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**CHINA AND THE LAW OF THE SEA  
CONFERENCE**

**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 on the right side of the page, partially overlapping the text.

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# China and the Law of the Sea Conference

BY HUNGDAH CHIU\*

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## CHINA AND THE LAW OF THE SEA CONFERENCE

*Hungdah Chiu*

In recent years, the People's Republic of China has shown increasing interest in the reformulation of the law of the sea. This, in China's view, is not only a legal problem but a significant issue in the struggle by the Third World countries, with which the People's Republic of China identifies itself, against the hegemony of the two superpowers—the United States and the Soviet Union. In short, the Third United Nations Conference on the Law of the Sea is viewed as a battleground in the unceasing struggle of the People's Republic of China and the Third World against the superpowers; it is one of the major testing grounds for China's world view.\*

This chapter analyzes the People's Republic of China's position at the ongoing UN Law of the Sea Conference. An attempt is made to link China's national interests to its official position at the conference. It is necessary, at the outset, to review the People's Republic of China's attitude toward the law of the sea in general<sup>1</sup> and its position in the preparatory committee of the conference—the UN Committee on the Peaceful Uses of the Seabed and the Ocean Floor Beyond the "Limits of National Jurisdiction" (hereafter referred to as the Seabed Committee). Without such a review, it would be difficult to assess elements of change and continuity in Chinese policy.

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\*In his policy speech delivered on July 2, 1974, at the Caracas session of the conference, Chai Shufan, head of the Chinese delegation, stated, "The new legal regime of the sea must accord with the interests of the developing countries and the basic interests of the peoples of the world" against superpower domination ("Third UN Conference on the Law of the Sea," *Official Records* 1 [1975]: 81).

## THE PEOPLE'S REPUBLIC OF CHINA'S ATTITUDE TOWARD THE LAW OF THE SEA BEFORE ITS ENTRY INTO THE UNITED NATIONS

Before 1958, the People's Republic of China paid little attention to the question of the law of the sea, and even its position on the scope of the territorial sea was unclear. On July 17, 1952, the Soviet member of the United Nations International Law Commission, F. I. Kozhevnikov, observed that the Chinese government "has so far made no ruling on the width of its territorial waters."<sup>2</sup> Similarly, in July 1957, a PRC writer, Wei Wenhan, also observed: "The breadth of our territorial sea is not yet explicitly prescribed. However, at the 1930 Hague [Codification] Conference, the representative of Old China [ROC] did approve the 3 nautical mile breadth of territorial sea."<sup>3</sup>

A textbook on criminal law prepared by the Central Political-Legal Cadres School in Peking and published in September 1957 noted that the territorial sea can be either three or twelve nautical miles, but it did not specify whether China adhered to the three- or twelve-mile limit.<sup>4</sup> With respect to the method of delimiting the baseline of the territorial sea, the 1957 criminal law textbook noted that "the borderlines (outer limit) of the [territorial sea] are to be drawn at a given distance from the low-water marks of the sea coast."<sup>5</sup> This is the so-called normal baseline method that was then used by most countries.

On December 13, 1957, the Indonesian government extended its territorial sea from three to twelve nautical miles and announced the use of the archipelago principle in delimiting its territorial sea.\* The application of this principle would have included as internal waters of Indonesia substantial areas between the islands of the Indonesian Archipelago, hitherto considered high seas. The Netherlands, United Kingdom, and other countries protested to the Indonesian government. The People's Republic of China, however, rushed to its defense. An article in the December 28, 1957 issue of the *Renmin Ribao* written by "Commentator," the pseudonym for a ranking Chinese Communist official, denounced the British and Dutch protests. It argued that Indonesia is a country comprising more than 3,000 islands, and for reasons of security and prevention of smuggling, it is necessary to include waters between islands as internal waters. The article also referred to the British practice of extending its jurisdiction to 24 nautical miles from the coast of St. Helena Island when Napoleon was held there.<sup>6</sup>

Another article appeared in February 1958, just a few weeks before the opening of the Geneva Conference on the Law of the Sea, categorically rejecting as "totally groundless" the alleged U.S. and British claim that the three-

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\*This principle means that a state may employ the method of straight baselines joining the outermost points of the outermost islands and drying reefs of an archipelago in drawing the baselines from which the extent of the territorial sea, economic zone, and other special jurisdictions are to be measured.

nautical mile territorial sea is a "norm of international law." It observed that "the practice of the great majority of states shows that the breadth of territorial sea is freely decided by a state in accordance with its historical usage, economic interest, and [national] security." Although the article took note that there are different methods for measuring the baseline, it observed that "in practice, it is generally agreed that the baseline is the low-tide line."<sup>7</sup>

Although the People's Republic of China was not invited to attend the Geneva Conference on the Law of the Sea (February 24 to April 27, 1958), it appears that it watched closely the developments during the conference.<sup>8</sup> The conference approved the use of the straight baseline method in delimiting territorial sea<sup>9</sup> but failed to limit the breadth of the territorial sea at six nautical miles, as proposed by the United States.\* Not until the fall of 1958 did the People's Republic of China make its position known on the question of the territorial sea.

On August 23, 1958, the People's Republic of China suddenly began a massive artillery bombardment of Jinmen (Quemoy), an island held by the Republic of China off the mainland coast. The People's Republic of China's air and naval forces soon joined the action. The United States offered some limited logistic support by escorting the ROC supply ships to the three-mile limit off Jinmen. On September 4, the People's Republic of China issued a declaration<sup>10</sup> on China's territorial sea, announcing the extension of its territorial sea to 12 miles and the adoption of the straight baseline method<sup>11</sup> for delimiting the territorial sea boundary.

The declaration included all ROC-held offshore islands within the People's Republic of China's territorial sea. The United States refused to recognize this extension, saying it was an "attempt to cloak aggressive purposes."<sup>12</sup> On September 7, the United States Navy continued to escort ROC supply ships to three nautical miles from Jinmen.<sup>13</sup> The People's Republic of China responded by issuing a serious warning on the same day, declaring that "such an act, encroaching upon the sovereignty of our country, is dangerous."<sup>14</sup>

In the People's Republic of China's legal circles, writers rushed to the defense of the Chinese extension of territorial sea and the adoption of the straight baseline method. Their arguments were based primarily on two grounds. In the first place, they argued that it is within the sovereign right of a state to decide the breadth of its territorial sea, although its decision should not be arbitrary. Zhou Gengsheng was of the opinion that a state "has the right to decide the

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\*The 1958 Convention on the Territorial Sea and the Contiguous Zone provides, "The contiguous zone may not extend beyond twelve [nautical] miles from the baseline from which the breadth of the territorial sea is measured" (*UNTS*, 516: 220). This provision seems to imply that the territorial sea may be extended beyond three miles, but not to twelve, leaving some room for a contiguous zone.

breadth of its territorial sea [by taking into consideration its] national defense, economic interest, and geographical situation."<sup>15</sup> Two other authors took a more restrictive view. Guo Ji wrote that a state had the "sovereign right" to declare "a reasonable breadth of its territorial sea."<sup>16</sup> Similarly, Fu Zhu wrote that "the breadth of the territorial sea . . . should be decided, within reasonable limits, in accordance with the respective needs of [various] countries."<sup>17</sup>

Second, they argued that the "three nautical miles territorial sea" had never been a generally recognized principle of international law. They referred to the practice of states and the discussions at the 1930 Hague Codification Conference, the United Nations International Law Commission, and the 1958 Geneva Conference on the Law of the Sea.<sup>18</sup>

With respect to the straight baseline method adopted in the PRC declaration, the PRC writers relied on the *Anglo-Norwegian Fisheries* case (1951),<sup>19</sup> the Draft Articles on the Law of the Sea (1956), the Geneva Convention on the Territorial Sea and the Contiguous Zone (1958), and the practice of various states,<sup>20</sup> to justify the use of this method for delimiting China's territorial sea. However, PRC writers did not explain why the Chinese coastlines would justify the use of this method.

After mid-1959, the People's Republic of China's interest in the question of the law of the sea declined. When the Second United Nations Conference on the Law of the Sea was held in the spring of 1960, China simply ignored it. It was neither reported in the *Renmin Ribao* nor commented upon in the legal or international affairs journals, such as *Zhengfa yanjiu*, *Shijie zhishi*, or *Guoji wenti yanjiu*.

During the 1960s, PRC pronouncements on the question of the law of the sea continued to be limited. Except for promulgating the rules concerning Qiongzhou Strait,<sup>21</sup> its activities were confined primarily to giving "serious warnings" to "American imperialism" for violating the People's Republic of China's "territorial sea." In the year 1963, for example, the People's Republic of China gave 15 "serious warnings" to the United States for alleged intrusions into China's territorial sea by U.S. warships or military aircrafts. It also gave five "serious warnings" for alleged intrusions into its "sea areas" (haiyu).<sup>22</sup>

Another significant action by the People's Republic of China was its strong protest against the U.S. proclamation of a "combat zone" off the Vietnamese coast in 1965. This "combat zone" extended eastward to 111 degrees east longitude, which is about nine nautical miles off the coast of Triton (Zhongjian) Island of the Paracels (Xisha).<sup>23</sup> The People's Republic of China published an article by "Observer," a pseudonym for a senior Chinese Communist official, denouncing the act as "a menace to China's security and an encroachment on China's sovereignty," because the zone "extends to the very door of China and even includes part of Chinese territorial waters in the vicinity of China's Hsisha Islands."<sup>24</sup>

Another peculiar aspect of the People's Republic of China's attitude



toward the law of the sea during this period was its silence on the question of the 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,<sup>25</sup> 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 the high seas and the territorial sea, while those parts relating to the continental shelf and the conservation of fishing resources were omitted.<sup>26</sup> In fact, the whole collection of documents does not contain anything on the continental shelf.

The first PRC response to the question of the continental shelf seems to have been prompted by the proposed ROC, Republic of Korea (ROK), and Japanese joint development of the seabed in the vicinity of Taiwan and the Diaoyutai Islets in 1970. An article entitled "US and Japanese Reactionaries out to Plunder Chinese and Korean Seabed Resources," which appeared in the December 4, 1970 issue of the *Renmin Ribao*, severely denounced the alleged aggression of plundering the rich resources "of the sea floor of China's vast shallow water areas."<sup>27</sup> The article did not define the scope of the Chinese claim to the seabed of the East China Sea, and the term "continental shelf" was not even used.

It was not until after the People's Republic of China had taken over the Chinese seat in the UN from the Republic of China in late 1971,<sup>28</sup> amidst an increasing worldwide concern about the law of the sea, that the People's Republic of China expressed its official attitude on the question of the continental shelf.

#### **THE PEOPLE'S REPUBLIC OF CHINA AT THE PREPARATORY COMMITTEE OF THE LAW OF THE SEA CONFERENCE: THE UN SEABED COMMITTEE**

In the early 1970s, the People's Republic of China gradually renewed its interest in the law of the sea. The focal point of the People's Republic of China's present interest, however, is not primarily on China's own territorial sea problem but on supporting developing countries' desires to expand their territorial sea rights or maritime rights to 200 nautical miles.\* The first significant PRC action

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\*Until recently, the People's Republic of China referred to Latin American claims for a 200-mile territorial sea, economic zone, or patrimonial sea generally as "*linghai quan*" (territorial sea right). Recent PRC documents and press reports began to use the term "*haiyang quan*" (maritime right) in regard to the same claims.

was an editorial entitled "Support Latin American Countries' Struggle to Defend Their Territorial Sea Rights," which appeared in the *Renmin Ribao* on November 20, 1970.<sup>29</sup> In the editorial, the People's Republic of China committed itself to supporting the 200-nautical mile breadth of territorial sea claimed by Latin American countries.

The Chinese people regard the struggle of the Latin American countries and people against U.S. imperialist aggression as their own struggle. They express firm support for the Latin American countries and people in their struggle against U.S. imperialist aggression and in defense of the rights of territorial seas.

The People's Republic of China's support became increasingly firm. For example, in mid-1971, when some Peruvian cabinet members visited China, Premier Zhou Enlai "reiterated the firm support of the government of the People's Republic of China for Peru and other Latin American countries in their struggle to persist in defending their rights over 200-nautical mile territorial waters and their maritime jurisdiction."<sup>30</sup> Subsequently, the People's Republic of China included such a commitment in the documents establishing diplomatic relations with several Latin American countries. Thus, in the joint communiqué announcing its establishment of diplomatic relations with Peru on November 2, 1971, the People's Republic of China stated that it recognized "the sovereignty of Peru over the maritime zone adjacent to its coast within the limit of 200 nautical miles."<sup>31</sup> The joint communiqué announcing establishment of diplomatic relations with Argentina on February 13, 1972, contained a similar declaration.<sup>32</sup> It should be noted that the term "territorial sea" was not used in these documents.

Despite the People's Republic of China's support for a 200-nautical mile territorial sea or maritime zone off the coast, it did not articulate its legal grounds for supporting such a claim until it replaced the ROC delegation at the United Nations on October 26, 1971,<sup>33</sup> and was elected to the UN Seabed Committee—a subsidiary established by the General Assembly to do preparatory work for the Third UN Conference on the Law of the Sea.

In his first speech before the Seabed Committee on March 3, 1972, the PRC representative, An Zhiyuan, attacked the hegemonism of the superpowers in attempting to limit the breadth of the territorial sea and based the legality of the 200-mile extension on state sovereignty. An did not specify the exact limit of a country's territorial sea, stating only that a country was "entitled to determine reasonably the limits of [its] territorial seas and jurisdiction according to . . . [its] geographical conditions, taking into account the needs of . . . [its] security and national economic interests. . . ."<sup>34</sup> However, a month later, on April 12, 1972, the *Renmin Ribao* defined the term *territorial sea* as follows:

The territorial sea is a part of the sea area extended to a designated width from the low-water line or the selected baseline . . . along the entire coast of a coastal state and is under the state's sovereign jurisdiction. At present, the width of the territorial sea of coastal states (also called littoral states) of the world is extremely inconsistent. Their widths start from 3 nautical miles and may extend to 4, 6, 10, 12, 18, 30, 130, and up to 200 nautical miles.<sup>35</sup>

The mention of 200 nautical miles in the above statement may imply that China reserves the right to consider it as the ultimate limit of the territorial sea.

Chinese representative Zhuang Yan explained the different legal status of the territorial sea and the economic zone at the Subcommittee II of the Seabed Committee, on March 20, 1973, as follows:

Territorial sea is a part of the territory of a coastal state over which it exercises complete sovereignty. In the case of an exclusive economic zone, the coastal state mainly enjoys ownership over the economic resources therein, including living resources and sea-bed natural resources. . . . In order to protect, utilize, explore and exploit the resources therein, it is necessary for the coastal state to exercise exclusive jurisdiction over the area and the right to take necessary measures and promulgate appropriate laws and regulations to protect these resources against plunder, appropriation, destruction or pollution. . . . Other countries can engage in activities in the exclusive economic zone of a given country only when they have secured its consent by concluding necessary agreements with it through consultations on an equal footing and on the basis of respect for its sovereignty.<sup>36</sup>

With respect to the right of a landlocked country neighboring a coastal state, Zhuang Yan suggested that the latter "should, in principle, grant to its neighboring landlocked state common enjoyment in certain proportion of the rights of ownership and jurisdiction in its economic zone."<sup>37</sup>

Before the same subcommittee, the People's Republic of China also severely criticized the "manipulation by the imperialist powers" of the 1958 Geneva Conference on the Law of the Sea, which adopted the four conventions on the territorial sea, the high sea, the continental shelf, and the conservation of fishing resources.<sup>38</sup> Shen Weiliang singled out the 1958 Convention on the Territorial Sea and the Contiguous Zone for an attack. First, Article 24, Paragraph 2, which sets the limit of the contiguous zone at no more than "twelve nautical miles from the baseline from which the breadth of the territorial sea is measured," gave, according to Shen, the superpowers a "so-called legal basis" in their interference with the rights of the developing countries to expand their territorial sea or contiguous zone beyond 12 nautical miles.

Second, Shen stated, Article 14 was drafted in such general terms that

ships of all countries would enjoy the right of innocent passage through a country's territorial sea, and it "may be interpreted that foreign military ships enjoy the same right." Finally, Shen commented on Article 16, which prohibits suspension of innocent passage of foreign ships through straits used for international navigation. "This," he declared, "blatantly deprives coastal states with such straits of the right to exercise sovereignty over their own territorial seas" and allows "foreign warships and submarines [to] intrude unimpededly into the straits within the territorial seas limits of coastal states in disregard of their security."<sup>39</sup>

In a similar vein, Shen also criticized the advantages enjoyed by the superpowers under the Convention on the Continental Shelf. Three out of the only seven articles forming the operative part of the convention, he pointed out, were designed to uphold "the freedom of the high seas," such as the right to lay and maintain submarine cables and pipelines, navigation, fishing, the conservation of resources, scientific research, and so forth. Although these rights were nominally enjoyed by all, he said, who other than the superpowers could actually benefit from them fully, especially the right of "scientific research," which was subject to superpower abuse.<sup>40</sup>

On July 16, 1974, the People's Republic of China consolidated its above-stated views into a working paper and submitted it to Subcommittee II of the Seabed Committee.<sup>41</sup> The paper, divided into three parts, addressed these issues: territorial sea, exclusive economic zone or exclusive fishery zone, and continental shelf.

The working paper provided that the territorial sea "as delimited by a coastal state by virtue of sovereignty" was "a specified 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, the paper stated that a coastal state "is entitled to reasonably 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 international navigation, and shall give publicity thereto." Although the People's Republic of China's working paper did not put a limit on the breadth of territorial sea, the second part of the working paper on the economic zone provided 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 surmised that the People's Republic of China considers that the maximum breadth of the territorial sea should be 200 nautical miles.

The working paper was silent on the use of the straight baseline method to delimit the territorial sea. In view of the People's Republic of China's practice and the adoption of this method by the 1958 Convention on the Territorial Sea and Contiguous Zone, this omission should not be interpreted as a denial of the

validity of the straight baseline method of delimitation. Although the People's Republic of China clearly accepts the notion that a country must publicize the delimitation of its territorial sea, what form of publication it considers adequate is unclear. If it considers that a state using the straight baseline should indicate the lines on charts and furnish them to other countries, it is clear that China's practice has not satisfied this condition. Although the People's Republic of China announced its territorial sea breadth and the use of the straight baseline method in 1958, it has never given due publicity of its straight baselines on charts.

With respect to islands, the working paper further declared that "in principle" a state's sovereign right to delimit its territorial sea applied to islands as well as to mainland areas. A special rule, however, was applicable to archipelagoes: "An archipelago or an island chain consisting of islands close to each other may be taken as an integral whole in defining the territorial sea around it."

The working paper denied the right of passage through straits lying within a state's territorial sea regardless of the prior or existing use of the strait for international navigation. Passage of foreign military vessels would be subject to prior notification or approval at the discretion of the coastal state. Although no provision concerning the right of overflight above the territorial sea was included in the paper, since such a right is not recognized in customary international law, the omission would not constitute a tacit PRC recognition.

Part 2 of the working paper concerned the "exclusive economic zone or fishery zone." It was 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." The limit of the zone was set as up to 200 nautical miles from the baseline of the territorial sea, within which the coastal state would have ownership of all natural resources, "including living and non-living resources of the whole water column, seabed and its subsoil."

The inclusion of the geological conditions was apparently closely related to the problem of the continental shelf. The People's Republic of China has defined the continental shelf as "the natural prolongation of the continental territory." Unless the delimitation of the economic zone takes into consideration this geological element, China would be compelled to share the continental shelf with Japan in the Yellow and East China seas in conformity with the equidistance rule, even though the shelf is the natural prolongation of China's continental territory and not that of Japan.\*

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\*The People's Republic of China has not yet articulated its claim on the continental shelf of the Yellow Sea and the East China Sea. However, it deposited its instrument of ratification of the 1958 Convention on the Continental Shelf on October 12, 1970, with a reservation with regard to Article 6. "The boundary of the continental shelf appertaining to two or more States whose coasts are adjacent to and/or opposite each other shall be deter-

It should be noted that while the PRC working paper set a limit on the economic zone, no such limit was provided for the continental shelf. The working paper stated 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 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, these waters would be part of the high seas.

With respect to the right of passage, the working paper provided that "the normal navigation and overflight on the water surface of and in the airspace above the economic zone by ships and aircraft of all States shall not be prejudiced." No provision was made for subjecting military vessels or military aircraft to the requirement of prior notice or permission. Presumably, their right of passage would be the same as nonmilitary ships or aircraft.

Other provisions in the working paper generally reflected the PRC position on the economic zone as stated by the PRC delegate at the Seabed Committee. The above rules concerning the economic zone will, *mutatis mutandis*, apply to the exclusive fishing zones.

A question closely related to the economic zone is the conduct of scientific research in this area. The extension of the scope of the territorial sea or economic zone up to 200 nautical miles would necessarily include a large part of the ocean formerly considered as high seas area, freely accessible to scientific research. According to the People's Republic of China, these areas would no longer enjoy an unrestricted accessibility for scientific research under a 200-mile regime. The People's Republic of China supported the view of many developing countries that no freedom of scientific research in either territorial sea or economic zone exists. In a working paper on marine scientific research submitted to the Subcommittee III of the Seabed Committee on July 19, 1973, the People's Republic of China declared:

To conduct marine scientific research in the sea area within the national jurisdiction of a coastal State, prior consent of the coastal State concerned must be sought, and the relevant laws and regulations of the coastal State must be observed.

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mined in accordance with the principle of the natural prolongation of their land territories" (*International Legal Materials* 10 [1971]: 452). The seaward limit of the five "seabed reserve areas" promulgated by the Republic of China (Taiwan) on October 15, 1970, is approximately coincident with the 200-meter contour line (*Chung-yang jih-pao* [Central Daily News], October 16, 1970).

A coastal State is entitled to take part in the scientific research work conducted by other States in the sea area within its national jurisdiction and to receive data and results obtained in such work. The publication and transfer of such data and results are subject to the prior consent of the coastal State concerned.<sup>42</sup>

The above represented the positions of China before the opening of the Third United Nations Conference on the Law of the Sea.

Because of the existence of numerous proposals submitted by states to the Seabed Committee, it was impossible to work out a draft convention as a basis of discussion for the Law of the Sea Conference. The Seabed Committee only arranged the numerous proposals under various subject matters of the law of the sea in six volumes and submitted them to the General Assembly.<sup>43</sup>

On November 16, 1973, the General Assembly of the UN adopted Resolution 3067 (XXVIII), deciding to convene first an organizational session of the Third UN Conference on the Law of the Sea in New York from December 3 to 15, 1973, and then a second, substantive session in Caracas, Venezuela, from June 20 to August 29, 1974. Under the same resolution, the General Assembly decided to dissolve the Seabed Committee effective upon the opening of the conference. It also expressed appreciation for the preparatory work done by the Seabed Committee and referred its reports to the conference.<sup>44</sup>

## **THE PEOPLE'S REPUBLIC OF CHINA AT THE LAW OF THE SEA CONFERENCE**

### **Unique Features of the Conference**

Before discussing the People's Republic of China's position and strategy at the Law of the Sea Conference, it is necessary briefly to describe the unique features of the conference, which make it the longest conference ever held in history—still in progress at the time of this writing. In the first place, except for a few nations, such as then North Vietnam\* and the Republic of China (Taiwan), the conference has been attended by almost all countries of the world. Observers from national liberation groups, international organizations, and nongovernmental organizations were also invited. In total, about 5,000 delegates attended the first substantive session (second session) held at Caracas in the summer of 1974.

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\*After the collapse of the Republic of Vietnam (South Vietnam), in April 1975, North Vietnam unified Vietnam and renamed the country the Socialist Republic of Vietnam, which participated in the conference in its sixth session (May 23–July 15, 1977).

Second, in almost all conferences held under the auspices of the UN to adopt international conventions, a draft convention was usually available as the basis for discussion. For instance, at the First UN Conference on the Law of the Sea held in Geneva in 1958, there was a set of draft articles on the law of the sea,<sup>45</sup> with extensive commentaries on each article, prepared by the International Law Commission to serve as the basis of discussion of the conference. However, this was not the case for the Third Conference. As stated before, the preparatory Seabed Committee was unable to produce a draft convention for the conference. It was not until the end of the third session of the conference (second substantive session) that an informal draft emerged as the basis for future discussion. By that time, the conference had already been in session for 16 weeks.

Third, in recent years, most international conferences convened under the auspices of the UN have resorted to a majority or two-thirds majority rule for the adoption of international conventions. However, this is not the case with the Third Conference that, while nominally still adhering to the majority rule, has in fact conducted its business on a so-called consensus rule. This is because the General Assembly on November 16, 1973, approved a "Gentlemen's Agreement" as the guideline for voting procedure at the conference,

recognizing that the Conference at its inaugural session will adopt its procedures, including its rules regarding methods of voting and bearing in mind that the problems of ocean space are closely interrelated and need to be considered as a whole and the desirability of adopting a Convention on the Law of the Sea which will secure the widest possible acceptance.

The General Assembly expresses the view that the Conference should make every effort to reach agreement on substantive matters by way of consensus; that there should be no voting on such matters until all efforts at consensus have been exhausted; and further expresses the view that the Conference at its inaugural session will consider devising appropriate means to that end.<sup>46</sup>

The agreement was endorsed by the conference at its nineteenth meeting on June 27, 1974, and incorporated in the appendix of the rules of procedure adopted by the conference at the twentieth meeting held on the same day.<sup>47</sup> In order to achieve a consensus, the conference has resorted to informal, off-the-record meetings or group consultations and has avoided a showdown vote. This process is obviously more time-consuming than if the majority rule were used.\*

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\*A decision on all matters of substance requires a two-thirds majority of the members present and voting (Rule 39). However, according to Rule 37, before a matter of sub-



The last unique feature of the conference is the emergence of various overlapping negotiating, pressure, or interest groups that cut across the lines of developed and developing countries. At the first session held at New York UN headquarters between December 3 and 15, 1973, five regional groups were recognized by the conference for the purpose of distributing seats in the General Committee, three Main Committees, and the Drafting Committee.<sup>48</sup> These groups were the African group, the Asian group, the Latin American group, the Western European group, and the Eastern European group. Later, more groups emerged as the conference progressed, such as the Group of 77, the group of coastal states on exclusive economic zone, the Arab group, the group of landlocked and geographically disadvantaged states, and the territorialist group. The largest group is the Group of 77, which in fact now has at least 110 countries, including all Third World countries. Both the United States and Canada were assigned to the Western European group.

#### **The People's Republic of China and the Rules of Procedure of the Conference**

Our discussion of the People's Republic of China's participation at the Law of the Sea Conference will begin with its position on the rules of procedure of the conference, followed by a discussion of the major issues at the conference, and then some procedural questions of the conference.

The first session of the conference, held from December 3 to 15, 1973 in New York, considered the draft rules of procedure for the substantive sessions and the distribution of seats in its committees. On December 11, 1973, when the conference at its fourth meeting was considering the question of election of the officers to its Main Committees and the Drafting Committee, PRC delegate Ling Qing proposed that the election of the officers should be based on the principle of "one state, one seat." He explained that this principle received support from the Asian, African, and Latin American groups and was consistent with the People's Republic of China's longstanding conviction that all countries, large or small, should have equal rights and that no country, however powerful, should enjoy a privileged position at an international conference. He concluded his remarks with an attack on the United States and the Soviet Union: "It should be noted that only super-powers [are] asking for more than one seat. That [is] an unfair and unreasonable manifestation of super-power hegemony, which [my] delegation firmly opposes."<sup>49</sup>

Since the PRC delegate's statement was directed against the United States and the Soviet Union and was an attempt to prevent these two countries from

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stance is put to a vote, a determination that all efforts at reaching general agreement have been exhausted shall be made by the two-thirds majority provided for in Rule 39. The rules of procedure of the conference are in UN Doc. A/Conf. 62/30 (1974).

taking seats both in the General Committee and the Drafting Committee, both countries soon expressed their opposition to the Chinese proposal. Soviet delegate Dmitry N. Kolesnik said that the Chinese proposal should be categorically rejected and explained why the five permanent members of the UN Security Council should be given seats in both the General Committee and the Drafting Committee.<sup>50</sup>

United States delegate John R. Stevenson also spoke against the principle of one seat for one state for the conference.<sup>51</sup> The meeting ended without resolving this problem, and the debate on the Chinese proposal resumed at the fifth meeting, held in the afternoon of the same day. At that time, PRC delegate Ling Qing refuted the Soviet assertion that the permanent members of the UN Security Council should have a privileged status in international conferences, citing Article 2 (1) of the UN Charter upholding the "sovereign equality" of all member states.<sup>52</sup>

Many Third World countries, such as Peru, Argentina, Lebanon, Algeria, and Tanzania, spoke in favor of the PRC proposal. At the sixth meeting, on December 12, 1973, the president of the conference proposed the following compromise formula to solve the dispute over the principle of "one state, one seat": "No State shall as a right be represented on more than one main organ of the Conference."<sup>53</sup> This formula was accepted by the conference. Under the above-stated formula, both the Soviet Union and the People's Republic of China could claim only partial victory. The conference apparently categorically rejected the Soviet demand of a privileged position for the permanent members of the Security Council, but, on the other hand, it did not preclude the Soviet Union from holding offices in more than one committee of the conference. As a matter of fact, at the seventh meeting, held on December 12, 1973, the Soviet Union was elected to serve as a vice-president of the conference and also as a member of the Drafting Committee.<sup>54</sup> The PRC delegate Ling Qing was quite unhappy about that election and said that his delegation had to "reserve its position."<sup>55</sup>

The People's Republic of China's support for the principle of "one state, one seat" needs an explanation. Under the Soviet position, all permanent members of the Security Council, including the People's Republic of China, would have had seats in all major committees of the conference. Then, why did China oppose having such a privileged position? Apart from the overt reason of supporting the principle of sovereign equality of all states—a principle supported by almost all Third World countries—there seem to be other reasons. First, since all major powers would routinely be elected to the vice-presidencies of the conference, by adopting the "one state, one seat" principle, the PRC could effectively exclude all major powers—the United States, Soviet Union, France, United Kingdom, and the People's Republic of China—from serving on the important Drafting Committee, thus leaving that committee to be dominated by small or middle powers, among whom the overwhelming majority would be Third World

countries. Unlike the two superpowers, the People's Republic of China's absence from the Drafting Committee would, at present, have very little impact. The People's Republic of China is not a major maritime power; its annual distant-water fish catch, its oceangoing merchant fleet, and its shipbuilding capacity are all even smaller than those of the Republic of China in Taiwan. Moreover, the People's Republic of China also lacks a legal expert to serve on the Drafting Committee who could make a substantive contribution to the work of that committee.\* For these reasons, at least for the moment, China would lose little by not participating in the Drafting Committee of the conference.

On December 15, 1973, the last day of the first session, the conference still could not agree on the rules of procedure. The president therefore proposed that informal consultations should be held in New York from February 25 to March 1, 1974. If necessary, further meetings would be held for the purpose of informal consultation. He further proposed that the decision in regard to the rules of procedure should be taken by the conference in Caracas not later than June 27, 1974.<sup>56</sup> The PRC delegate, Ling Qing, did not oppose the president's proposal but emphasized that if the proposed consultations were held with the participation of only a few countries, then it would be unreasonable to put the resulting decision before the whole conference as a *fait accompli*. Therefore, his delegation would support an Argentine proposal that, before the Caracas session, the conference as a whole should decide to apply the rules of procedure of the General Assembly for adopting the rules of procedure of the conference.<sup>57</sup> Both the president's proposal and the Argentine proposal were accepted by the conference.

The second session of the conference was held in Caracas, Venezuela, between June 20 and August 29, 1974. The conference continued its work on the rules of procedure. The People's Republic of China generally agreed to most of the draft rules prepared by the UN secretariat<sup>58</sup> with the exception of Draft Rule 4, which provides:

A Credentials Committee shall be appointed at the beginning of the first session of the conference to serve for all sessions. It shall consist of nine members, who shall be appointed by the Conference on the proposal of the President. It shall examine the credentials of repre-

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\*Among its delegates to various sessions of the Law of the Sea Conference, it seems only one was designated as a legal expert in the PRC delegation since the sixth session. Ni Zengyu attended the sixth and seventh sessions; and Wang Tieya attended the eighth session. See *Delegations to the Third U.N. Conference on the Law of the Sea*, Sixth Session, New York, May 23 to July 15, 1977 (UN Doc. A/CONF.62/INF.7 [June 21, 1977], p. 13; *Ibid.*, Seventh Session, Geneva, March 28 to May 19, 1978, A/CONF.62/INF.8 [May 1, 1978], p. 11; and Provisional List of Delegations, Eighth Session, Geneva, March 19 to April 27, 1979, p. 9).

sentatives and report to the Conference without delay. At the subsequent sessions of the Conference it shall examine only the credentials of representatives newly accredited.<sup>59</sup>

The People's Republic of China submitted a proposal to delete the last sentence.<sup>60</sup> At the twentieth meeting, held on June 27, 1974, PRC delegate Ke Zaishuo explained that the reason for this proposal was that political developments between sessions and the participation of new states made it advisable for credentials to be examined at each session. Noting that this procedure is followed by the Credentials Committee of the General Assembly at each session, he could see no reason why the Credentials Committee of this conference should examine credentials only once. He proposed:

If the Conference wish[es] to retain the last sentence of draft rule 4, however, it should be amended by the insertion of some additional wording, such as "if there are no objections or unless otherwise challenged," at the end of the sentence.<sup>61</sup>

Ke emphasized that the proposed amendment represented the *position of principle* of his delegation. The Chinese proposal received support from many Third World countries, which apparently hoped to reopen the issues of credentials of some countries, such as South Africa or even Israel, at every session of the conference.

U.S. delegate Stevenson opposed the People's Republic of China's proposal and pointed out that the Chinese amendment would mean that after accepting the credentials of representatives of approximately 150 countries at the conference's first session, the conference would have to review those credentials even if only one delegation requested a review. He therefore believed that the conference should not review, at its substantive session, credentials that it had already approved. Reviewing credentials already approved, in his view, would divert the attention of the conference from its work on the law of the sea, become a divisive factor, and delay progress.<sup>62</sup>

In view of the different views held by the PRC and the U.S. delegates, the Australian delegate proposed a compromise solution that credentials already accepted by the conference should be reviewed only if they had been rejected by the General Assembly.<sup>63</sup> PRC representative Ke Zaishuo, however, refused to accept the compromise solution. The president of the conference, after hearing the opinions of several other delegates, suspended the meeting in order to consult the delegates of the People's Republic of China, United States, Australia, the United Kingdom, and others. Then, the president proposed the following compromise solution to Rule 4. At the end of the present text, the final full stop would be replaced by a comma and the additional phrase "unless the Conference decides otherwise by a majority of the representatives present and voting." This compromise proposal was adopted by the conference.<sup>64</sup>

U.S. delegate Stevenson said that his delegation accepted the compromise solution reluctantly and hoped that its provisions would be used with restraint. His delegation, he said, would strongly deplore any effort to reopen the credentials questions already settled by the conference's first session held in December, since that would be inconsistent with the aim of concluding an acceptable convention on the law of the sea as speedily as possible.<sup>65</sup> The PRC delegate did not criticize the compromise solution, since under that formula the Third World countries could reopen the issue of credentials at any time they wished since they control the majority of the conference.

### **The PRC and Some Substantive Issues of the Conference**

On the substantive issues at the Law of the Sea Conference, the People's Republic of China's position is generally the same as stated before, though it is prepared to make concessions to accommodate the great majority of the Third World countries. For instance, the People's Republic of China's working paper previously discussed advocated that the archipelago principle be applied to archipelagoes of mainland states also. This principle was tacitly accepted for the informal single negotiating text\* produced at the end of the third session but was omitted later in the revised single negotiating text<sup>66</sup> and the informal composite negotiating text (ICNT).<sup>67</sup> However, the People's Republic of China was silent on this question, apparently in deference to opposition from the Third World countries.

Be that as it may, China will not concede its principles when it comes to a proposal that it considers to be vitally important, even if that proposal has received considerable support from countries of the Third World. For instance, on April 6, 1976, when the conference was discussing the dispute settlement procedure provided in the informal single negotiating text, the People's Republic of China strongly opposed the inclusion of provisions concerning compulsory jurisdiction of an international judicial organ in a future convention, despite the fact that such an arrangement received considerable support from Third World countries. Nevertheless, in view of strong support given to this proposal, the People's Republic of China was willing to make a compromise that included the compulsory settlement provisions, not in the convention itself, but in a separate protocol.<sup>68</sup>

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\*Part 7 entitled "Archipelagos," of the informal single negotiating text prepared by the head of the Second Committee, Reynaldo Pohl, contains two sections, the first of which relates to archipelagic states, and the second to oceanic archipelagos belonging to continental states. Section 1 contains 14 articles (117-130), while Section 2 has only one article (131), which provides that "the provisions of section 1 are without prejudice to the status of oceanic archipelagos forming an integral part of the territory of a continental state" (UN Doc. A/CONF.62/WP.8/Part II, May 7, 1975, in *Official Records* 4: 168-97).

The People's Republic of China would like to see the Law of the Sea Conference become a rallying point for the Third World's fight against the so-called maritime hegemony of the two superpowers. Thus, in his opening policy speech delivered on July 2, 1974, before the second session of the conference held at Caracas, the leader of the PRC delegation, Chai Shufan, said:

*All developing countries, although they might differ on specific issues, must unite against hegemonist policies [of the superpowers]. The fundamental and vital interests of developing countries [are] closely linked, and unity [will] bring victory in the protracted and unremitting struggle. China [is] a developing socialist country belonging to the third world. Its Government [will], as always, adhere to its just position of principle, resolutely stand together with the other developing countries that [cherish] independence and sovereignty and [oppose] hegemonist policies, and work together with them to establish a fair and reasonable law of the sea that [will] meet the requirements of the present era and safeguard the sovereignty and national economic interests of all countries. (emphasis added)<sup>69</sup>*

Nevertheless, the situation in the conference is too complicated for the People's Republic of China to manipulate a rather simplistic antisuperpower battle among the developing countries. The various groups organized in the conference do not fall neatly into the People's Republic of China's perceived lines. For instance, within the landlocked countries group, there are developing countries, such as the Central African Republic (an empire from 1977-79) and Uganda, but there are also small industrial powers, including Switzerland and Czechoslovakia. The People's Republic of China's strong opposition to a Soviet position that other countries should also have fishing and certain other rights in the economic zone of a coastal state almost certainly would win the support of many developing countries, but at the same time, such a position would offend the landlocked or geographically disadvantaged developing countries. In order to accommodate the interests of the latter, the People's Republic of China took the position that the landlocked and geographically disadvantaged countries "should also enjoy reasonable rights and interests in the economic zones of neighboring coast states and the right of transit through the territories and territorial seas of neighboring coastal states."<sup>70</sup> This compromised the People's Republic of China's support for the "exclusive" nature of the economic zone advocated by some developing countries and ironically supported by such Soviet bloc countries as Mongolia and Czechoslovakia.

At the conference, the United States, the primary supporter of the principle of a "package" settlement, was prepared to accept a general agreement on a 12-mile outer limit for the territorial sea and a 200-mile outer limit for the economic zone, provided that that was part of an acceptable comprehensive package,

including a satisfactory regime within and beyond the economic zone, and providing for unimpeded transit of straits used for international navigation.<sup>71</sup> In regard to the right of other states in a coastal state's economic zone, the United States held the view that no "unjustifiable interference" with navigation, overflight, and other nonresource uses by the coastal state was to be permitted and that insofar as a coastal state did not fully utilize its fishery resources, it must "permit fishing by foreign ships under reasonable coastal state regulation." With respect to the question of scientific research in the economic zone, the United States supported a proposal to obligate the state conducting the research to notify the coastal state, provide for its participation, and ensure sharing of the data and assistance in interpreting such data. However, prior consent of the coastal state would not be required.<sup>72</sup> The Soviet position on the above questions was essentially the same as that of the United States.<sup>73</sup>

The People's Republic of China's position on the limit of the territorial sea, the exclusive jurisdiction of the coastal state over its economic zone, and scientific research contradicted that of the United States and the Soviet Union. It insists that a coastal state has the right to set a reasonable limit on its territorial sea, even beyond 12 nautical miles.\* However, there now appears to exist a growing consensus among countries, developed and developing, to accept the 12-mile limit on territorial sea.

A natural consequence of increasing the maximum width of the territorial sea to 12 nautical miles is that many straits used for international navigation will become part of the territorial sea of the coastal state or states. A study prepared by the U.S. Department of State indicates that more than 100 world straits are affected by a 12-mile territorial sea.<sup>74</sup> While many maritime powers, including the United States and the Soviet Union, were willing to agree to increase the maximum limit of the territorial sea to 12 nautical miles, they insisted on a guarantee of the freedom of navigation through straits used for international navigation but lying within the newly extended limits of the territorial sea.<sup>75</sup>

On July 22, 1974, Malaysia, Morocco, Oman, and Yemen jointly submitted a proposal entitled "Navigation Through the Territorial Sea, Including Straits Used for International Navigation."<sup>76</sup> According to this proposal, a strait, though lying within the limit of the territorial sea and used for international navigation, retains its legal status as territorial sea. The right of passage of foreign ships is generally guaranteed, but with respect to the passage of military ships, the proposal provides that in view of the fundamental rights of a sovereign state "the coastal state may require prior notification to or authorization by its

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\*While the People's Republic of China considered that the limit of the territorial sea could go beyond 12 miles, it did not commit itself to the support of a 200-mile territorial sea, taking into consideration the divergent opinions among developing countries on this question (Third UN Conference on the Law of the Sea, *Official Records* 4: 78).

competent authorities for passage of foreign warships through its territorial sea, in conformity with regulations in force in such a state." Earlier, on July 19, 1974, the Soviet Union also submitted a proposal entitled "Draft Articles on Straits Used for International Navigation" to the Second Committee, which provided, *inter alia*, for the "enjoyment of the equal freedom of navigation (as that of the case on the high seas) for the purpose of transit passage through such straits" by all ships.<sup>77</sup>

On July 23, 1974, the deputy leader of the Chinese delegation, Ling Qing, commented on the above two proposals in the Second Committee.

The legal status of the territorial sea [differs] from that of the high seas. The territorial sea [is] undeniably an inseparable part of the territory of the coastal State, which exercised full sovereignty over it. A strait lying within the limits of the territorial sea [can] hardly change its status and become part of the high seas simply because it [is] normally used for international navigation. . . .

The Soviet proposal, however, while placing restrictions on the sovereignty and rights of the coastal State, [demands] the right of equal freedom of navigation for all ships, including warships. . . .

The passage of foreign military vessels [is] . . . an entirely different matter, and must be clearly distinguished from that of foreign merchant vessels. . . . The super-powers [have] always tried to obliterate that distinction under the smoke-screen of "all ships," and [have] adopted pretexts of all kinds in an attempt to impose free passage through straits by warships.<sup>78</sup>

On the question of scientific research, the Eastern European countries jointly submitted a proposal on April 3, 1975, that provided, *inter alia*, that "marine scientific research within the territorial sea . . . may be conducted only with the consent of, and under the conditions laid down by the coastal state" (Article 4). But, on the question of marine scientific research in the economic zone, it provided that if the research was unrelated to the exploration and exploitation of the living and nonliving resources of the zone, no prior consent would be required and an advance notification of the coastal state concerned would be sufficient (Article 6).<sup>79</sup> On April 21, 1975, Iraq, chairman of the Group of 77 in the Third Committee, also presented a proposal on scientific research.<sup>80</sup> The proposal would require that all scientific research in the economic zone\* be conducted with prior consent of the coastal state.

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\*The precise term—economic zone, patrimonial sea, national sea or sea under national jurisdiction and/or sovereignty, and continental shelf, which do not refer to the international area—remains to be determined (UN Doc. A/CONF.62/C.3/L.13/REV.2, April 21, 1975, p. 199, no. 48).



At the twenty-first meeting, held on April 17, 1975, PRC delegate Luo Yuru criticized the Eastern European proposal as follows:

[The proposal nullifies] the reasonable principle that, in order to safeguard their sovereignty and security, the coastal state's consent should be required for any marine scientific research carried out in waters over which it [has] jurisdiction. It [is] impossible, in practice, to determine whether or not such research [is] related to marine resources. The pretext of scientific research [is] used by super-powers to undermine the security and economic interests of the many developing countries which [are] coastal states.<sup>81</sup>

The PRC delegate did not speak in favor of the Iraqi proposal at the subsequent meetings of the Third Committee, but its position as given above certainly would at least support the proposal submitted by Iraq.

On the controversial problem of seabed mining, the developing countries would like the proposed International Seabed Authority to establish its own mining arm, known as Enterprise, to have monopolistic control over exploitation of the minerals. The industrial powers want to have a parallel system, that is, private companies—or in the case of the Soviet bloc, state-run corporations—to conduct operations concomitantly with Enterprise. The People's Republic of China took the position that the International Seabed Authority should have the right of effective control over all activities in the international seabed area.<sup>82</sup> China strongly opposed the demand of the superpowers for a parallel system of exploitation or for equality between the proposed international seabed authority and the state or private enterprises.<sup>83</sup> However, since late 1976, a parallel system of exploitation has become the only acceptable formula to the industrial powers, who alone can provide the technological know-how to the proposed International Seabed Authority and its enterprises, and the Third World countries have no other choice but to accept that formula as a basis of negotiation. The People's Republic of China has also moderated its position on that basic issue.

Thus, during the informal consultation and discussion on this issue at the seventh session held at Geneva between March 28 and May 13, 1978, the PRC delegate took the position that while carrying out exploitation through the proposed International Seabed Authority's enterprises, the authority should also allow certain countries and entities to enter the area under its own control to take part in exploration and exploitation, but they must undertake the commitment to provide funds and transfer technology to the authority.\* He also pointed out that no substantial changes should be made on the basic contents of

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\*At the eighth session, held again in Geneva, in March/April 1979, the People's Republic of China expressed the view that countries engaged in seabed mining should be

the ICNT concerning the priority for the authority's enterprises and the commitment undertaken by countries and entities entering this area to make these enterprises financially and technically capable.<sup>84</sup>

Because of the slow progress in reaching a compromised solution to the deep seabed-mining problem at the conference, the U.S. government has, since the fall of 1977, supported the congressional enactment of deep seabed-mining legislation. Previously, the administration's position was that no such legislation should be enacted before the conference solved the deep seabed-mining problem.

The changed U.S. position was severely criticized by the chairman (Fiji) of the Group of 77 at the beginning of the resumed part of the seventh session of the conference held in New York between August 21 and September 15, 1978. The Group of 77 considered such unilateral national legislation as "contrary to the Declaration of Principles contained in General Assembly Resolution 2749 (XXV) [of 1970] and the declaration for a moratorium on seabed exploration and exploitation contained in General Assembly Resolution 2564-D (XXIV) [of 1969]."<sup>85</sup> \* The Soviet Union also expressed its full support for the position of the Group of 77 and considered such unilateral legislation as "a violation of the [General] Assembly resolutions obliging states and their nationals to refrain from any exploitation of that area of the seabed pending the regulation of such activities by an international regime."<sup>86</sup>

Despite the People's Republic of China's avowed full support for the position of the Third World countries at the conference, it was silent on the issue. It was not until the last day of this session on September 15, 1978, when the chairman of the Group of 77 and the Soviet Union again criticized the United States for such unilateral national legislation, that the People's Republic of China expressed its "full support" for the position of the Group of 77.<sup>87</sup> Nevertheless, despite the characterization of its support as "full," China's statement was vague on the legally binding character of the two UN General Assembly resolutions invoked by the chairman of the Group of 77. On the Declaration of Principles

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mainly responsible for financing the International Seabed Authority's mining operation (statement by the PRC delegate at the First Committee, UN Office at Geneva, Press Release SEA/103, April 25, 1979, p. 3).

\*Paragraph 4 of Resolution 2749 (XXV), adopted on December 17, 1970, by a vote of 108 to 0, with 14 abstentions, provides, "All activities regarding the exploration and exploitation of the resources of the area and other related activities shall be governed by the international regime to be established" ([1970] *Yearbook of the United Nations* [1972], p. 78). Resolution 2574-D (XXIV), adopted on December 15, 1969, by a vote of 62-28-28, declares, "Pending the establishment of the . . . international regime: (a) States and persons, physical or juridical, are bound to refrain from all activities of exploration of the resources of the area of the seabed and ocean floor, and subsoil thereof, beyond the limits of national jurisdiction" ([1969] *Yearbook of the United Nations* [New York: Columbia University Press, 1971], p. 70).

contained in Resolution 2749 (XXV), the People's Republic of China merely said that it was "just and correct." With respect to the Moratorium Resolution 2574-D (XXIV), China was silent. Moreover, it did not say that such unilateral national legislation was illegal, but merely took the position that such action "was in violation of the General Assembly resolutions and was bound to affect ongoing negotiation." Despite the Soviet opposition to such unilateral national legislation, the People's Republic of China still accused the Soviet Union of obstructing the "progress on the law of the sea."

On the so-called package deal settlement mentioned above, the People's Republic of China took the position that the interrelations between various aspects of the law of the sea must never be accommodated at the expense of the sovereignty of the states concerned and the interests of international peace and security. At the fourteenth meeting of the Second Committee, held on July 23, 1974, PRC delegate Ling Qing stated:

The superpowers have advocated free passage through straits for all ships, including warships, as a precondition for a package settlement of various issues relating to the law of the sea. . . . Any attempt to exchange recognition of the legitimate demands of the developing countries for free passage through straits by military vessels [will] not be tolerated.<sup>88</sup>

#### **The People's Republic of China and Some Procedural Problems of the Conference**

At the third session of the conference, held in Geneva from March 17 to May 9, 1975, a decision was made to request each chairman of the three Main Committees to prepare a single negotiating text covering the subjects entrusted to his committee, thus consolidating the numerous proposals or drafts before the conference. The president of the conference stressed that the single text should take into account all the formal and informal discussions held so far, should be informal in character, and should not prejudice any delegations's position. It should not represent any negotiated text or accepted compromise but only serve as a basis for discussion.<sup>89</sup> Be that as it may, it appeared that the negotiating text would in fact take the position of a draft and would effectively replace many earlier proposals.

The People's Republic of China did not favor such an arrangement. In its view, the conference should focus on major substantive issues or principles before going into a detailed drafting process.<sup>90</sup> Nevertheless, in view of the strong support given to such an arrangement, the People's Republic of China did not oppose the idea of producing a negotiating text, although it took the position that the text should not prejudice earlier proposals and should not be treated as the sole document for consultation and discussion.<sup>91</sup>

Moreover, the People's Republic of China also objected to another practice

of the conference—that of assigning certain issues to many working groups for closed-door consultations. In the People's Republic of China's view, discussions should not be conducted in private but only on a broad basis and on an equal footing. Also, it argued that a proliferation of working groups should be avoided so as to enable developing countries with small delegations to play their full part.<sup>92</sup> However, China's alleged reason for disapproving working groups does not disclose the whole story. The People's Republic of China has a small delegation of about 20 members to attend the conference, and its size is even smaller than some medium-sized countries, such as Denmark and the Netherlands. A proliferation of working groups would effectively exclude the People's Republic of China's participation in the discussion in those group meetings. Furthermore, the People's Republic of China has very few legal experts who can actively contribute to the work of those groups.

When a particular procedural issue involving divergent views among the Third World countries arises, the People's Republic of China's strategy is to avoid taking sides by abstaining on the issue. Thus, soon after the opening the seventh session at Geneva on March 28, 1978, a serious dispute arose among the Third World countries concerning the retention of H. Shirley Amerasinghe, who was removed by Sri Lanka as a member of its delegation, as the president of the conference. The Afro-Asian group wanted him to continue to serve as president of the conference, while the Latin American group opposed such a proposal. For two weeks, the conference was deadlocked over this issue. Finally, on April 5, the conference decided by a roll-call vote of 75 to 18 with 13 abstentions to let Ambassador Amerasinghe serve as the conference president.<sup>93</sup> During the whole debate on this issue, the People's Republic of China was silent, and when the issue was put to vote, China was among the 13 states that abstained. Only after the voting was over, did the PRC delegate, An Zhiyuan, express his hope that the result of the vote would not have an adverse effect on the unity or solidarity of the conference, calling for the strengthening of unity among the developing countries of Asia, Africa, and Latin America.<sup>94</sup>

In order to oppose the alleged Soviet hegemony, the People's Republic of China took every opportunity to attack the Soviet Union at the conference, and sometimes it even disregarded the rules of procedure in launching such attacks. For instance, at the sixty-seventh plenary meeting of the conference, held on April 23, 1976, in Geneva, when the conference was discussing the question of peaceful uses of ocean space, the People's Republic of China severely attacked the Soviet pursuit of "maritime hegmonism."<sup>95</sup>

Again, at the meeting on June 28, 1977, when the conference was discussing the proposal to draw up an "informal composite negotiating text" as the next stage in the work toward a law of the sea convention, PRC delegate Shen Weiliang attacked the two superpowers' stand on seabed mining and other problems of the law of the sea. Despite the president's repeated interruptions and appeals to him not to discuss matters of substance, Shen defended the stand of

the developing countries, stressing the principle that seabed resources were the common heritage of mankind and berating the superpowers for putting forward proposals aimed at plundering seabed resources "under the cloak of legality."<sup>96</sup>

In addition to its occasional disregard for the rules of procedure, the People's Republic of China at times also published invectives against the superpowers made at informal, off-the-record meetings of the conference in the *Renmin Ribao*,<sup>97</sup> although the standard practice is not to disclose the contents of informal meetings to the public.

## CONCLUSIONS

A survey of the People's Republic of China's position and activities at the Law of the Sea Conference indicates that, because of the complexity of the issues, China is not equipped to operate effectively in its battle against the alleged superpower maritime hegemonism. Preoccupation with superpower hegemonism does not always work in harmony with Peking's national interest. For instance, Chinese support for the Third World proposal regarding the requirement of prior notification and consent in the passage of military vessels through a strait used for international navigation lying within the territorial sea may, in the long run, contradict China's own interests as a growing naval power.

As a whole, the People's Republic of China appears to go along with the great majority of the developing countries in the conference and has not played a prominent role thus far, except in the adoption of the rules of procedure of the conference. The People's Republic of China is reluctant to take sides on issues involving divergent views among Third World countries. It shows willingness to take a stand only if an issue is directed against one or both of the superpowers. The fact that many issues before the conference cut across the lines of the conflicts between the superpowers and the developing countries (North-South conflicts) does seem to present a problem for the Chinese.

Another possible reason why the People's Republic of China has been playing a relatively passive role is its lack of competent legal experts to participate in the complicated work of drafting a convention that would have over 300 articles. The People's Republic of China, since the purge of the Gang of Four in 1976, seems to have awakened to this deficiency and is beginning to move in the direction of training more legal professionals in international law.<sup>98</sup> If the conference should last long enough, it is possible that China may participate more actively and vigorously in the drafting process in future sessions. Since the sixth session, some delegates have observed that PRC delegates have shown more interest in the substantive and technical aspects of the work of the conference, at least in informal, off-the-record meetings and in behind-the-scene exchanges of views.

Chinese participation, nevertheless, is not to be ignored. As the late Jamil

El-Baroody of Saudi Arabia observed, at the fifty-seventh meeting held on March 15, 1976, "If whatever convention [arrived at is] not acceptable to China, the Soviet Union, or the United States of America, the work [of the Conference will] have been in vain."<sup>99</sup> It remains true, however, that China's influence in the conference does not come from its antisuperpower posture, but from its own status as a fledgling or potential superpower.

## NOTES

1. For details, see Dominique David, "La Republique Populaire de Chine et le Droit des Mers," *France-Asie* 2 (1974): 71-92; Hungdah Chiu, "China and the Question of Territorial Sea," *International Trade Law Journal* 1 (1975): 29-77; Charles Douglas Bethill, "People's China and the Law of the Sea," *International Lawyer* 8 (1974): 724-51; Menno T. Kamminga, "Building 'Railroads on the Sea': China's Attitude towards Maritime Law," *CQ*, no. 59 (July-September 1974), pp. 544-58; Jerome A. Cohen and Hungdah Chiu, *People's China and International Law: A Documentary Study* (Princeton, N.J.: Princeton University Press, 1974), 1: 467-97; Yu Chih, "Peking Sabotaged U.N. Conference of International Law of the Sea," *Chung-kung yen-chiu* [Studies on Chinese Communism] 9 (1975): 25-34.

2. *1952 Yearbook of International Law Commission*, Vol. 1, p. 153 (UN Doc. A/CN.4/SER.A/1952) (New York: United Nations, 1958).

3. Wei Wenhan, "Discussing the Question of the Width of the Territorial Sea," *Faxueh* [Science of Law], no. 3 (June 1957), p. 25.

4. *Zhunghua remin gonghe guo xingfa zongze jiangyi* [Lectures on the general principles of criminal law of the People's Republic of China] (Peking: Faluchuban she, 1957), p. 36 [hereafter cited as *Lectures*]; translated in Cohen and Chiu, *People's China*, p. 321.

5. *Lectures*, p. 231.

6. Commentator, "Sovereignty over Territorial Sea and Freedom of the Sea," *RMRB*, December 28, 1957, p. 5.

7. Chen Gang, "'Territorial Waters' and 'Internal Waters,'" *Shijie Zhishi* [World Knowledge], no. 3 (Feb. 5, 1958), p. 31.

8. Part of the Draft Articles on the Law of the Sea, adopted by the UN International Law Commission in 1956 ([1956] *Yearbook of the International Law Commission*, 2: 253 [New York: United Nations, 1957]), was translated into Chinese and published in Waijiao Xueyuan [Institute of Diplomacy], ed., *Guoji gongfa cankao wenjian xuanji* [Compilation of the reference documents of international law] (Peking: Shijie Zhishi she, 1958), pp. 254-63 [high seas] and 265-70 [territorial sea]. After the conference, Chinese writers frequently referred to the documents of the conference to support their arguments. See Zhou Gengsheng, "The Important Significance of Our Government's Declaration Concerning the Territorial Sea," *Shijie Zhishi*, no. 18 (September 20, 1958), p. 16.

9. See Article 4, Convention on the Territorial Sea and the Contiguous Zone (September 15, 1958) in United Nations, *Treaty Series* [hereafter cited as *UNTS*], 516: 209.

10. The text of the declaration is in *PR*, no. 28 (Sept. 9, 1958), p. 21.

11. For an explanation of the "straight baseline," as distinct from the "normal baseline," see Fu Zhu, *Guanyu Woguo de linghai wenti* [Concerning the question of our country's territorial sea] (Peking: Shijie zhishi she, 1959); translated in Cohen and Chiu, *People's China*, 1:470.

12. See G. Barraclough, *Survey of International Affairs, 1956-1958* (London: Oxford University Press, 1962), p. 568.

13. *Ibid.*, p. 569.
14. *Zonghua remin gonghe guo duiwai guanxi wenjian ji* [Collection of documents relating to the foreign relations of the People's Republic of China] (Peking: Shijie zhishi she, 1963), 5: 169.
15. Zhou Gengsheng, "Territorial Sea," p. 16.
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21. Cohen and Chiu, *People's China*, pp. 535-38.
22. See a listing of these serious warnings in *Yijiu liusan nian renmin ribao suoyin* [Index to 1963 People's Daily] (Peking: Renmin ribao tushu guan, 1965), p. 288. It is not clear whether the term "sea areas" refers to China's internal waters, or areas contiguous to the territorial sea.
23. Executive Order No. 11216, *Federal Register* 30 (1965): 5817.
24. Observer, "Johnson Administration's Act of Piracy," *RMRB*, May 2, 1965, p. 2; translated in *PR*, no. 19 (May 7, 1965), p. 23.
25. Zhou Gengsheng, "Territorial Sea."
26. *Guoji gongfa cankao wenjian xuanji*, pp. 254-63 [high seas] and 265-70 [territorial sea].
27. Cohen and Chiu, *People's China*, 1: 347-49.
28. On the seating of the People's Republic of China, see UN General Assembly Resolution 2758 (XXVI) in *UN Monthly Chronicle* 8 (November 1971): 61.
29. Translated in *PR*, no. 13 (Nov. 27, 1970), pp. 7-8.
30. "Peruvian Minister of Fisheries Visits China," *PR*, no. 26 (June 25, 1971), p. 4.
31. "Joint Communiqué on Establishment of Diplomatic Relations between China and Peru," *PR*, no. 45 (Nov. 5, 1971), p. 5.
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36. *Xinhua Weekly*, no. 13 (March 26, 1973), p. 5.
37. *Ibid.*, p. 7.
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41. UN Doc. A/A.C.138/SC.II/L.34 (July 16, 1973); reprinted in *International Legal Materials* 12 (September 1973): 1231-34.
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49. *Ibid.*
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51. *Ibid.*, p. 10.
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57. *Ibid.*, p. 32.
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69. Third UN Conference on the Law of the Sea, *Official Records* 1: 81.
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71. U.S. delegate Stevenson's statement at the thirty-eighth meeting, July 11, 1974. *Ibid.*, p. 160.
72. *Ibid.*, pp. 160–61.
73. Soviet delegate Kolosovsky's statement at the twenty-second meeting, June 28, 1974. *Ibid.*, pp. 68–69.
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86. Statement by the Soviet delegate, Semyon R. Kozyrev, at the General Committee's August 28, 1978 meeting, UN Press Release SEA/327, August 28, 1979, p. 4.
87. Statement by Ke Zaishuo, the Chinese delegate, at the hundred-ninth plenary meeting, September 15, 1978, U.N. Press Release SEA/334, September 15, 1978, pp. 7-8. See also, "Law of the Sea Conference," *PR*, no. 39 (Sept. 29, 1978), p. 28.
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