

# Military Activities in the EEZ

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8<sup>th</sup> World Ocean Forum 2014

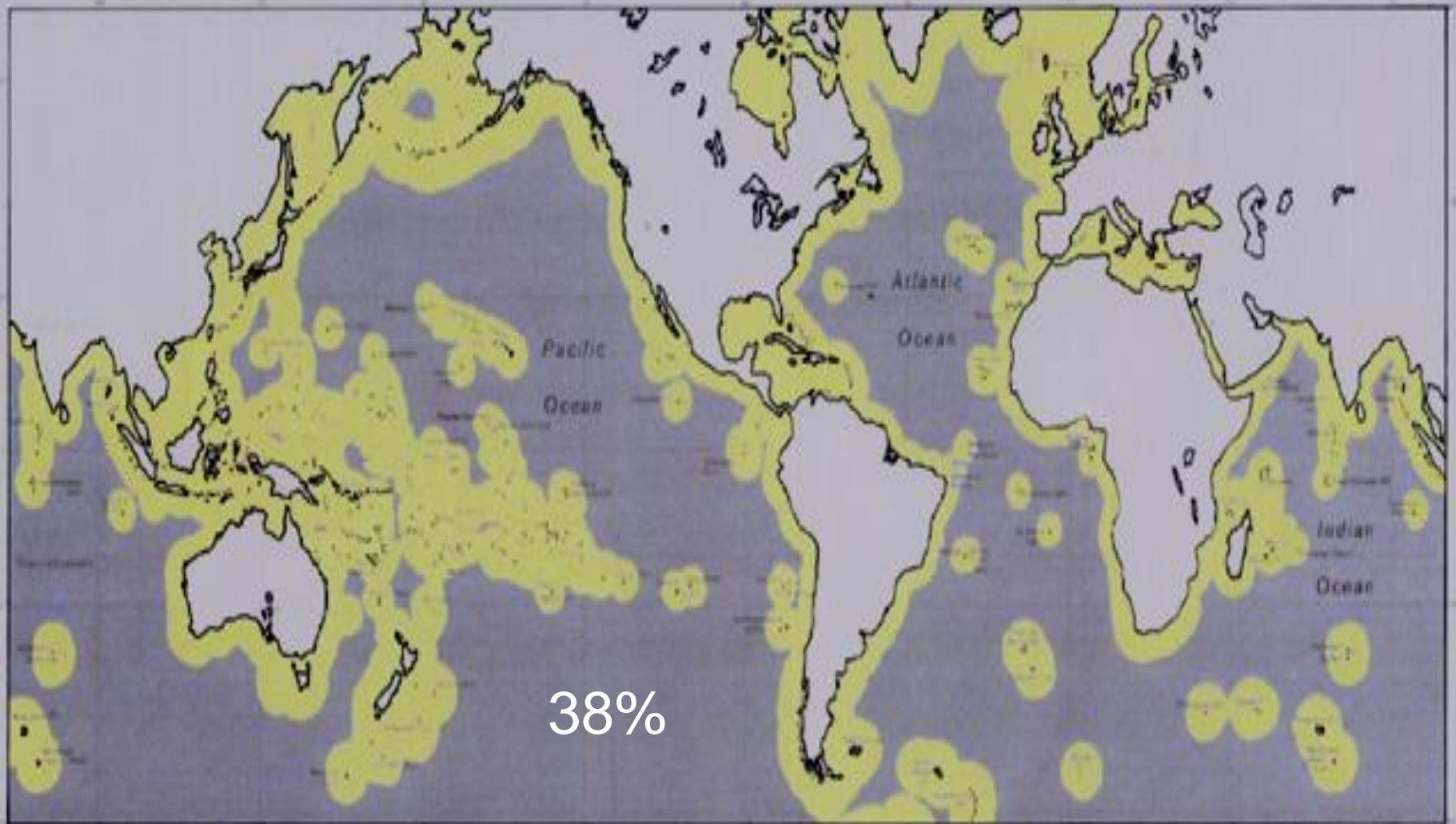
16-19 September 2014

Busan, Republic of Korea

# Overview

- Coastal State Competencies in EEZ
- User State Rights and Freedom in EEZ
- Military Activities in EEZ
- Excessive EEZ Claims in North Asia
  - DPRK
  - PRC

# 200 NM EEZ



# Coastal State Competencies in EEZ

- Art. 56 - coastal state has
  - Exclusive resource-related rights in EEZ
  - Jurisdiction in EEZ over
    - artificial islands, installations and structures
    - marine scientific research (MSR)
    - protection and preservation of the marine environment
  - Due regard obligation
  - **No residual coastal state security interests**
    - Considered and rejected at UNCLOS III

# High Seas Freedoms of Navigation and Overflight

- Art. 58 – all states have high seas freedoms of navigation and overflight referred to in Art. 87 and **other internationally lawful uses** of the sea related to these freedoms
  - Not limited to navigational rights
  - Includes all lawful military activities
- Due regard obligation

# US Position at UNCLOS III

- All states continue to enjoy in the EEZ traditional high seas freedoms of navigation and overflight and the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to those freedoms, which remain qualitatively and quantitatively the same as those freedoms when exercised seaward of the zone. **Military operations, exercises and activities have always been regarded as internationally lawful uses of the sea.** The right to conduct such activities will continue to be enjoyed by all States in the EEZ.

# Article 86

- Art. 86(1) – EEZ is a *sui generis* zone that is not part of the high seas
- Art. 86(2) – nothing in Art. 86 abridges the freedoms enjoyed by all States in EEZ in accordance with Art. 58
  - Art. 58(1) – non-resource-related high seas freedoms referred to in Art. 87 apply in the EEZ (traditionally includes military activities)
  - Art. 58(2) – Art. 88-115 and other pertinent rules of international law apply in EEZ in so far as they are not incompatible with Part V
    - Art. 95/96 – immunity of warships and government non-commercial ships
    - Art. 98 – duty to render assistance
    - Art. 99 – repression of slave trade
    - Art. 100-107 – repression of piracy
    - Art. 108 – suppression of illicit traffic in narcotic drugs
    - Art. 109 – suppression of unauthorized broadcasting
    - Art. 110 – right of approach and visit
    - Art. 111 – right of hot pursuit
    - Art. 112 – right to lay submarine cables and pipelines

# Environmental Jurisdiction

- Art. 236 exempts warships, naval auxiliaries and other government owned or operated non-commercial vessels and aircraft from the environmental provisions of the Convention.
- Best efforts requirements.
  - Reasonable and practicable
  - Cannot impair operations/operational capabilities



# Military Activities at Sea



# Military Activities in the EEZ

- Recognized right:
  - Customary Law and State Practice
  - UNCLOS
  - IMO/IHO World-wide Navigational Warning Service (NAVAREA warning, para. 4.2.1.3.)
  - ICAO Rules and Recommendations (Annex 15 – Aeronautical Information Services, para. 5.1.1.1.)

# UNCLOS

## Restrictions on Military Activities

- UNCLOS limitations
  - Art. 19 & 20 Territorial Sea limitations
  - Art. 39 & 40 International Straits limitations
  - Art. 52 & 54 Archipelagic Waters limitations
- Similar limitations **NOT** included in Part V (EEZ provisions)
- Security interests **NOT** included in Part V

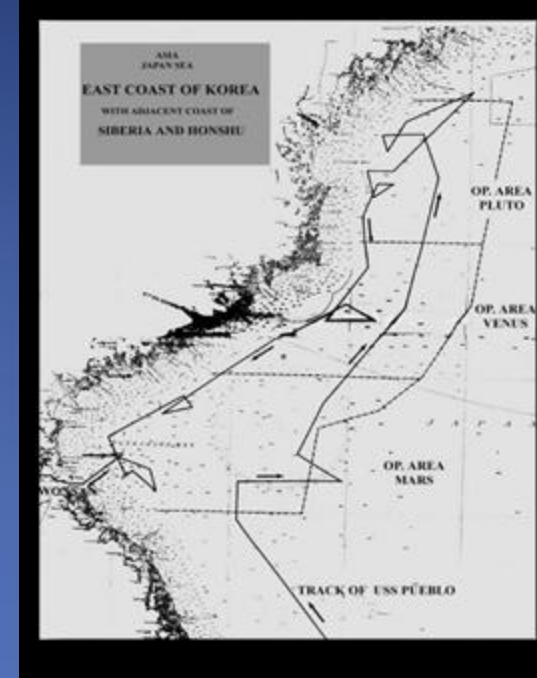
# Military Activities in EEZ

- 18 states regulate military activities in EEZ
  - **Bangladesh**, Brazil, Cape Verde, **China**, India, **Indonesia**, Iran, Kenya, **Malaysia**, Maldives, Mauritius, **Myanmar**, **North Korea**, Pakistan, **Philippines**, Portugal, **Thailand** and Uruguay
    - 7 states claim excessive territorial seas
    - 3 states claim security interests in the contiguous zone
- Coastal State restrictions take many forms:
  - Prohibition on military marine data collection (military surveys) and hydrographic surveys
  - Prior notice and consent
  - Environmental restrictions/resource-related concerns
  - National security restrictions
- Only China, DPRK and Peru have directly interfered

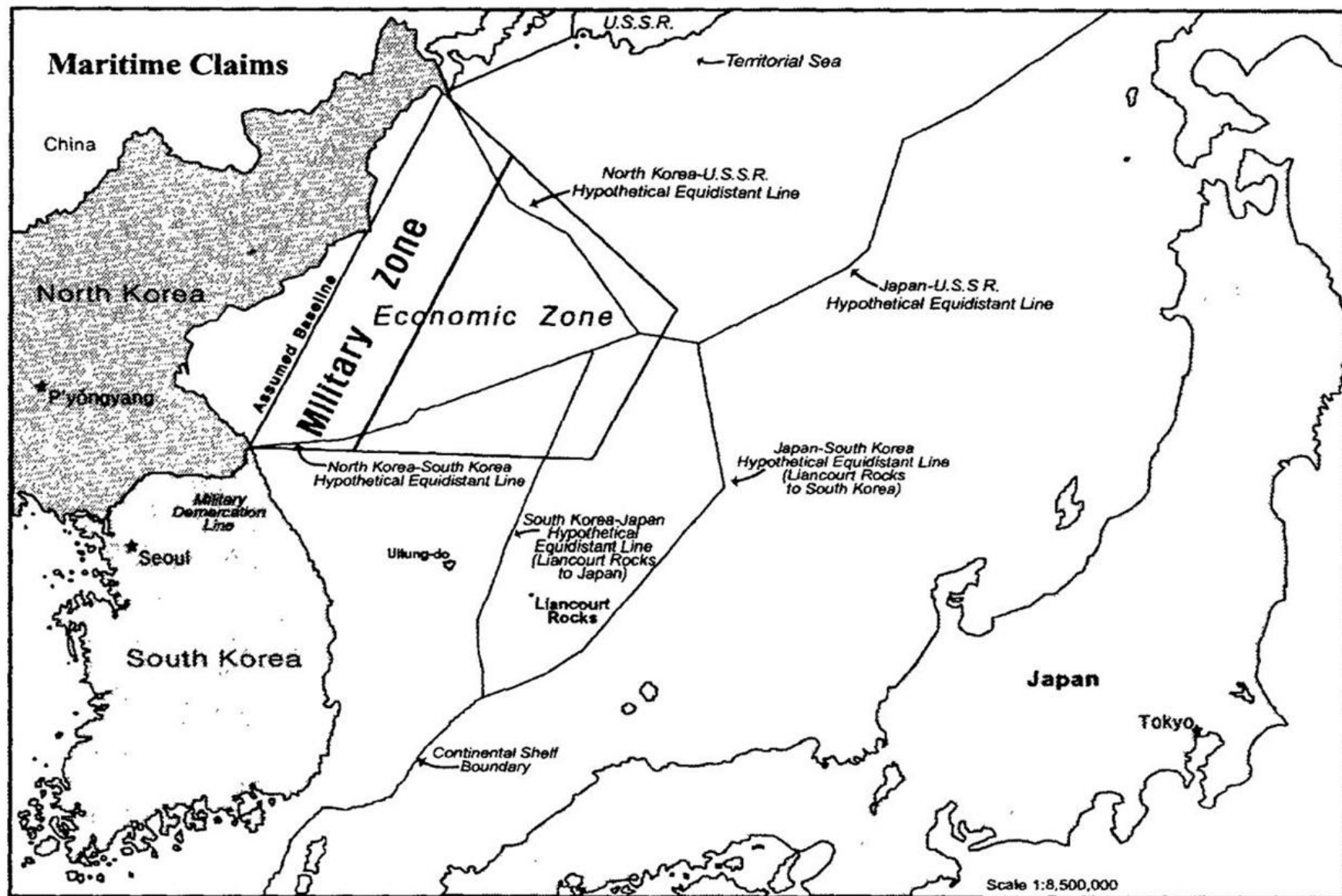


# USS Pueblo (Jan 1968)

- 15.8 nm off Yo Do island
- Overtly collecting intelligence
  - Gauge Soviet/DPRK reaction
- Attacked by 5 DPRK vessels
- Held captive
  - 335 days



# DPRK EEZ and Military Security Zone



# DPRK EEZ Decree of 21 June 77

- For the purpose of protecting, developing and exploiting the country's maritime resources, the EEZ of the DPRK is hereby established.
- The EEZ shall extend 200 nm from the baseline of the territorial sea; in waters that cannot be delimited to 200 nm, it shall be demarcated by a line bisecting the waters.
- The DPRK shall exercise sovereignty over all living and non-living resources within its economic maritime zone.
- No foreign person, vessel or aircraft may engage in fishing, install facilities, **take photographs**, investigate, **survey**, prospect, exploit or engage in any other harmful economic activity in the EEZ of the People's Democratic Republic of Korea without the prior approval of the competent authorities of the DPRK. **[U.S. does not recognize this portion of the claim]**
- All vessels authorized to engage in fishing activities in the EEZ of the DPRK must strictly observe the fishing and maritime order of the DPRK.
- Any activity that violates this Decree or the relevant laws and regulations of the DPRK shall be dealt with in accordance with the laws of the DPRK, as the circumstances warrant.
- This Decree shall enter into force on 1 August 1977.

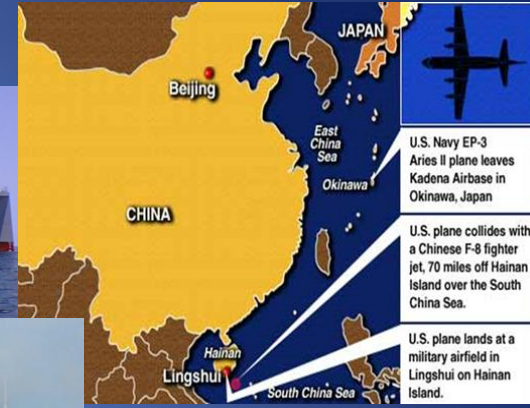
# DPRK Military Security Zone Aug 77

- Military Security Zone: 50nm beyond territorial sea off east coast in Sea of Japan (East Sea), and to limits of EEZ off west coast in Yellow Sea (West Sea).
  - Navigation and overflight
    - Forbidden for foreign warships and aircraft
    - Merchant vessels require prior permission
- This claim is not recognized by the U.S.
  - Protested claim by public statement in 1977 and diplomatic protest in 1990
  - Operational assertion (overflight) conducted in 1988.



# Notable Incidents with PRC

- USNS *Bowditch* (03/01)
- EP-3 Incident (04/01)
- USNS *Impeccable* (03/09)
- USNS *Victorious* (05/09)
- USS George Washington (07-11/10)
- U-2 Intercept (06/11)
- INS *Airavat* (07/11)
- INS *Shivalik* (06/12)
- USNS *Impeccable* (07/13)
- USS Cowpens (12/03)



# Surveillance/Reconnaissance in EEZ (2001)

## US POSITION

- Art. 19, 58 & 86 – right to conduct military activities in the EEZ, including surveillance and reconnaissance flights
- Long-standing state practice (e.g., RF activities during Cold War; recent RF flight activities off Alaska)
- Art. 56 – coastal state due regard obligation
- Not a threat or use of force against the territorial integrity or political independence of PRC (consistent with Art. 2(4) of UN Charter and UNCLOS Art. 19)

## PRC POSITION

- Only freedom of overflight applies in the EEZ
- Military activities in the EEZ require coastal state consent
- Intelligence collection poses threat to PRC security interests
- Art. 301 – states must refrain from any threat or use of force against the territorial integrity or political independence of any state (peaceful purposes article)

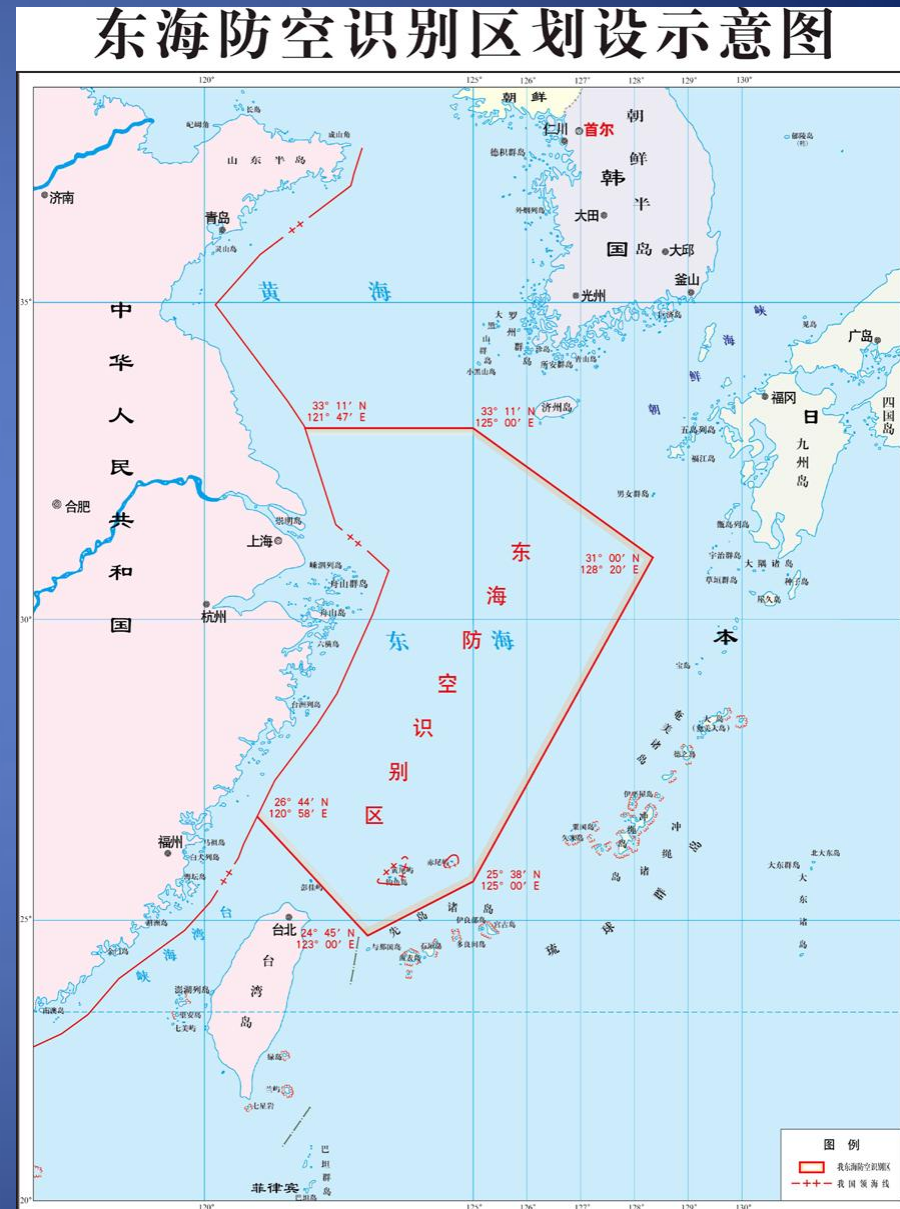
# PRC Intelligence Activities in U.S. EEZ

- 2013 DOD Annual Report to Congress
  - PRC conducted intelligence collection operations in U.S. EEZ off Guam and Hawaii
  - PRC conducted intelligence collection operations in U.S. EEZ during 2012 RIMPAC Exercise
- Operations confirmed by PRC military office on June 1, 2013, at Shangri-La Dialogue
- 2014 RIMPAC Exercise
  - *Dongdiao*-class *Beijixing* (AGI-815) observed collecting intelligence in U.S. EEZ



# PRC ADIZ Declaration- Nov 23, 2013

- Objective: defend national sovereignty and territorial and air security, and maintain orderly aviation
- **All aircraft** entering zone must notify PRC authorities beforehand
- PRC will take **unspecified defensive measures** against those that **do not comply**
  - Will not hinder normal freedom of flights **if they've notified PRC authorities**

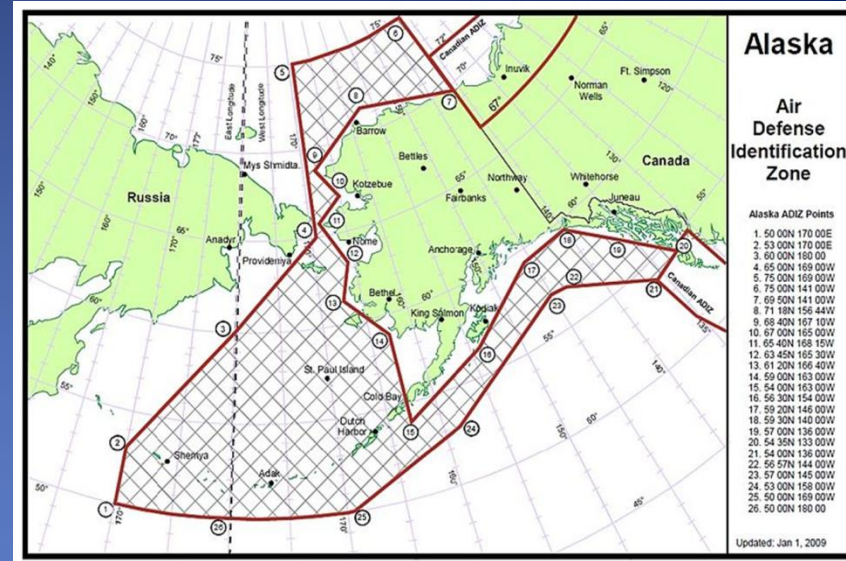
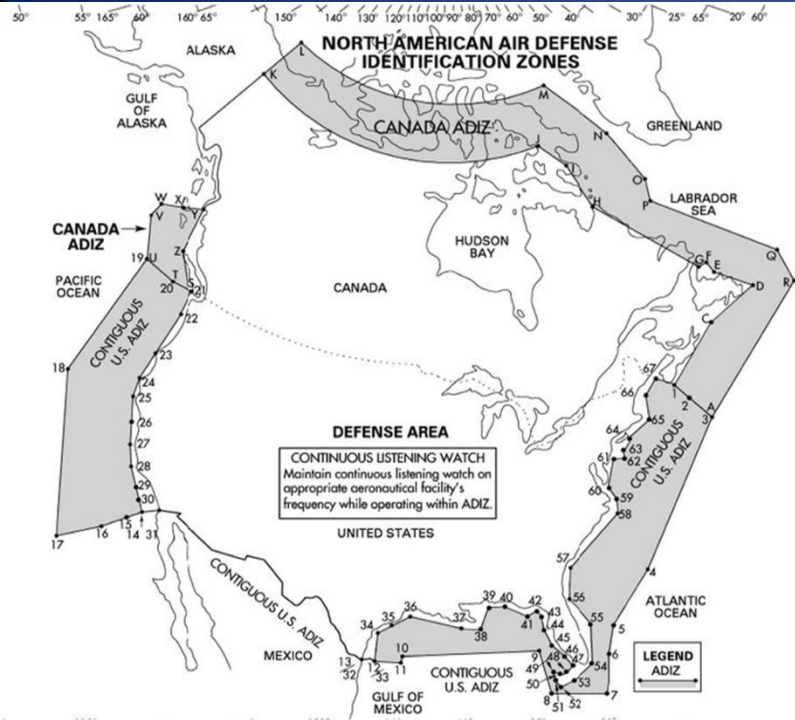




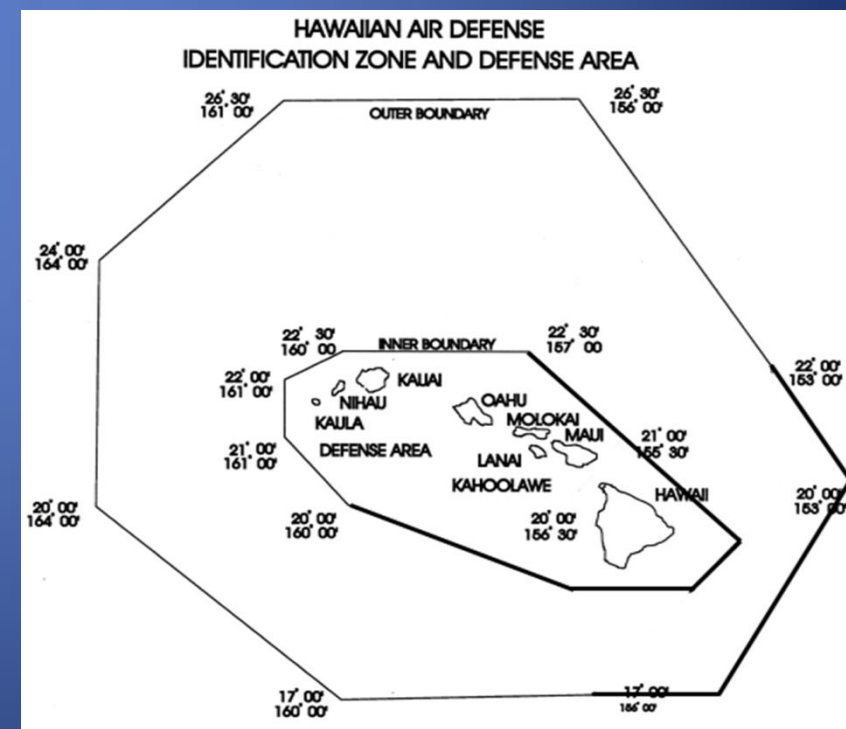
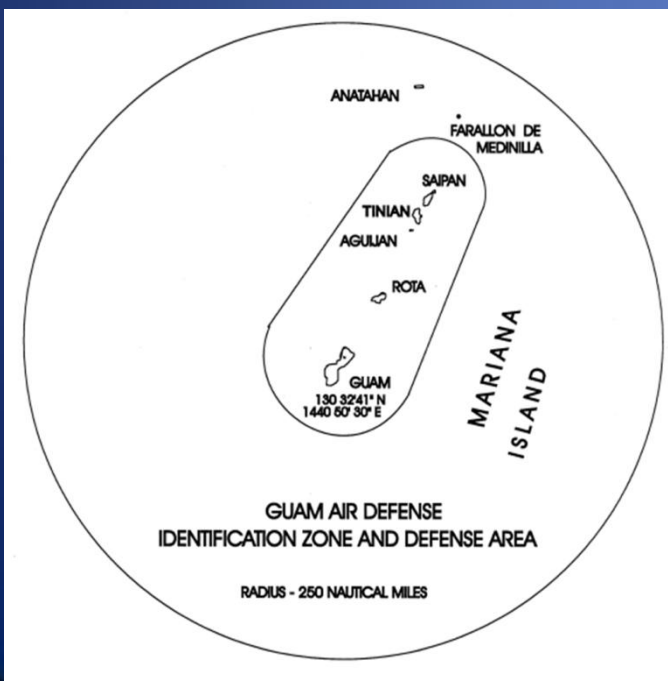
# Air Defense Identification Zones

- International Airspace
  - Unilaterally established
  - Reasonable condition of entry
- Identification Requirement
  - Entering National Airspace: Yes
  - Not Entering National Airspace: No





# US ADIZs



# U.S. ADIZ Procedures

- All aircraft **entering domestic U.S. airspace** from points outside must provide for identification prior to entry.
- Operational requirements
  - File flight plan
  - Operating two-way radio
  - Operable radar beacon transponder
- Intercept procedures clearly set out in FAA Aeronautical Info Manual Ch 5

# PRC ADIZ Problematic

- Overlaps with pre-existing ROK and Japanese ADIZs
  - No consultations
- Applies to all aircraft
  - Inconsistent with
    - Overflight rights in EEZ
    - State practice





# U.S. Diplomatic Response by DOS

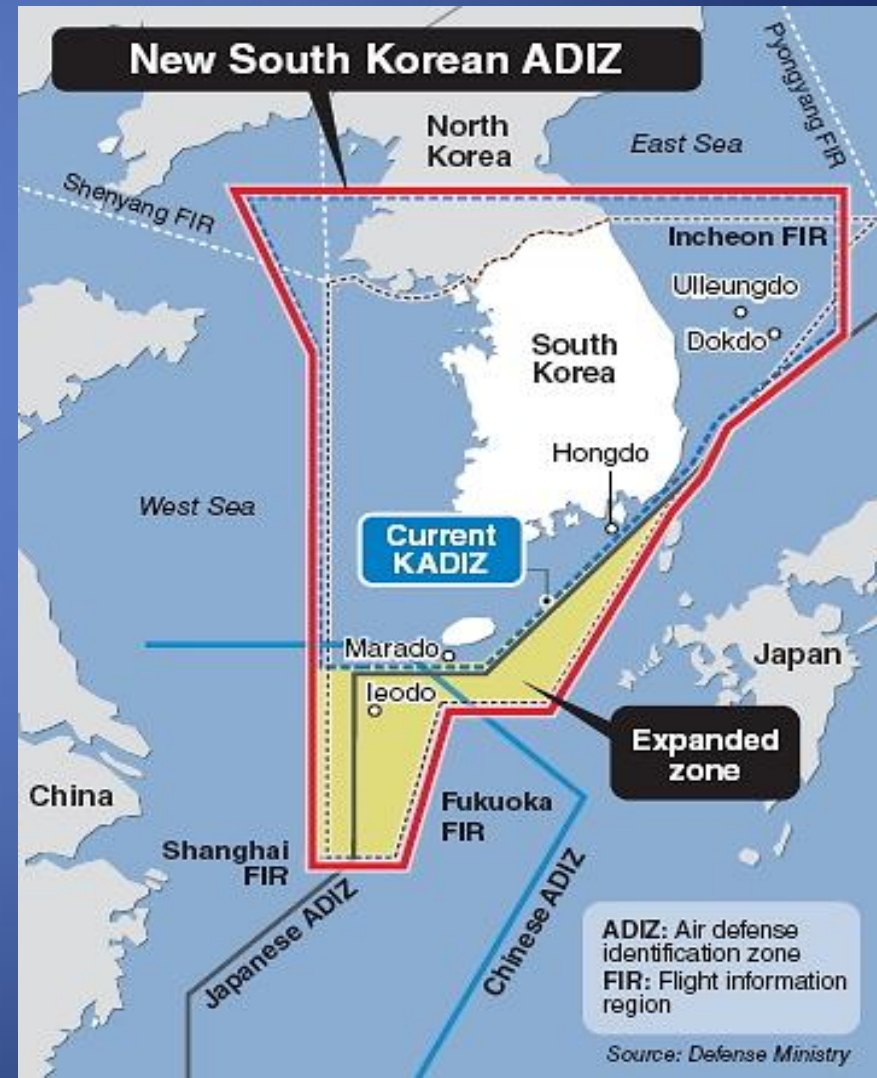
- The United States is deeply concerned about China's announcement that they've established an "East China Sea Air Defense Identification Zone."  
**This unilateral action constitutes an attempt to change the status quo in the East China Sea.** Escalatory action will only **increase tensions in the region and create risks of an incident.**
- **Freedom of overflight** and other internationally lawful uses of sea and airspace are essential to prosperity, stability, and security in the Pacific. **We don't support efforts by any State to apply its ADIZ procedures to foreign aircraft not intending to enter its national airspace. The United States does not apply its ADIZ procedures to foreign aircraft not intending to enter U.S. national airspace.** We urge China not to implement its threat to take action against aircraft that do not identify themselves or obey orders from Beijing.
- We have urged China to exercise caution and restraint, and we are consulting with Japan and other affected parties, throughout the region. **We remain steadfastly committed to our allies and partners,** and hope to see a more collaborative and less confrontational future in the Pacific.

# Japanese Diplomatic Response

- 3. The announcement issued by the Chinese Ministry of National Defense obliges aircraft flying in international airspace to abide by its domestic procedures, and refers to the recourse to “defensive emergency measures” by Chinese Armed Forces in case where such aircraft does not follow the instructed procedures. The announced measures **unduly infringe the freedom of flight in international airspace**, which is the general principle of international law, and will have serious impacts on the order of international aviation. As many flight routes of civil airplanes run across the airspace above the East China Sea, Japan is deeply concerned about such measures from the viewpoint of its impact on the order and safety of civil aviation.
- 4. The announced measures have **no validity whatsoever on Japan**, and Japan demands China to revoke any measures that could infringe upon the freedom of flight in international airspace.
- 5. In addition, the “zone” set by the Chinese Ministry of National Defense seemingly describes the airspace over the **Senkaku islands, an inherent part of the territory of Japan**, as if it were a part of China’s “territorial airspace”. Japan cannot accept at all such description.

# South Korean ADIZ Extensioin

- Prior consultations with Japan, U.S. and PRC
  - No objection from Japan
  - PRC expressed regret



# U.S. DOD Statement

"The United States is deeply concerned by the People's Republic of China announcement today that it is establishing an air defense identification zone in the East China Sea. **We view this development as a destabilizing attempt to alter the status quo in the region.** This unilateral action increases the risk of misunderstanding and miscalculations.

**"This announcement by the People's Republic of China will not in any way change how the United States conducts military operations in the region.**

"The United States is conveying these concerns to China through diplomatic and military channels, and we are in close consultation with our allies and partners in the region, including Japan.

"We remain steadfast in our commitments to our allies and partners. **The United States reaffirms its longstanding policy that Article V of the U.S.-Japan Mutual Defense Treaty applies to the Senkaku Islands."**



# U.S. Operational Assertion

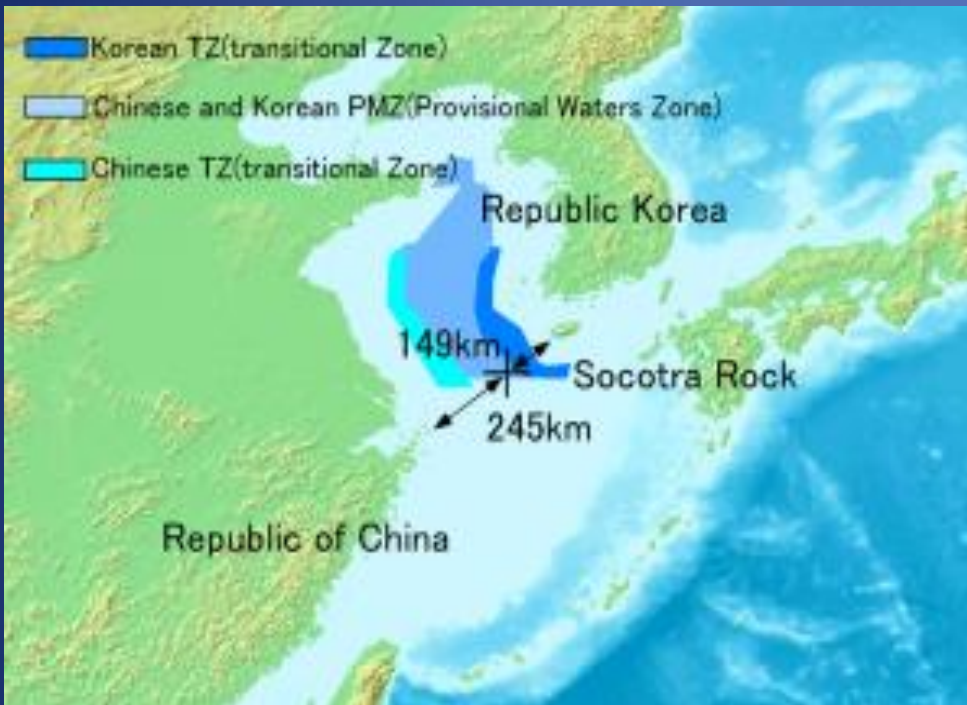
## B-52 Bombers FON Nov 26, 2013



# ROK and Japanese FON Challenges

## Nov 26, 2013

- Ieodo (Socotra Rock)



- Senkakus



Senkaku (JPN)  
Diaoyu (PRC)  
Tiaoyutai (ROC)  
Islands

# Concluding Thoughts

- Restrictions inconsistent with UNCLOS and customary international law
  - Growing concern for U.S. military
- All nations must remain engaged to preserve navigational freedoms and operational flexibility
  - Prevent erosion of UNCLOS balance of interests
    - Coastal states = resource rights
    - Other states = high seas freedoms



QUESTIONS?