

# **SEABED BOUNDARY ISSUES IN THE EAST CHINA SEA**

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## **The Contending Claims**

Between March 1969 and September 1970, altogether 11 seabed petroleum blocks were unilaterally staked out by Japan, South Korea, Taiwan and Okinawa (which was still under United States administration). The four Japanese blocks and Okinawa's one were claimed by private oil interests, unlike South Korea's two and Taiwan's four by the respective governments (Map I)<sup>1</sup>.

In staking out their respective unilateral claims, Japan applied the median-line principle, and South Korea and Taiwan the so-called natural prolongation of land territory principle. Inevitably, the claims overlapped with one another to different extents.

The contending claims of the three claimants centered on the legal status of the Okinawa Trough, which lies parallel close to the east of the Okinawa Islands chain. Japan ignored the Trough as a limiting factor in staking out its claims, while South Korea and Taiwan invoked the 200-meter-depth criterion as defined in the Geneva Convention on the Continental Shelf of 1958, the Trough being much deeper than 200 meters. Thus, the claims of South Korea and Taiwan extended to the west bank of the Trough.

In search of a breakthrough from what was otherwise likely to remain an endless legal scramble among the three claimants, they agreed to try joint development of mineral resources, leaving boundary demarcation aside for future negotiation.

Late in 1970, the three claimants had agreed to proceed with some form of joint development, when China came forward with a strong protest. Later an informal agreement was reached between Japan and South Korea to proceed with the scheme without Taiwan.

Finally, Japan and South Korea signed two agreements in January 1974, one of them relating to their shelf boundary in the northern part of the Korea Strait (called

Tsushima Strait in Japan) and the other relating to joint development in the overlapping area (Map II)<sup>2</sup>.

The two agreements came into force in 1978. Based on the median-line principle, the first agreement still remains the only instance of continental shelf boundary agreement in Northeast Asia. The second one on joint development has a mandatory period of 50 years, e. g., to the year 2028.

It is now for China, Japan and South Korea to negotiate and agree on a tri-junction from which to draw their respective sectors of the continental shelf.

In this paper, the author tries to identify critical legal issues with respect to the delimitation of the seabed boundaries among China, Japan and South Korea. For unavoidable reasons, no opinion is given on how or on what international legal criteria the issues should be finally settled among the three parties.

### **Legal Issues**

On a broad basis, four legal issues are relevant with respect to the demarcation of shelf boundaries in the East China Sea.

1. The first issue has to do with the applicability of the natural prolongation of land territory principle, because, within 200 nautical miles from the coast, this criterion

would appear to have been superseded by the new regime of the 200-mile exclusive economic zone ( hereinafter "EEZ")<sup>3</sup>.

In other words, from the standpoint of Japan, it would appear that, under the new law of the sea regime, the legal status of the Okinawa Trough could no longer be a limiting factor in the demarcation of maritime boundaries in this particular area. Now, it is for the other two coastal states, namely, China and South Korea, to justify the legal grounds on which to sustain their common position vis-a-vis Japan.

2. The second issue is related to the status of the Japan-South Korea joint development agreement, which was signed and came into force before the 1982 UN Convention on the Law of the Sea came into force for the three coastal states. The fact that China has been strongly opposed to the joint development scheme from the beginning would make it necessary, as a prerequisite, for the three coastal states to agree on a boundary between China on the one side and Japan and South Korea on the other.

3. The third issue concerns Japan and South Korea only. Their joint development scheme being not a boundary agreement, the two parties have yet to agree on their shelf boundary within their common sector. In this regard, the fact that most of the joint development zone happens to lie apparently on the Japanese side of what would likely be the median-line between the two states could emerge as a critical legal point at issue.

4. The fourth issue relates to the fact that South Korea has applied 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. It is now for South Korea to justify its application of two different criteria in the two Seas contiguous to each other.

### **Concluding Remarks**

In the particular case of continental shelf boundary demarcation in the East China Sea, the fact that the law of the sea itself has basically changed from the 1958 Geneva Conventions to the new Convention of 1982 has caused seabed controversies which would otherwise have not arisen.

In other words, the median-line criterion as defined in the 1958 Convention was superded by the 1969 natural prolongation criterion, which, in turn has been overtaken by the 200-mile EEZ regime. As a result, it would appear that the applicability of the median-line criterion has been revived.

Opinions expressed in this paper are strictly the author's own, and do not reflect those of the Tribunal in any way.

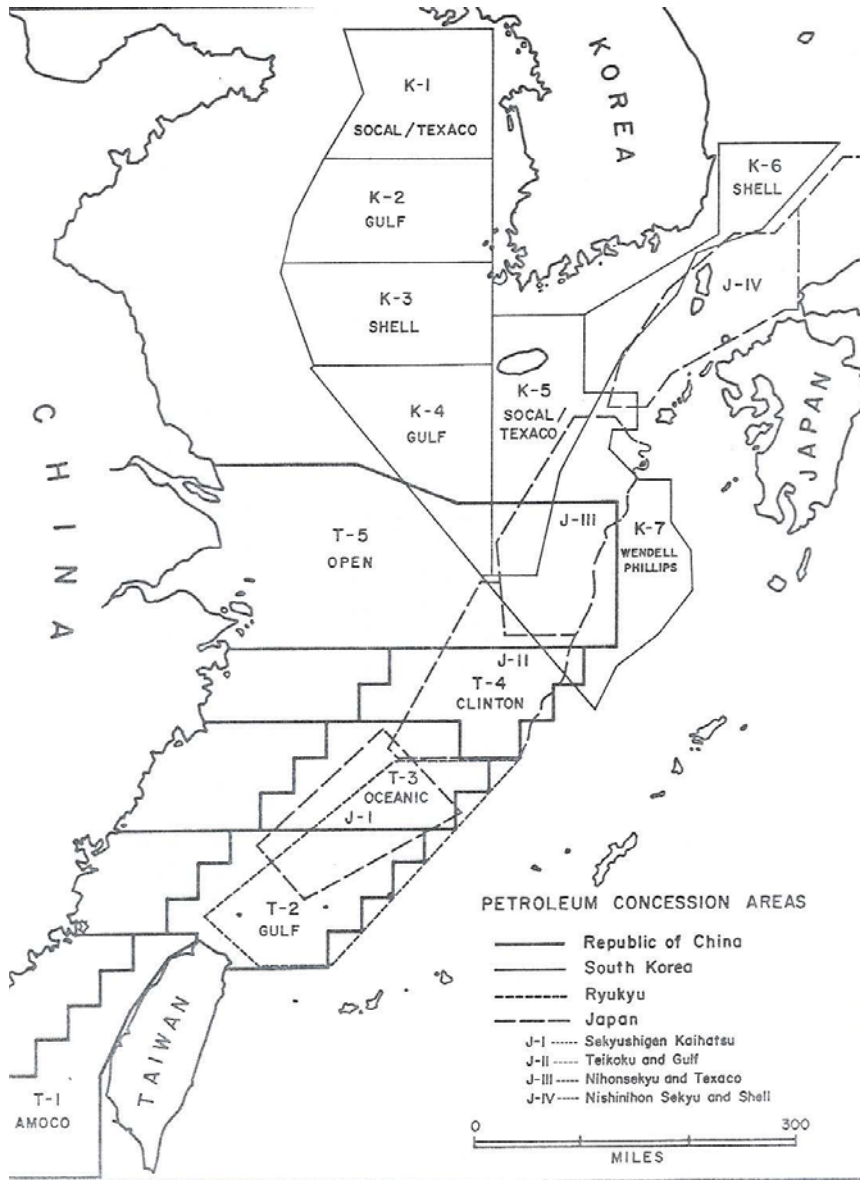
## SELECTED REFERENCES

1. Selig S. Harrison, *China, Oil and Asia: Conflict Ahead*, 1977.
2. Tatsu Kambara, Takashi Saito, Yoshihiko Hirakawa, and Kazuo Yamanouchi, *Chugokuno Sekyusangyou* (the oil industry of China), 1985.
3. British Institute of International and Comparative Law, *Joint Development of Offshore Oil and Gas*, first volume not serially numbered, 1989 and Vol. II, 1990.

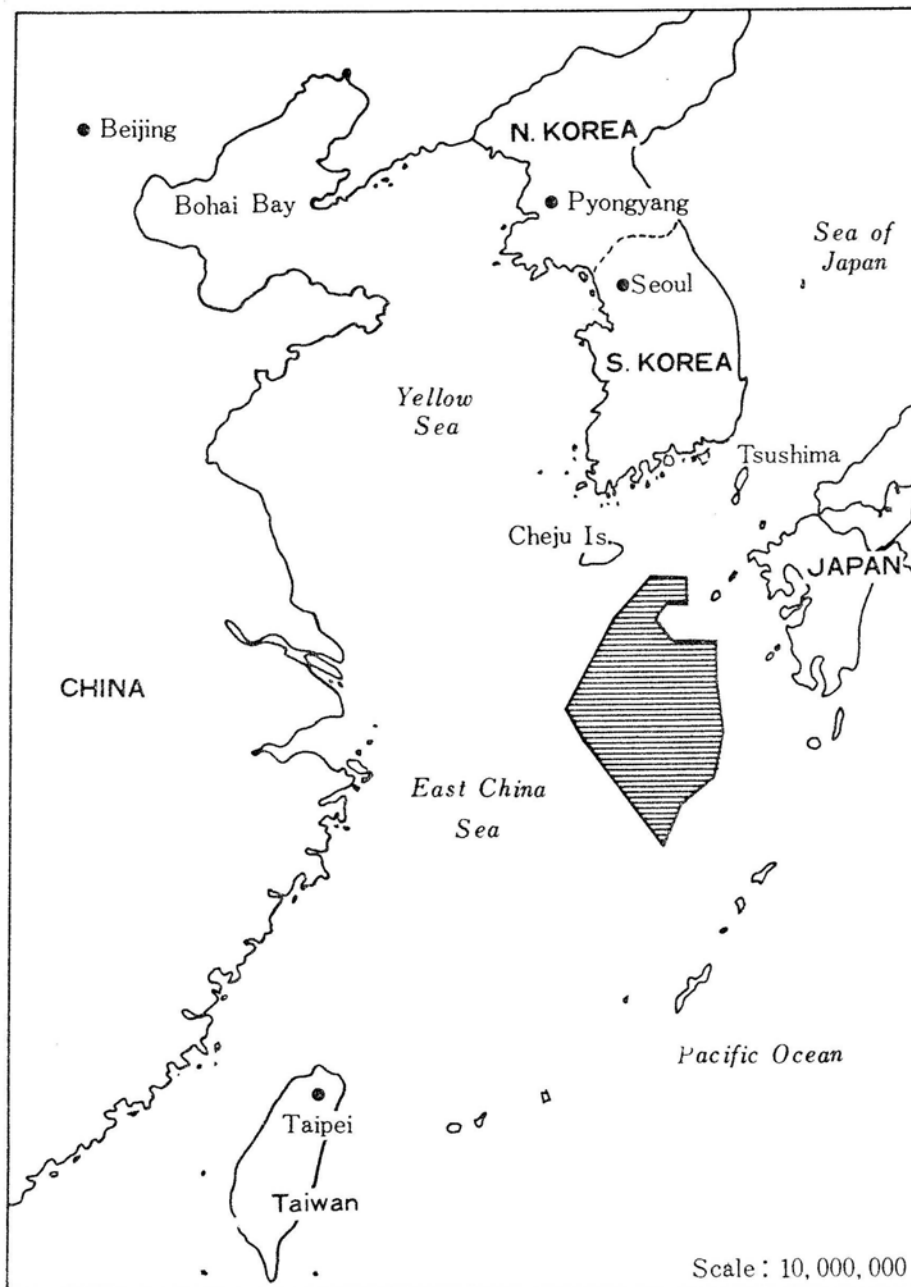
## **Maps**

- I. Unilateral Claims and Concession Areas in the Yellow Sea and the East China Sea, as of Sept. 1970. Source: Choon-Ho Park, "Oil Under Troubled Waters: The Northeast Asia Sea-Bed Oil Controversy," *Harvard International Law Journal* , Vol. 14, No. 2, Spring 1993, p. 219.





II. Japan-South Korea Joint Development Zone. Source: 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, 1981.



Map 4.2 The Joint Development Zone

## NOTES

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<sup>1</sup> For further details with cartographic illustrations, see Choon-Ho Park, "Oil Under Troubled Waters: The Northeast Asia Sea-Bed Controversy," *Harvard International Law Journal*, Vol. 14, No. 2, Spring 1973, pp. 212-260.

<sup>2</sup> For further details with cartographic illustrations, see US Dept. of State, Bureau of Intelligence and Research, Office of the Geographer, *Limits in the Seas*, No. 75, Sept. 2, 1977 (contains the texts and maps of the two agreements); 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, 1981; and Masahiro Miyoshi, *The Joint Development of Offshore Oil and Gas in Relation to Maritime Boundary Delimitation*, *Maritime Briefing*, Vol. 2, No. 5, 1999.

<sup>3</sup> For further details, see Choon-Ho Park, "The Sino-Japanese-Korean Sea Resources Controversy and the Hypothesis of a 2--Mile Economic Zone," *Harvard International Law Journal*, Vol. 16, No. 3, Summer 1975, pp. 27-46.