.<sup>9</sup>

With this government statement regarding future maritime security operations in a similar situation, it seemed that the incident had been brought to a close.<sup>10</sup>

## II. THE LEGAL ISSUES INVOLVED

The incident involves a number of legal issues. Broadly they are the right of innocent passage through the territorial sea, the status of warships and especially submarines, the impact of passage of nuclear-powered vessels on the marine environment, *etc.*

### A. *The Right of Innocent Passage and Submarines*

It is established under international law that foreign ships generally have the right of innocent passage through the territorial sea. It is not established, however, whether warships have the same right. While the traditional maritime powers tend to admit it, a good number of States, mainly developing States, require authorisation or notification prior to the entry of warships into the territorial sea.

This was one of the formidable questions at the First United Nations Conference on the Law of the Sea of 1958 (UNCLOS-I), as was at the Third United Nations Conference on

<sup>9</sup> Cabinet Secretariat, *Ryousui-nai Senbotsu-Sensuikan e no Taisho ni tsuite* (On Coping with Submarines Navigating within the Territorial Waters), 19 January 2005, mimeo. (Unofficial translation by this author)

<sup>10</sup> See also Aoki, Takashi, "Intrusion into the Territorial Sea by an Unidentified Submarine" (2003-4) 11 *Asian Yearbook of International Law* 194-5.

the Law of the Sea that started in 1973 (UNCLOS-III). Both conferences failed to adopt a specific rule or rules on this issue: There was some discussion during UNCLOS-I but the participating States were unable to find rules acceptable to all of them, while discussion of the issue during UNCLOS-III appears to have been abandoned at an early stage. Thus one would turn to customary international law, but unfortunately this is not altogether clear either.

One would then turn to State practice for some guidance as the last resort, and find that the United States and the Soviet Union, the two super powers with strong maritime interests, agreed in 1989 to adopt a joint statement on the right of innocent passage. The joint statement articulates a “Uniform Interpretation of Rules of International Law Governing Innocent Passage”, and sets out the basic interpretation in these words:

2. All ships, including warships, regardless of cargo, armament or means of propulsion, enjoy the right of innocent passage through the territorial sea in accordance with international law, for which neither prior notification nor authorization is required.<sup>11</sup>

This formula is not, of course, a *uniform* interpretation accepted by States, but seems to reflect a certain degree of State practice, as indeed it does the practice of Japan, for example. When it extended the breadth of its territorial sea from three to twelve miles in 1977, Japan chose to maintain the three-mile rule “for the time being” in respect of five chosen straits<sup>12</sup> which would otherwise have been included in its extended territorial sea: it was so designed as to ensure free passage of foreign ships, including warships, through those five straits without discrimination as to their nationality.

On the other hand, there seems to be a good number of States that require prior authorisation or notification for foreign warships to enter the territorial sea.<sup>13</sup> It may be noted in this context that China required foreign warships to have prior permission to enter its territorial sea in its Provisional Measures of 1946 before its revolutionary government and renewed this requirement in its Law on the Territorial Sea and the Contiguous Zone of

<sup>11</sup> Attachment to the Joint Statement by the United States of America and the Union of Soviet Socialist Republics, done at Jackson Hole, Wyoming, 23 September 1989, para. 2, (1989) 28 *International Legal Materials* 1444 at 1446.

<sup>12</sup> *Ryūkai oyobi Setsuzoku-suiiki ni kansuru Houritsu* (Act on the Territorial Sea and the Contiguous Zone), 2 May 1977, revised 14 June 1996, Additional Rules, para. 2.

<sup>13</sup> Prior authorisation is required by China (see note 15), Iran (*Act on the Marine Areas of the Islamic Republic of Iran in the Persian Gulf and the Oman Sea*, 1993, Art. 9, in Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, United Nations, ed., *The Law of the Sea: National Legislation on the Territorial Sea, the Right of Innocent Passage and the Contiguous Zone* (New York: United Nations, 1995)[Law of the Sea: National Legislation] at 167), Pakistan (*Territorial Waters and Maritime Zones Act*, 1976, para. 3(2), Law of the Sea: National Legislation at 256), Romania (*Act concerning the Legal Regime of the Internal Waters, the Territorial Sea and the Contiguous Zone of Romania*, 7 August 1990, Art. 21(2), Law of the Sea: National Legislation at 290), Sudan (*Territorial Waters and Continental Shelf Act*, 1970, para. 8(3), Law of the Sea: National Legislation at 358), United Arab Emirates (*Federal Law No. 19 for 1993*, regarding definition of the marine areas of the United Arab Emirates, Art. 5(2), Law of the Sea: National Legislation at 399), Yemen (*Act No. 45 of 1977 concerning the Territorial Sea, the Exclusive Economic Zone, the Continental Shelf and Other Marine Areas*, Art. 7(a), Law of the Sea: National Legislation at 420), etc. Prior notification is required by Denmark (*Royal Ordinance of 27 February 1976 governing the admission of foreign warships and military aircraft to Danish territory in time of peace*, Sect. 3(1), Law of the Sea: National Legislation at 104), Estonia (*Decision of the Government of Estonian Republic on Navigation of ships through the Territorial Sea and the Internal Waters of the Estonian Republic*, 1993, para. 2, Law of the Sea: National Legislation at 125), India (*The Territorial Waters, the Continental Shelf, the Exclusive Economic Zone and Other Maritime Zones Act*, 1976, para. 4(2), Law of the Sea: National Legislation at 159), Korea (*Territorial Seas Act*, promulgated by Law No. 3037, 31 December 1977, Art. 5(1), Law of the Sea: National Legislation at 282), Sweden (*Proclamation of 3 June 1966 concerning the admission to Swedish territory of foreign naval vessels and military aircraft*, Art. 4(1), Law of the Sea: National Legislation at 362), etc.

25 February 1992.<sup>14</sup> As a submarine is a kind of warship, it may consequently be questioned how China can require foreign warships to seek its permission to enter its territorial sea when one of its submarines intruded into the territorial waters of a neighbouring country by navigating submerged in violation of the rule of international law that a submarine must navigate on the surface in the territorial sea.

In the territorial sea, a submarine is “required to navigate on the surface and show its flag.”<sup>15</sup> This is not only a rule of conventional law but also of customary law, dating back to the 1920s when navigational laws were universally framed on the theory of surface navigation to ensure that ships conform to the accepted standards of safety to navigation.<sup>16</sup> It has since been incorporated in the legislation of a number of States.<sup>17</sup> This requirement, however, does not clearly entail the denial of the right of innocent passage when it is not met. Some States have interpreted it to mean that the coastal State may attack a submerged submarine because such passage is not innocent and therefore a violation of the coastal State’s territorial sovereignty.<sup>18</sup> In the present case of the Chinese submarine, the Japanese Government did not take any such strong measure but simply pursued it with warnings that it surface and show its flag.

#### B. Use of the Limit of the Air Defence Identification Zone

When the suspected submarine crossed the limits of Japan’s A.D.I.Z. over the East China Sea, a further pursuit of the suspected submarine was abandoned, while it was nearly identified as belonging to the Chinese Navy. It may be wondered why an air zone is used for the purposes of identifying the limit of sphere of jurisdiction on the sea, but the A.D.I.Z. is commonly used for such purposes to determine the limits of jurisdictional area in maritime security operations. When, for example, two unidentified foreign vessels under the guise of fishing boats were found to be in the territorial sea off Noto Peninsula in the Sea of Japan in March, 1999, fifteen Japan Coast Guard boats and twelve aircraft were mobilised to chase them because they defied repeated challenges and warning shots to stop and fled away. The pursuit failed in the end as the two suspected vessels got out of the Japanese A.D.I.Z, when a command was issued to stop the pursuit.<sup>19</sup>

The A.D.I.Z. was first introduced by the United States during the 1950s, in the midst of international tensions of the Korean War, unilaterally to designate a certain area of the air sphere over the high seas adjacent to the territorial sea for the exercise of the coastal State’s jurisdiction over foreign aircraft for purposes of its military security.<sup>20</sup> Canada, France, the Dominican Republic, and Iceland followed suit, though with varying regulatory measures

<sup>14</sup> *The Law of the People’s Republic of China on the Territorial Sea and the Contiguous Zone*, translated by the Legislative Affairs Commission of the Standing Committee of the National People’s Congress of the People’s Republic of China, 25 February 1992, Article 6, para. 2.

<sup>15</sup> Article 20 of the *United Nations Convention on the Law of the Sea of 1982*, 1833 U.N.T.S. 397 [UN Convention on the Law of the Sea]; Article 14, para. 6 of the *Convention on the Territorial Sea and the Contiguous Zone of 1958*, 516 U.N.T.S. 205.

<sup>16</sup> D.P. O’Connell & I.A. Shearer, eds., *The International Law of the Sea*, Vol. I (Oxford: Clarendon Press, 1982) at 294-295.

<sup>17</sup> Netherlands (1931), Italy (1933), Peru (1946), Bulgaria (1951), Denmark (1951), Norway (1951), Romania (1956), Soviet Union (1960), Portugal (1966); *Ibid.* at 295, note 228.

<sup>18</sup> See O’Connell, *supra* note 17 at 296-297 for such interpretations and attacks or threats of attack. Cf. G.G. Fitzmaurice, “Some Results of the Geneva Conference on the Law of the Sea”, (1959) 8 *International and Comparative Law Quarterly* at 98, where the author says: “... a submarine that traverses the territorial sea submerged or not showing her flag may possibly not be in innocent passage, but this will not be *because* she is submerged or not showing her flag.” (Emphasis in original)

<sup>19</sup> For more details of this incident, see Miyoshi, Masahiro, “Cross-Border Security and Law Enforcement: The Japanese Experience” (2004) 124 *The Journal of International Affairs* 3.

<sup>20</sup> Kuribayashi, Tadao, *Gendai Kokusaihou* (Contemporary International Law) (Tokyo: Keio-Gijuku University Press, 1999) at 351.

in respect of geographical scope, kinds or purposes of aircraft for regulation, punishments on the illicit aircraft, *etc.* As the zones were set up unilaterally over certain areas of the high seas, opinion has been divided as to its legality in relation to the long-established freedom of aircraft to fly over the high seas. The fact, however, is that a considerable number of countries have nonetheless maintained those zones.<sup>21</sup>

In the pursuit of the two suspected vessels in 1999, the Japanese Coast Guard boats would have had the right to chase the fleeing vessels to the limit of the territorial sea of their flag State or a third State,<sup>22</sup> but they ceased the chase at the limit of the A.D.I.Z. which does not extend that far “for fear that such a hot pursuit might have exasperated the flag State to aggravate the situation.”<sup>23</sup> The same caution was taken in the present case. Whatever its legal status may be in international law, therefore, the A.D.I.Z. would appear to be applied, at least in Japanese practice, as a practical limit in the pursuit of foreign suspected vessels whether they navigate on the surface or underwater.

### C. Implications for the Marine Environment

As the Chinese submarine was nuclear-powered, the question may be raised as to whether it did not pose a possible hazard of radioactive contamination of the water in the sea area it passed through.

There was the same kind of apprehension in the incident of a Soviet submarine passing through a strait between two small Okinawa islands in August 1980, especially because it had an accidental fire on board and had difficulty in navigating, which compelled it to ask the Japanese Government for permission to pass through the strait, rather than sailing round one of the islands on the high seas. The Japanese Government rejected the request on the ground that the “Three Anti-Nuclear Principles” prevented it from allowing nuclear materials to be brought into the Japanese waters. An investigation by the Japan Coast Guard of the water in the wake of the submarine proved that it did not pollute the water with radioactivity although it was nuclear-powered and had some nuclear weapons on board.<sup>24</sup>

The main concern in the incident under consideration was whether there was a threat to the peace or security of Japan, rather than a hazard of marine pollution by radioactive materials. Innocent passage through the territorial sea is enjoyed by all ships, including warships in principle, “so long as it is not prejudicial to the peace, good order or security of the coastal State”.<sup>25</sup> Indeed the coastal State has the obligation not to “hamper the innocent passage of foreign ships through the territorial sea except in accordance with this Convention”, and in particular not to “impose requirements on foreign ships which have the practical effect of denying or impairing the right of innocent passage” in the application of the UN Convention or any laws and regulations adopted in conformity with it.<sup>26</sup> On the other hand, the coastal State may require “ships carrying nuclear or inherently dangerous or

<sup>21</sup> *Ibid.*

<sup>22</sup> Article 111, para. 3 of UN Convention on the Law of the Sea, *supra* note 16.

<sup>23</sup> The Director-General of the Defence Agency was quoted as stating so at a Cabinet meeting. See “Fushinsen-Taisaku: Taiou-Nouryoku wo Kyouka” (Measures against Suspicious Vessels: Capabilities to Cope Strengthened) *The Asahi Shimbun* evening edition (4 June 1999) at 2.

<sup>24</sup> For more details of the incident and the legal issues involved, see Nakamura, Ko, “Kaku-Sekisai Gunkan no Ryoukai-Tsuukou ni tsuite” (On the Passage of a Nuclear-loaded Warship through the Territorial Sea), (October 1981) 13 *Hogaku-Kyoushitsu* (Class of Law) at 94-98. There was a peculiarly Japanese aspect in this incident due to the Three Anti-Nuclear Principles proclaimed by the Diet and repeatedly confirmed at its sessions. See Miyoshi, Masahiro, “Ocean Transport of Radioactive Fuel and Waste: A Japanese Perspective”, (Paper presented at the Law of the Sea Conference, *Oceans in the Nuclear Age*, at Berkeley, California, February 2006) 4-6. This paper will be included in the proceedings of the conference (forthcoming publication).

<sup>25</sup> Article 19, para.1, UN Convention on the Law of the Sea, *supra* note 16; Article 14, para. 4, Convention on the Territorial Sea and the Contiguous Zone of 1958.

<sup>26</sup> Article 24, para. 1, UN Convention on the Law of the Sea, *supra* note 16.

noxious substances or materials”, as well as tankers and nuclear-powered ships, to confine their innocent passage to “such sea lanes and traffic separation schemes as it may designate or prescribe for the regulation of the passage of ships”.<sup>27</sup> But this requirement is not intended to deny innocent passage to such vessels but to ensure the “safety of navigation” only.<sup>28</sup>

Consequently, should such vessels pass through the territorial sea with avowed protective measures against marine pollution, it would be difficult for the coastal State to enforce its anti-pollution laws and regulations on those vessels. In the present case under consideration, since the suspected submarine passed submerged through the territorial sea of Japan without any indication of its possible environmental impact while defying the repeated warnings that it surface and show its flag, there was in fact nothing that the Japanese Government could have done in terms of environmental protection.<sup>29</sup>

### III. CONCLUDING REMARKS

The recent Chinese atomic-powered submarine’s incursion into the Japanese territorial waters was explained away by the Chinese authorities as a “technical mistake” during its normal course of training, and no formal apology was offered for the incident that strictly was a violation of a rule of international law. The explanation might be understandable as a legal formality, but does not account for the entire context of the incident.

If a policy discussion is to be made in this legal writing, a remarkable recent development in the Chinese external activities is the lack of transparency in the country’s rapidly expanding military budget and the growing naval activities, including extensive marine scientific research activities, in the western Pacific under the self-styled “peaceful rise” diplomacy.<sup>30</sup> Given this recent development, one may be rightly tempted to “read” some hidden or latent intention in the extensive submarine activities of China in the East and South China Seas and well beyond into the Pacific Ocean.<sup>31</sup> The recent incident of the Chinese submarine occurred in this broad context.<sup>32</sup> If China is taking a peace offensive in the name of “peaceful rise”, it

<sup>27</sup> Article 22, paras. 1, 2, UN Convention on the Law of the Sea, *supra* note 16.

<sup>28</sup> Article 22, para. 1, UN Convention on the Law of the Sea, *supra* note 16.

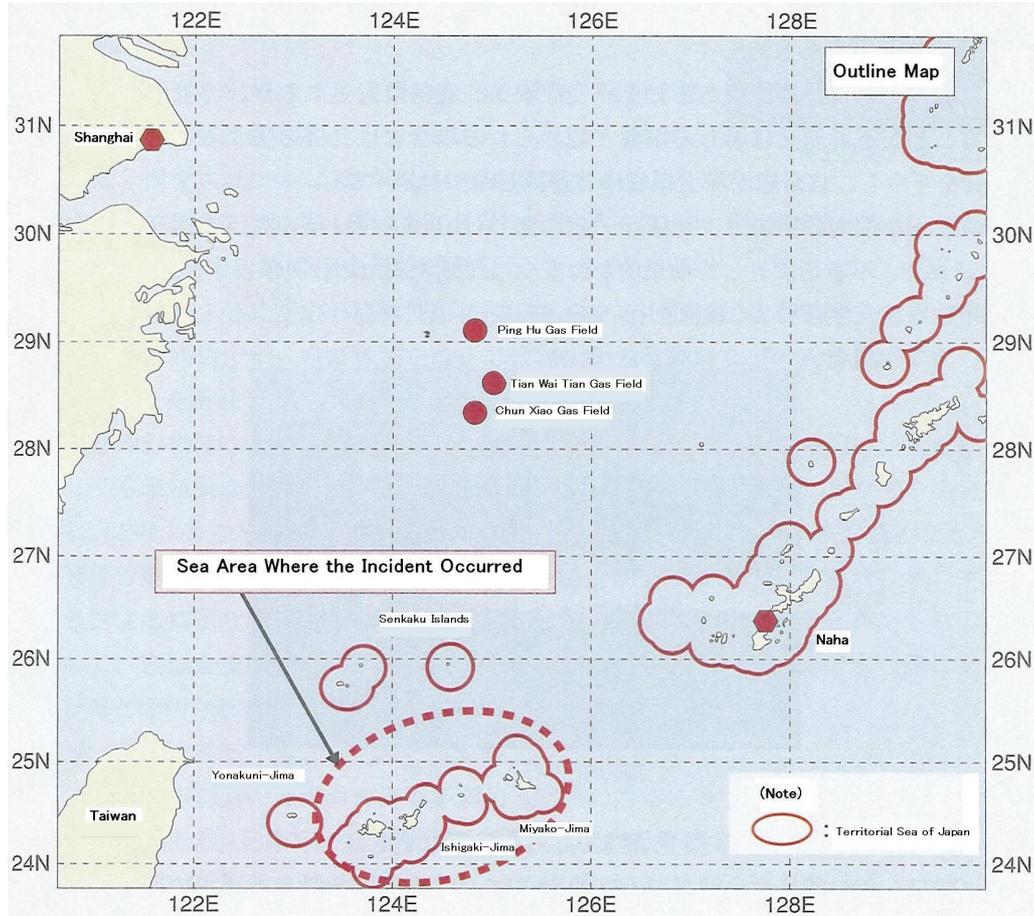
<sup>29</sup> As a matter of theoretical possibility, there might have been an attack on the submarine as under the Norwegian or Swedish legislation, but this would have been a measure of security rather than environmental protection.

<sup>30</sup> According to the Japanese Defence Agency, Chinese aircraft, conducting intelligence-gathering and surveillance, have approached the Japanese airspace frequently during the past year, and Air Self-Defence Force fighter jets scrambled 107 times in response in the fiscal year 2005 that ended 31 March 2006, about eight times that in the previous fiscal year. See “ASDF kept busy by surge in Chinese air encroachments” *The Japan Times* (22 April 2006) at 2.

<sup>31</sup> See, e.g., Hiramatsu, Shigeo, “Chugoku-Taiwan Kankei to Chugoku no Tai-Taiwan Gunji-Senryaku” (The Cross-Strait Relations and China’s Military Strategy against Taiwan), in Aichi University Institute of International Affairs, ed., *Nijuisseiki ni okeru Hokuto-Ajia no Kokusai-Kankei* (The International Relations in Northeast Asia in the 21<sup>st</sup> Century) (Tokyo: Toho-shoten, 2006) 157-179, especially at 169-174. See also, *id.*, *Chugoku no Kaiyou-Senryaku* (China’s Ocean Strategy) (Tokyo: Keiso-shobo, 1992); *id.*, *Ko-Takumin Jidai no Gunji Kaikaku* (Military Reform in the Age of Jiang Zemin) (Tokyo: Keiso-shobo, 2004).

<sup>32</sup> It will be recalled that, when discussing the legal status of the territorial sea and “straits used for international navigation” in respect of the passage of warships through them at a meeting of the Third United Nations Conference on the Law of the Sea in July 1974 (UNCLOS-III), the Chinese delegate strongly opposed the Soviet proposal for equal freedom of navigation for all ships, including warships. He stated: “That, in essence, was a denial of the status of such straits as territorial sea and of the coastal State’s sovereignty and jurisdiction over them. Such *contempt for the sovereignty of the strait State was unacceptable* to his delegation. ... Thus, the idea of ‘all ships’ and ‘free passage’ as advocated by the super-Powers were designed to enable their warships and *nuclear submarines* to cross the oceans of the world in implementation of their expansionist policies and their strategy of world hegemony.” (Emphasis added), paras. 44, 50, 2 *UNCLOS III Off. Rec.*, 13<sup>th</sup> Meeting on 23 July 1974, as quoted in Sohn, Louis B. & John E. Noyes, eds., *Cases and Materials on the Law of the Sea* (Ardsley, New York: Transnational Publishers, 2004) at 469. If this were an official statement of the Chinese Government, as this writer understands it to be, it would appear to be contradicted by the recent incident of its

is hoped that it will show its genuine intention of peace in its relations with its neighbouring countries.



Map of the Sea Area in which the Incident occurred.<sup>33</sup>

submarine passing submerged through the territorial sea of Japan in violation of the rule of international law that a submarine surface and show its flag in the territorial sea.

<sup>33</sup> Defence Agency, *Nippon no Bouei 2005* (Defense of Japan 2005), (Tokyo: Gyousei, 2006) at 167.