

CONTINENTAL SHELF DELIMITATION IN THE EAST CHINA SEA

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In March, 2004 an incident involving the Senkaku/Diaoyutai islets in the East China Sea attracted widespread media attention. This incident, “only the latest in a flurry of disputes between Japan and its still-resentful neighbors,” reminds one that “the memories of World War II and earlier aggressions by the Japanese in China and the Korean Peninsula remain fresh”.¹ However, the controversy is not just about the collective memories of the burdened past of Japan and its neighbors. As an American newspaper pointed out, “Though the islands have little strategic value, surveys have shown potentially lucrative oil deposits in the area, and both governments would

probably face a backlash from right-wing pressure groups if they formally relinquished their claims².”

I will first analyze the general law of seabed boundary delimitation and go on to discuss how this law plays out in East Asia (mainly, China, Japan, and the two Koreas). I will then venture some proposals for cooperative arrangements for the joint exploration for and exploitation of oil resources in the East China Sea, with particular reference to the Diaoyutai/Senkaku area.

International Jurisprudence on Maritime Delimitation: A Brief Overview

Maritime boundary delimitation law can be regarded as largely composed of the relevant provisions of the two general treaties dealing with the subject (i.e., the 1958 Geneva Convention on Continental Shelf and the 1982 United Nations Convention on the Law of the Sea (hereinafter, “1982 UNCLOS”)) and the jurisprudence of the International Court of Justice (ICJ) and other international tribunals. Considered as such, it seems that the law has come full circle after a long and arduous voyage.

As is commonly known, this odyssey began with the Truman Proclamation in 1945. In the immediate aftermath of this epoch-making action, many states in the Middle East and Latin America followed suit. These developments prompted the International Law Commission to take up the task of codifying and progressively

developing international law relating to the emergent institution of continental shelf.

Article 6 of the Geneva Convention on Continental Shelf, which was based on preparatory work done by the ILC, provided for the equidistance/special circumstances rule in the absence of agreement between the states concerned. Even though a leading scholar of the law of the sea criticized the convention as an exercise in “developing a *lex ferenda* for this still unknown area of abundant riches”,³ a majority of commentators evaluated it in positive terms, including Article 6.⁴

This state of affairs was seriously undermined by the 1969 *North Sea Continental Shelf* case, which was considered “surely one of the most interesting as well as debatable decisions in the history of the Court”.⁵ This judgment denied that Article 6 of the 1958 Convention represented “a rule of customary international law binding on all States”.⁶ Instead, it declared the now famous dictum that “delimitation is to be effected by agreement in accordance with equitable principles, and taking account of all the relevant circumstances ...”⁷ This dictum, coupled with the legal characterization of the continental shelf as “a natural prolongation of [a coastal state’s] land territory into and under the sea”⁸ called into serious question the customary status of the equidistance principle.

The arbitral tribunal in the *Anglo-French Continental Shelf* case in 1977 seemed

to reinstate the rule of equidistance when it stated that the equidistance/special circumstances rule as articulated by Article 6 of the 1958 Convention, “in effect gives particular expression to a general norm that, failing agreement, the boundary between States abutting on the same continental shelf is to be determined on equitable principles”.⁹ However, two subsequent ICJ judgments disturbed the delicate compromise articulated by the 1977 tribunal. According to Judge Guillaume, after the 1982 *Tunisia/Libya Continental Shelf* case¹⁰ and the 1984 *Gulf of Maine* case,¹¹ “case law and treaty law had become so unpredictable that there was extensive debate within the doctrine on whether there still existed a law of delimitations or whether, in the name of equity, we were not ending up with arbitrary solutions.”¹²

However, the 1985 *Libya-Malta* case marked a significant turning point. As the Court adopted the distance principle in areas situated within 200 miles from the coasts in question, natural prolongation, for all practical purposes, lost relevance to that geographical extent, i.e., within 200 nautical miles from the coast.¹³ More importantly for our purposes, in this case a two-stage delimitation process, i.e., provisional delimitation employing an equidistance line and then adjusting the line to remove inequitable results, was used.¹⁴ In subsequent ICJ and arbitration cases, this method has generally been followed. In the most recent cases dealing with the delimitation of a

single maritime boundary, the Court stated as follows:

For the delimitation of the maritime zones beyond the 12-mile zone [the Court] will first provisionally draw an equidistance line and then consider whether there are circumstances which must lead to an adjustment of that line.¹⁵

This method [“the so-called equitable principles/relevant circumstances method], which is very similar to the equidistance/special circumstances method applicable in delimitation of the territorial sea, involves first drawing an equidistance line, then considering whether there are factors calling for the adjustment or shifting of that line in order to achieve an “equitable result”.¹⁶

Since 1969 there were also other significant developments in the law of maritime delimitation such as “the clear trend towards single maritime boundaries”.¹⁷ In the consideration of relevant circumstances, coastal geography enjoys a dominant position.¹⁸ According to Charney, “the rejection of considerations other than coastal geography in maritime boundary delimitation is the preferable course. The introduction

of other considerations ... is ... likely to encourage greater conflict and uncertainty.”¹⁹

Under the circumstances, other factors such as economic considerations are likely to be of decreasing significance.²⁰

To conclude, the jurisprudence of the ICJ relating to maritime boundary delimitation seems to have been consolidated. Weil observes eloquently that international jurisprudence has grown from "les tentations d'une juridisation sauvage de l'équité" to "une juridisation sage de l'équité".²¹ In other words, the jurisprudence of the ICJ prior to the "landmark" 1985 *Libya/Malta* case indulged in a notion of equity as "une source autonome et directe de normativité, la juridicité proprement dite étant ramenée au degré zéro d'une simple règle de renvoi".²² But now the principle of equity has been tamed; "l'équité n'est plus à côté du droit et extérieure au droit, mais dans le droit dont elle forme partie intégrante".²³ It is claimed that equity, as an integral part of law, can now fulfil the functions of predictability and stability.²⁴

What are the implications of such developments for maritime delimitation in East Asia? If some states in the region, in particular China, take a different position on the principles and rules of maritime delimitation, how should one resolve this discrepancy? In order to answer these questions, I will deal with the respective positions of Japan, the Republic of Korea and China relating to the law of maritime delimitation

in the next section.

Seabed Delimitation in East Asia

Japan

With respect to the principles and rules applicable to the delimitation of the continental shelf and the exclusive economic zone, the Japanese government has consistently relied on the principle of equidistance. Japan's adherence to the equidistance principle is reflected in the relevant domestic legislation. Thus, Article 1(2) of the 1996 Japanese Law on the Exclusive Economic Zone and the Continental Shelf defines the outer limit of the exclusive economic zone (hereinafter "EEZ") as "the equidistance line (if a different line is agreed on between Japan and a foreign state, that line)" when the 200 nautical mile line as measured from the baseline extends beyond the equidistance line. Article 74 of the 1982 UNCLOS makes no mention of the equidistance line and only provides that "[t]he delimitation of the exclusive economic zone ... shall be effected by agreement on the basis of international law ... in order to achieve an equitable solution". In contrast, Japanese law puts forth the principle of equidistance as the mandatory rule of delimitation and delimitation based on other criteria effected by agreement is regarded as an exception.²⁵ The provision appears to be

based on the idea that there exists a high degree of similarity between the equidistance/special circumstances rule as provided for in Article 15 of the 1982 Convention and the equitable principles as articulated in Articles 74 and 83 of the Convention. As discussed above, such an interpretation is in accord with recent ICJ and arbitral jurisprudence relating to maritime delimitation. This position has been adopted by the Japanese government defensively in the face of strong South Korean and Chinese invocation of the natural prolongation theory in connection with continental shelf boundary delimitation in the East China Sea.²⁶

South Korea

As far as the delimitation of the continental shelf is concerned, the ROK government has taken a selective or “eclectic” approach. In relation to China, it has invoked the principle of equidistance. In contrast, it has relied on the principle of natural prolongation of land territory as articulated in the 1969 *North Sea Continental Shelf* cases. As pointed out above, when the ICJ handed down this judgment in 1969, the ROK government lost almost no time in invoking it *vis-à-vis* Japan. This principle of natural prolongation provided powerful theoretical ammunition to the ROK government in its negotiations with Japan that resulted in the adoption of the joint development zone

in the East China Sea.

The ROK position on the principles and rules to be applied in its adjacent seas is sometimes criticized as being inconsistent.²⁷ In fact, the Chinese government has criticized its ROK counterpart for adopting both methods and applying whichever is most advantageous.²⁸

The seabed areas of the Yellow Sea constitute a single continuous continental shelf in contrast to the East China Sea where the Okinawa Trough exists. Therefore, there is little likelihood that China could succeed in challenging an equidistance line as being inequitable.²⁹ From the standpoint of Article 74 of the 1982 UNCLOS providing for equitable principles, on which China itself places a great reliance, one could justify the ROK position by arguing that equidistance (as no more than a technique employed to achieve an equitable solution)³⁰ and natural prolongation (as title and a relevant circumstance) are subordinate to the umbrella principle of equity. Also, state A is not necessarily bound to apply the principles adopted in its maritime boundary treaties with state B in relation to other states.³¹

However, the evolution of the international jurisprudence on maritime delimitation law seems to impact on the ROK position. On the doctrinal side, there is an argument that with the introduction of a new concept of continental shelf under the 1982

UNCLOS the Okinawa Trough could not be accorded any significance and that Japan is entitled to extend its continental shelf beyond the Trough.³²

China

In stark contrast to Japan, the Chinese government has been an ardent proponent of equitable principles and has persistently denied the customary law status of equidistance since the controversy over the seabed boundary broke out in the early 1970s. Shortly after the controversy occurred, the Chinese government consolidated its views on the territorial sea, EEZ and continental shelf into a working paper submitted to Subcommittee II of the Seabed Committee. This document, titled “Working Paper on Sea Area within the Limits of National Jurisdiction”, provided in the second section dealing with EEZs or exclusive fishery zones that “A coastal state may reasonably define an exclusive economic zone ... beyond and adjacent to its territorial sea in accordance with its geographical and *geological conditions*, the state of its natural resources and *its needs of national economic development*.”³³ It was apparent that the inclusion of the geological conditions was closely related to China’s characterization of the continental shelf as a natural prolongation of land territory.³⁴ In the same document, the importance of consultations in maritime delimitation was emphasized. In the section

dealing with the continental shelf, it is provided that “States adjacent or opposite to each other, the continental shelves of which connect together, shall jointly determine the delimitation of the limits of jurisdiction of the continental shelves through consultations on an equal footing”.³⁵

The Chinese stance of emphasizing the principle of natural prolongation and the need for consultations was reconfirmed when the Chinese government leveled a sharp criticism against the Korean-Japanese agreement of 30 January 1974 on the joint development of the continental shelf in the East China Sea. While criticizing the agreement as “an infringement on China’s sovereignty, which the Chinese Government absolutely cannot accept”, the spokesman for the PRC Foreign Ministry issued a statement arguing that “according to the principle that the continental shelf is the natural extension of the continent, it stands to reason that the question of how to divide the continental shelf in the East China Sea should be decided by China and the other countries concerned through consultations.”³⁶ In the substantive sessions of UNCLOS III after 1974, China expressed firm support for equitable principles in relation to EEZ/continental shelf delimitation. For instance, at the Resumed Ninth Session (28 July – 29 August 1980), the PRC stated that delimitation should be effected through negotiations between the parties concerned on the basis of equity, taking into account all

factors concerned; the median line can be employed only when its use is in accordance with equitable principles.³⁷

Now the question is how the Chinese position on the principles and rules of maritime delimitation is applied to the Yellow Sea and the East China Sea. In the former, the Chinese side tries to avoid the application of the equidistance principle by invoking various geological or geomorphological features of the sea. The official position of China is still not clear in this regard. However, various geological or topographical criteria have been suggested by a number of scholars and researchers. Thus, a description of the seabed topography, such as the fact that a smooth gentle slope (1:26,000) from the west meets the steep and less regular slope (1:6,000) from the east in an axial valley two-thirds across on the Korean side of the Yellow Sea, or the fact that the eastern third of the sea is floored by sand originating from the mountains of Korea while the rest (2/3) on the western side is floored by clay discharged by the two rivers of China, i.e., the Huanghe and the Yangtze,³⁸ is cited with approval as the basis of title.³⁹ Also, China may have hoped to argue that the continental shelf in the Yellow Sea is a prolongation of the Chinese landmass in an eastward direction and not a prolongation of the Korean peninsula westwards.⁴⁰

In the East China Sea, China is taking almost the same position as it takes

toward Korea. In relation to Japan, it puts forth the principle of natural prolongation of land territory which the ICJ endorsed in its 1969 *North Sea Continental Shelf* cases. In this connection, the existence and legal significance of the Okinawa Trough looms large. Basing itself on the principle of natural prolongation, China contends that this geomorphological feature constitutes the natural frontier between the continental shelves of China and Japan.⁴¹

It was pointed out above that the adoption of the 1982 UNCLOS has brought about a substantial change to the international jurisprudence relating to the EEZ/continental shelf delimitation. How has China responded to this important development which impinges directly on its claims in the Yellow Sea and the East China Sea? Of course, in China a keen attention has been paid to the evolution of the jurisprudence of the ICJ and other arbitral tribunals. Faced with the increasing erosion of the principle of natural prolongation and equity in international jurisprudence, a strenuous effort has been made to preserve the tenability of its original position.⁴²

Let me first summarize the Chinese position and, in so doing, point out its methodological approach and strategy. First, China still adheres faithfully to the international law of maritime delimitation as articulated in the 1969 *North Sea Continental Shelf* cases, which “could have hardly have been more timely to China”.⁴³

This position is also consistent with the stance taken by the Chinese government in the UNCLOS III negotiations.

Secondly, in its interpretation of the customary international law of maritime delimitation as embodied in the 1969 ICJ cases and the relevant articles (in particular, 74(1) and 83(1) of the 1982), China emphasizes the principle of equitable solution through consultations. This principle is concretized by taking into account and giving due weight to all the relevant factors in a given delimitation case. In contrast to the international jurisprudence's "lionizing" geographical factors to the virtual exclusion of other factors, China takes a more expansive and inclusive view of relevant circumstances to be factored into maritime delimitation, including geological or geomorphological factors and economic factors.

Thirdly, China has attentively followed the evolution or transformation of the international jurisprudence on maritime delimitation. Rather than accepting that this jurisprudence is binding on it, however, China has tried to "localize" or "parochialize" the normative impact of the jurisprudence, *inter alia*, by invoking still widely diverging state practice which China seems to regard as a more authoritative and fundamental source of international normativity. If this strategy of localization or parochialization should prove unsuccessful, it is submitted, it could fall back on the principle of

persistent objector and thereby exempt itself from the binding force of the international jurisprudence.

Fourthly, in trying to confine the normative reach of the international jurisprudence concerning maritime delimitation, China places emphasis on the unique factual matrix of each given delimitation case. In doing so, the principle of equidistance is discounted as a principle valid for a limited category of delimitation or no more than a mere technique which has not attained the same normative status as the principle of equity.

As such, the Chinese position shows a wide discrepancy with the international jurisprudence on maritime delimitation. How is this discrepancy to be explained and overcome? By stubbornly sticking to the principle of equity in defiance of the newly consolidated international “case-law”, does China violate international law? Or is China fully justified in adhering to equitable principles either as a persistent objector or because another source of international normativity, i.e., state practice is still on its side? What are the implications of this discrepancy (between international jurisprudence and Chinese practice) for international dispute settlement in East Asia? Will China stay its course by preferring bilateral consultations or negotiations to multilateral or third-party settlement?

A detailed discussion of these questions is beyond the scope of this short paper.

Let me just allude to an important point for our purposes. Based on the above analysis, it can be argued that the states in East Asia (especially China), in their efforts to manage or resolve maritime delimitation issues within the region, have room for manoeuvre even outside the normative framework structured by the ICJ's jurisprudence. Given the wide discrepancy between the (tenable, in the light of the foregoing discussion) position of some states in the region and the jurisprudence of the ICJ and arbitral tribunals, it will be difficult to expect the states concerned to refer their disputes relating to maritime delimitation to international tribunals in the near future.

Continental Shelf Delimitation in the East China Sea

Both China and Japan can put forth seemingly valid arguments based on international law. As was pointed out above, the international law of maritime delimitation is afflicted with an "intentional or constructive ambiguity" and, as a result, cannot provide clear normative cues for the resolution of questions or disputes relating to the Senkaku/Diaoyutai islets and the oil resources in their vicinity. In other words, both sides could engage in a *mouvement perpétuel* of endlessly exchanging equally plausible legal arguments over these questions.

Under the circumstances, China and Japan should strive to devise cooperative arrangements for the exploration and exploitation of oil resources in the East China Sea while shelving the problem of territorial sovereignty over those islets. Deng Xiaoping made a proposal along those lines in the 1980s. It is also true that both China and Japan has tried to approach the question of exploring and exploiting the oil resources in the Diaoyutai/Senkaku area without touching on the extremely convoluted and inflammatory question of territorial sovereignty, as is shown by a series of serious negotiations between state and private actors from both sides. The question of whether China and Japan can agree to a cooperative arrangement for joint development of oil reserves in the area in question depends on many factors such as the improvement of overall political and diplomatic relations between the two countries, the prospects for the discovery and development of large seabed petroleum deposits in the area in question, and the presence of pressing needs for oil resources from the Senkaku/Diaoyutai area.

It will be very difficult for the two countries to overcome a number of hurdles and reach a provisional agreement. However, one does not need to be overly pessimistic. The countries in the region, i.e., China, Japan and the ROK have recently adopted a

series of bilateral fisheries agreements that combine to establish a provisional regional fishing regime in East Asia: the 1997 Agreement on Fisheries between Japan and the People's Republic of China,⁴⁴ the 1998 Agreement on Fisheries between the Republic of Korea and Japan⁴⁵ and the 2000 Agreement on Fisheries between the Republic of Korea and the People's Republic of China.⁴⁶ (Map 1).⁴⁷

This result reflects a meeting of minds among the three governments that the final and definitive delimitation of exclusive economic zones of the states concerned is not feasible at the present stage due to a variety of factors, *inter alia*, the disagreement over the principles and rules of maritime delimitation and territorial disputes. The three governments instead adopted fisheries agreements of a provisional nature, focusing their attention on the question of how to delimit various zones of an interim character in the Sea of Japan (known as "East Sea" in Korea) and the East China Sea.

As shown in Map 1, in the fisheries agreement between ROK and Japan two polygons of a rather strange shape were adopted as "intermediate zones"⁴⁸ or "provisional measures zones"⁴⁹ where fishing ships of the two countries can engage in harvesting subject to the recommendation or decision of the ROK-Japan Joint Fisheries Committee (Article 9).

In the agreement between ROK and China, two kinds of zones, i.e., a

provisional measures zone and transitional zones, are adopted. The latter zones are to be incorporated into the EEZs of both contracting parties after a four-year period following the entry into force of the agreement, i.e., in June 2005. A provisional measures zone, located approximately 52 nautical miles from the coasts of each state is also established between Japan and China. The three agreements all contain a clause confirming the character of these agreements as provisional arrangements of a practical nature without prejudice to the position of each state relating to issues on the law of the sea or issues in international law other than matters on fisheries.⁵⁰

Conclusion

The experiences and lessons from the fisheries agreements could be productively applied to a provisional agreement for joint development in the Diaoyutai/Senkaku islets. Negotiators for the ROK and Japan had to navigate their way around the thorny question of territorial sovereignty over the Tokdo/Takeshima dispute. Both parties agreed to put aside this thorny question in a two-pronged way. First, both sides consented to limit the geographical scope of the agreement to the exclusive economic zones of Japan and the ROK, thereby excluding the 12 nautical mile belt of territorial waters surrounding the Takeshima/Tokdo from the application of the

agreement. This effectively meant that the status quo of the territorial question or controversy was undisturbed or preserved. In other words, both sides implicitly agreed to shelve this thorny question of territorial sovereignty. Secondly, the ROK and Japan put in place a caveat (Article 15) which reads that “Nothing in this Agreement shall be deemed to prejudice the position of each Contracting Party relating to issues in international law other than matters on fisheries.” This clause reconfirms that the question of territorial sovereignty over the Tokdo/Takeshima was left untouched by the 1998 fisheries agreement.

One could propose a framework for the provisional zone of joint development in the Senkaku/Diaoyutai islets as follows. First, China and Japan agree to exclude the territorial waters surrounding the islets from the zone of joint development or exploitation, thereby freezing the problem or controversy over the territorial sovereignty over these islets.

Secondly, both sides should make concessions on a reciprocal basis concerning the most difficult question of the principles and rules to be applied in maritime delimitation. In other words, China should not insist on natural prolongation as its basis of continental shelf claim, or according to Susumu Yarita, in his paper for this volume, “should not raise the issue of the continental shelf margin as the basis for its seabed

jurisdiction”. Japan should reciprocate by dropping its support for the median line. It should be noted that such reciprocal concessions would be without prejudice to the official positions of the respective parties on the question of maritime delimitation. China and Japan can avoid the embarrassment of appearing to back down from their original position by choosing the eastern limit of the joint development zone somewhere between the median line and the eastern end of China’s continental shelf margin. In so doing, they need not mention either natural prolongation or the median line.

Thirdly, the joint development zone needs to be of a substantial size. It also needs to straddle the putative median or equidistance line. If the zone were to be of a small size, the parties concerned would have difficulty shelving the thorny and divisive question of which principle or rule of delimitation (i.e., equidistance or natural prolongation) should apply in the sea in question. For instance, a small joint development zone falling between the putative median line and the end of the Chinese continental shelf margin would be unacceptable to Japan. On top of this, a joint development zone of a substantial size would testify to the seriousness of the parties concerned about cooperation.

NOTES

¹ *Washington Post*, 27 March 2004.

² *New York Times*, 26 February 2004.

³ Shigeru Oda, *International Control of Sea Resources*, 2nd ed. (Dordrecht/Boston/London: Martinus Nijhoff Publishers, 1989), p. 171.

⁴ See the quotations contained in Oda, *supra* note 7, p. 171.

⁵ Wolfgang Friedmann, "The North Sea Continental Shelf Cases – A Critique", 64 *American Journal of International Law* (1970), p. 229.

⁶ ICJ Reports 1969, p. 41 (para. 70).

⁷ *Ibid.*, p. 54 (para. 101).

⁸ *Ibid.*

⁹ 18 *International Legal Materials* (1979), p. 421.

¹⁰ ICJ Reports 1982, 59 (para. 70).

¹¹ ICJ Reports 1984, p. 290 (para. 81).

¹² Gilbert Guillaume, *Speech to the Sixth Committee of the General Assembly of the United Nations* (Oct. 31, 2001), available at <http://www.icj-cij.org/icjwww/ipresscom/iprstats.htm>. As cited in David A. Colson, "The Delimitation of the Outer Continental Shelf Between Neighboring States", 97 *American Journal of International Law* (2003), p. 100.

¹³ Colson, *supra* note 16, p. 101. However, the Court still tried hard not to give an impression that it was privileging the equidistance method. Thus, it stated that "[T]he equidistance method is not the only method applicable to the present dispute, and it does not even have the benefit of a presumption in its favour." ICJ Reports 1985, p. 47 (para. 63).

¹⁴ Weil welcomes this method as "une juridisation sage de l'équité" in the law of maritime delimitation. Prosper Weil, "Le droit international en quête de son identité: Cours général de droit international public", 237 *Recueil des cours* (1992 VI), pp. 246-257. For a detailed discussion of this two-stage method utilized by the Court, see Barbara Kwiatkowska, "Equitable Maritime Boundary Delimitation", in A. Vaughan Lowe and Malgosia Fitzmaurice (eds.), *Fifty Years of the International Court of Justice: Essays in Honour of Sir Robert Jennings* (Cambridge: Cambridge University Press, 1996), pp. 282-290.

¹⁵ *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*, ICJ Reports 2001, para. 230.

¹⁶ *The Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea Intervening)*, ICJ Reports 2002, para. 288.

¹⁷ R.R. Churchill and A.V. Lowe, *The Law of the Sea*, 3rd ed. (Manchester: Manchester University Press, 1999), p. 195. For a detailed discussion of the common maritime boundary, see Malcolm D. Evans, "Delimitation and the Common Maritime Boundary", *British Yearbook of International Law* (1994), pp. 283-332.

¹⁸ For a detailed account of geography in maritime delimitation, see Prosper Weil, "Geographic Considerations in Maritime Delimitation", in J.J. Charney and L.M. Alexander (eds.), 1 *International Maritime Boundaries* (1993), pp. 115-130.

¹⁹ *Supra* note 4, p. 240.

²⁰ For a detailed discussion of this question, see Barbara Kwiatkowska, "Economic and Environmental Considerations in Maritime Boundary Delimitations", in J.J. Charney and L.M. Alexander (eds.), 1 *International Maritime Boundaries* (1993), pp. 75-113.

²¹ Weil, *supra* note 18, 246-257.

²² *Ibid.*, p. 251. According to Weil, the emphasis laid upon the monotypic or *unicum* character of each case of delimitation (and the resultant difficulty of articulating rules of law having a certain degree of generality) is criticized in the following terms. "Facts can only produce law if they have a pre-existing legal norm applied to them. By themselves, they are powerless to create law. This is always true." *The Law of Maritime Delimitation – Reflections* (Cambridge: Grotius, 1989), p. 181.

²³ Weil, *supra* note 18, p. 258.

²⁴ *Ibid.*

²⁵ Jung Hai-Ung, "EEZ chejae wa hanil eoeop hyeopjeong [EEZ Regime and the ROK-Japan Fisheries Agreement]",

6 *Seoul International Law Journal* (1999), p. 5.

²⁶ Choon-ho Park, "Oil under Troubled Waters: The Northeast Asia Sea-Bed Controversy", in *Ibid.*, *East Asia and the Law of the Sea* (Seoul: Seoul National University Press, 1983), p. 30. This article originally appeared under the same title in 14 *Harvard Journal of International Law* (Spring 1973), pp. 212-60.

²⁷ Park, *supra* note 29, p. 22. According to him, "since the Korean claims in the Korean-Japanese dispute rely on the different principle based on the natural prolongation of the land territory, it may be necessary for Korea to explain to China why the median principle applied in one situation and the natural prolongation principle in the other". *Ibid.* See also Yuan Gujie, *Guoji haiyang huajiede lilun yu shijian* [The Theory and Practice of the International Maritime Delimitation] (Beijing: Faluchubanshe, 2001), p. 182.

²⁸ Paul C. Yuan, "China's Jurisdiction over its Offshore Petroleum Resources", 12 *Ocean Development and International Law* (1982), p. 200; Seo-hang Lee, "South Korea and the Continental Shelf Issue: Agreements and Disagreements between South Korea, Japan and China", 10 *Korea and World Affairs* (1986), p. 68.

²⁹ Greg Austin, *China's Ocean Frontier: International Law, Military Force and National Development* (St. Leonards, Australia: Allen and Unwin, 1998), p. 192.

³⁰ Kuen-Chen Fu, *Equitable Ocean Boundary Delimitation: On Equitable Principles and Ocean Boundary Delimitation* (Taipei: 123 Information Company, 1989), p.305.

³¹ Maurice Mendelson, "On the Quasi-Normative Effect of maritime Boundary Agreements", in Nisuke Ando, Edward McWhinney and Rüdiger Wolfrum (eds.), *Liber Amicorum Judge Shigeru Oda* (The Hague/London/New York: Kluwer Law International, 2002) (hereinafter, "FS Oda"), p. 1071.

³² Jin-Hyun Paik, "Haeyang gyeonggye hoekjeong wonchikeui hyeoncheongwa hanbando jubyon haeyeokeui gyeonggye munje[The Evolution of the Principles of Maritime Delimitation and the Questions of Maritime Boundaries of Korea's Adjacent Seas]", 6 *Haeyang jeongchaek yeongu* [Marine Policy Research] (1991), p. 39. Judge Choon-ho Park observed in his 1979 article that with the emergence of a new definition of continental shelf in the UNCLOS III negotiations "the Okinawa Trough could cease to be a limiting factor on Japan in the delimitation of the East China Sea continental shelf". *Supra* note 29, p. 258.

³³ 12 *International Legal Materials* (1973), p. 1232 (emphasis added).

³⁴ Hungdah Chiu, "China and the Law of the Sea Conference", *Occasional Papers/Reprints Series in Contemporary Asian Studies* No. 4 (41) (Baltimore: School of Law, University of Maryland, 1981), p. 9.

³⁵ 12 *International Legal Materials* (1973), p. 1234.

³⁶ Hungdah Chiu, "Chinese Attitude toward Continental Shelf and Its Implications on Delimiting Seabed in Southeast Asia", *Occasional Papers/Reprints Series in Contemporary Asian Studies* No. 1-1977 (Baltimore: School of Law, University of Maryland), p. 23.

³⁷ Statement of PRC delegate Shen Wei-liang at the plenary meeting held on 25 August 1980. UN Press Release (Geneva) SEA/128 (1980), p. 4; Ying-jeou Ma, "Legal Problems of Seabed Boundary Delimitation in the East China Sea", *Occasional Papers/Reprints Series in Contemporary Asian Studies* No. 3-1984 (82) (Baltimore: School of Law, University of Maryland), p. 54.

³⁸ Park, *supra* note 34, p. 53.

³⁹ Yuan, *supra* note 35, p. 174. Yuan argues that the partition of the seabed of the Yellow Sea in the ratio of 2:1 in favour of China accords with the principle of proportionality in terms of the length of the relevant coastlines. *Ibid.*, p. 182. The following book also discusses the "silt line" as the PRC's basis of its claims in the Yellow Sea. Selig S. Harrison, *China, Oil and Asia: Conflict Ahead* (New York: Columbia University Press, 1977), p. 220.

⁴⁰ Choon-ho Park, "China and Marine Jurisdiction: Some Boundary Issues", 22 *German Yearbook of International Law* (1979), pp. 136-137.

⁴¹ Yuan, *supra* note 35, p. 202.

⁴² *Ibid.*, pp. 245-248. This book represents a scholarly view only. However, in light of the continuity between the view expressed in the book and the traditional official position and other circumstances, one could surmise that there is not much discrepancy between this view and the official stance of the Chinese government.

⁴³ Park, *supra* note 29, p. 258.

⁴⁴ Signed on 11 November 1997 and entered into force on 1 June 2000. An unofficial translation of the agreement appears at Sun Pyo Kim, *Maritime Delimitation and Provisional Arrangements in North East Asia* (The Hague/London/Boston: Kluwer Law International, 2004), pp. 293-300.

⁴⁵ Signed on 28 November 1998 and entered into force on 22 January 1999. For the text, see *Ibid.*, pp. 283-292.

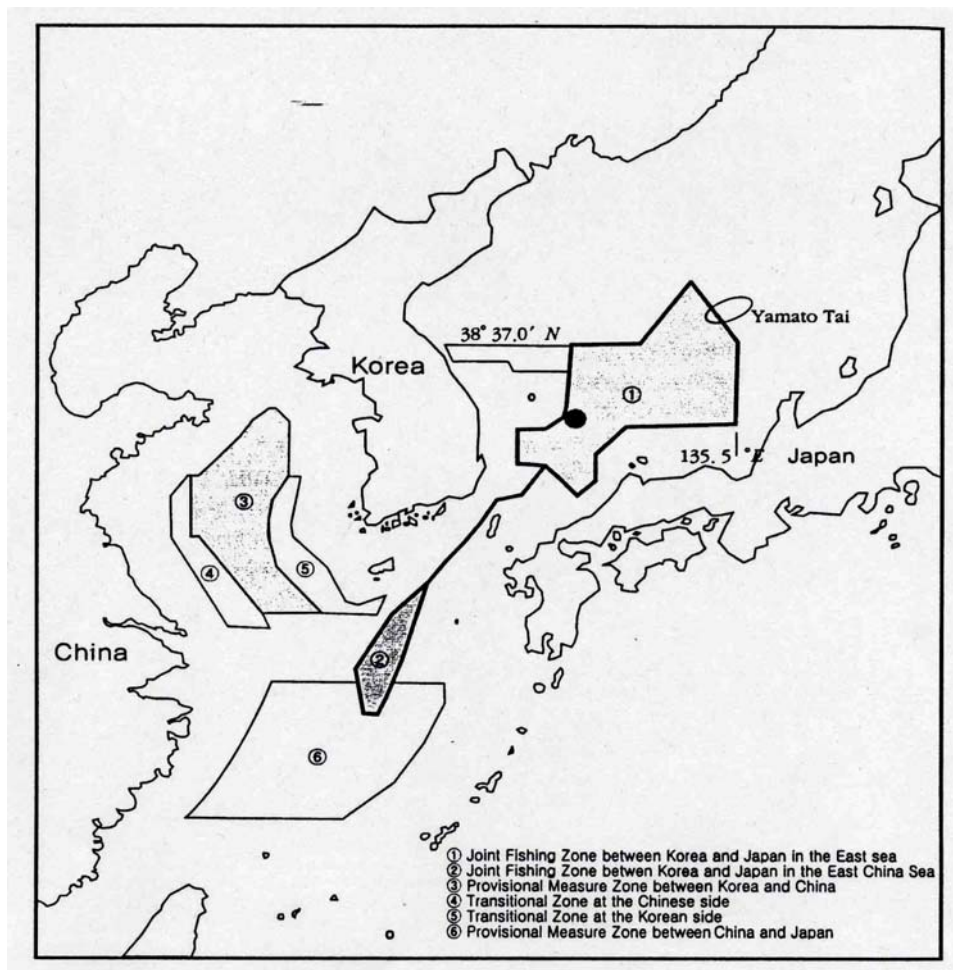
⁴⁶ Signed on 3 August 2000 and entered into force on 30 June 2001. For the text, see *Ibid.*, pp. 301-308.

⁴⁷ For detailed discussions of these agreements, see Park Hee Kwon, *The Law of the Sea and Northeast Asia* (The Hague/London/Boston: Kluwer Law International, 2000), pp. 49-75; Nobukatsu Kanehara and Yutaka Arima, “New Fishing Order – Japan’s New Agreements on Fisheries with the Republic of Korea and with the People’s Republic of China”, 42 *Japanese Annual of International Law* (1999), pp. 1-31.

⁴⁸ Park, *supra* note 45, p. 61.

⁴⁹ Kanehara and Arima, *supra* note 79, p. 12. In the agreement itself, there is no official appellation given to these zones. Scholars and practitioners from Japan and Korea call this zone differently.

⁵⁰ Article 12 of the 1997 Sino-Japanese Agreement; Article 15 of the 1999 Korea-Japanese Agreement; and Article 14 of the 2000 Sino-Korean Agreement.



<Map 1> from Sun Pyo Kim, *Maritime Delimitation and Provisional Arrangements in North East Asia* (The Hague/London/Boston: Kluwer Law International, 2004), p. 226.