

# China's Position on the Law of the Sea: With Special Reference to Offshore Oil Development

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## I. Introduction

Offshore oil development in the China seas<sup>(1)</sup> has to be seen from the perspective of the overall oil situation in the coastal states involved, namely, China, Japan, North and South Korea, Indonesia, Malaysia, the Philippines, Taiwan, and Vietnam. With the exception of China and Indonesia, which produce oil in great quantities and exports a fair amount of it, these countries are heavily or totally dependent on foreign sources to meet their demand for oil. For instance, Japan—one of the world's largest oil consumers—imports nearly 100 percent of its crude oil, its own domestic supply scarcely reaching half a percent of the total demand which exceeds 250 million tons a year.<sup>(2)</sup> In the other coastal states, the situation is similar to or even worse than Japan's. In these oil-poor countries, therefore,

(1) As used in this study, "the China seas" refers to the Yellow Sea, East China Sea, South China Sea, the Gulf of Tonkin, and part of the Sunda Shelf, severally or collectively, as the case may be.

(2) Sekyu Tsushinsha, *Sekyu shiryo* [Oil data] (Tokyo: Sekyu Tsushinsha, 1977), pp. 2-3. For crude oil statistics, Japan uses "kiloliter," not "ton." A ton amounts to 7.3 barrels on the average, and a barrel to 0.159kl. On this basis, a kiloliter of crude oil is 0.8615 ton.

crude oil imports weigh very heavily on their balance of payments. Since China as an "oil power" and a major coastal state in the region is in a decisively important position with respect to the future of offshore oil development in the China seas, it is first necessary to take a brief and general look at China's oil situation.

According to some Chinese records, use of mineral oil in China dates back to centuries before Christ. The "burning stuff" was called by different names up until the eleventh century, when the word *shiyou*, meaning petroleum, was first used by Shen Kuo (1031-95), a Sung dynasty scholar. China also claims proudly that the world's first oil well was drilled in the present Sichuan Province in 1521, preceding the first one drilled in the United States in 1859 (the Drake well of Titusville, Pennsylvania) by 339 years.<sup>(3)</sup> For nearly 4 centuries following the first drilling, however, there was no significant development of oil in China until the early part of the present century, when old wells were improved and new ones were developed. But it was the People's Republic, founded in 1949, that launched an extraordinary drive to build an oil industry in the modern sense of the term. Nevertheless, the production of crude oil was so inadequate in meeting the demand that, up until the mid-1960s, China had to rely on foreign—mainly Soviet—sources for the major part of its oil supply.

In the traditional view of Western oil geologists, China was not richly endowed with oil resources, its sedimentary basins being continental in origin, with the exception of a few that are of marine origin. This view was not taken seriously by certain Chinese oil specialists, among them a Western-trained geologist by the name of Li Siguang (1899-1971). Li was convinced that oil could be present in continental sedimentation as distinct from marine sedimentation, which comprises major oil centers elsewhere. Li successfully proved that China was not poor in oil, and, in recognition of this monumental contribution, he is sometimes called the father of oil ex-

(3) Zhang Ming-nan, Cehn Ru-xi, Xu Wen-jun, and Yang Zhen-yu, *Zhongguo shiyou qingliufendi zucheng* [The fractional distillation of Chinese petroleum] Beijing: Kexue Chubanshe, 1962), p. 6.

ploration in China.

Currently, China produces over 100 million tons of crude oil a year from its onshore oilfields alone and has emerged as the largest oil producer throughout East Asia, with Indonesia running close behind. China has also begun to export its crude oil, first to North Korea in 1964 and to North Vietnam in 1965; well over 10 percent of its annual production is now exported to a number of countries in East Asia, with Japan as the major customer. Since the last decade, outside observers have been engaged in an endless numbers game to determine the volume of oil deposits in the Chinese continent and to assess China's potential to become a major exporter as well as a major producer in the future. One analysis, done by the U.S. Central Intelligence Agency (CIA) and believed to be possibly conservative, may be noted with interest:

Analysis of the limited body of information available on onshore liquid reserves has yielded broad agreement on a range centering on about 40 BB [billion barrels] of ultimately recoverable reserves, with the possibility that there may be as much as 100 BB. In comparison, as of mid-1976, remaining proved plus probable reserves were estimated to be 390 BB in the Middle East, 64 BB in Africa, 47 BB in North America, and 42 BB in Latin America.

China's onland reserves, though considerable, cannot support the predictions of China becoming a world oil power. Moreover, a large and growing domestic demand for oil, the quality of many of the reserves, technological problems in extracting oil, and geopolitical considerations argue against continuous increases in exports.

There are kerogen or oil shale deposits in China said to be comparable to the vast oil shale deposits in the United States. Soviet geologists in China through 1960 reported 153.3 BB of shale reserves.<sup>(4)</sup>

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(4) U.S. Central Intelligence Agency, *China: Oil Production Prospects*, ER 77-10030U (Washington, D.C.: Central Intelligence Agency, 1977), p. 7.

As in the case of the inland areas, the offshore waters of the China seas were also thought by marine geologists of the West to be generally unlikely to contain oil and remained unexplored by them up until the late 1960s. In the late 1950s, however, China's own marine geologists published reports of geophysical surveys they had conducted in the Yellow and East China Seas as well as in the Po Hai.<sup>(5)</sup> China had thus already been putting some effort into the search for offshore oil before other coastal states of the region began to turn their attention to the sea for oil. In fact, by the mid-1960s, China's interest in its seas as another (potential) source of oil was so serious that offshore oil development, in its third 5-year economic plan (1966-70), represented one of the major points of emphasis.<sup>(6)</sup> It was also during this period that informal cooperation began between Chinese and Japanese specialists.<sup>(7)</sup>

In the other coastal states that border on the China seas, however, serious efforts toward searching for oil from the sea were not made until October 1968, when, inspired by the preliminary findings of eminent marine geologists such as Kenneth Emery of the United States and Hiroshi Niino of Japan, a joint geophysical survey was conducted in the Yellow and East China Seas by a team of scientists from Japan, South Korea, Taiwan, and the United States. The survey was sponsored by the Committee for the Coordination of Joint Prospecting for Mineral Resources in Asian Offshore Areas (CCOP) of the United Nations Economic Commission for Asia and the Far East (ECAFE).<sup>(8)</sup> The report of the survey published in 1969 said:

(5) Fan Shih-ching and Chin Yun-shan, "Zhongguo Donghai he Huanghai nanbu dizhidi chubu yanjiu" [Preliminary study of submarine geology of China's East Sea and the southern Yellow Sea], *Haiyang yu huzhao* [Oceanologia et limnologia] 2 (April 1959): 82-85; English trans., *Translations on Communist China*, no. 97, Joint Publications Research Service (JPRS) 50252 (April 7, 1970), pp. 12-36. For further details, see, e.g., S. Harrison, *China, Oil, and Asia: Conflict Ahead?* (New York: Columbia University Press, 1977), p. 58.

(6) Jingjibu [Ministry of economic affairs], *Dalu shiyou gongye gailan* [Summary of the petroleum industry of the mainland] (Taipei: Ministry of Economic Affairs, June 1967), pp. 6-7.

(7) *Ibid.*, p. 7.

(8) K.O. Emery *et al.*, "Geological Structure and Some Water Characteristics of

"The shallow sea floor between Japan and Taiwan appears to have great promise as a future oil province of the world, but detailed seismic studies are now required."<sup>(9)</sup> With respect to China's offshore oil potential, however, the U.S. CIA analysis cited above says: "Offshore reserves, although possibly very large, are as yet the subject of conjecture only. Even if very large, they may prove difficult and expensive to locate and extract. Neither the Chinese nor foreigners have yet acquired enough data on offshore sedimentary deposits make valid estimates. Predictions about China's future as an oil power based on exploitation of offshore deposits are premature."<sup>(10)</sup>

Against the foregoing background, the present study attempts to analyze the problems by which the efforts of the coastal states to develop oil from some (supposedly) promising areas of the China seas have been stalled continually since 1969. Particular reference is made to the law-of-the-sea and territorial issues which, apparently, some of the coastal states involved are not yet prepared or willing to settle in the immediate future.

## II. The Law-of-the-sea Issues

### 1. In the Yellow and East China Seas

In terms of consequent results, the ECAFE report above of 1969 can be said to have been the origin of the "seabed oil war" among the coastal states of Northeast Asia. Partly due to exaggeration in the report,<sup>(11)</sup> the oil-poor coastal states instantly overtaken with excitement and premature expectations which are still unrealized. In the countries with debilitating demands for oil, this initial reaction was perhaps natural in light of statements made by the report in its conclusion: "A high probability exists that

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the East China Sea and the Yellow Sea," *Technical Bulletin* (ECAFE) 2 (1969): 3-43.

(9) *Ibid.*, p. 4.

(10) U.S. CIA, p. 8.

(11) "The project leader was removed following a barrage of criticism. It is true that the ship's equipment was unable to penetrate all of the formations most likely to contain oil..." (*ibid.*, p. 6).



the continental shelf between Taiwan and Japan may be one of the most prolific oil reservoirs in the world." "A second favorable area for oil and gas is beneath the Yellow Sea where three broad basins are present."<sup>(12)</sup> In fairness to the report, however, it has to be pointed out that the conclusion also recommended "Further seismic studies in order to adequately portray the shapes and extents of these small structures."<sup>(13)</sup>

But the actual reaction of Japan, South Korea, and Taiwan was to attempt to grab as much of the seabed area as possible by extending their respective jurisdictions over the area that each of them regarded as its own continental shelf. In so doing, they interpreted the law of the sea to the advantage of their individual national positions. In specific terms, at issue was the applicability of the relevant provisions of the 1958 Geneva Convention on the Continental Shelf, particularly the median-line principle as given in article 6 (1), which was basically undermined by a new criterion invented by the International Court of Justice (ICJ) in its judgment of the North Sea Continental Shelf Cases of 1969, namely, the natural prolongation of land territory principle.<sup>(14)</sup> As a result, Japan insisted on the median-line principle, Taiwan on the natural prolongation of land territory principle, and South Korea on a combination of both, that is, the median-line principle toward China in the Yellow Sea and the natural prolongation of land territory principle toward Japan in the East China Sea.

When, based on delimitation principle(s) of its own choice, each of them staked out claims over the continental shelf, most of the Yellow and East China Seas was divided into 17 seabed mining zones of Japan, Taiwan, and South Korea.<sup>(15)</sup> Their claims heavily overlapped, especially in the areas which the ECAFE report held to be promising for oil, leaving only four

(12) Emery *et al.*, p. 41.

(13) *Ibid.*

(14) International Court of Justice, *The North Sea Continental Shelf Cases* (1969), p. 53.

(15) Choon-ho Park, "Oil under Troubled Waters: The Northeast Asia Sea-Bed Controversy," *Harvard International Law Journal* 14 (1973): 226 and map at p. 219.

of the 17 zones uncontested. Furthermore, each claimant hastened to involve Western oil companies in order to enhance its claims; concession arrangements with them for most of the unilaterally claimed zones had been completed by September 1970.<sup>(16)</sup>

Each of the three coastal states was thus concentrating on the consolidation of its unilateral claims but ignoring the question of mutual boundaries. It was in this state of deadlock that the idea of joint development was conceived as a possible breakthrough in a situation that could otherwise remain an endless legal controversy. Japan, South Korea, and Taiwan were to proceed with oil development, leaving the surface boundary problems to future negotiations. In mid-November, 1970, they agreed to form a three-party oil development consortium. At this time, however, Peking hastened to intervene, lodging a strong protest in early December of the same year. Despite its apparent practicality, the first attempt at joint development had to end abortively even before its merits could be tested.<sup>(17)</sup>

In subsequent years. Japan and South Korea made overtures to China to seek negotiated agreement on their seabed boundaries, but they were invariably greeted with silence. Impatient at China's patience they made a second attempt at joint development, this time without Taiwan, by signing an agreement in January 1974.<sup>(18)</sup> As expected, China resumed its protest against the alleged infringement of its sovereignty. South Korea ratified the pact in December 1974, but it was not until June 1978 that Japan did the same, following repeated procedural manipulations in its parliament.<sup>(19)</sup>

(16) *Ibid.*, pp. 223-24.

(17) *Ibid.*, pp. 227-29.

(18) Choon-ho Park, "The Sino-Japanese-Korean Sea Resources Controversy and the Hypothesis of a 200-Mile Economic Zone," *Harvard International Law Journal* 16 (1975): 42-45. For the English text of the agreement and a map, see *Continental Shelf Boundary and Joint Development: Japan-Republic of Korea*, Limits in the Seas, no. 75 (Washington, D.C.: Department of State, Office of the Geographer, 1977).

(19) For details, see, e.g., Choon-ho Park, "China and Maritime Jurisdiction: Some Boundary Issues," *German Yearbook of International Law* (Kiel: Institut für Internationales Recht, 1980), vol. 22, chap. 2, and sources cited therein.

The reluctance of the Japanese parliament to approve an agreement that the government had willingly signed is related to the emergence of a new regime in the law of the sea, namely, the exclusive 200-mile economic zone (EEZ).

The 200-mile EEZ was first proposed by Kenya to the Geneva session of the United Nations Seabed Committee in August 1972.<sup>(20)</sup> This new form of maritime jurisdiction has since been adopted for fishing and other economic purposes, by some 90 states to date (as of May 1981), including Japan, the Soviet Union, the United States, and other major maritime powers of the world.<sup>(21)</sup> To the extent that the 200-mile EEZ makes depth and bottom topography of the sea irrelevant in delimitation of a coastal state's economic jurisdiction, the natural prolongation of land territory principle is basically undermined in cases where opposite coastal states are less than 400 miles apart. However, the applicability of the median-line principle is, as a consequence, enhanced, apparently, to the advantage of Japan. This assumption is of great importance to Japan, as the joint development area is situated almost entirely on its side of the median line toward China and South Korea. In Japan, therefore, opponents to the pact may have counted on the potentiality that, on the strength of the 200-mile EEZ regime, the seabed area in question would eventually fall under Japanese jurisdiction, hence destroying the need for parliamentary approval to ratify it.

As yet the 200-mile EEZ has had no dramatic impact on the Yellow and East China Seas because only North Korea and Taiwan claim it since August 1977 and September 1979 respectively.<sup>(22)</sup> To settle fishing-rights

(20) United Nations, General Assembly, Official Records, *Report of the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond National Jurisdiction*, suppl. 21 (4/9021), 6 vols. (1973), 3:72 (hereafter cited as *Report*).

(21) Robert W. Smith, ed., *National Claims to Maritime Jurisdiction*, Limits in the Seas, No. 36, 4th ed., (Washington, D.C.: Department of State, Office of the Geographer, 1981), p. 12.

(22) *Pyongyang Times* (July 9, 1977), p. 3; or *Foreign Broadcast Information Service* (FBIS) (Asia and Pacific) 4 (July 1, 1977): D2. For a commentary,



problems with the Soviet Union, Japan adopted a provisional 200-mile fishing zone in May 1977<sup>(23)</sup>; on the west, therefore, it does not apply beyond Japanese territorial waters toward China and Korea. Neither China nor South Korea has declared a 200-mile EEZ, obviously because of the difficulty of delimiting maritime boundaries with adjacent and opposite neighbors. In the northern part of the Yellow Sea, no boundary delimitation or dispute is reported to have taken place, to date, between China and North Korea.<sup>(24)</sup>

In the Yellow and East China Seas, the major law-of-the-sea dispute over offshore oil development began with Japan, South Korea, and Taiwan as the principal disputants. Peking has since emerged, in place of Taiwan, to argue against the other two parties, just as North Korea has occasionally protested against Japan and South Korea for their alleged attempts to carve up the sea resources to which it insists it is also entitled. In relation to Japan, however, the interests of Peking and Taiwan would coincide, as would those of North and South Korea. Because of this, the adjacent Yellow and East China Seas would, in the first instance, have to be delimited into three sectors (by a trijunction in the East China Sea), leaving the Chinese and the Korean sectors to be shared, where appropriate between the two sides of each divided coastal state.<sup>(25)</sup> But it should be pointed out that final delimitation of boundaries among the parties involved is not possible unless two basic problems are overcome by them. One is

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see *People's Korea* (July 13, 1977), p. 2. For the English text of the Taiwanese declaration, see Coordination Council for North American Affairs, Washington, D.C., Press Release, September 7, 1979.

(23) United Nations, Doc. ST/LEG/SER. B/19, 1980, pp. 215-228. For details with a map, see Seiichi Yoshida, "200-kairijitai: wagakunino gyogyo suiekinimo" [The 200-mile era: in our seas as well] *Tokino horei* [Current laws], no. 974 (1977), pp. 11-19.

(24) Park, "China and Maritime Jurisdiction," and "The 50-Mile Military Boundary Zone of North Korea," *American Journal of International Law* 72(1978): 866-75.

(25) For a hypothetical illustration, see U.S. Department of State, Office of the Geographer, *Potential Maritime Zones of Northern East Asia*, 503591 12-77 (Washington, D.C.: Department of State, 1977).

the ambiguity in the law of the sea regarding boundary delimitation between adjacent and opposite coastal states (see Current State Practices below), and the other is the territorial dispute over the ownership of offshore islands (see Territorial Issues below).

## 2. In the South China Sea

The main basin of the South China Sea is contiguous to the Gulf of Tonkin in the northeast and, through the Sunda Shelf, to the Gulf of Thailand in the west, and is also surrounded by Brunei (due to become independent from Britain in 1983), China, Indonesia, Malaysia, the Philippines, Taiwan, and Vietnam.<sup>(26)</sup> On account of such geographical circumstances, the law-of-the-sea and territorial issues are even more complicated here than in the Yellow and East China Seas. With respect to seabed oil development, there are two current law-of-the-sea issues: one is between China and Vietnam in the Gulf of Tonkin and the other between Indonesia and Vietnam in the Sunda Shelf.

1. In the Gulf of Tonkin, China and Vietnam are reported to have been anxious to develop oil in recent years, although to date they have no agreement on their maritime boundary.<sup>(27)</sup> At present the political relations between the two socialist neighbors have so deteriorated that the delimitation of their boundary even in this small and semi-enclosed gulf would not be an easy undertaking. Their political relations aside, however, the dispute represents one of a series of highly complicated and interrelated offshore problems for them, problems which neither coastal state would find practical it to settle as self-contained issues. With respect to the general legal principle to be applied in delimitation of the continental shelf, both China and

(26) For the geophysical circumstances of the South China Sea, see M.L. Parke, Jr., K.O. Emery, R. Szymankiewicz, and L.M. Reynolds, "Structural Framework of Continental Margin in South China Sea, *American Association of Petroleum Geologists* 55 (May 1971): 723-51.

(27) Reportedly China found oil in the Gulf of Tonkin (the *Beibu* Gulf in Chinese and the *Vinh Bac Phan* in Vietnamese); see *Dagongbao* (October 12, 1979), as quoted in *Sankei shinbun* (October 13, 1979), p.5.

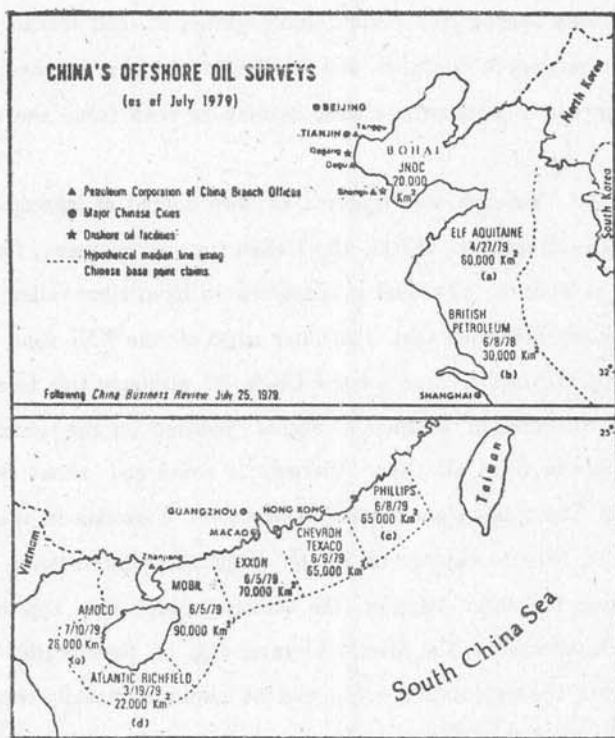
Vietnam officially support the natural prolongation of land territory principle.<sup>(28)</sup> Their respective overtures and unofficial practices, however, do not necessarily appear to substantiate this, as may be seen from the instances below.

In April 1973, Vietnam was reported to have signed an agreement with Ente Nazionale Idrocarburi (ENI), the Italian state oil company, for drilling in the Gulf of Tonkin. The deal is suspected to have since fallen through. It may be noted, however, that the outer edge of the ENI zone roughly coincided with the median line toward China,<sup>(29)</sup> although this fact alone is not sufficient to represent Vietnam's official position on the extent of its offshore claims in the Gulf. Now Vietnam is concerned about the three contracts that China has signed with Western oil consortia in the spring and summer of 1979 to explore oil in the disputed waters around Hainan Island, because the outer edge of the Chinese zones also approximately coincides with the median line toward Vietnam (fig. 1). Specifically, Vietnam would fear that the exploration arrangements might eventually result in *de facto* recognition of the Chinese claims.

Owing to a series of offshore boundary problems with its adjacent and opposite neighbors, China as well as Vietnam would feel it inadvisable to adhere rigidly to, or to depart conspicuously from, any particular principle of delimitation. For instance, China has persistently pressed for the natural prolongation of land territory principle with Japan and South Korea (and presumably North Korea as well) with respect to the continental shelf dispute in the Yellow and East China Seas; for geomorphological reasons, most of the disputed waters would then fall under Chinese jurisdiction. In

(28) Working paper presented to the 1972 Geneva session of the UN Seabed Committee by China in *Report*, p. 74; and Vietnamese declaration of 200-mile economic zone, *FBIS* (Asia and Pacific) (May 24, 1977), p. K6.

(29) *Petroleum News: Southeast Asia* 7 (January 1977): 46. A Chinese proposal on the delimitation of boundaries in the Gulf of Tonkin reads: "[Paragraph] 4. [T]he two sides shall demarcate their respective economic zones and continental shelves in the Beibu Gulf and other sea areas in a fair and reasonable way in accordance with the relevant principles of present-day international law of the sea" (*Beijing Review* [May 4, 1974], p. 17).



**Fig. 1.** —This map shows approximate location and area size where foreign oil companies have signed contracts with the Chinese to conduct seismic surveys in offshore areas. Exact locations have not been announced, at the request of the Chinese. The date listed is that of the contract signing. Companies are committed to completing the surveys and submitting the analyzed results within 12 months of starting. The Chinese have said they will try to conduct the first round of bidding for actual exploration contracts within 12 months of receiving the data. To quote one authority, the contracts will be "Chinese in concept, service in name, risk in nature." Companies now undertaking seismic surveys were told they will be given the final exploration contract if their bid matches the best one submitted. Japan National Oil Corp.(JNOC) reached an agreement in principle with the Chinese last summer on exploration and development of oil in south Bohai Gulf, but has not yet signed a firm contract. Developments as of July 25, 1979, include: (1) Unified Pearl River Mouth Area Basin: On July 4 the Chinese notified 55 U.S. and foreign companies, who had already shown some interest, that they had 60 days to inform the Chinese of their serious intent in becoming early participants in this area composed of the Mobil, Exxon, Chevron, and Phillips blocks. After the Chinese receive this response, they will give the companies another 30 days to accept formally. Members of the first round of early participants are expected to sign with the original four operators on August 7 in Dallas. (2) Amoco block: In mid-July the Chinese sent telexes to at least 20 U.S. and foreign companies with an offer to contact Amoco if interested in early participation in its block. (3) Yellow Sea

blocks: A set of letters was also extended in June to a number of companies inviting them to become early participants in these two blocks. *a*=Total, British Petroleum (BP), Petro Canada, JNOC, and Shell had been asked to participate but had not decided as of July 1, 1979; *b*=Eff Aquitaine, Exxon, Phillips, Shell, and Union Oil had been asked to participate but had not decided as of July 1, 1979; *c*=Original participants are AGIP, Eff Aquitaine, Allied Chemical's Union Texas, and Total; *d*=Santa Fe International is an original participant; *e*=Original participants are Cities Service, Pennzoil, Union Oil of California, AGIP, and BP (Legend adapted from *China Business Review*, July/August 1979, p. 62. © National Council for US China Trade, 1979). For further development, see the sources cited in Postscript at the end of the Article.

contrast, the same principle—if rigidly applied to the Gulf of Tonkin—would be more advantageous to Vietnam than to China because of the seabed topography.

2. In the Sunda Shelf, the continental shelf is adjacent to the territories of Brunei, Indonesia, Malaysia and Vietnam, but the delimitation would thus involve all these coastal states.<sup>(30)</sup> Brunei's sector would probably be delimited with Malaysia in the first instance. The Chinese position here would depend on the strength of its claims to the Spratly Islands. This would leave the major part of the Sunda Shelf to be shared among Indonesia, Malaysia, and Vietnam, by a pair of trijunctions (because Malaysia would have two separate—the Peninsular and the Eastern—sectors).

Following the downfall of Saigon to Hanoi in April 1975, the unified Vietnam has been anxious to resume oil drilling in the waters off the Mekong Delta. Oil had been found here previously by Western oil companies operating under contracts with the defunct South Vietnamese regime.<sup>(31)</sup> To consolidate its claims in this promising area, Vietnam sought to settle its seabed boundary first with Indonesia, but the six rounds of talks, held alternately in Hanoi and Jakarta since June 1978, were reported

(30) For the geophysical circumstances of the Sunda Shelf, see Zvi Ben-Avraham and K.O. Emery, "Structural Framework of Sunda Shelf," *American Association of Petroleum Geographers Bulletin* 57 (1973):2323-66.

(31) *Petroleum Economist* (June 1975), p. 206; *Oil and Gas Journal*, (July 16, 1973), p. 80. For further details, see Katsutoshi Murakami, "Tonan ajiani okeru sekyu keizaino doko" [Trends of oil development in Southeast Asia] (1), "Refaransu [Reference], no. 297 (1975), pp. 38-39.



to have ended without agreement.<sup>(32)</sup> The two parties apparently disagreed on the principle to be applied, Indonesia insisting on the median-line principle as against the natural prolongation of land territory principle preferred by Vietnam for the same reasons of sea-bed topography as in the Gulf of Tonkin. In an area where the former South Vietnamese claims were contested by both Indonesia and Malaysia, however, final boundary agreement would not have been possible without the participation of Malaysia, even if Indonesia and Vietnam had reached agreement on their segment of the boundary. Thus, the final delimitation of a multipronged boundary in the greater South China Sea region will not yet be possible until Brunei and China have declared their 200-mile EEZs.<sup>(33)</sup>

### 3. Current State Practices

When its resumed tenth session adjourned in Geneva in August 1981, the Third United Nations Law of the Sea Conference (UNCLOS III) had been in session for a total of 85 weeks since 1973. Nevertheless, the delimitation of the continental shelf and the exclusive economic zone between opposite and adjacent states had remained one of the unresolved issues, when the tenth (New York) session ended in April 1981. The relevant provisions of the revised Informal Composite Negotiating Text (ICNT, rev. 3) of UNCLOS III, simply read:

(32) British Broadcasting Corporation (BBC), *Summary of World Broadcast (SWB)*, pt. 3. Far East, 2d ser., FE/5835/A3, June 10, 1978, p. 8; FE/5894/A3, August 18, 1978, p. 5; FE/5966/A3, November 11, 1978, pp. 8-9; FE/6024/A3, January 24, 1979, p. 3 *FBIS* (Asia and Pacific) (May 26, 1981): p. N1; and David Jenkins, "Trouble over oil and waters," *Far Eastern Economic Review*, August 7, 1981, pp. 32-33.

(33) Among the coastal states, the following maintain 200-mile limits: Japan, for fishing only, May 1977; North Korea, EEZ, August 1977; Indonesia, EEZ, March 1980; Malaysia, EEZ, April 1978; the Philippines, EEZ, May 1979; Thailand, EEZ, February 1980; Taiwan, EEZ, September 1979; Kampuchea, EEZ, January 1978; and Vietnam, EEZ, May 1977. In September 1980, Singapore stated that it could, "also claim an EEZ," but did not specify the limit. For the English texts or translations of these claims, see Nordquist and Park, *North America and Asia-Pacific and the Development of the Law of the Sea*, Binders 1 and 2, 1981.

The delimitation.....between States with opposite or adjacent coasts shall be effected by agreement in conformity with international law. Such an agreement shall be in accordance with equitable principles, employing the median or equidistance line, where appropriate, and taking account of all circumstances prevailing in the area concerned.<sup>(34)</sup>

The core of the articles above was "agreement," which was wrapped in a shroud of ambiguities such as "equitable principles," "where appropriate," and "all the relevant circumstances." The geographical circumstances of the world are so complicated that it is simply not possible for a universal convention to accommodate them all in specific terms. Deliberations at Negotiating Group 7 of UNCLOS III, to which this subject was assigned, had therefore resulted in futile exchanges between the advocates of equidistance and equitable principles, whereas, in the view of an adept observer, the former is a methodology and the latter an aim.<sup>(35)</sup>

At the resumed tenth (Geneva) session in August 1981 (when the ICNT was made the Draft Convention on the Law of the Sea), however, in search of a breakthrough the controversial provisions were basically revised to read:

The delimitation.....shall be effected by agreement on the basis of international law as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.<sup>(36)</sup>

Pending conclusion of UNCLOS III, many coastal states have either declared their maritime economic jurisdictions in unspecific terms or deferred negotiation of seabed boundaries with adjacent or opposite neighbors. For

(34) UNCLOS III, *Informal Composite Negotiating Text*, rev. 3 (ICNT, rev. 3) (A/CONF 62/WP. 10/Rev. 3) September 22, 1980, articles 74(1), 83(1) (hereafter cited as ICNT, rev. 3).

(35) Robert D. Hodgson, to the author, September 21, 1979; see also *U.S. Delegation Report*, 8th sess., UNCLOS III, Geneva, March 19–April 27, 1979, pp. 3, 33.

(36) A/CONF. 62/L. 78, Draft Convention on the Law of the Sea, August 28, 1981, articles 74(1), 83(1).

example, China, as well as all the "200milers" in the China seas, has been invariably saying that, in waters with overlapping claims, the boundary should be determined "through consultations." Another point of ambiguity is found in declarations which specify the spatial extents of claims but not the baselines from which the extents are measured; in fact, all the "200 milers" in the China seas have followed this "evasive" practice. It is noteworthy that, according to one estimate, "If all existing coastal states and territories declared 200-mile economic zones, there would result approximately 331 maritime boundaries, [of which] fewer than 25 percent... have been negotiated."<sup>(37)</sup>

### III. The Territorial Issues

In the China seas, there are two territorial disputes that have obstructed the development of seabed oil in the region. One is the Senkaku-Diaoyutai dispute in the East China Sea between China, Japan, and Taiwan, and the other is the Paracel-Spratly dispute in the South China Sea between China, Malaysia, the Philippines, Taiwan, and Vietnam. Both cases concern the ownership of obscure offshore islands which are valuable to the owners because of their location rather than their physical usefulness. Most of them are uninhabited and so tiny that they are hardly visible on an ordinary map, but the claimants sometimes exaggeratedly call them "the sacred territory of the fatherland."

#### 1. The Senkaku-Diaoyutai Dispute<sup>(38)</sup>

In July 1970, Taiwan and Gulf Oil signed an oil concession contract over an offshore area northeast of Taiwan. Eight uninhabited islands, situated

(37) Robert D. Hodgson, "The Delimitation of Maritime Boundaries between Opposite and Adjacent States through the Economic Zone and the Continental Shelf," *Proceedings* (13th Annual Conference, Law of the Sea Institute, University of Hawaii, forthcoming: 1982), p. 2.

(38) For the contentions of China and Japan, see Park, "Oil under Troubled Waters," pp. 253-58.

northeast of Taiwan and west of Okinawa (the *Senkaku* in Japanese and the *Diaoyutai* in Chinese) were included in the Taiwan-Gulf Oil concession area.<sup>(39)</sup> Almost instantly, Japan protested against Taiwan, alleging that the islands belonged to Japan. The territorial controversy thus begun in 1970 has been a major political issue—initially between Japan and Taiwan, but now Peking has assumed the burden of the argument against Japan.

Each side bases its contention on history, geography, international law, and even geology, and invariably insists that the territory in question has always and indisputably been its own. As the dispute involves not only potential oil but also ownership of territory, it becomes even more difficult for either side to compromise its claims simply in the interest of negotiated settlement, because, for historical reasons, national sentiments run high over territorial issues in East Asian countries, and such issues are often regarded as too important to be negotiated.

Currently, the islands are not in the full control of either claimant, each side cautiously trying to avoid grating on the raw nerves of the other, while trying to change the status quo in its favor. In consideration of such political sensitivity, the United States government has reportedly decided to discourage American oil companies from operating in disputed waters. As a result, the Taiwan-Gulf Oil contract of 1970 has been suspended indefinitely, as have many other such contracts Taiwan signed with various American operators.<sup>(40)</sup>

## 2. The Paracel-Spratly Disputes<sup>(41)</sup>

In the South China Sea there are approximately 200 islands, many of

(39) *Ibid.*, maps at pp. 219 and 240.

(40) *Petroleum News: Southeast Asia* (January 1977, 1978, 1979, 1980, 1981) [feature issues entitled, "Exploration Annual"].

(41) Choon-ho Park and Hungdah Chiu, "Legal Status of the Paracel and Spratly Islands," *Ocean Development and International Law Journal* 3 (1975):1-28; Choon-ho Park, "The South China Sea Disputes: Who Owns the Islands and the Natural Resources," *ibid.*, 5 (1978): 27-59; *Beijing Review* (May 4, 1979), p. 17; *Viet Nam's Sovereignty over the Hoang Sa and Truong Sa Archipelagoes*, Vietnamese *White Book* (September 27, 1979), abridged in

them coral outcrops without vegetation or otherwise incapable of "supporting human habitation."<sup>(42)</sup> They are grouped into four archipelagoes, namely, the Pratas Reef, the Macclesfield Bank, and the Paracel and the Spratly Islands. Chinese ownership of the Pratas Reef (the *Dongsha* in Chinese) has not been contested. The Macclesfield Bank (the *Zhongsha* in Chinese) consists of some 30 underwater elevations, but Chinese ownership of these submerged "islands" does not seem to have been contested to date. However, it remains to be seen whether contemporary international law would recognize claims placed on submerged mid-ocean islands. According to some Chinese observers, the highest island in the Macclesfield Bank is approximately 10 meters (32 feet) below sea level and, being a coral island, grows up at a rate of 10 centimeters (4 inches) a year.<sup>(43)</sup>

The Paracel Islands (the *Xisha* in Chinese and the *Hoangsa* in Vietnamese) have been under Chinese control since January 1974, when, in a two-day *blitzkrieg*, the former South Vietnamese armed forces were wiped off the islands by Chinese forces. Vietnam nevertheless insists that the change of hands was merely a temporary relinquishment of its sovereignty, whereas China seems to regard it as a resumption of control of its own territory. The Spratly Islands (the *Nansha* in Chinese and the *Truongsa* in Vietnamese) are claimed in whole by China, the Philippines, Taiwan, and Vietnam, and by Malaysia in part. With the exception of China and Malaysia, each claimant is in control of some of the islands. Furthermore,

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*FBIS* (Asia and Pacific) (October 1, 1979), pp.K1-K13, and reproduced in full in UN Doc. A/34/541:S/13565, October 19, 1979; and the Chinese rebuttal, *Some Documentary Evidence Showing That the Vietnamese Government Recognized the Xisha and Nansha Islands as Chinese Territory*, reproduced in UN Doc. A/34/712:S/13640, November 23, 1979.

(42) According to the Draft Convention, "Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf" (pt. 8, "Regime of Islands," article 121, par.23).

(43) Chen Dong-kang, *Wo guo de nan hai zhu dao*, 2d ed. (Peking: Zhongguo Qingnian Chubanshe, 1964), pp.31-32; English trans. of the 1st ed. in JPRS (n. 5 above), no. 18-424 (1963), pp.24-25; and Huang Jiu-shun, *Zhongguo dili gailun* (The natural geography of China) (Hong Kong: Shanghai Shuju), p.85.



the Philippines is reported to have confirmed the presence of oil in the Reed Bank area.<sup>(44)</sup>

The nature of the Paracel-Spratly disputes is basically similar to that of the Senkaku-Diaoyutai dispute, although, with more parties and a larger number of islands involved, the former are by far more complicated. In strategic terms, the Paracel-Spratly disputes are also deeply couched in another dimension of great importance to major maritime powers as well as to other users of the sea for communications, because the South China Sea provides a predominantly important maritime route that links East Asia with the rest of the world, with the exception of the Americas. Furthermore, one of the world's most important and densely used straits for international navigation, namely, the Malacca Straits, is situated at the threshold of the South China Sea. For this geographical reason, it would be correct to say that the importance of the Straits is contingent on the safety of passage through the South China Sea, and vice versa.

### 3. The Impact on Seabed Oil Development

Most of the small offshore islands in the China seas whose ownership is currently under dispute were previously held to be almost negligible in terms of physical value. The emergence of the 200-mile EEZ regime at the beginning of the present decade has dramatically increased their value, because of the mounting expectation that their owners may eventually be entitled to the resources underlying the surrounding waters. For instance, the ownership of a tiny mid-ocean island (depending on its location) can be the basis on which the owner can claim jurisdiction to approximately 130,000 square nautical miles of adjacent sea. For these reasons, UNCLOS III has experienced considerable difficulty in the course of its deliberations to define an island and its legal status.

As they can affect the division of sea resources between opposite and

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(44) *Nihon keizai shinbun*, Tokyo (August 3, 1976), p.4; *Petroleum News: Southeast Asia* (January 1977), p.37.

adjacent states, offshore islands situated at critical locations have become extremely important, and the China seas are studded with numerous small islands which, seldom heard of otherwise, have become prominent in their obstruction of seabed oil development in the region. Aside from their traditional attitude toward territorial integrity, the intransigence of the parties with regard to the two territorial disputes in the China seas should be looked at in this context. In brief, they realize that in order to own the sea resources, it is necessary for them to own the islands. Consequently, until territorial issues are settled, it is impossible to delimit seabed boundaries in disputed waters. This, in turn, blocks the development of resources, as has happened, for example, in the Yellow and the East China Seas.

#### IV. Observations

In the late 1960s and early 1970s, the coastal states of the semi-enclosed China seas, particularly those with no domestic supply of crude oil, were overjoyed at the "sniff" of oil in their own offshore waters and plunged into a sea-grab race with one another. In the flurry, however, they stumbled on a series of problems, including delimitation of the continental shelf with adjacent and opposite states. The law of the sea, which was just beginning to be reviewed under United Nations sponsorship, was not specific enough to be readily applied to their highly complicated geographical circumstances. Although boundary negotiations have been taking place sporadically in less controversial areas, most coastal states are not likely to undertake serious negotiations, pending conclusion of UNCLOS III in 1982 (as scheduled).

Problems of boundary delimitation were further exacerbated by two territorial disputes, which will continue to be obstacles to oil development in the disputed waters. Ironically, one of them, namely, the Senkaku-Diaoyutai dispute between China and Japan, originated in one claimant's endeavor to search for oil in the area. Since, in East Asia, territorial issues involve national sentiments more seriously than in other regions, however, the

settlement of the two cases is not going to be easy, unless all parties to each dispute come to an agreement whereby none of them loses face.

The coastal states also failed to appreciate the procedures involved in moving oil from underneath the seabed to the filling station, a process none of them was economically or technologically capable of undertaking without the participation of extraregional oil interests. In a region chronically plagued by ideological feuds—up until the demise of South Vietnam in April 1975, East Asia had three of the world's four divided nations and still has two at present—the arrival of foreign oil companies enhanced political sensitivity to seabed oil development. Under such circumstances, some of the coastal states simply deferred the delimitation of sea boundaries, while others tried joint development. In a deadlocked situation, the joint endeavor of Japan and South Korea was an alternative signifying a breakthrough. But this new approach has been found to be fraught with problems unforeseen at the beginning, making its future still quite uncertain. On balance, any attempt to settle an issue without the participation of all the parties involved has merit as a provisional measure, but as a partial settlement its inherent weaknesses always threaten to cancel out its strength.

Inevitably, the alternative approach open to the coastal states of the China seas, as elsewhere, has been to proceed with seabed oil development in undisputed near-shore waters and to gradually expand their operation seaward. The security of crude oil supply having become a global concern, obstacles to seabed oil development, such as problems of boundary delimitation, will increasingly come under the scrutiny of the vigilant coastal states concerned. The expected conclusion of UNCLOS III will also expedite settlement of boundary issues in the China seas that have been shelved to await codification of universal criteria. In the final analysis, however, the question still remains whether the coastal states are arguing impatiently over actual or mythical oil.

### Postscript

This is a substantially revised and updated version of the author's article published in *Ocean Yearbook 2*, University of Chicago Press, 1980, pp.302-316. Further details regarding offshore oil development and the territorial disputes in the China seas may be found in some recent sources such as:

Choon-ho Park, "The Turmoil Over China Oil, Soil And Seas: A Review Of The First Decade," *East Asian Executive Reports*, Vol. 3, No. 5, May 1981, pp.2, 8-13.

Choon-ho Park, "Joint Development of Mineral Resources in Disputed Waters: The Case of Japan and South Korea in the East China Sea," *Energy*, Vol. 6, No. 11, November 1981, pp.1335-1354.

*Foreign Broadcast Information Service*, "Sovereignty over Spratly, Paracels Claimed," Vol IV (Asia and Pacific), 6 articles by Hanoi VNA, January 4, 1982, pp.K1-K4; January 6, 1982, pp.K3-K14, pp.K15-K18; January 12, 1982, pp.K1-K3, pp.K3-K7; January 13, 1982, pp.K1-K4; and the *White Book* by the Vietnamese Foreign Ministry (*ibid.*, January 18, 1982, pp.K2-K17).

*Petroleum Economist*, Special Report on China, November 1981, pp.475-498.

Henry S. Stokes, "Oil Riches Off China's Shores," *The New York Times*, January 19, 1982, p.27:1.