

OCCASIONAL PAPERS/ REPRINTS SERIES IN CONTEMPORARY ASIAN STUDIES

NUMBER 1 — 1977

**CHINESE ATTITUDE TOWARD CONTINENTAL
SHELF AND ITS IMPLICATION ON DELIM-
ITING SEABED IN SOUTHEAST ASIA**

Hungdah Chiu

An outline map of East and Southeast Asia, showing the coastlines of China, Korea, Japan, the Philippines, and Indonesia. The map is positioned in the background of the text.

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Published with the cooperation of the Maryland International Law Society.

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500 West Baltimore Street, Baltimore, Maryland 21201 USA.

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Subscription is US \$10.00 for 10 issues (regardless of the price of individual issues) in the United States and Canada and \$12.00 for overseas. Check should be addressed to OPRSCAS and sent to Professor Hungdah Chiu.

Price for single copy of this issue: US \$1.00.

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FOREWARD

ROBERT A. SCALAPINO

Scholarship on contemporary Asia is steadily improving, both in quantity and quality. An ever-widening stream of documentary materials and primary sources is also forthcoming. Yet the problem of dissemination remains serious. The costs of all forms of publication continue their steep rise. As one result, many excellent articles never see the light of day, or are relegated to obscure outlets, rarely discovered by the working teacher and researcher.

Hence, we can only welcome additional efforts to bring before us timely work in the social sciences on the rapidly changing Asian scene. The value of the series will naturally depend upon both the quality and the range of items selected. It will be particularly useful if varying perspectives can be provided on some of Asia's more perplexing problems, and if an appropriate mix can be established between "data-oriented" pieces and work that is theoretical or conceptual in nature.

Fortunately, the series has as its editor, Professor Hungdah Chiu, a widely recognized scholar in the field of international law and organization. He will be assisted by a professional editorial staff and a diverse group of academic specialists.

I view this venture as another example of the vitality characterizing the Asian field today, and a tribute in particular to our younger scholars. All of those interested in contemporary Asia will surely join me in wishing it a long and successful life.

EDITORS' NOTE

The Occasional Papers/Reprints Series in Contemporary Asian Studies represents an attempt to bring to the attention of Asia scholars articles that might otherwise be submerged in the growing tide of the information explosion. Many valuable Asian studies are virtually unavailable because of the shortage of funds and outlets for publication; others are published in foreign periodicals, and these, too, are unavailable to scholars in the United States. Furthermore, the normal publication schedule for an article in a journal entails at least six months lag time between submission and publication. It is thus opportune to launch the present series, to ensure prompt publication of available articles in a widely disseminated series and to enrich the multidisciplinary literature available to Asia scholars.

Each year, this series will publish six to twelve issues of occasional papers and reprints; each issue will contain one or more articles discussing current Asian affairs. As a multidisciplinary publication, we will publish articles in the fields of politics, economics, sociology and law. Our goal is to provide a forum for scholars in the several disciplines to present their findings and views in a manner comprehensible to the scholarly community as a whole. To that end we will publish English-language versions of articles that originally appeared in foreign journals, as well as reprints of articles from English language journals and occasional papers that would otherwise be unavailable to Asia scholars.

The editors thank Professor Robert Scalapino, Director of the East Asian Center of the University of California at Berkeley, for his gracious forward to the series, Dean Michael J. Kelly of the University of Maryland School of Law, and the members of The Advisory Board for their encouragement and help.

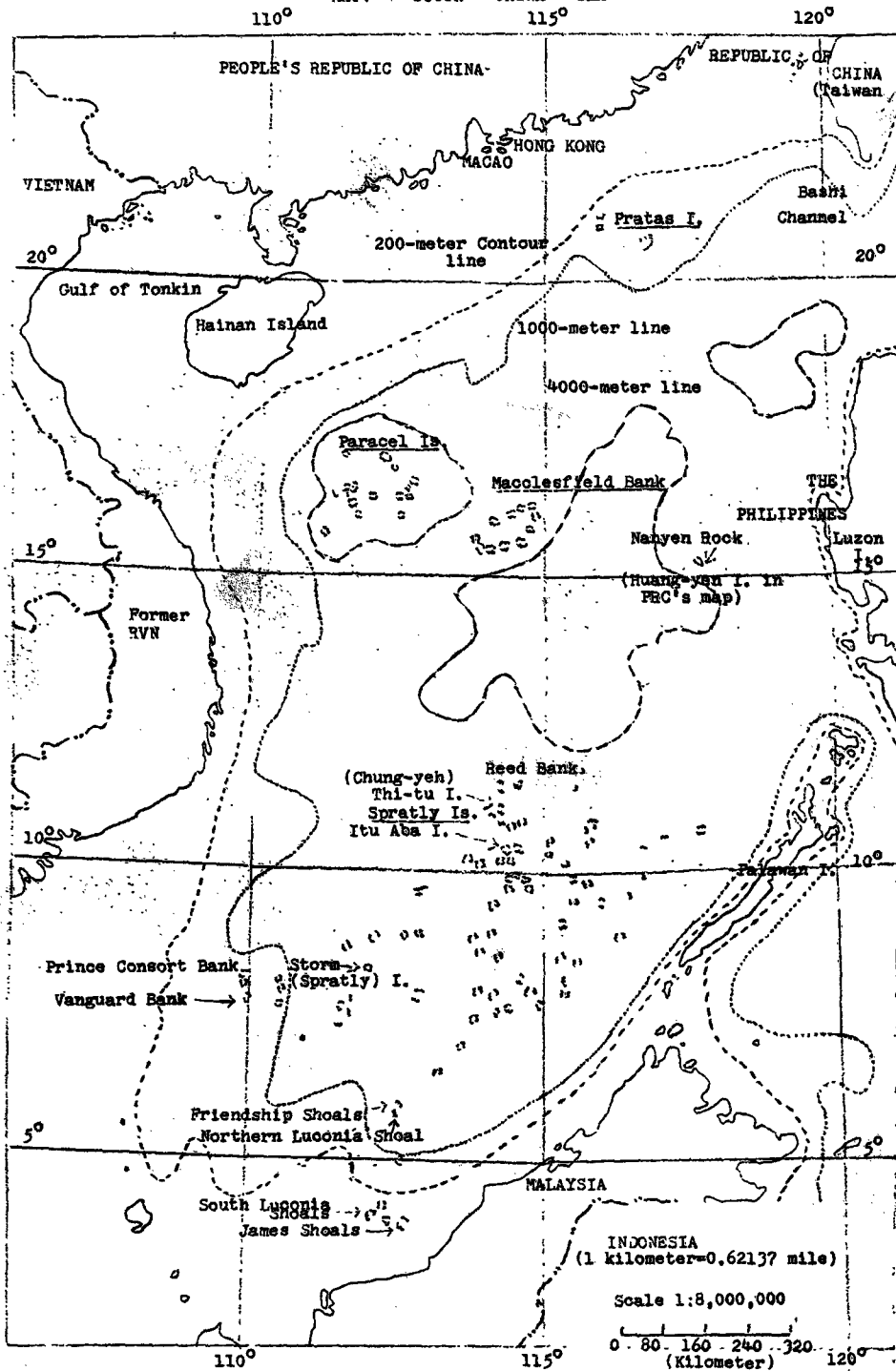
We hope that the community of Asia scholars, in the United States and abroad, will join with the editors and the distinguished Advisory Board in this endeavor, through their subscriptions, comments and submission of articles.

Hungdah Chiu

David Simon

January 1, 1977

MAP: SOUTH CHINA SEA



**CHINESE ATTITUDE TOWARD CONTINENTAL SHELF
AND ITS IMPLICATION ON DELIMITING
SEABED IN SOUTHEAST ASIA**

HUNGDAH CHIU*

1. INTRODUCTION

Beginning with a proclamation issued by President Truman of the United States on September 28, 1945,¹ many countries have made claims to the continental shelf adjacent to their coast. These claims were later recognized by the 1958 Geneva Convention on the Continental Shelf,² which in Article 2 provides that "the coastal State exercises over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources." Despite the fact that the concept of continental shelf has been generally recognized in international law at least since 1958 and despite the participation of Japan, the Republic of Korea (ROK), the Republic of China (ROC) and the Republic of Vietnam (RVN) in the 1958 First United Nations Conference on the Law of the Sea held at Geneva which drafted the Convention, none of these countries made any claim to the continental shelf in the seabed of East and Southeast Asia until the late 1960s. At that time a report of a committee of the United Nations Economic Commission for Asia and the Far East (ECAFE) disclosed that "a high probability exists that the continental shelf between Taiwan and Japan may be one of the most prolific oil reservoirs in the world"³

Since then, the ROC, the People's Republic of China (PRC), the ROK, the Democratic Republic of Korea, Japan, the former RVN and now the unified Vietnam, have all asserted their claims

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1. 59 Stat. 884; W. BISHOP, *INTERNATIONAL LAW* 637 (3rd ed. 1971).

2. 499 U.N.T.S. 311; T.I.A.S. No. 5578.

3. Emory et al., *Geological Structure and Some Water Characteristics of the East China Sea and the Yellow Sea*, 2 *TECH. BULL., TECHNICAL ADVISORY GROUP REPORT*, 39-40 (1969). For a study of this problem, see Choon-ho Park, *Oil Under Troubled Waters: The Northeast Asia Seabed Controversy*, 14 *HARV. INT'L L.J.* 212 (1973).

to the seabed in the East or South China Sea. As a result, there are now several serious disputes among these countries. The two most serious disputes in this area are between China and Japan over the T'iaoyutai Islets (Senkaku Gunto),⁴ and between China and Vietnam over the Spratly and Paracel Islands.⁵ These islands are mostly uninhabited and have little economic value except as bases for fishing in the area. However, they may serve as bases for claiming the adjacent continental shelf or for applying the archipelago principle to delimit the territorial sea of certain mid-ocean islands, and it is for these reasons that the ownership disputes are particularly acute.

This paper proposes to study the Chinese attitude toward the continental shelf concept in international law and its implications for delimiting the continental shelf or seabed in the vicinity of Taiwan and the South China Sea.⁶

The seabed beneath the East China Sea comprises a broad continental shelf area stretching eastward from the coast of China to the Okinawa trough. In the northern part, the outer edge of the shelf has a distance of about 450 kilometers (281 miles) off the Yangtze River and it gradually narrows in the southwest direction to about 125 kilometers (78 miles) in the Taiwan Strait. The 200-meter (600 feet) contour line follows very closely to the eastern coast of Taiwan and then moves in a northeast direction. The T'iaoyutai Islets lie approximately 100 miles northeast of Taiwan and within the 200-meter contour line.⁷

In the South China Sea area, the continental shelf extends from the Taiwan Strait to the Kwangtung Province, Hainan

4. See generally J.A. COHEN & H. CHIU, 1 PEOPLE'S CHINA AND INTERNATIONAL LAW: A DOCUMENTARY STUDY 346-353 (1974) and Choon-ho Park, *supra* note 3, at 248-258.

5. See generally COHEN & CHIU, *supra* note 4, at 341-346, and H. Chiu and Choon-ho Park, *Legal Status of Paracel and Spratly Islands*. 3 OCEAN DEVELOPMENT AND INTERNATIONAL LAW 1-28 (1975). The RVN's claim to these islands was well presented in REPUBLIC OF VIETNAM, MINISTRY OF FOREIGN AFFAIRS, WHITE PAPER ON THE HOANG SA (PARACEL) AND TROUNG SA (SPRATLY) ISLANDS (Saigon, 1975). The ROC Government immediately issued a statement rejecting the Vietnam claim. *Gov't declares island groups ROC property, protests Saigon's claims*, 16 FREE CHINA WEEKLY 1 (No. 7, February 23, 1975).

6. For other aspects of the Chinese attitude toward the law of the sea, including some discussion on the question of continental shelf, see Dominique David, *La République Populaire de Chine et le Droit des Mers*, FRANCE-ASIE, 1974/2, at 71-92; Hungdah Chiu, *China and the Question of Territorial Sea*, 1 INT'L TRADE L.J. 29-77 (1975); Charles Douglas Bethill, *People's China and the Law of the Sea*, 8 INT'L LAWYER 724-751 (1974).

7. Emory et al., *supra* note 3, at 13, 25, 26 (1969).

Island and then to Vietnam. The width of the shelf is approximately 200 kilometers (125 miles) in Kwangtung; then it gradually narrows to less than 100 kilometers (62.5 miles) in the southern part of Vietnam. Off the 200-meter (about 600 feet) contour line of the shelf, the seabed abruptly drops off to abyssal plains. The Paracel and Spratly Islands, about 230 nautical miles apart, are situated in mid-ocean where the depth drops immediately to almost 1,000 meters around the Paracels and about 3,000 meters at some points around the Spratlies.⁸

2. THE REPUBLIC OF CHINA AND THE QUESTION OF THE CONTINENTAL SHELF

Only a few ROC scholars have paid attention to the question of the continental shelf in international law. The first ROC scholar who discussed this question appears to be Dr. Shu-hsi Hsu in his capacity as a member of the United Nations International Law Commission. His initial attitude toward the concept of continental shelf was quite negative; he thought that to place the submarine area outside the territorial sea under the jurisdiction of the coastal state was inconsistent with the principle of freedom of high seas.⁹ He also raised a question on the use of the term "continental shelf" to describe the seabed area adjacent to the coastal state. He said at the 196th meeting of the International Law Commission held on June 17, 1953:

The expression [is] a totally misleading one, and certainly would not be understood by the layman. Indeed, though possibly quite intelligible to western lawyers, its use in the east would certainly lead to confusion. The concept of the continental shelf [has] now become far wider than originally discussed by the Commission. A more comprehensive and accurate term, whose meaning would be immediately apparent without lengthy explanation, [is] now needed.¹⁰

8. See *Chart of Atlas of Islands in South China Sea*, YA-KUANG YU-TI HSUEH-SHE, CHUNG-HUA JEN-MIN KUNG-HO-KUO FEN-SHENG TI-T'U (Atlases of the provinces of the People's Republic of China), 41 (6th rev. ed. 1953).

9. See his talks at the 89th Meeting of the United Nations Association of China held in 1953, in Shu-hsi Hsu, *The Republic of China's Contribution to the United Nations in the Field of Development of International Law*, 8 TA-LU TSA-CHIH (Continental magazine), 29 (No. 8, March 15, 1953).

10. [1953] 1 Y.B. INT'L L. COMM'N. 76, Doc. A/CN. 4/SER. A/1953 (Sales No. 59 V. 4. Vol. I.)

Dr. Hsu proposed the use of the term "submarine areas."¹¹ However, another ROC scholar, Dr. Yuan-li Liang, who served as Director of the Division for the Development and Codification of International Law of the United Nations Secretariat and Secretary of the Commission until 1964, pointed out that the term "submarine areas" did not offer a solution, as the term had a far wider connotation than the term "continental shelf." Moreover, the term failed to convey the element of proximity to the coastal state.¹² The Commission did not adopt Dr. Hsu's view.

With respect to the definition of the term "continental shelf," Dr. Hsu supported the view of another member of the Commission, Faris Bey el-Khouri, that if the depth of the continental shelf was fixed to 200 meters, the width should also be fixed.¹³ In other words, Dr. Hsu suggested that a definition of continental shelf should be formulated in terms of both depth and width; he suggested that the maximum width of the shelf should be 24 miles.¹⁴

Dr. Hsu preferred to take a restrictive approach to the coastal state's right to the adjacent continental shelf; he opposed the principle of sovereignty over the continental shelf.¹⁵ In his view, the coastal state's right should be limited to exploration and exploitation of the natural resources of the continental shelf. Among the five reasons he gave to oppose a coastal state's right of sovereignty over the continental shelf, two deserve special attention.

Dr. Hsu pointed out that it would be unrealistic to suppose that sovereignty over the continental shelf, if recognized, could be restricted to the seabed and subsoil since states might later claim subjacent waters as well. Moreover, acceptance by the International Law Commission of the principle of sovereignty over the continental shelf would lead to ever-increasing claims, embracing the superjacent waters and airspace and extending out into the high seas beyond the limits which the commission had fixed, unless political situations proved to be unfavorable to such

11. *Id.*

12. *Id.*

13. Hsu's statement at the 197th meeting of the International Law Commission held on June 18, 1953. *Id.* 80.

14. [1956] 1 Y.B. INT'L L. COMM'N. 136, Doc. A/CN. 4/SER. A/1956 (Sales No. 1956, V. 3, Vol. I).

15. Hsu's statement at 205th meeting of the International Law Commission held on June 20, 1953. [1953] 1 Y.B. INT'L L. COMM'N., *supra* note 10, at 135.

developments.¹⁶ Subsequent developments, as will be seen later in this paper, indicate that Dr. Hsu's worry was justified.

Dr. Hsu did not present any concrete proposal on the question of delimitation of continental shelf between neighboring countries, but he supported the proposal of referring delimitation disputes to arbitration.¹⁷

On June 1, 1956, when the Commission again discussed the definition of continental shelf, an amendment consisting of two parts was proposed to the draft definition: (1) that the coastal state's right of exploitation of the adjacent seabed be extended to the "continental terrace," i.e., to a greater depth than 200 meters, since the foot of the terrace was generally at a depth of 500 meters; and (2) that the coastal state's right be extended beyond 200 meters and up "to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said (seabed) areas."¹⁸ Commenting on the second part of the amendment, Dr. Hsu questioned the purpose of mentioning a depth of 200 meters at all if states were to have exclusive rights of exploitation to any depth at which exploitation was possible. According to him, the continental shelf issue should be solved in accordance with the following three principles:

1. A coastal state may enjoy exclusive rights of exploration and exploitation of the natural resources of the seabed and subsoil of the contiguous high seas to a distance of, say, 24 miles.
2. Such exploration and exploitation must not result in any unjustifiable interference with navigation, fishing or fish production.
3. Any disputes which may arise from the assertion or enjoyment of such exclusive rights shall be submitted to arbitration at the request of any of the parties.¹⁹

However, he did not wish to press his proposal at that late stage in the discussion.

The first part of the proposed amendment was later withdrawn and only the second part of the amendment was put to

16. Hsu's statement at 215th meeting of the International Law Commission held on July 14, 1953. *Id.* 199-200.

17. Hsu's statement at 201st meeting of the International Law Commission held on June 24, 1953. *Id.* 106.

18. UN Doc. A/CN. 4/SER. 357, para. 44.

19. [1956] 1 Y.B. INT'L L. COMM'N. 136, Doc. A/CN. 4/SER. A/1956.

vote; it was adopted by 7 votes to 5, with 3 abstentions. Dr. Hsu voted for the amendment²⁰ which was incorporated, with minor modification in wordings, in Article 1 of the 1958 Convention on the Continental Shelf.

Another ROC scholar, Chang Pao-shu, took a different view. Chang is a fishery expert and has been Secretary-General of the ruling Kuomintang (Nationalist Party) since 1968. He maintained that the continental shelf is the area where sedentary fishes stay and is rich in natural resources, so it should be part of the territory of the coastal state. In addition, the coastal state should have preferential rights with respect to the exploitation and conservation of the living resources in this area.²¹

When the Draft Articles on the Law of the Sea were sent to the member states of the United Nations for comments, the ROC fishing industry expressed the view that the sea area of the continental shelf should be considered a part of the territorial sea and that the coastal state should have the preferential right and duty with respect to the living resources there.²² The ROC government, however, did not adopt this view and made no comments on those articles concerning the regime of the continental shelf.²³

At the First United Nations Conference on the Law of the Sea held at Geneva in February-April, 1958, an ROC delegate, Professor Kwei, expressed the view at the Fourth Meeting of the Fourth Committee (Continental Shelf) held on March 4, 1958, that the term "sovereign rights" in Draft Article 68 (later Article 2 of the Convention) should be replaced by "rights of control and jurisdiction," since the control over the continental shelf should not be of the same degree as control over the territorial sea. He felt

20. *Id.* 139.

21. CHANG PAO-SHU, HAI-YANG FA YEN-CHIU (Studies on the law of the sea), 11, 133 (1957), cited in Kan Huang, *The Republic of China and the Regime of Continental Shelf*, 1 JEN YU SHE-HUI (Man & Society) 50, 56 (Taipei, No. 2, August, 1973). Two other Chinese scholars also concisely described the regime of continental shelf in international law but did not meaningfully touch on the question of what attitude the ROC should take. 2 T'ANG WU, CHUNG KUO YU KUO-CHI-FA (China and international law) 297-301 (1957); Yi-ting Chang, *Delimitation of The Continental Shelf*, 6 ANNALS OF THE CHINESE SOCIETY OF INTERNATIONAL LAW 39-50 (1969).

22. See *Our Fishing Industry's Recommendation on the Law of the Sea*, YU-YU (Friends of Fishermen), No. 74, at 13 (Aug. 10, 1957).

23. UN Doc. A/CONF. 13/5/Add 2, dated Jan. 29, 1958, in 1 UN CONF. ON THE LAW OF THE SEA OFF. REC., PREPARATORY DOCUMENTS 110-111, UN Doc. A/CONF. 13/37 (Sales No. 58. V.4. Vol. I).

that the right of the coastal state over the continental shelf should be recognized on the condition that the exploitation of the natural resources was possible and that the coastal state had taken steps toward their development. In other words, the coastal state's right over the continental shelf should be regarded not only as a *right of priority*, or a preferential right, but also as a right incident to its sovereignty.²⁴

Draft Article 67 provided that the term "continental shelf" refers to "the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 meters (approximately 100 fathoms), or beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of said areas." Professor Kwei thought the article was not "precise enough." He was of the opinion that, while it might be said that the former criterion imposed a limitation of area and the latter a limitation of purpose, it was nevertheless true that the latter criterion contradicted the former and therefore would not be helpful for avoiding disputes of uncertainty.²⁵ But Professor Kwei also pointed out that the ROC had no preference for one criterion over the other.²⁶

The International Law Commission Draft did not explicitly provide for a continental shelf for islands. The Philippines therefore proposed at the Fourth Committee (Continental Shelf) of the Conference an amendment to Article 67 that the term continental shelf "shall be understood to apply also to similar submarine areas adjacent to and surrounding the coasts of islands." When the amendment was put to vote, the ROC voted for the amendment, while Japan and the ROK voted against. Article 67 as amended by the Philippines, however, was adopted by 51 votes to 9, with 10 abstentions.²⁷

When the Fourth Committee came to discuss Draft Article 68, which provides that "the coastal State exercises over the continental shelf sovereign rights for the purpose of exploring and exploiting its natural resources," the United States proposed that the word "sovereign" be replaced by the word "exclusive."²⁸ As stated before, the ROC also opposed the use of the word "sovereign" to characterize the coastal state's right, so it

24. UN CONF. ON THE LAW OF THE SEA OFF. REC., FOURTH COMM. (Continental Shelf) 4, UN Doc. A/CONF. 13/42 (Sales No. 58, V.4, Vol. VI).

25. *Id.*

26. UN Doc. A/CONF. 13/C.4/L.26 (21 March 1958), in *id.* 133.

27. *Id.* 47.

28. UN Doc. A/CONF. 13/C. 4/L.31 (24 March 1958), in *id.* 135.

supported the United States proposal.²⁹ The Fourth Committee adopted the proposal by 21 votes to 20, with 27 abstentions. Both the ROC and Japan voted for the amendment while the ROK voted against.³⁰ The United States changed its position at the 8th plenary session and supported the original proposal of the International Law Commission using the word "sovereign."³¹

Article 71 (later Article 5 of the Convention) of the Draft Articles on the Law of the Sea provided for the rights of a coastal state in the continental shelf. When the committee discussed this article, India proposed to add a new paragraph as follows: "The continental shelf adjacent to any coastal State shall not be used by the coastal State or any other State for the purpose of building military bases or installation."³² The amendment was rejected by 31 votes to 18, with 6 abstentions. The ROC, ROK, and Japan all voted against the Indian amendment.³³

The ROC signed the Convention on April 29, 1958, without any reservation. However, no action was taken to ratify the convention until late 1960s. In academic circles, while a few ROC scholars did discuss the question of the continental shelf problem in international law in connection with the 1958 Convention, none of them ever discussed the attitude ROC should take toward this problem.³⁴

It was not after the release of the above UN ECAFE committee report, which disclosed the possibility of oil reservoirs in the continental shelf between Taiwan and Japan, that the ROC government began to assert its claim on the continental shelf adjacent to China's coast.

On July 17, 1969, the Executive Yuan (Cabinet) of the ROC issued the following declaration:

The Republic of China is a State signatory to the Convention on the Continental Shelf which was adopted by the UN Conference on the Law of the Sea in 1958. For the purposes of exploring and exploiting natural resources and in accordance

29. Professor Kwei's statement at 20th meeting held on March 26, 1958, in *id.* 52.

30. *Id.* 69.

31. See M.M. Whiteman, *Conference on the Law of the Sea: Convention on the Continental Shelf*, 52 AM. J. INT'L L. 637 (1958).

32. UN Doc. A/CONF. 13/C. 4/L. 57 (1 April 1958), in *id.* 141.

33. *Id.* 91.

34. *E.g.*, see Liu Po-lun, *A Study of the Regime of the Continental Shelf*, 10 J. OF SOC. SCI. 234 (Taipei, 1960) and SUN-SHEN LEI, *HAI-YANG FA YEN-CHIU* (A study of the Law of the Sea) (Taipei, 1964).

with the principles embodied in the said Convention, the Government of the Republic of China declares that it may exercise its sovereign rights over all the natural resources of the seabed and subsoil adjacent to its coast outside its territorial sea.³⁵

In late 1969, the Executive Yuan referred the 1958 Convention to the Legislative Yuan for ratification. In early 1970, the Executive Yuan decided that in ratifying the Convention, the ROC should make the following reservation to Article 6:

With regard to the determination of the boundary of the continental shelf as provided in paragraphs 1 and 2 of Article 6 of the Convention, the Government of the Republic of China considers:

(1) that the boundary of the continental shelf appertaining to two or more States whose coasts are adjacent to and/or opposite each other shall be determined in accordance with the principle of the natural prolongation of their land territories; and

(2) that in determining the boundary of the continental shelf of the Republic of China, exposed rocks and islets shall not be taken into account.³⁶

The reservation was referred to the Legislative Yuan in mid-1970. While that body was considering the ratification of the Convention with the proposed reservation, legislator Li-hao Teng explained to the plenary meeting of the Yuan that the principle of "natural prolongation of land territory" in delimiting the continental shelf between neighboring countries, as provided in the first part of the reservation, was recognized by the International Court of Justice in its 1969 decision on *North Sea Continental Shelf Cases*.³⁷ With respect to the second part of the reservation, he explained that exposed rocks or islets are themselves parts of the continental shelf and therefore should not

35. Hungdah Chiu, *Chinese Contemporary Practice and Judicial Decisions Relating to International Law, 1968-1970*, 7 THE ANNALS OF THE CHINESE SOCIETY OF INTERNATIONAL LAW 84 (Aug. 1970); also in 9 FREE CHINA WEEKLY 4 (No. 48, July 20, 1969).

36. 59 LI-FA YUAN KUNG-PAO (Gazette of the Legislative Yuan) 3 (No. 64, Aug. 22, 1970); English translation in 10 INT'L LEGAL MAT. 452 (1971).

37. Federal Republic of Germany v. Denmark, Federal Republic of Germany v. The Netherlands, [1969] I.C.J. Rep. 3.

be considered as a basis for asserting a claim over a continental shelf.³⁸ He did not explain why this reservation was necessary for the ROC, but it would not be difficult to identify the reason behind such a reservation. As stated in the beginning of this paper, both the ROC and Japan have claimed sovereignty over the T'iaoyutai Islets, which are situated on the edge of the continental shelf extended from the China mainland and Taiwan. By denying exposed rocks or islets as a basis for claiming continental shelf, the ROC apparently was preparing its second line of defense, i.e., even if the ROC lost in the territorial dispute over the T'iaoyutai, it would still deny Japan's right to claim the continental shelf for those islets.³⁹

On the other hand, it must be pointed out that such a reservation would have had the undesirable effect of weakening the ROC claim of the continental shelf for its South China Sea mid-ocean islands, namely, the Paracel and Spratly Islands.⁴⁰

The Legislative Yuan ratified the Convention with the proposed reservation and the ROC President issued an instrument of ratification on September 23, 1970, which was deposited with the UN Secretariat on October 14, 1970.⁴¹

38. Chung-yang jih-pao (Central daily news), Aug. 22, 1970, news item reprinted in T'IAOYUTAI LIEH-YU WEN-T'I TSI-LIAO HUI PIAN (Collected materials on the question of T'iaoyutai Islets) 4 (The Fourth Committee of the Nationalist Party Central Committee ed., 1972).

39. Cf. the recent dispute between Turkey and Greece over the continental shelf of the Aegean Sea. Greece has some 350 islands in the Aegean stretching very near to the Turkish coast. Greece relies on a provision of the 1958 Convention on the Continental Shelf which says that islands enjoy the same rights as the mainland in claiming continental shelf. She maintains that the shelf boundary between Turkey and Greece should be the median line between the island and the Turkish mainland. This position would make Greece the owner of almost all the continental shelf of the Aegean Sea. Turkey, contending that islands do not have a continental shelf, says the continental shelf of the Aegean Sea should be equally divided between Turkey and Greece regardless of the islands. See C.H. Farnsworth, *Greek-Turkish Oil-Field Dispute in Aegean Remains Unresolved*, N.Y. Times, July 23, 1974, at 16 and S.V. Roberts, *Dispute Goes On Over Aegean Sea*, *id.*, February 16, 1975, at 17.

40. However, either the ROC or the PRC may still use the archipelago principle to claim a much larger territorial sea of these islands and therefore also the seabed of the territorial sea. Nevertheless, it should be noted that the revised Single Negotiating Text which serves as the basis of discussion in the Third United Nations Conference on the Law of the Sea seems to limit the application of the archipelago principle only to archipelago states, such as Indonesia and the Philippines. See Article 119 at Part V of the text in 5 THIRD UN CONF. ON THE LAW OF THE SEA OFF. REC. 171 (Sales No. E. 76, V.8).

41. 10 INT'L LEGAL MAT. 452 (1971).

In the meantime, in July-September, 1970, the ROC granted four concession contracts to four oil companies in areas stretching from the Taiwan Strait northeast to roughly 300 miles east of mainland China's Chekiang Province.⁴² On September 3, 1970, the ROC promulgated an Act on the Exploration and Exploitation of Oil in the Sea Area⁴³ for the purpose of regulating "the exploration and exploitation of the oil in sea area of the territorial sea and the adjacent continental shelf of the Republic of China" (Article 1). Then on October 15, 1970, the ROC announced that in accordance with this Act, it designated five "Reserved Offshore Petroleum Areas" in the East China Sea.⁴⁴ The western boundary of the area is the China mainland coast and the eastern boundary is approximately coincident with the 200-meter contour line.

Both Japan and the ROK also claim the continental shelf in some areas claimed by the ROC. These three countries have produced altogether 17 concession blocks, differing in legal formulation. Only four remain uncontested, while the remaining 13 overlap one another.⁴⁵ It is not clear whether American oil companies granted concession contracts in the disputed areas have continued their exploration work there. Recently, the ROC government announced that oil and natural gas were discovered in the continental shelf of Area 1 (the Taiwan Strait area) by Amoco Oil Company,⁴⁶ but only vaguely referred to the exploration of oil in other areas allocated to other American oil companies.⁴⁷

42. The dates of the contracts and locations of the concession are as follows:

Amoco	July 11, 1970	Area 1
Gulf	July 12, 1970	Area 2
Oceanic Exploration	Aug. 13, 1970	Area 3
Clinton	Sept. 24, 1970	Area 4

See Chung-yang jih-pao, Aug. 14, 18, Sept. 25, and Oct. 16, 1970.

43. CHUNG-HUA MING-KUO HSIEN-HSING FA-KWEI LEI-PIEN, LIU-SHIH NIEN SHU-PIEN (Collection of current laws and decrees of the Republic of China, 1971) 928 (1971).

44. See Chung-yang jih-pao, Oct. 16, 1970, news item in T'IAOUYTAI, *supra* note 38, at 9; *Undersea Oil Hunt In Progress*, China Post, Oct. 16, 1970, at 4.

45. See Park, *supra* note 3, at 226.

46. *Oil & Gas Exploration Expanding*, 16 FREE CHINA WEEKLY 1 (No. 3, Jan. 19, 1975).

47. See the ROC Foreign Ministry statement of February 14, 1974, *infra* note 65 and accompanying text.

Except for the above-stated sea area, the ROC has not made known the exact boundary of the continental shelf it claims for China as a whole, nor has it clarified whether it would claim the continental shelf for the Paracel and Spratly Islands in the South China Sea.⁴⁸ While it has repeatedly reasserted its claim and denounced the former RVN and now the Vietnamese claim to these islands,⁴⁹ the ROC has been silent on the oil concession areas designated by the former RVN in 1973 and 1974 in the nearby area.⁵⁰

* * *

A question closely related to the ROC's attitude toward the continental shelf problem is its attitude toward the seabed beyond national jurisdiction. In 1967, the ROC supported a proposal submitted by Malta requesting the General Assembly of the United Nations to consider the peaceful use of the seabed beyond national jurisdiction.⁵¹ On March 5, 1968, the ROC government submitted a note to the UN Secretary-General to express its view of this question. The note stated that the ROC "is in general agreement with the view that the seabed and the ocean floor, and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction should not be subject to national appropriation, should be reserved exclusively for peaceful purposes and should be explored and exploited for the benefits of all people irrespective of their degree of economic or scientific development."⁵²

The note also called for the study of the question of "the definition or delineation of the seabed, and the ocean floor, and

48. But cf. note 40, *supra*.

49. See Chiu and Park, *supra*, note 5. In February 1975, the ROC again denounced the RVN's claim to these islands; see note 5, *supra*. On August 27, 1976, when the ROC learned that a Conference was held in Manila among the Philippines, PRC, Vietnam and others aiming at settling the disputed Reed Bank area of the Spratly Islands, she immediately reiterated her claim for the Spratly Islands. *Govt. reiterates Spratly Sovereignty*, 17 FREE CHINA WEEKLY 1 (No. 35, Sept. 5, 1976).

50. See *RVN Government Proclamation on Control Over Continental Shelf* (Saigon VIETNAM PRESS in English, 25 Jun. 74 Evening Edition S), in 1 SPECIAL REPORT, TRANSLATION ON THE LAW OF THE SEA 66 (July 12, 1974, JPRS, No. 62456).

51. CHUNG-HUA MING-KUO CH'U-HSI LIEN-HO-KUO TA-HUI TI ERH-SHIH-ERH CHIEH CH'ANG-HUI TAI-PIAO-TUAN PAO-KAO-SHU (Report of the Delegation of the Republic of China to the 22nd Session of the General Assembly of the United Nations) 84 (1968).

52. UN Doc. A/AC. 135/1, March 11, 1968, at 28; reprinted in Chiu, *supra* note 35 at 79-80.

the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction.”⁵³ The note did not state the ROC position on this question. However, on December 4, 1970, the ROC delegate to the First Committee of the General Assembly, Dr. Liang, said:

The Chinese government is cognizant of the imprecision surrounding the concept and the definition of the continental shelf as they appear in Article 1 of the [Geneva] Convention on the Continental Shelf. Nonetheless, before international legislation in the sense of the conclusion of new multilateral treaties has succeeded in defining the outer limits of the continental shelf, we do not see any other alternative than to consider the Geneva Convention as the positive law.⁵⁴

With respect to the question of the international regime for the control of the seabed beyond national jurisdiction, the ROC delegate to the First Committee of the General Assembly, Mr. Shu, elaborated the ROC position at 1591st meeting held on October 30, 1968, as follows:

It would be advisable to establish an international regime under the auspices of the United Nations so that the resources of the sea-bed and the ocean floor would be developed with the cooperation of all Member States, and in particular with the technological and financial cooperation of well-developed Member States. The future proceeds from the development and exploitation of these resources should be fairly distributed for the benefit of all mankind.⁵⁵

On December 15, 1969, the General Assembly adopted the so-called “moratorium resolution” (Resolution 2467D (XXIV)) by a vote of 62 to 28, with 28 abstentions. The resolution “declares that, pending the establishment of the (proposed) international regime: (a) states and persons, physical or juridical, are bound to refrain from all activities of exploitation of the resources of the area of the seabed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction; (b) no claim to any part of that area or its resources shall be recognized.”⁵⁶

53. *Id.*

54. GAOR, 25th Sess., First Committee, 1785th Meeting, December 4, 1970, at 8 (A/C. 1/PV. 1785).

55. GAOR, 23rd Sess., First Committee, 1591st Meeting, October 30, 1968, at 12 (A/C. 1/PV. 1591).

56. 7 UN MONTHLY CHRONICLE 89 (No. 1, Jan. 1970).

The ROC at first decided to vote against the resolution, but in view of the strong support given to this resolution by Latin American countries it decided to abstain.⁵⁷ The reason for taking such a position was later explained by Dr. Liang at the 1785th meeting of the First Committee of the General Assembly held on December 4, 1970:

In regard to the so-called "Moratorium resolution" adopted by the General Assembly in December 1969, it will be recalled that China abstained in the voting at the plenary session of the General Assembly. We still hold the view that during the interim period before the adoption by the international community of an international regime and the definition of the area of exploration and exploitation, development programmes and enterprises should not be stultified. Time and tide indeed wait for no man.⁵⁸

It should be pointed out that in mid-1969 the ROC began formally to claim the continental shelf in the East China Sea; by the fall of 1970, it has already signed contracts with four American oil companies to explore oil reserves in the East China Sea.⁵⁹ Therefore, the ROC might feel that the "moratorium resolution" may have an undesirable effect on its exploration activities in East China Sea.

On October 25, 1971, the UN General Assembly adopted Resolution 2758 (XXVI) to have the PRC take over the Chinese seat from the ROC.⁶⁰ Since then the ROC has been excluded from, among others, any UN activities on the law of the sea, including participation in the Third United Nations Conference on the Law of the Sea.⁶¹ Furthermore, the ROC has not yet made known its position on some recent important problems concerning the law of

57. CHUNG-HUA MING-KUO CH'U-HSI LIEN-HO-KUO TA-HUI TI ERH-SHIH-SSU CHIEH CH'ANG-HUI TAI-PIAO-TUAN PAO-KAO-SHU (Report of the Delegation of the Republic of China to the 24th Session of the General Assembly of the United Nations) 102 (1969).

58. GAOR, 25th Sess., First Committee, 1785th meeting, *supra* note 54, at 9.

59. *Cf.* notes 35, 42, 43, 44 and 45 and their accompanying text, *supra*.

60. 8 UN MONTHLY CHRONICLE 61 (No. 10, Nov. 1971).

61. On October 15, 1973, when the UN Political and Security Committee discussed the question of a resolution concerning the convening of the Third United Nations Conference on the Law of the Sea, the PRC delegate, Ling Ching, specifically emphasized that "the Chiang Kai-shek clique should not be invited to attend the Conference on the Law of the Sea." *Recommendation for Holding UN Conference on Law of Sea*, HSIHUA WEEKLY, No. 45, at 22 (Nov. 5, 1973).

the sea, such as the 200-mile economic resources zone,⁶² which is closely related to the problem of the continental shelf.

On January 30, 1974, Japan and the ROK signed an agreement concerning the joint development of the continental shelf in the East China Sea,⁶³ and on February 4, the PRC made a statement affirming its rights in the area.⁶⁴ On February 14, the ROC also made a statement to affirm its rights in the area:

In connection with certain statements recently made by some States concerning the development of submarine resources in the East China Sea and the illegal claims made by the Chinese Communist regime, the Government of the Republic of China reserves all her rights over the continental shelf extending from her coast including the part in the East China Sea. Such rights include the right to explore the continental shelf and to exploit its natural resources.

The continental shelf in question is adjacent to, and is a natural prolongation of, the territory of the Republic of China. As confirmed by the Convention on the Continental Shelf signed in Geneva on April 29, 1958, the Republic of China is entitled, as the coastal State, to the exercise of sovereign rights over the continental shelf pertaining to her for the purpose of exploring it and exploiting its natural resources.

Accordingly, the Government of the Republic of China has delineated five Reserved Offshore Petroleum Areas in the East China Sea and in the Taiwan Strait as announced by the Government Information Office on October 15, 1970. The activities for the exploration and exploitation in these areas have begun for several years and are going on extensively.⁶⁵

62. But, on September 15, 1976, the ROC signed a fishery agreement with the United States, recognizing the legality of the new US 200 miles Fishery Conservation Zone. On the other hand, the agreement also authorizes the ROC fishing vessels to fish in the zone, subject to US conservation restrictions. *ROC & US Sign Fishery Agreement in Washington*, NEWS FROM CHINA. PE. 76-834, September 16, 1976.

63. The agreement was digested and excerpted in News Review Magazine, Feb. 3, 1974; cited from Choon-ho Park, *The Sino-Korean Sea Resources Controversy and the Hypothesis of a 200-mile Economic Zone*, 16 HARV. INT'L L.J. 43, n. 1 (1975).

64. See note 79, *infra*.

65. *Continental Shelf Rights Reserved*, 15 FREE CHINA WEEKLY 1 (No. 6, Feb. 17, 1974).

The statement's reference to the 1958 Convention seems to indicate that the Convention, in the ROC's view, is still the acceptable law governing the continental shelf question. In this connection, it is interesting to note that early on December 4, 1970, the ROC delegate to the First Committee of the UN General Assembly, Dr. Liang, stated that except for the problems of definition of the continental shelf, "we do not find any other weakness in the provisions of the Convention on the Continental Shelf which would preemptorily call for amendment."⁶⁶

3. THE PEOPLE'S REPUBLIC OF CHINA AND THE QUESTION OF THE CONTINENTAL SHELF

Until very recently, the PRC had been silent on the question of the continental shelf in international law. While the PRC writers have discussed many problems relating to the law of the sea, none of them appear to have ever discussed the question of continental shelf. Although some writers did refer to the United Nations International Law Commission's work on the law of the sea and the 1958 First United Nations Conference on the Law of the Sea at Geneva,⁶⁷ they did not mention anything on the question of the continental shelf. In a collection of international law documents published in 1958, the editor only incorporated those parts of the Draft Articles on the Law of the Sea adopted by the United Nations International Law Commission in April-July, 1956, relating to high seas and territorial sea, while those parts relating to the continental shelf and the conservation of fishing resources were omitted.⁶⁸ In fact, the whole collection of documents does not contain anything on the continental shelf.

The first PRC response to the question of continental shelf seems to have been prompted by the proposed ROC-ROK-Japan joint development of the seabed in the vicinity of Taiwan and the T'iaoyutai Islets in 1970. An article entitled "US and Japanese Reactionaries Out to Plunder Chinese and Korean Seabed

66. GAOR, 25th Session, First Committee, 1785th meeting, *supra* note 54, at 9.

67. *E.g.*, see Chou Keng-sheng, *The Important Significance of Our Government's Declaration Concerning Territorial Sea*, SHIH-CHIEH CHIH-SHIH (World knowledge), No. 18, at 16 (Sept. 20, 1958) and Kuo Chi, *Important Steps for Safeguarding the Sovereignty of the Country*, CHENG-FA YEN-CHIU (Studies in political science and law), No. 5, at 10 (Oct. 14, 1958).

68. KUO-CHI KUNG-FA TS'AN-K'AO WEN-CHIEN HSUAN-CHI (Compilation of reference documents of international law) 254-263 (high seas), 265-270 (territorial sea) (Wai-chiao hsüeh-yüan [Institute of Diplomacy] ed. 1958).

Resources," which appeared in the December 4, 1970, authoritative *People's Daily* (Jen-min jih-pao), severely denounced the alleged aggression of plundering the rich resources "of the sea floor of China's vast shallow water areas."⁶⁹ The article did not define the scope of the Chinese claim to the seabed of East China Sea, and the term "continental shelf" was not even used.

It was not until after the PRC had taken over the Chinese seat in the UN from the ROC in late 1971,⁷⁰ and following the increasing worldwide concern about the law of the sea, that the PRC expressed its official attitude toward the question of the continental shelf. On March 3, 1972, the PRC delegate to the UN Committee on the Peaceful Uses of the Sea-bed and the Ocean Floor Beyond the Limits of National Jurisdiction (hereafter referred to as the Seabed Committee), An Chi-yuan, delivered his first speech. He said:

We maintain that all coastal countries have the right of disposal of their natural resources in their coastal areas, seabed and the subsoil thereof so as to promote the well-being of their people and the development of their national economic interests.⁷¹

Again here the term "continental shelf" was not used, nor was the concept.

The next month, the authoritative *People's Daily* found it necessary to explain a few basic terms on the law of the sea to its readers. It defined the continental shelf as follows:

The seabed extends gradually downward and outward from the coast, usually with increasing declivity, to a depth at which there is a marked increase of declivity. This sea-bed area of comparatively great declivity is usually called the continental slope. The shallow sea area from the sea coast to the continental slope is called the continental shelf.⁷²

A few months later, a popular pamphlet entitled *Hai-ti shih-chieh* (Undersea World) was published in Peking. The book uses simple language to explain the structure of the seabed or ocean-

69. Translated under the same title in 13 PEKING REVIEW 15 (No. 50, Dec. 11, 1970), reprinted in 1 COHEN & CHIU, *supra* note 4, at 347-349.

70. See note 60, *supra*, and accompanying text.

71. UN Doc. A/AC. 138/SR. 72 (1972); reprinted in 11 INT'L LEGAL MAT. 654 (1972).

72. Jen-min jih-pao (People's Daily), April 12, 1972; translated in 1 COHEN & CHIU, *supra* note 4, at 492.

floor, continental shelf, continental slope, and other related problems. It defines continental shelf as follows:

The area, having generally a moderate declivity, extended outward from the sea coast is called 'continental shelf' (ta-lu chia). The area extended further outward with increasing declivity and then sharply descends to 3,000 meters depth is called continental slope. Off the continental slope is the broad ocean floor.⁷³

While the above definition of continental shelf is not essentially different from the generally accepted scientific definition, it does not follow the criteria of 200-meter depth or exploitation provided in Article 1 of the 1958 Convention on the Continental Shelf.⁷⁴

Apparently, however, the PRC did not like the 1958 Convention on the Continental Shelf. PRC delegate Shen Wei-liang severely criticized the Convention at Subcommittee II of the Seabed Committee on March 29, 1973, saying:

Three out of the only seven articles forming the operative part of the Convention are designed to uphold "the freedom of the high sea." For instance, Article 3 stipulates that the rights of a coastal state over the continental shelf do not affect the legal status of the superjacent waters as high seas, or that of the airspace above those waters. Article 4 includes a specific clause against impediment to the laying and maintenance of submarine cables or pipelines on the continental shelf. Under Article 5, there are many more specific provisions: paragraph 1 stipulates that exploitation of the continental shelf must not interfere with navigation, fishing, the conservation of resources and scientific research. Paragraph 6 says that installations or devices for exploitation must not interfere with international navigation.

73. NAN TI, HAI-TI SHIH-CHIEH (The Seabed World) 9 (1972). 200,000 copies of this book were printed. A subsequent article described the concept of continental shelf in a somewhat more detail form. See Lin Hsi-ch'ing *Topography of the Seabed*, Ti-li Chih-Shih (Knowledge of geography), No. 6, at 29-31 (Peking, September 1975).

74. Article 1 of the Convention provides:

For the purpose of these Articles, the term "continental shelf" is used as referring (a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.

Paragraph 8 stipulates that a coastal state shall not normally withhold its consent to the request of "purely scientific research" into the continental shelf, etc. In a word, no one is allowed to prejudice or affect the so-called "four freedoms" of the superpowers.⁷⁵

He was, however, silent on the definition of continental shelf provided in Article 1 of the Convention. A few months later, on July 15, Shen again spoke at another meeting of Subcommittee II on the subject of "the sea area within the limits of national jurisdiction." He criticized the view of "some one, who claims himself to be the 'friend' of the developing countries," apparently referring to the Soviet representative, for demanding the limits of the continental shelf be extended to a depth of 500 meters. He observed that "according to this criterion, the continental shelf of his country will far exceed 200 miles and in some places will extend to seven hundred miles and even more than one thousand miles."⁷⁶

Shen also submitted a "working paper on sea area within the limits of national jurisdiction"⁷⁷ to Subcommittee II for deliberation at the meeting. The paper is divided into three parts: (1) Territorial Sea, (2) Exclusive Economic Zone or Exclusive Fishery Zone, and (3) Continental Shelf.

Since the question of continental shelf is closely related to the questions of territorial sea or exclusive economic zone, it is also necessary to consider the PRC's position on these two problems. The working paper provides that territorial sea "as delimited by a coastal state by virtue of sovereignty," is "a specific area of sea adjacent to its coast or internal waters, including the airspace over the territorial sea and its bed and subsoil thereof, over which it exercises sovereignty." With respect to the breadth of the territorial sea, it provides that a coastal state "is entitled to reasonably to define the breadth . . . according to its geographical features and its needs of economic development and national security," and that it should pay "due regard to the legitimate interests of its neighboring countries and the convenience of

75. *Chinese Representatives Speaks at Sub-committee of UN Seabed Committee*, HSIHUA WEEKLY, No. 15, at 17-18 (April 9, 1973), reprinted in 1 COHEN & CHIU, *supra*, note 4, at 496-497.

76. *Developing Countries, Small and Medium-Sized Countries Oppose Maritime Hegemonism at UN Seabed Meeting*, HSIHUA WEEKLY, No. 31, at 25 (July 30, 1973).

77. UN Doc. A/A.C. 138/SC. II/L. 34 (16 July 1973), reprinted in 12 INT'L LEGAL MAT. 1231-1234 (No. 5, Sept. 1973).

international navigation, and shall give publicity thereto." It further provides that a "coastal state in the same region may, through consultations on an equal footing, define a unified breadth or a limit for the territorial sea in the region."

With respect to the question of delimiting territorial sea between states adjacent or opposite to each other, the working paper merely provides that the boundaries shall be defined "on the principles of mutual respect for sovereignty and territorial integrity, equality and reciprocity."

Although the PRC working paper does not put a limit on the breadth of the territorial sea, the second part of the working paper on the economic zone provides that the "outer limit of the economic zone may not, in maximum, exceed 200 nautical miles measured from the baseline of the territorial sea." Therefore, it may be reasonably concluded that the PRC considers the maximum breadth of the territorial sea should be 200 nautical miles.

The working paper further provides that "in principle" the breadth and limits of the territorial sea as defined by a coastal state are applicable to islands, but it makes a special rule for archipelagoes. It is provided that "an archipelago or an island chain consisting of islands close to each other may be taken as an integral whole in defining the limits of the territorial sea around it."

Part II of the working paper concerns the "exclusive economic zone or fishery zone." It is provided 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" (emphasis added). The limit of the zone is set up to 200 nautical miles from the baseline of the territorial sea. It should be noted that one of the elements in deciding the scope of economic zone contained in the working paper is *geological condition*. This condition was apparently included because the economic zone is closely related to the problem of the continental shelf, and the working paper itself also provides for the coastal state's ownership of all the natural resources within the zone, "including living and non-living resources of the whole water column, seabed and its subsoil." In other words, the seabed or the continental shelf of the economic zone is owned by the coastal state. The PRC has defined continental shelf in Part III of the working paper as "the natural prolongation of the continental territory," and unless the

delimitation of economic zone takes into consideration this geological element, China would have to share the continental shelf with Japan in the Yellow Sea and the East China Sea by the equidistance rule, even though the shelf is the natural prolongation of China's continental territory and not that of Japan.

It should also be noted that while the PRC working paper sets a limit on the economic zone, no such limit was provided for the continental shelf. The working paper provides that "a coastal State may reasonably define, according to its specific geographical conditions, the limits of the continental shelf under its exclusive jurisdiction beyond *its territorial sea or economic zone*" (emphasis added). Therefore, a state's continental shelf may extend beyond more than 200 nautical miles from the baseline of the territorial sea if its geographical conditions warrant such an extension. However, the superjacent waters of the continental shelf beyond the territorial sea, the economic zone or the fishery zone "are not subject to the jurisdiction of the coastal State." In other words, such water areas are in the nature of high seas.

Similar to its provisions on the territorial sea, Part III of the working paper also provides the states adjacent or opposite to each other and having connected continental shelves "shall jointly determine the delimitation of the limits of jurisdiction of the continental shelves through consultations on an equal footing." It further provides that such states "shall, on the basis of safeguarding and respecting the sovereignty of each other, conduct necessary consultations to work out reasonable solutions for the exploitation, regulation and other matters relating to the natural resources in their contiguous parts of the continental shelves."

With respect to the legal status of the continental shelf, the working paper provides that "the natural resources of the continental shelf, including the mineral resources of the seabed and subsoil and living resources of sedentary species, appertain to the coastal State." This description does not differ essentially from Article 2 of the 1958 Convention, which provides that "the coastal State exercise over the continental shelf sovereign rights for the purpose of exploring it and exploiting its natural resources," which "consist of the mineral and other non-living resources of the seabed and subsoil together with living organisms belonging to sedentary species. . . ."

If the continental shelf of a coastal state extends beyond its territorial sea or economic zone or fishing zone, the working paper provides that "the normal navigation and overflight on the

superjacent waters of the continental shelf and in the air space thereabove by ships and aircrafts of all States shall not be prejudiced." This again is essentially similar to Article 3 of the 1958 Convention, which provides that "the right of the coastal State over the continental shelf does affect the legal status of the superjacent waters as high seas, or that of the air space above those waters."

With respect to the question of laying submarine cables and pipelines on the continental shelf, the PRC's working paper differs significantly from the 1958 Convention. Article 4 of the Convention provides that "subject to its right to take reasonable measures for the exploration of the continental shelf and the exploitation of its natural resources, the coastal State may not impede the laying or maintenance of submarine cables or pipelines on the continental shelf." The PRC draft, however, appears to give the coastal state absolute discretion about whether to allow others to lay cables or pipelines. It provides that "a coastal State may enact all necessary laws and regulations for the effective management of its continental shelf" and "the delineation of the course for laying submarine cables and pipelines on the continental shelf by a foreign state is subject to the consent of the coastal state."

The PRC's working paper is silent on the question of scientific research on continental shelf, but, in another working paper submitted by the PRC on scientific research,⁷⁸ it is provided that "to conduct marine scientific research in the sea area within the national jurisdiction of a coastal State, prior consent of the coastal State must be observed." Since the question of the continental shelf is provided in the working paper entitled "Sea Area Within the Limits of National Jurisdiction," the "sea area" referred to in the working paper on scientific research should also include the continental shelf area. If this is the case, the PRC's position appears to depart significantly from Article 5 (8) of the 1958 Convention, which provides:

The consent of the coastal State shall be obtained in respect of any research concerning the continental shelf and undertaken there. Nevertheless, the coastal State shall not normally withhold its consent if the request is submitted by a qualified institution with a view to purely scientific research into the physical or biological characteristics of the continental shelf, subject to the proviso that the coastal State shall have the right, if it so desires, to participate or to be

78. UN Doc. A/AC. 138/SC. III/L. 42 (1973).

represented in the research, and that in any event the results shall be published.

On January 30, 1974, Japan and the ROK signed at Seoul an agreement concerning the joint development of the continental shelf. On February 4, the spokesman of the PRC Foreign Ministry issued a statement saying 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." The "joint development zone" marked off by Japan and the ROK on the continental shelf in the East China sea "behind China's back" was characterized as "an infringement on China's sovereignty, which the Chinese Government absolutely cannot accept."⁷⁹

At the first substantive session⁸⁰ — the second session — of the Third United Nations Conference on the Law of the Sea held in Caracas, Venezuela, between June 20 and August 29, 1974, the PRC was silent on the question of the continental shelf, although it did express its view generally on the related problem of the international seabed area. Thus, the Head of the PRC delegation, Chai Shu-fan, said:

We hold that the international sea-bed area should be used for peaceful purposes. Resources in the international sea area are, in principle, owned jointly by the people of all countries, and it is for all countries to work out together an international regime and set up an appropriate international machinery to manage and exploit these regimes.⁸¹

In the same speech, the PRC delegate also denounced the then RVN's claim to the Paracel and Spratly Islands by saying:

The Government of the People's Republic of China has on more than one occasion solemnly declared that the Hsisha [Paracel] and Nansha [Spratly] Islands in South China Sea have always been an inalienable part of Chinese territory. The Chinese Government and people will definitely not

79. *PRC Foreign Ministry Spokesman Issues Statement*, HSINHUA WEEKLY, No. 6, at 27 (Feb. 11, 1974).

80. The first session was devoted to procedural matters for organizing the conference.

81. *At UN Conference on Law of the Sea, Chinese Delegation Leader Chai Shu-fan's Speech*, 17 PEKING REVIEW 11-12 (No. 28, July 13, 1974).

tolerate any infringement on China's territorial integrity and sovereignty by the Saigon authorities on whatever pretext.⁸²

When the Conference ended on August 29, it did not reach the stage of adopting a new convention on the law of the sea. Subsequently, the Third session (held at Geneva from March 15 to May 7, 1975), the Fourth session (held at New York from March 15 to May 7, 1976) and the Fifth session (held at New York from August 2 to September 17, 1976) still could not work out a new convention; therefore, the Conference recommended to the General Assembly of the United Nations to have the Sixth session of up to 7 weeks held in New York beginning on May 23, 1977. None of the past sessions have made any final decision on the question of the continental shelf, and it does not appear that the PRC has so far made any significant statement concerning the question of continental shelf at the conference. In view of this development, at the time of this writing in December 1976, it is impossible to make a conclusive coverage of the PRC's view on the continental shelf problem at the Law of the Sea Conference.

4. CHINA AND THE DELIMITATION OF THE SEABED IN SOUTHEAST ASIA

The countries that may claim seabed in the South China Sea area are the PRC, the ROC, Vietnam, Malaysia, Indonesia, Burnei, and the Philippines. If China had not claimed sovereignty over the mid-ocean islands of the Spratly and the Paracel Islands, then China's claim to the seabed adjacent to the mainland, Hainan Island and the southern part of Taiwan would not present any serious problems in delimitation. Under such circumstances, the only place that needs delimitation between China and its neighbor is in the Gulf of Tonkin between the PRC and Vietnam. Another place that may possibly need delimitation is the Bashi Channel between Taiwan and the Luzon Island of the Philippines. In both places, the delimitation will not, as we will see later, present very serious difficulties.

However, China's consistent claim of territorial sovereignty over the mid-ocean Paracel Islands, the Spratly Islands, and the submarine Macclesfield Bank creates a difficult problem regarding the division of the seabed in the area where the islands are situated. The Chinese claim is further complicated by the fact that China not only claims sovereignty over the islands or exposed rocks in the area, but also many shoals below the surface of the

82. *Id.*

sea; some of the shoals are even located on the continental shelf of other countries.

As stated before, both the ROC and the PRC consider the continental shelf as the natural prolongation of the "land territory" (Lu-ti ling-tu — ROC) or "continental territory" (Ta-lu ling-tu — PRC). Literally applying this principle to the mid-ocean islands in the South China Sea, one may conclude that these islands should not be the basis for claiming any continental shelf. This is especially true if one reads the ROC's reservation to Article 6, paragraphs 1 and 2 of the 1958 Convention on the Continental Shelf, where the reservation explicitly excludes "exposed rocks and islets" in determining the boundary of the continental shelf of the ROC.⁸³ However, it may also be argued that the ROC's reservation relating to Article 6 concerns the delimitation of the continental shelf connecting two or more countries and has nothing to do with islands whose continental shelf does not connect with any other countries. In other words, the ROC can still invoke Article 1 of the Convention, which grants islands the same status as the land territory.

The PRC's proposed definition of the continental shelf makes that country's position more restrictive; it refers to the "continental territory" and therefore may be interpreted as denying any continental shelf for islands. This is especially true if one looks at the PRC's working paper on the continental shelf as a whole; that paper is silent on the question of whether islands can claim a continental shelf.

However, the PRC's practice seems to deny such a literal interpretation. On April 2, 1974, at a meeting in Colombo of the 30th Session of the United Nations ECAFE discussing the problem of prospecting for mineral resources in Asia's offshore areas, PRC delegate Huang Ming-ta said:

. . . China hereby reiterates that all *seabed* resources in China coastal sea areas and *those off her islands belong to China*. China alone has the right to prospect and exploit these seabed resources.⁸⁴ (Emphasis added.)

Again, on May 6, 1974, PRC delegate Wang Tzu-chuan spoke at the Economic Commission of the 56th Session of the United Nations Economic and Social Council opposing the inclusion of the Spratly (Nansha) Islands and the sea area around them in the

83. See note 36 *supra*, and accompanying text.

84. *Chinese Representative Speaks At ECAFE Meeting*, 17 PEKING REVIEW 6-7 (No. 15, April 12, 1974).

U.N. hydrographic plan for the South China Sea. He said that "Nansha as well as Hsisha, Chungsha and Tungsha Islands have always been China's territory and that the People's Republic of China has indisputable sovereignty over these islands and the *sea areas* around them"⁸⁵ (emphasis added). The term "sea areas" is used instead of "territorial sea," apparently indicating that the PRC claims a broader area around these islands than the generally recognized territorial sea.

Moreover, it must be pointed out that the PRC's "working paper on sea area within the limits of national jurisdiction"⁸⁶ recognizes territorial sea for islands and even the so-called archipelago principle in delimiting islands' territorial sea. The application of these principles to the South China Sea islands situation would grant the PRC a very large sea area as territorial sea (including, of course, the seabed beneath the territorial sea). Furthermore, the PRC's working paper on the economic zone does not exclude islands for claiming an economic zone; thus these islands would apparently be able to claim an economic zone beyond their territorial sea.

In view of this, a PRC claim that islands in the South China Sea should have a continental shelf is not a very crucial problem in the island areas, because according to PRC's working paper, these islands can certainly serve as a basis for claiming territorial sea and economic zone in this area and thereby the seabed within the territorial sea or the economic zone.⁸⁷

One crucial problem is, as mentioned before, that either the ROC or the PRC also claims submerged shoals (An-sha in Chinese) or the submerged bank (T'an in Chinese) in these areas. Some of these banks or shoals are located in the same continental shelf of some islands; therefore, if these islands should have a continental shelf, they can be claimed by the ROC or the PRC as the continental shelf of these islands. However, a number of them are unrelated to any nearby islands, and the ROC or the PRC claim to them may be challenged by nearby countries. The

85. *Chinese Delegation Makes Statement on "International Cooperation in Cartography,"* HSINHUA WEEKLY, No. 19, at 25-26 (May 13, 1974).

86. See note 77 *supra*, and accompanying text.

87. However, it should be noted that the revised Single Negotiating Text, which serves as the basis of discussion in the Third United Nations Conference on the Laws of the Sea, provides that "Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf." Article 128, para. 3, of Part V of the Text, in 5 THIRD UN CONF. ON THE LAW OF THE SEA OFF. REC. 172 (1976).

following is a tentative analysis of some places of possible dispute.

Both the ROC and the PRC consider the submerged Vanguard Bank⁸⁸ (Wan-an t'an in Chinese; the eastern part is located at 70° 30' N and 103° 55' E) as their territory, but the former RVN also claimed this submerged place as its continental shelf.⁸⁹ The bank is in the seabed area beyond the 200-meter contour line off the coast of Vietnam and also that of the coast of the Spratly (Storm, or Nanwei in Chinese) Island claimed by both the ROC and the PRC.

Southwest of the Vanguard bank, both the ROC and the PRC claim several shoals near the Malaysian territory of Sarawak such as North Luconia Shoals, Friendship Shoals, South Luconia Shoals and James Shoals. Some shoals are located within the 200-meter contour line of the continental shelf of the Sarawak coast. Malaysia is a party to the 1958 Convention and has already enacted legislation claiming the continental shelf area off its coast up to "a depth no greater than 200 meters below the surface of the sea."⁹⁰ Therefore, it is unlikely that Malaysia would recognize either the ROC or the PRC claims to the above-

88. CHENG TZU-YUEH, NAN-HAI CHU-TAO TI-LI CHIH-LUEH (General records on the geography of southern sea islands) 55 (1948).

89. The RVN's Petroleum Law No. 011/70 of 1 December 1970, provides for the ownership and the control of all natural petroleum deposits not only within its territorial sea, but also within its continental shelf. The law defined "continental shelf" as "the seabed not more than 200 meters deep, or if more than that depth (over 200 meters) which still admits of exploitation of natural resources by technical means." On June 9, 1971, the RVN issued Order No. 249-BKT/AB/UBQGDH/ND to make its claim more precise. The area claimed by Vietnam is mostly within the 200 meter depth area, except in the eastern part of the area. See Shigeru Oda, *The Delimitation of the Continental Shelf in Southeast Asia and the Far East*, 1 OCEAN MANAGEMENT 343 (1973). Oil was recently reported discovered in an area about 190 miles south of the Vietnamese coast. See J.M. Markham, *Another Oil and Gas Discovery Is Reported Off South Vietnam*, N.Y. Times, Oct. 27, 1974, at 11. See also David G. Brown, *The Development of Vietnam's Petroleum Resources*, 16 ASIAN SURVEY 553-570 (No. 6, June 1976). After the fall of the RVN, the oil drilling was suspended, but the new government in Saigon before the unification had shown interest to have foreign companies to resume operation. See *Vietnam, Mobil talk on drilling*, The Sun (Baltimore), Apr. 26, 1976, at A4. See also an earlier report on North Vietnamese interest in resuming oil exploration in south Vietnam. *Hanoi Official Invites New Bids for Petroleum in South Vietnam*, N.Y. Times, Nov. 26, 1975, at 44.

90. Continental Shelf Act, 1966 (Act of Parliament No. 57 of 1966, 28 July 1966), in NATIONAL LEGISLATION AND TREATIES RELATING TO THE TERRITORIAL SEA, THE CONTIGUOUS ZONE, THE CONTINENTAL SHELF, THE HIGH SEAS AND TO FISHING AND CONSERVATION OF THE LIVING RESOURCES OF THE SEA 375, UN Doc. ST/LEG/SER. B/15 (1970).

mentioned shoals, some of which are located as little as less than 50 miles off its coast.

In the eastern part of the South China Sea, both the ROC and the PRC claim the Nanyen Rock (Huang-yen Island in PRC's map, located at approximately 117° 50' E and 150° N),⁹¹ near the west part of Philippine's Luzon Island. The Rock is separated from Luzon Island by a sea area whose depth is far beyond 200 meters. However, in recent years, the Philippines has claimed a baseline of its territorial sea along 118° E; in some places this is over 100 miles off the coast of Luzon Island.⁹² Any Philippines attempt to measure its territorial sea or economic zone from this line would necessarily conflict with the ROC or the PRC claim to the island and its adjacent sea area, including the seabed. Similarly, many shoals claimed by the ROC or the PRC in the eastern part of the Spratly Islands are separated by deep sea from the Palawan Island of the Philippines; nevertheless, the Philippines has drawn a baseline far beyond the coast of the Palawan Island extending not too far from some shoals claimed by either the ROC or the PRC. Any Philippine attempt to claim territorial sea or an economic zone from this baseline would certainly conflict with the ROC or the PRC claim here. As a matter of fact, the Philippines has already occupied Thi-tu and four other islets claimed by the ROC or the PRC and has cooperated with foreign oil companies to search for oil in the Reed Bank area.⁹³

The Pratas Reef (Tungsha Ch'untao in Chinese) in the northern part of the South China Sea is less than 200 miles from the Chinese mainland coast. It is surrounded by the seabed with about 200 meters depth. South of the Reef, however, the seabed suddenly descends to more than 1000 meters depth, and north of

91. See map attached to CHINA YEARBOOK 1974 (ROC) and CHUNG-HUA JEN-MIN KUNG-HO KUO TI-T'U (Map of the People's Republic of China) (Peking, 3rd ed. 1972, 7th printing 1973).

92. Generally speaking, the Philippines claimed the imaginary lines described in Article 3 of the Spanish-United States Peace Treaty of December 10, 1898 as its baseline for territorial sea. The line indicated in this treaty runs from west to east along or near the 20th parallel of north latitude, and through the middle of the navigable channel of Bashi, from the 118th to 127th degree meridian of longitude east of Greenwich, and then connects with a line west of the Palawan island. See Leon O. Ridao, *The Philippine Claims to Internal Waters and Territorial Sea: An Appraisal*, 3 PHILIPPINE Y.B. INT'L L. 57-79 (1974) and Jorge R. Coquia, *Philippine Territory Under the New Constitution*, *Id.* 80-89; and Oda, *supra* note 89 at 338-341. For relevant Philippine decrees, see NATIONAL LEGISLATION . . . , *supra* note 90 at 105-111.

93. See *Oil Exploration off Palawan*, Foreign Broadcasting Information Service, No. 175 (Sept. 10, 1973), at P2.

the Reef the seabed gradually descends to 500 meters and then ascends northward toward the Chinese mainland coast. The Pratas Reef is now under the effective control of the ROC; because of its isolated location, it is unlikely that any other state may reasonably challenge a reasonable ROC claim, shared by the PRC, to the adjacent seabed.

The Macclesfield Bank (Chungsha Ch'untao in Chinese), claimed by both the ROC and the PRC, presents an interesting problem because the whole bank is beneath the sea, with an average depth of about 80 meters (the shallowest part is about 13 meters). The whole bank is about 75 nautical miles from northeast to southwest and the widest part is about 33 nautical miles.⁹⁴ Both the ROC and the PRC have claimed the bank as Chinese territory. The PRC declaration of September 4, 1958, which extended the PRC's territorial sea to 12 nautical miles, specifically provided that the 12 nautical miles regime applied to "the Tungsha Islands, the Hsisha Islands, the Chungsha Islands [Macclesfield Bank], the Nansha Islands and all other islands belonging to China which are separated from the mainland and its coastal islands by the high seas."⁹⁵ It does not appear that the PRC has made known the territorial sea baseline for the Macclesfield Bank.

Both the ROC and the PRC have not elaborated on their legal basis for claiming the underwater Macclesfield Bank. In this connection, a PRC writer observed: "Although the Chungsha Islands [sic] are now submerged beneath the surface of the sea, many years from now they may emerge from the surface of the sea and become islands or sandbanks."⁹⁶ If that is the case, then it would appear that China may base its claim to the Macclesfield Bank on the grounds of preserving a future territorial claim with respect to some islands that may emerge. Be that as it may, it is still not clear whether territorial sea can be claimed for these submerged seabed areas.

The seabed between the ROC-owned southern part of Taiwan and the northern part of the Luzon Island of the Philippines is separated by deep sea of more than 1000 meters depth and should not create a difficult problem as regards delimitation.

Finally, the seabed in the Gulf of Tonkin area between the PRC and Vietnam is all within the 200-meter contour line; its

94. See CHENG TZU-YUEH, *supra*, note 88, at 37.

95. 1 PEKING REVIEW 21 (No. 28, September 9, 1958); reprinted in CHINA AND THE QUESTION OF TAIWAN: DOCUMENTS AND ANALYSIS 281 (H. Chiu ed., 1973).

96. CHÜ CHI-WU, TSU-KUO TI NAN-HAI CHU-TAO (The southern sea islands of the motherland) 36 (1954).

delimitation should not present any serious difficulty because there is no island owned by one country that is situated near the coast of another country. The seabed is the natural prolongation of the land territory of the PRC and Vietnam and therefore should be equally divided between them.

However, it must be pointed out that, although North Vietnam (now Vietnam) was silent on the Paracel and Spratly Islands before the fall of the RVN in April 1975, it has since succeeded to the claim of the former RVN and publicized its position.⁹⁷ On the other hand, the PRC also has made it known on a number of recent occasions that she continues to consider these islands as PRC's "sacred territory."⁹⁸ Under this circumstance, the question in this area is not simply delimitation of the seabed or continental shelf; the issue involves a serious and complicated territorial dispute. At present, while the PRC has occupied the Paracel Islands, Vietnam has occupied the Spratly Island (Nanwei) and twelve other islets in the Spratly Islands group (Nansha), and the ROC has occupied the T'ai-ping Islet (Itu-aba) — the largest islet in this group. None of them appears willing to give up its claim.

97. On December 22, 1975, the editorial of Hanoi's authoritative newspaper *Nhan Dan*, said that the Vietnamese armed forces will protect "the independence and sovereignty of Vietnam and the integrity of her territory including her territorial waters, her borders, her offshore islands and her continental shelf." *Hanoi warns China on disputed islands*, *The Sun* (Baltimore), Dec. 23, 1975, at A2. Recently, it was reported that a Vietnamese map published after the fall of the RVN has included the Spratlys and the Paracels in the Vietnamese territory. See *Map of Vietnam Omits North-South Border*, *N.Y. Times*, March 2, 1976, at 8. On learning of the publication of the map by Vietnam, the ROC Foreign Ministry Spokesman issued a statement on March 19, 1976, reiterating the ROC's claim to these islands. See *Chung-yan jih-pao* (Central daily news), int'l ed., Mar. 20, 1976, at 1. The PRC did not publicly respond to the Vietnamese map.

98. Before the fall of the RVN, the PRC had made many statement asserting her sovereignty over the Spratlys and the Paracels, see Chiu and Park, *supra* note 5. On November 24, 1975, an article entitled "South China Sea Islands, Chinese Territory Since Ancient Times," by Shih Ti-tsu, appeared in the *Kuang-ming jih-pao* (Enlightenment daily). The article was reprinted in full in *Jen-min jih pao* (People's Daily) the next day and was translated into English and published in 18 *PEKING REVIEW* 10-15 (No. 50, December 12, 1975). The article was also reprinted in the Hong Kong communist newspaper with an accompanying commentary accusing the Soviet Union of trying to "stir up" Vietnam against China by backing the Vietnamese claim to the islands. See Fox Butterfield, *China Reasserts Claim to Islands*, *N.Y. Times*, Nov. 27, 1975, at 10. Subsequently, the whole article was reprinted in *TI-LI CHIH-SHIH* (Knowledge of geography) No. 9, at 1-4 (Dec. 1975).

5. CONCLUDING OBSERVATIONS

Both the ROC and the PRC concepts of continental shelf emphasize the feature of "natural prolongation of the land territory." While this definition will help the Chinese claim to the continental shelf in the seabed adjacent to China mainland, it has also the undesirable effect of weakening either the ROC or the PRC claim to mid-ocean seabed in the South China Sea, because the seabed there is not the natural prolongation of the China mainland territory. Moreover, if one accepts either the ROC or the PRC view that the element of natural prolongation of the land territory is an essential part of the concept of continental shelf, then all countries in Southeast Asia can equally invoke this concept to claim their continental shelf. The result would be that Malaysia or Vietnam would certainly deny either the ROC or the PRC claim to some shoals, such as South Luconia Shoals, James Shoal, Prince Consort Bank, and Vanguard Bank, which are located on the continental shelf and which no doubt constitute the natural prolongation of the land territory of Malaysia or Vietnam.

However, as pointed out before, the PRC's working paper presented to the UN Seabed Committee recognizes territorial sea and economic zone for islands and even allows the use of the archipelago principle in delimiting islands' territorial sea. If these principles were applied to the South China Sea islands claimed by the PRC, then it would be unnecessary for the PRC to base its claim to the seabed there on the continental shelf concept as these islands could be the basis for claiming a large sea area as either territorial sea or economic zone, including, of course, the seabed beneath the territorial sea.

In view of this, it appears clear that the PRC's claim to seabed in Southeast Asia has little connection with its concept of continental shelf. The PRC claim is primarily based on its claim to ownership over these islands; then it uses these islands to claim large areas in the South China Sea as its territorial sea or economic zone, including the seabed beneath.

If other countries in this area wanted to claim seabed there, they could resort to similar arguments. Without claiming ownership over the South China Sea islands, one can hardly make any significant claim to the seabed in the South China Sea area. Therefore, a state's territorial claim to these mid-ocean islands is interlocked with its claim to seabed there.

While the PRC is willing to make concessions to third world countries in many international matters, there is so far no indication that it would be willing to give up its claim to the South

China Sea islands. As the PRC is steadily developing its naval, fishing and commercial shipping force, it is unlikely that in the future it would soften its territorial claim to these islands as they may be used as naval, intelligence or fishing bases.⁹⁹

99. See Fox Butterfield, *Spratly Islands Causing Concern*, N.Y. Times, Jan. 25, 1976, at 17.