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THE INTERNATIONAL POLITICS
OF OFFSHORE OIL CLAIMS
IN EAST ASIA : WITH
SPECIAL REFERENCE TO CHINA

by
G.W.P. George

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I. INTRODUCTION

As the title of his subject suggests, one of the responsibilities of the student of international relations is the description and explanation of changes in political relations between nations. This responsibility is most pressing when at least one of the countries concerned is important in a global or regional context, and when its relationships with other states are in a delicate stage or in a process of transition.

There are many ways of studying changes in interstate relations. Treaties and other government-to-government agreements can be examined for what they may reveal about the relationship at an official level. But such agreements are usually very crude indicators as they seldom reflect changes on a year-by-year (even less on a month-by-month) basis. Government, or press, statements are frequently consulted to provide information on ephemeral changes. However, these sources are often suspect for they might - owing to ideological or propaganda reasons - not accurately reveal that country's thinking on some foreign policy issue.

A more reliable guide to interstate relations may be the study of less formal links between the countries concerned. A study of fluctuations in the level of bilateral trade, investment flows, cultural and sporting links, and the exchange of tourists, may provide the necessary information.

Yet other methods may be employed. A common technique is to focus on some issue in dispute between the nations concerned. The student will try to determine whether policy changes with respect to the controversy parallel broader political changes between the disputants. Generally, the more sensitive the issue the more useful it is as a barometer of political change.

Often the most sensitive issues between nation states involve border disputes and other problems related to territorial sovereignty. Such disputes might have historical or cultural origins as, for example, the dispute between India and Pakistan over Kashmir. Or the squabble might be over a strip of land (or water) considered to be of strategic value - as is the case between Syria and Israel over the Golan Heights. Sometimes, however, such disputes might be connected with resource development. The political geographer J.R.V. Prescott has noted that 'the commonest source of such disputes are water bodies which mark or cross any boundary, and the territorial waters and continental shelf areas'.¹

Of the latter type of sovereignty dispute, probably no other has had such an impact on recent interstate relations as that involving claims to offshore areas believed rich in oil. Dramatic rises in the price of OPEC crude, and the continued insecurity of supply from the Middle East, have made the possession of domestic oil reserves increasingly important. Not surprisingly, therefore, most coastal states are anxious to lay claim

to as large an area of their continental shelves as possible. Unfortunately, for the sake of world order, international law as it relates to the sea is so ambiguous that many competing offshore claims - while each might be strictly legal - overlap.

Few parts of the globe have been as affected by this problem as East Asia.* The following pages will note that this region is believed to contain some of the world's largest undersea reserves of oil. The coastal countries have rushed to stake their claims to the region's continental shelves and ocean basins. Much of the recent action in this respect has taken place in the Yellow, East China and South China Seas.

It is this subject - offshore oil claims in East Asia - that provides the focus of the following dissertation. Emphasis will be given to the way in which offshore oil controversies help to describe changes in intra-regional political relations - especially those between China and its neighbours.

China has been given particular stress for not only is it the region's largest (and, in many senses, strongest) power, but it is also a country busy redirecting its foreign policy. This paper will, therefore, pay almost exclusive attention to offshore disputes between China and those

* For the purposes of this paper, the East Asia region embraces that part of mainland and offshore Asia lying to the east of the Andaman Sea and to the north of the Timor Sea. The Soviet Union is not included.

countries - Japan, the Philippines and North Vietnam - which have a delicately evolving relationship with Peking.

It will be noted that competition for ownership over promising areas of the continental shelves has already brought many nations of the East Asia region into confrontation. The fact that confrontation has seldom led to open conflict suggests that narrow economic considerations have often given way to broader political determinants of national self-interest. A detailed examination of the controversies over offshore claims in the East and South China Seas bears out this suggestion.

Such an examination also serves to explain one of the apparent paradoxes of East Asian offshore oil development. The following pages will reveal how it was in the years immediately preceding the oil crisis - 1969 to 1973 - that most of the claims concerning offshore oil in the region were fiercely contested. Since the oil crisis, however, when one would normally have expected national claims to oil to be even more hotly pursued, the debate has been relatively muted.

The fact that the Senkakus, Paracels and Spratlies and other offshore areas believed rich in oil no longer make headline news cannot adequately be explained by changes in the world oil situation. The relative calm of the past two years can only be explained against the background of the evolving political situation in the East Asian region. The continuing Sino-Soviet split, Washington's detente with Peking and Moscow, America's

'retreat' from mainland Asia, and the 'fall' of South Vietnam, Cambodia and Laos, have all contributed to an atmosphere of great political uncertainty. The nations of the region are anxiously assessing which country, or group of countries, holds the new balance of power. During this delicate period most East Asian states are careful not to make any political moves that might unduly antagonise any of their neighbours. Most significantly, the last two years or so have witnessed a somewhat more cooperative and relaxed relationship between many of the ASEAN member states and Japan on the one hand, and China on the other.

The paper will be divided into two main sections. Following this introduction, Part II provides the setting against which the oil controversies (discussed in Part III) will be studied. Part II will consider the importance of offshore oil to East Asia, the legal background to offshore oil claims, and the political setting in East Asia from 1969 to the present.

In Part III, case studies of offshore oil controversies in the East China Sea and the South China Sea will be examined in some detail. Attention will be paid to those aspects of the case studies which shed light on intra-regional political relations, particularly those involving China.

The short, concluding, Part IV will assess the degree to which the controversies detailed in Part III accurately reflect the major trends in recent East Asian political relations as outlined in the final section of Part II.

It should be stressed again that the object of this paper is to determine how a study of competing claims to offshore oil in East Asia might reveal major trends in intra-regional political relations. It is not intended here to describe in detail all the activities of the East Asian offshore oil industry. Statistics of offshore oil exploration and production; the effects of offshore oil development on the domestic politics of Asian countries; and the activities of foreign multinational oil companies, are only related where they are considered relevant to the main theme.

Footnotes

- 1 For a description of the various types of boundary disputes see J.R.V. Prescott, The Geography of Frontiers and Boundaries, Aldine Publishing Co., Chicago, 1965, pp.109-151.

II. THE SETTING

The political significance of offshore oil controversies cannot, however, usefully be studied in a vacuum. First, it is helpful to determine the degree to which the possession of offshore oil is considered important by different countries. A country that has: a large demand for oil, little domestic production, and a serious balance of payments deficit, might feel forced to adopt a stronger and more inflexible stand regarding offshore oil claims than other, more favoured, countries.

Second, it is necessary to have some familiarity with those sections of the law of the sea that relate to the possession and development of offshore areas believed rich in oil (and other mineral) resources. Invariably, a country's claim to sovereignty over some part of the ocean seabed will be based on that country's interpretation of the law of the sea. Unfortunately, the present ambiguities in marine law mean that there are often two or more countries claiming legal title to the same piece of seabed.

Third, it might be useful to outline the main trends in East Asian political relations during the past seven years or so. Once these trends have been defined it can be seen how closely they are paralleled by experiences in the case studies that follow in Part III.

The Importance of Offshore Oil to East Asia

Interest in the development of offshore oil among the countries of East Asia has greatly increased since the late

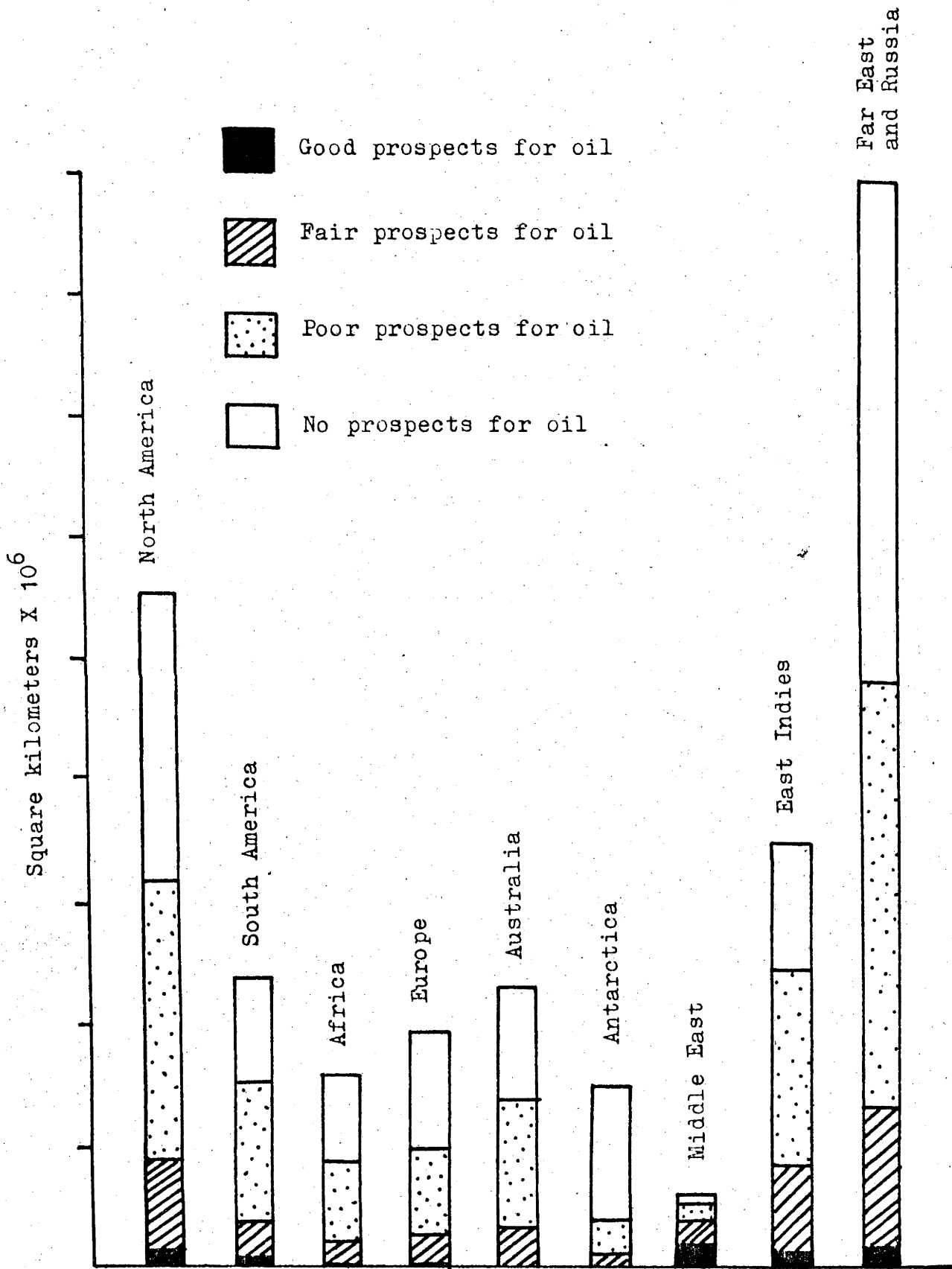
1960s. This growing interest has been prompted by: the steeply rising cost of imported oil from the Middle East since late 1970 (and particularly since late 1973) which has aggravated these countries' balance of payments problems; growing domestic demand for oil by many East Asian states; recent surveys in Asian waters that suggest the presence of large reserves of oil; and improvements in offshore oil drilling technology that now make economic exploitation of these reserves more feasible.

The oil potential of the world's continental shelves and shallow ocean basins has long been recognised. These areas usually contain a greater thickness of marine Tertiary sediments from which most of the world's petroleum production comes than do the exposed parts of the continents.¹ James A. Crutchfield, writing in 1973, noted that 'Even today, production of offshore oil is under way in the waters of 22 countries, and more than 75 nations on five continents are undertaking, or have granted permission to undertake, exploration off their shores. Some 16 percent of the world production of crude oil is now coming from offshore sources and about 20 percent of the proved petroleum reserves are in these areas.'²

East Asia has long been considered an area potentially rich in offshore oil. The region is favoured with large areas of continental shelves and small ocean basins. Data collected by L.G. Weeks in the mid-1960s gave further support to the view that the waters of Southeast Asia and the Far East contained some of the most promising areas in the world for offshore oil development (see Diagram 1).

DIAGRAM I.

OIL PROSPECTS OF THE CONTINENTAL SHELVES



SOURCE: B.J.Skinner and K.K.Turekian, Man and the Ocean, Prentice-Hall Inc., N.J., 1973, P.79. Adapted from the data of L.G.Weeks, 1965.

Despite these favourable estimates of East Asia's offshore oil potential, the countries of the region showed no urgency in laying claim to areas of the adjoining continental shelves. This may be explained in large measure by the fact that, until the late 1960s, offshore oil development was considered uneconomical in all but the most favoured situations. Oil drilling technology permitted only the exploitation of areas covered to a depth of 30 meters or so. Moreover, the cost of offshore oil production was generally so expensive when compared with that on land that only the largest offshore oil fields could induce the major international oil companies to invest the necessary large sums of money.

So long as the price of producing oil in the Middle East remained low there was little reason for the majors to develop offshore oil in East Asia. Moreover, the political climate for investment in the most attractive offshore area of Asia - the Indonesian archipelago - was less than enticing in the face of Sukarno's nationalist policies.

From the late 1960s, however, there has been much greater interest (both from within and from outside the region) in developing East Asia's offshore oil. This interest reached a peak, from which it has scarcely retreated, during the oil crisis of 1973/74.

It was a survey conducted in 1968/1969 by the Committee for Coordination of Offshore Prospecting (CCOP - an ECAFE-sponsored project) that made the countries of the region appreciate the potential value of the oil lying off their coasts. This survey assessed that oil in large quantities

lay in the whole sweeping offshore arch stretching from Burma to Japan.

Leon Howell and Michael Morrow asserted in 1970 'a clutter of claims and predictions, statistics and guesses, poured out on a slightly benumbed Southeast Asia. Euphoria reigned!'³ John Culbertson in Singapore Trade and Industry: 1972 declared that 'offshore tests have proved that the oil potential in Southeast Asia is greater than in other parts of the world.' The Straits Times of 11 July, 1970, quoted Mr Lawton Lawrence, managing director of Avery Lawrence, an American engineering firm, that 'Southeast Asia could become one of the world's five major oil-producing areas in the 1970s - rivalling the Persian Gulf.'

As the case studies will show, the release of the CCOP survey findings prompted a rash of claims to large areas of the South and East China Seas.

Another factor that contributed to the offshore boom was the development of suitable exploration, production, transportation and storage technology. By late 1971, for example, Shell Oil Co. had begun using Sedco 445 off Brunei. This equipment was capable of drilling in water depths up to 6,000 feet.

What gave greatest impetus to the development of East Asian offshore oil, however, was the increase in Middle Eastern oil prices that began their upward climb in late 1970. The price increases (together with the improved offshore oil technology) made many of the formerly

unattractive undersea areas of East Asia economic propositions.

By 1971, the bargaining strength of OPEC and the deteriorating situation in the world oil demand/supply equation had led to what Malcolm Caldwell has described as a 'frantic search for oil ... being conducted round the globe by the oil companies, the governments of the consumer countries, and by international agencies such as ECAFE on their behalf.'⁴ Caldwell estimated that much of the almost \$7.25 billion a year the oil industry was spending in its search for more petroleum reserves was spent in East Asia.⁵

Most of the countries of the region were eager to let the major oil companies explore for oil off their coasts. The offshore oil boom promised rich rewards for the host country - or at least for some sections of the host community. First, some of the oil produced might be retained for use by the host's industrial sector, thus reducing the need to pay scarce foreign currency for imported oil. Second, the royalties and taxes gained by exporting offshore oil would help to offset the large balance of trade problems faced by most countries of the region. Third, even should offshore exploration activities fail to find oil in commercial quantities the host country still stood to gain through the sale of offshore concessions and the provision of ancillary services.

Even some of those countries less favoured in terms of offshore oil potential could still benefit from the boom. Singapore, a shelf-locked state, realised that as a major

regional maritime, industrial and refining center, it could hope to receive more than its share of the foreign money being invested in East Asian undersea oil.

And the money promised to flow in large quantities. Caldwell claims that early in 1970 the Chase Manhattan Bank's Chairman, David Rockefeller, 'whetted the appetites of all the Asian businessmen and financiers present [at an Asian financial forum held in Singapore] by predicting a capital investment of \$35 billion by oil companies in Asia and the Western Pacific over the next 12 years - most of it in Southeast Asia.'⁶

The promised lavish spending attracted the attention of many of the region's political élites. A rivalry developed among many East Asian countries to attract foreign oil company investment. The national élites in some Southeast Asian nations (most notably in Suharto's Indonesia, and in Thieu's South Vietnam) hoped to channel some of the investment funds into their pockets. Howell and Morrow assert 'Governments quickly acquire dependency on oil revenues for their budgets and interest groups for their wealth, status, and power.'⁷

Japan, the region's greatest oil consumer, stood to gain much from the offshore oil boom. First the Japanese hoped to develop oil from their own continental shelves (more on this in Part III). Second, they hoped that Japanese oil development companies would join in the search for oil in waters elsewhere in East Asia. Oil coming from East Asian sources had several advantages for

the Japanese: Southeast Asian oil had a generally lower sulphur content than Middle Eastern oil; transport costs were lower for East Asian oil; and even politically troubled East Asia seemed a better security bet than the unstable Middle East.

All these factors had the desired effect, and by late 1973 the great carve-up of offshore areas into oil concessions was well advanced. (See Diagrams 2 and 3.)

The rush for East Asian offshore oil reached a new high, bordering on hysteria, following the oil crisis of late 1973. All the reasons for interest in the region's undersea oil development now applied with greater force. The sheer magnitude of the price increases in Middle Eastern oil posed a serious problem for most countries of the region.⁸ Not only had the price of oil imports risen by some 300 percent, but the prices of imports (such as fertilisers) from the industrialised countries threatened to rise steeply. The development of indigenous oil now seemed more urgent as an earner of valuable foreign exchange, which could be used to import needed capital for development.

The major oil companies were only too eager to accept the invitation to participate in offshore oil development in East Asia. The majors were determined to find alternative oil fields outside the Middle East. As Michael Morrow puts it 'The rush to Southeast Asia has been, in part, the rush of major companies to gain leverage in relationships with Middle East producing countries. Non-Arab producers cannot be held together

DIAGRAM II

OIL CONCESSIONS IN SOUTHEAST ASIA

ASIA-PACIFIC OIL-PRODUCTION ACTIVITY October 1973

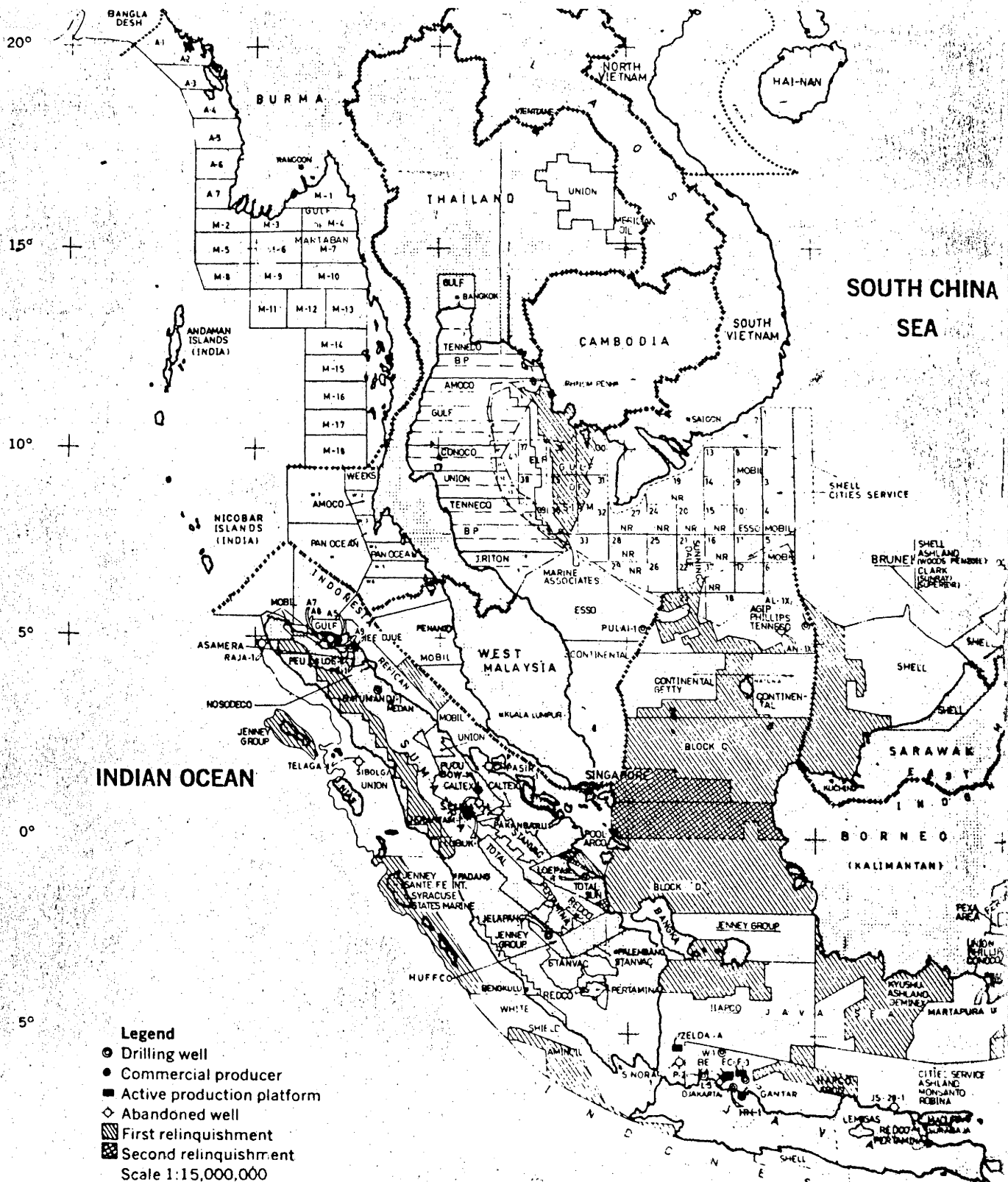


DIAGRAM II

SOURCE: Howell, L. and Morrow, M.
Asia, Oil Politics and the Energy Crisis, IDOC/
 International Documentation,
 1974, P.P. 96-7, from a map
 which first appeared in
Petroleum News Southeast Asia,
 30 Nov., 1973.

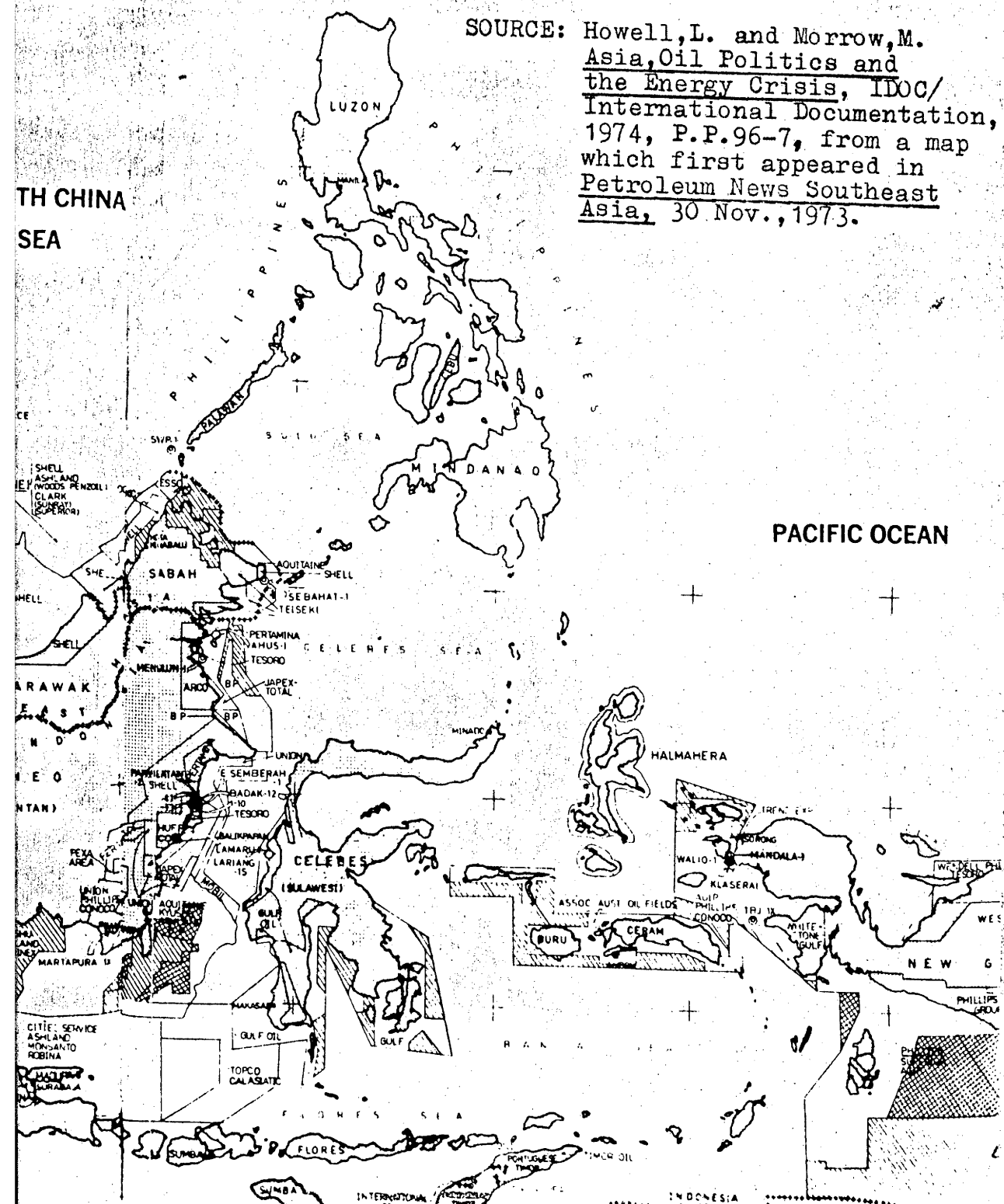
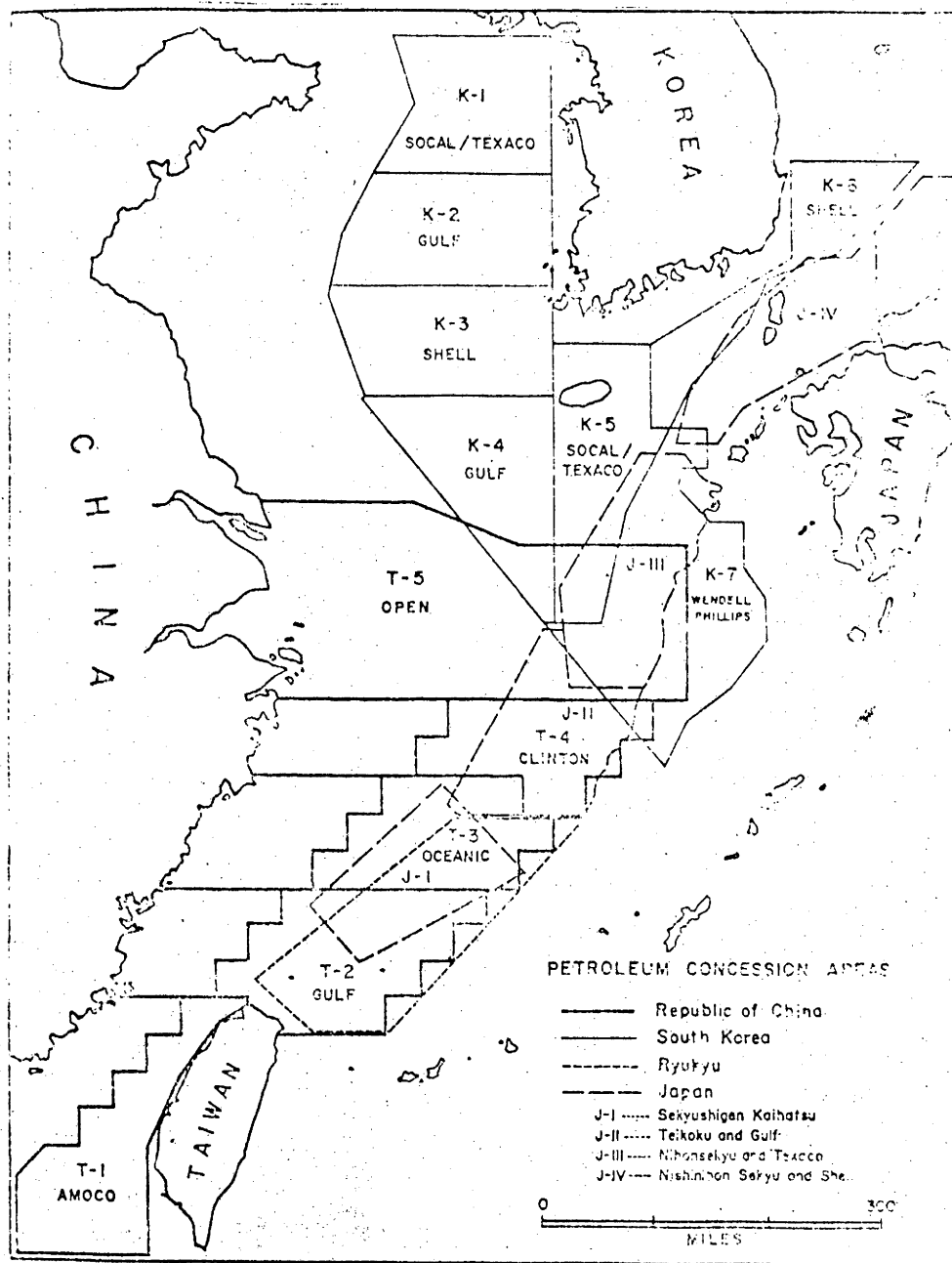


DIAGRAM III
OIL CONCESSION AREAS IN THE FAR EAST



SOURCE: Park, Choon-Ho "Oil Under Troubled Waters: The Northeast Asia Sea-Bed Controversy" Harvard International Law Journal, Vol. 14, 1973, P.219, based on US State Dep't, Map No. 261 7-71 (State RGE)

by Arab nationalism or anti-Zionism.'⁹

There are other good reasons why the majors are attracted to the region. The new level of oil prices set by OPEC has helped to make the development of East Asian offshore oil more of an economically viable proposition. The Far Eastern Economic Review has noted that 'in general, higher crude prices have brought oil companies flocking to the continental shelves and coastal plains of Asia It was estimated that US companies alone will invest \$566 million in Indonesia during 1975 (up from \$319 million in 1974) and \$192 million elsewhere in the Far East excluding Japan. Every country along the Asian rim has offshore exploration planned or in progress - except for Sri Lanka and Pakistan, which have onshore drilling in progress, and North Korea whose plans are unknown.'¹⁰

By the end of 1975, the surge of exploration for offshore oil that had followed the 1973/74 energy crisis had tapered off somewhat. This reflected in part the stagnant demand for oil in the industrialised world - particularly in Japan. However, there is little doubt that interest in developing the undersea oil wealth of the region remains at a far higher level than that prevailing before October, 1973. And so long as OPEC continues to charge such high prices for its oil, this interest in East Asian offshore oil will continue.

The degree of interest shown in offshore oil development in East Asia has, therefore, three distinct phases. Phase one covers the period up to the late 1960s, when interest was at a relatively low level. Drilling technology was then still so backward to permit exploitation of only the most favoured offshore sites - for example in the shallow waters off Borneo. As the price of Middle East oil was then a mere US\$1.80 a barrel few, if any, offshore fields could compete in price.

Phase two lasted from about 1969 to late 1973, and can be considered to be a period of moderate/high interest. Offshore oil production technology had made great advances and permitted drilling in much deeper water. This was also a period marked by rising world oil prices that made the exploitation of offshore oil (in East Asia and elsewhere in the world) economically more attractive.

Phase three dates from late 1973 to the present, when interest in offshore oil development in East Asia reached new peaks. A quadrupling of the price of Persian Gulf oil threatened serious balance of payments problems.

The Legal Background to Offshore Oil Claims

In recognition of the growing importance of offshore oil, the countries of East Asia have been eager to lay claim to sovereignty over waters off their coasts. Naturally, these countries have tried to ensure that their claims are supported in international law. Unfortunately, the law of the sea is most ambiguous on the subject of ownership of resources of the seabed and subsoil of the continental

shelf - where lies the commercially attractive reserves of offshore oil. In order to give greater meaning to the East Asian oil controversies considered in Part III it might be useful first to outline these legal ambiguities.

The debate over the right of dominion over the sea and its resources has a long history. Much of the doctrine of maritime order as we now know it was conceived by the great seventeenth century Dutch lawyer Hugo Grotius who asserted that the ocean must be held free for common use. The 'boundless ocean', Grotius argued, 'was indivisible, open and intangible - its natural resources were infinite.' But, as Seyom Brown reminds us, Grotius' advocacy of freedom of the seas was challenged by the British jurist John Selden who believed 'The right of dominion gave nations the right to exclude others from claimed portions of the sea, to prevent fishing, navigating, landing and "taking of gems".'¹¹ Selden argued that the sea's resources were exhaustible, its space could be divided, and its uses could be effectively controlled.

For much of the past three and a half centuries it was Grotius' doctrine of freedom of the seas that was accepted as the standard in international law.¹² With few exceptions, the resources of the sea did appear to be inexhaustible. Moreover, in some cases - as, for example, underwater oil - they were incapable of being exploited.

However, technological and political developments in the middle of this century began to undermine the freedom

of the seas doctrine. The first real blow came in September, 1945, when President Truman proclaimed that the United States regarded 'the natural resources of the subsoil and seabed of the continental shelf beneath the high seas but contiguous to the coasts of the United States as appertaining to the United States, subject to its jurisdiction and control.'¹³ The Declaration was largely the result of strong pressures by the American petroleum industry which wanted exclusive rights to exploit hydrocarbons in offshore areas.

Comparable claims by other states followed. Unilateral bids were made by a number of states to the living and mineral resources off their coasts. For example, Chile, Ecuador and Peru extended exclusive rights to fisheries as well as the ocean floor out to 200 miles. Kim Traavik remarks 'The Truman Declaration in effect constituted the opening of a legal Pandora's box. Today practically all coastal states ... have put forward claims to national shelf areas of greatly differing sizes.'¹⁴

These unilateral claims over the living and mineral resources of very large areas of the world's oceans raised the prospects of what C.D. Beeby has described as 'a new variety of colonial scramble involving international tensions and even the possibility of open conflict among states.'¹⁵

In recognition of this threat, the United Nations in 1958 convened a conference in Geneva in an attempt to clarify the law of the sea. One of the four treaties to emerge from the conference was the Convention on the Continental

Shelf. The Convention recognised that a coastal state had sovereign and exclusive rights to the resources of its continental shelf.¹⁶ It defined the continental shelf as:

(a) 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 similar submarine areas adjacent to the coasts of islands.¹⁷

It was the ambiguous quality of this Article 1 of the Convention that was responsible for much of the subsequent confusion with respect to sovereignty over offshore oil claims. The Convention failed to produce an adequate definition of the outer limit of the area in which 'sovereign and exclusive' rights might be exercised.

It was evident that the International Law Commission that had been responsible for preparatory work done on the Convention recognised that the legal continental shelf might extend beyond the geological shelf.¹⁸ But the 'exploitability' criterion left open the possibility that claims to areas of the seabed would move progressively seawards with the advance of technology. As Kim Traavik notes 'carried to its logical extreme, the criterion of possible exploitation could in effect be taken to mean that the shelf zone of a coastal state need no other delimitation than some other coastal state's seabed area.... In theory, and by way of example, one might thus visualise that the countries on each side of the Atlantic Ocean partitioned its seabed between them along the median line.'¹⁹

The use of the word 'adjacent' in Article 1 also creates problems in defining the outer limits of sovereignty. Several jurisdictional disputes have arisen concerning 'interrupted' shelves where shallow areas lie beyond the first 200-meter isobath seaward from the coast. Does the presence of deep submarine canyons disqualify the 'outlying' shallow areas from inclusion within the shelf regime? Article 1 does not provide a clear answer.

Another serious problem is the provisions the Convention made for dividing up the continental shelf that is shared by two or more nations. Article 6 of the Convention states in part:

1. Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.

2. Where the same continental shelf is adjacent to the territories of two adjacent States, the boundary of the continental shelf shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary shall be determined by application of the principle of equidistance from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.²⁰

The qualification in paragraph 2 concerning 'special circumstances' can be given various interpretations. This qualification, Stan Ross has noted 'may refer to the physical characteristics of the area, to the existence of

a navigable channel, or it may refer to the distribution of the resources of the sea-bed or subsoil. Moreover, the Convention does not indicate whether any notion of equitable apportionment should be considered.²¹

The equidistant rule, and the special circumstances qualification, were central to the North Sea Continental Shelf dispute between West Germany and Denmark, and West Germany and Holland in the late 1960s. Under the equidistant rule, West Germany would have received sovereignty over only a very small part of the North Sea (which has large oil deposits). The International Court decided that this rule was but one of several equitable principles that should be applied in determining the division of the continental shelf. The Court ruled that the continental shelf must be the 'natural prolongation of land territory and must not encroach upon what is the natural prolongation of the territory of another state.'²²

The ambiguities inherent in the 'exploitability', 'adjacency', and 'special circumstances' criteria in the Convention have made difficult the orderly development of offshore resources at a time when global interest in the development of resources in and under the sea (particularly oil) has reached new peaks.

In recognition of this urgent and growing problem, there have been several further attempts to establish some kind of national order for the exploitation of ocean resources. Conferences on the law of the sea held in Caracas (from June to August 1974) and in Geneva (from

March to May 1975) reached no final agreement, but progress was made towards solving some of the problems. There was substantial support for the proposal that a 200-mile economic zone and a 12-mile territorial sea be adopted. (Australia, the Soviet Union, Britain, and most of the developing states of Asia, Africa and Latin American supported this concept.) The prevailing view²³ was that coastal states should have total control over the resources within the economic zone.

Naturally, the landlocked and geographically disadvantaged countries have been hesitant about endorsing a 200-mile economic zone. They are still more reluctant to accept an even broader coastal state jurisdiction over seabed resources. About 45 states have proposed that coastal nations should have jurisdiction over the whole of the continental shelf - even where it extends beyond the 200-mile economic zone. This group of countries refers to the decision of the International Court of Justice in respect of the North Sea Continental Shelf cases which granted to the coastal states sovereign rights over the seabed resources of the whole of the natural prolongation of their land territory to the outer edge of the continental margin.

The present Law of the Sea Conference being held in New York will - among its many other responsibilities - address itself to the problem of the 200-mile economic zone. It will also attempt to resolve other issues relevant to sovereignty over non-living marine resources. Among these are: the rights of islands - for example, do small, uninhabited islands, far from the mainland, generate

a 200-mile economic zone?; and the role and powers of an international agency to be established having control over the exploitation of resources beyond the limits of national jurisdiction.

Despite the ambiguities in the law of the sea a state of complete anarchy does not exist regarding claims to sovereignty over resources of the seabed and subsoil thereof. Some states have made use of the provisions for mutual agreement laid down in Article 6 of the Convention on the Continental Shelf. As of mid-1973 there were 19 bilateral agreements governing the boundaries between national claims to submarine areas.²⁴

The Political Setting in East Asia Since 1969

Before treating with the case studies it is necessary to outline major recent developments in East Asian political relations. It is against this background that the political implications of the controversies over offshore oil claims in the region detailed in Part III will be measured and assessed. Emphasis throughout this section will be given to the fluctuating political relationships the countries of the region have had with the largest regional power - China. The period covered will be from 1969 to the present. These were the years when disputes over areas of the East and South China Seas believed rich in oil first arose.

This short sketch will note that, with some exceptions, there has been a marked change in the character of the relationship these countries have had with China. Where in 1969 these relationships were usually marked by great

suspicion and varying degrees of hostility, they are now typified by a relatively more relaxed and cooperative atmosphere.

In late 1969, Peking looked out on a generally hostile East Asia. China had just emerged from the Cultural Revolution during which it had given strong vocal support to revolutionary movements in Southeast Asia. China then seemed surrounded by enemies. South Korea, Japan, Taiwan, the Philippines, Okinawa, Guam, South Vietnam and Thailand all had American military bases. To the south lay Indonesia and Burma, and, to the west of the region, India - countries antagonistic to Peking. And, of course, there was the feared enemy to the north, the Soviet Union.

Most of the non-communist countries of the region had some sort of security pact with the United States. It is true that in July, 1969, President Nixon had expounded his 'Guam Doctrine' of gradual military disengagement from the Asian mainland. But while America's allies were expected to shoulder more of the burden of their own defense, the USA still remained deeply involved in Asia. The Doctrine made it plain that Washington would continue to provide its Asian friends with both military and economic assistance. In the wake of the Tet offensive of 1968, American policy had shifted from one of direct involvement in the region to one of indirect - but still substantial - intervention.

Peking might, in 1969, have been justified in believing that most of its Asian neighbours were collaborating in an American policy of containing China.

The Chinese viewed Japan as the greatest regional threat to their long-term security. The Nixon-Sato Communique of that year had stated that 'Japan's security is directly related to the security of South Korea and to the Taiwan Straits.' Peking feared that militarism had firmly re-established itself in Japan and that the continuing US-Japan Security Treaty (renewed in 1970) was a military alliance against China and North Korea. Japan was, in fact, thought to be taking over part of the American security role in the Pacific. Derek Davies saw Chou En-lai's visit to Pyongyang in April 1970 as laying 'the foundations for a basically anti-Tokyo Peking-Pyongyang-Hanoi axis.'²⁵ There was little doubt that Japan had now joined the Soviet Union and the United States in China's list of most feared and hated enemies.

Despite (or perhaps in part because of) Peking's increased hostility towards Tokyo, China in late 1969/early 1970 made a dramatic return to 'reasonable and pragmatic' foreign policies. It was probably the armed clashes with Soviet troops at the Ussuri River, together with the threatening Nixon-Sato Communique that served to remind Peking of its position of isolation and prompted the Chinese to mend their diplomatic fences with the Third World.

China's new smiling face was welcomed by some of the countries of East Asia which were then carefully assessing the full implications of the Guam Doctrine. Thailand's Thanat Khoman had already put out a feeler to Peking when in the spring of 1969 he called on 'non-communist Asia to close ranks and induce China to "work with us."'²⁶

The process of normalisation in China's relations with other East Asian countries has been fitful. Somewhat ironically, the speed with which Peking repaired its relations with Tokyo and Washington - two of the former arch enemies - was initially much greater than that with the countries of Southeast Asia.

It was Nixon's visit to Peking in February, 1972, followed by that of Tanaka seven months later, that marked the era of detente among the great powers. Many East Asian countries then began to feel a more pressing need to normalise diplomatic relations with Peking. However, it was not until 1974 that any marked progress was made in that direction. In the spring of that year, Malaysia became the first ASEAN member to announce the establishment of diplomatic relations with Peking. Also that year, Imelda Marcos visited Peking, and the new government in Bangkok sent several delegations to the Chinese capital.

Sino-Japanese relations continued to improve in 1974. The first shipments of Chinese oil (if only in small quantities) were beginning to arrive in energy-short Japan. More significantly, perhaps, on 20 April the Sino-Japanese Aviation Agreement was finally signed, after what Hong N. Kim has described as 'seventeen long months of arduous and hectic negotiations.'²⁷

It was the events of April last year that precipitated a new flurry of diplomatic negotiations. The fall of Saigon and Phnom Penh, and the subsequent emergence of a pro-communist regime in Vientiane, served to shatter the region's already shaky confidence in Washington's desire

and/or ability to protect them from 'the communist threat'. Throughout East Asia, national leaders were wondering whether American security guarantees were now worth very much. As John Girling put it, there has been a realignment of policies among many Southeast Asian states with a '...dramatic shift from alliance with the United States to a form of non-alignment, including friendly relations with China, and from dependence on military commitments to reliance on diplomacy and indeed self-reliance.'²⁸

The non-communist countries of the region discounted collective defence as a viable option for meeting the new situation. The Southeast Asia Treaty Organisation (SEATO) finally folded up in 1975. And, while the ASEAN states of Thailand, the Philippines, Indonesia, Malaysia and Singapore moved tentatively closer 'there was little chance (or hope) of presenting a united, military front to the new Vietnam. The accent was on appeasement, not confrontation.'²⁹

Some East Asian states were more eager than others to improve their relationship with China. Following Malaysia's example the previous year, in 1975 two other members of ASEAN - Thailand and the Philippines - established diplomatic links with China. Bangkok no doubt felt that closer relations with Peking would give Thailand some measure of protection against an enlarged communist Vietnam. It was not long after the fall of Saigon that the Thai Prime Minister ordered the withdrawal of 27,000 US servicemen stationed on five US-used bases by 17 March, 1976. Manila also had second thoughts about the two major US bases on

Filipino territory. President Marcos now viewed these bases and the Mutual Security Treaty with the United States as net liabilities.

The debacle in Vietnam also created doubts in Japanese minds about the reality of the American defence commitment should Japan be threatened. While the Japanese still realised they had little choice but to retain their defence links with the USA,³⁰ they also felt it wise to strengthen their links with China. Sino-Japanese trade increased by 50 percent in the first six months of 1975 and there were hints that China might become a future major alternative source of oil.

But there was a limit beyond which the Japanese were not prepared to go in appeasing Peking. Tokyo showed its reluctance to sign a Treaty of Friendship with China which contained a clause condemning 'hegemony-seeking' in East Asia by any country. Suspicious as the Japanese are of the Soviet Union, they are still anxious not to offend Moscow - the obvious target of the 'hegemony' clause.

The Sino-Soviet dispute explains in large part China's desire to reciprocate the cordial approaches of its Asian neighbours. Peking fears that the USSR will fill the vacuum left by America's withdrawal from the Asian mainland.

Not all countries of East Asia, however, were eager to make the pilgrimage to Peking. Singapore showed itself prepared to develop more cordial relations with China but not to the point of establishing diplomatic links.

Other, more conservative, regimes in East Asia were severely shaken by the fall of Saigon. Taipei and Seoul saw the 'loss' of Vietnam, Cambodia, and Laos as but the most recent and strongest example of the growing weakness of American resolve to stem communist expansionism. Events in Indochina made Chiang Ching-kuo and Park Chung Hee even more determined to bolster their defences against their communist neighbours. Nor were things much different in Indonesia. The bitterly anti-communist generals ruling that country were little more favourably disposed towards China than their brothers in Taiwan and South Korea.

Neither were the victors in Hanoi, Ho Chi Minh City and Vientiane much more favourably disposed towards China. During the last years of the Indochina war friction had developed between Hanoi and Peking. North Vietnam had long been worried how it might hope to maintain true independence from China. Most senior communists in Indochina, therefore, value their links with Moscow as a guarantee of their countries' political autonomy.

Even those countries anxious to improve their relations with Peking have not necessarily ceased to be less suspicious of the Chinese. The Thais and Malaysians, in particular, realise that whilst China is prepared to strengthen links with them on a state-to-state level, Peking still has an ideological commitment to supporting revolutionary wars of liberation. The Chinese, however, have been careful in recent years not to give more than weak/moderate verbal support to insurgent movements in Southeast Asia. Peking values its new links with the region

too much to risk driving these governments into the arms of Moscow. (It is China's fear of the USSR that also explains why Peking is not averse to the USA maintaining bases on the Asian mainland.)

Footnotes

¹ See V.E. McKelvey and F.F.H. Wang 'World Subsea Mineral Resources' in R.G. Pirie (ed.) Oceanography: Contemporary Readings in Ocean Sciences, O.U.P., London, 1973, p.368.

² J.A. Crutchfield 'Resources from the Sea' in Ocean Resources and Public Policy, University of Washington Press, Seattle, 1973, p.119.

³ Leon Howell and Michael Morrow Asia, Oil Politics and the Energy Crisis, IDOC/International Documentation, Nos.60-61, New York, 1974, p.59.

⁴ Malcolm Caldwell 'Oil and Imperialism in East Asia', Journal of Contemporary Asia, Vol.1, No.3, 1971, p.29.

⁵ *ibid.*, p.29.

⁶ *ibid.*, p.18.

⁷ Leon Howell and Michael Morrow 'Economic and Political Clout of Black Gold', Insight, September 1973, p.30. For more on the way in which the Indonesian military élite benefit from foreign oil investment see R.F. Ichord, Jr. 'Southeast Asia and the World Oil Crisis: 1973' Southeast Asian Affairs, 1974, Institute of Southeast Asian Studies, Singapore, March, 1974, pp.52-53.

⁸ Japan's oil import bill, for example, rose from \$3.9 billion for 246.1 million kilolitres in 1972, to \$18.9 billion for 278.3 million kilolitres in 1974. See my Japan's Oil Import Policies in the Age of 'Multipolar Diplomacy', Australia-Japan Economic Relations Research Project, Australian National University, April, 1975, p.65.

⁹ Michael Morrow 'The Politics of Southeast Asian Oil', Bulletin of Concerned Asian Scholars, April-June, 1975, p.36.

¹⁰ The Far Eastern Economic Review, Asia Yearbook 1975, Hong Kong, December 1974, pp.85-6.

¹¹ Seyom Brown and Larry L. Fabian 'Diplomats at Sea', Foreign Affairs, Vol.52, No.2, January 1974, p.304.

- 12 There have, of course, been some exceptions:
E.B. Jones notes, for example, that in 1858 'royal approval was granted to an act called the Cornwall Submarine Mines Act, which promulgated the dictum that all mines and minerals below low water mark under the open sea ... were vested in Queen as composing part of the territorial possessions of the Crown.' E.B. Jones, 'Development and Codification of the Law of the Sea', in E.B. Jones Law of the Sea: Oceanic Resources, Southern Methodist University Press, Dallas, 1972, p.38.
- 13 'Proclamation by President Truman of 28 September 1945', see S. Oda The International Law of the Ocean Development: Basic Documents, Sijthoff, Leiden, 1972, p.341.
- 14 Kim Traavik 'The Conquering of Inner Space: Resources and Conflicts on the Seabed', Cooperation and Conflict, Nos.2 and 3, 1974, p.9.
- 15 C.D.Beeby 'The United Nations Conference on the Law of the Sea: A New Zealand View', Pacific Viewpoint, Vol.16, No.2, September 1975, p.117.
- 16 See Article 2, paragraph 1, 'Convention on the Continental Shelf', in S. Oda, op.cit., p.21.
- 17 *ibid.*, Article 1.
- 18 The outer limits of the geological shelf in different parts of the world vary greatly both in distance from the shore and in depth. The geologist differentiates between the continental shelf, continental slope, and continental rise, in terms of their average gradient ($1/10^0$, 3^0 to 6^0 , and $1/10^0$ to 1^0 respectively). See diagram in Appendix I.
- 19 Kim Traavik, op.cit., p.7.
- 20 S. Oda, op.cit., p.22.
- 21 Stan Ross 'Law of the Sea', Current Affairs Bulletin, Vol.51, No.9, February 1975, p.10.
- 22 *ibid.*, p.10.
- 23 For varying interpretations of the economic zone and of the continental shelf see Appendix II.
- 24 See J.R.V. Prescott, The Political Geography of the Oceans, David and Charles, London, 1975, pp.190-7.
- 25 Derek Davies 'The Giants Square Off', Far Eastern Economic Review, 14 December 1970, p.28.
- 26 *ibid.*, p.38.
- 27 Hong N. Kim 'Sino-Japanese Relations Since the Rapprochement', Asian Survey, Vol.XV, No.7, July, 1975, p.568.

- 28 John Girling, 'Southeast Asia and the Great Powers: Interests and Perceptions', an unpublished seminar paper given in the Department of International Relations, A.N.U., 26 February, 1976, p.1.
- 29 Derek Davies 'Power Game: Asia's New Military Balance', Far Eastern Economic Review, 7 December 1975, p.45.
- 30 Earl C. Ravenal notes that 'Japan generally unnerved, sent its Foreign Minister to Washington in mid-April 1975 to seek a conspicuous pledge of support for the Security Treaty.' See his 'The End Game in Vietnam' Foreign Affairs, Vol.53, No.4, July, 1975, p.661.

III. OFFSHORE OIL CONTROVERSIES IN EAST ASIA

Part III of this paper examines in detail the controversies over offshore oil claims in East Asia. These disputes will be evaluated for the light they shed on intra-regional political relationships over the past seven years. As Peking's relationship with the countries of East Asia is of central interest, emphasis will be given to those controversies in which China is one of the disputants.

For the sake of convenience, Part III will be divided into two sections. Section one considers offshore oil disputes in the East China Sea, particularly that between China and Japan over the Senkaku Islands. Section two treats with offshore oil claims in the South China Sea involving China, the two Vietnams, the Philippines, and others.

East China Sea

The littoral states bordering on the East China and Yellow Seas have created a complex web of competing claims to offshore areas believed rich in oil. Taiwan contests claims by China and Japan; South Korea is in dispute with Japan, China and North Korea; North Korea challenges South Korea and Japan; China disputes claims by all its non-communist neighbours (and, some say, disputes claims by North Korea);¹ and Japan is involved in offshore disputes with all its neighbours.

Some of these controversies - for example, that between the two Koreas, and that between the two Chinas -

have been quite predictable and contribute little extra to our understanding of Far Eastern political relations. Other controversies, however, are of greater interest to the student of international relations. Especially interesting are those disputes between nations whose mutual political relationships are uncertain or which are in the process of great change. The dispute between Japan and China, involving sovereignty over parts of the East China Sea, is one such case and provides the focus of this section.

The following case study will demonstrate how the course of the debate between China and Japan closely parallels the wider political debate between the two countries. The years 1969 to 1971 were marked by intransigence and hostility - especially on the part of China. More recently, however, there has been an increasing desire by both parties to reach some sort of accommodation.

As noted in Part II, the 1968/69 CCOP survey confirmed the long-held suspicion that the continental shelves and ocean basins of the Far East had great potential for offshore oil development. Shortly after the survey, the US Navy's Oceanographic Office was quoted as saying that "potentially one of the most prolific reserves in the world" has been discovered in the East China and Yellow Seas near Japan, Taiwan and Korea....² World Oil magazine claimed that the most promising area extends along three ridges on the continental shelf between China and the Ryukyu Islands in the East China Sea Should exploratory drilling prove the U.S. Navy correct, nearby nations no longer will have to depend on imports from Indonesia and the Middle East.³

These estimates could well prove wildly over-optimistic. But what is significant, as far as the present discussion is concerned, is that the countries of the area believed that such potential existed. As recently as January, 1975, the New China News Agency was quoted as claiming that 'oil resources in the Yellow Sea, East China Sea and South China Sea, if fully exploited, together with 80 existing oil fields, will "place the country /China/ ahead of any oil producing nation in the world."' ⁴

The CCOP survey was conducted some five years before the oil crisis of late 1973 and two years before OPEC announced the first of many increases in the price of crude oil. This is not to suggest, however, that the survey's findings were not welcomed in East Asian capitals. Japan (the world's largest importer of oil since 1966), Taiwan, and South Korea, all found their high dependence on imported oil a burden. As noted in Part II, domestically produced oil would have two great attractions: the source of supply would be politically secure, and there would be great savings in foreign currency.

China was in a more fortunate position than the others. Since the mid-1960s the People's Republic had been a net exporter of oil. But Peking was no less interested in developing offshore crude, for such oil could be exported and would provide a welcome additional source of foreign currency for China's programme of industrial development.

All these countries were, therefore, anxious to lay claim to as large an area of the offlying seabed as possible.

Even before the results of the CCOP survey were made public, the South Korean government granted a concession contract (in April, 1969) to Gulf Oil Company to explore and exploit offshore areas. On 1 January, 1970, the Submarine Mineral Resources Development Law was promulgated. A Presidential decree of 30 May, 1970, outlined the dimensions of seven seabed mining blocks off the Korean coast. -(See Diagram 3 above)

The Taiwanese government also acted quickly, and on 17 July, 1969, took the first of several legal steps toward claiming sovereignty over a large area of the offlying continental shelf. In October that year Taipei established five 'seabed reserve areas.'

The Japanese government was less eager than those in Seoul and Taipei to involve itself legally in this issue. Tokyo did, however, in October and November, 1970, defend the interests of four Japanese oil companies which had applied for mining rights to four offshore blocks that were disputed by Taiwan and South Korea. Moreover, the Japanese government had in July that year challenged Taiwan's right to sign a contract with Gulf Oil Co. for the exploration and exploitation of oil resources in an area to the northeast of Taiwan. This area included the entire Tiao-yu-t'ai Islands (known to the Japanese as the Senkaku Islands) which Tokyo claimed belonged to the Ryukyus and, therefore, to Japan.

So, by late 1970, Japan, Taiwan and South Korea had each established unilaterally a boundary limit vis-a-vis the

state opposite. These unilateral claims overlapped in places. Out of the 17 seabed blocks which were designated by the three countries, only four were uncontested (see Diagram 3).

Not one of the three countries proposed to seek an agreement over the problem of boundary delimitation. Instead, it was suggested in July, 1970, that Japanese, South Korean and Taiwanese business interests should jointly develop the continental shelves. The problems of jurisdiction and boundary delimitation could be frozen and resolved at a later date.

Until then China had remained silent over the subject of offshore oil claims. But on 4 December, 1970, Peking made a strong protest against the actions of its three neighbours. The Peking Review attacked 'The Japanese militarists [who] have adopted a series of new and more vicious tricks for the purpose of plundering the undersea oil of China and Korea.' The article went on to warn that 'US imperialism, aggressive by nature, long ago stretched its claws of aggression on to the sea floor of China's vast shallow water areas....The US and Japanese reactionaries will reap their own bitter fruits if they do not pull in their claws of aggression.'⁵

China was clearly incensed by Japanese, Taiwanese and South Korean attempts to develop oil on what Peking viewed its continental shelf. China lost no time in claiming sovereign rights over the resources of the continental shelves lying off its coasts, and ownership of the Tiao-yu-t'ai Islands.

It might be useful at this juncture to outline the various legal claims made with respect to parts of the East China Sea. Each state has insisted that only its claims are tenable under international law. But, as noted above, the law of the sea is very ambiguous in matters involving delineation of continental shelf boundaries. Many of these ambiguities and weaknesses crop up in the East China Sea controversies, and have made legal resolution of the disputes difficult or impossible.

Naturally, each country interprets the law of the sea to suit its own national interests.

Choon-Ho Park has noted that China's claims to jurisdiction over the sea resources in the Yellow and East China Seas 'have been basically unspecific.'⁶ However, it is not too difficult to determine the main outlines of China's stand on law of the sea matters affecting offshore resources. China has long supported the basically Third World position that coastal states should have sovereignty over large areas of the offlying oceans. The Peking Review put China's position in somewhat vague terms. 'We maintain that all coastal countries have the right of disposal of their natural resources in their coastal seas, seabed and the subsoil thereof so as to promote the well-being of their people and the development of their national economic interests.'⁷

China has been somewhat more specific regarding offshore claims in the East China, South China, and Yellow Seas. China clearly embraces the 'natural prolongation of land

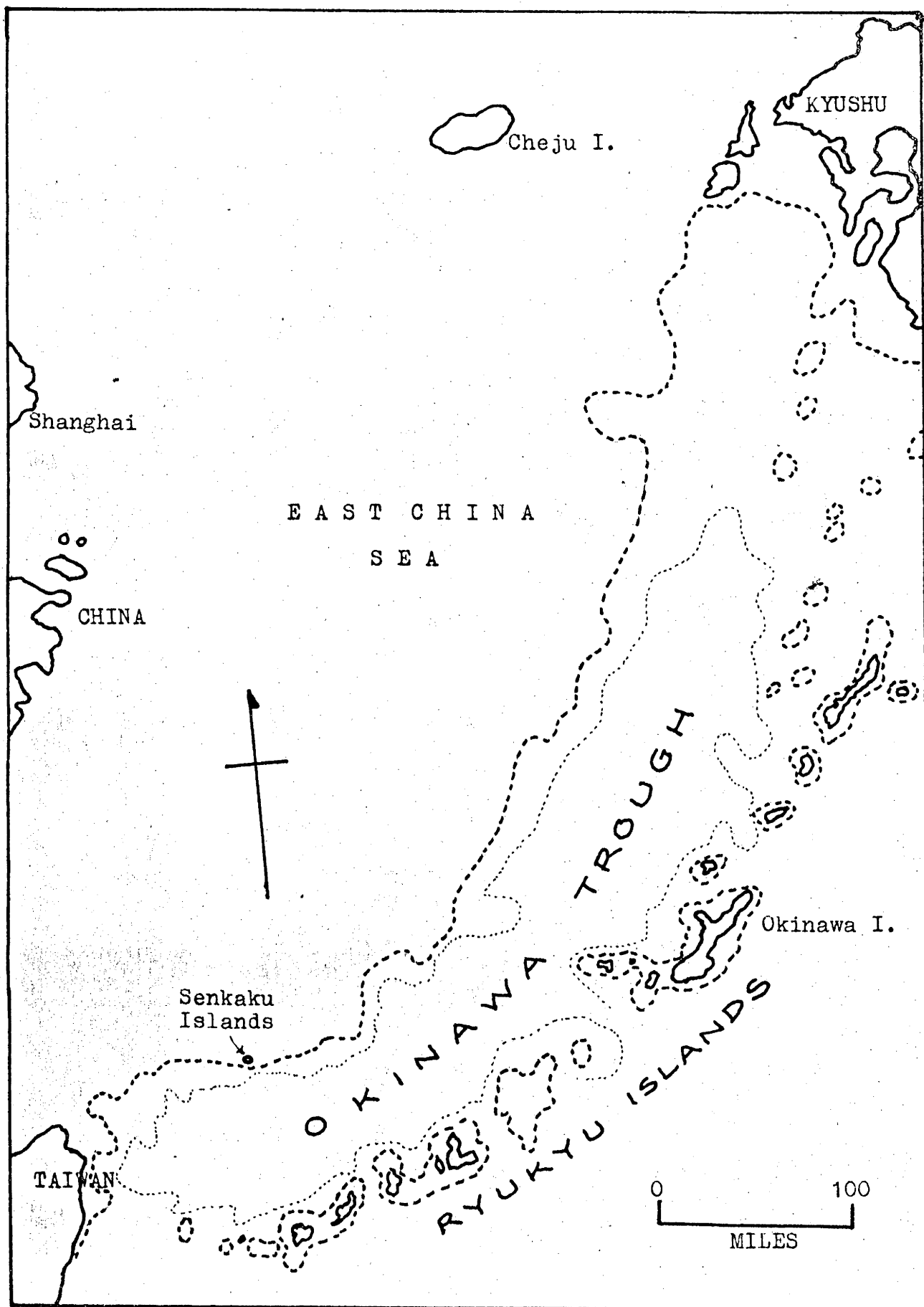
territory principle' which had been the basis of the 1969 International Court of Justice judgement in the North Sea Continental Shelf cases. The natural prolongation principle is advantageous to China as the continental shelf inclines gently from the mainland of China and drops abruptly into a deep trench - the Okinawa Trough - off the southwest coast of Japan. Peking argues that that part of the continental shelf lying to the west of the Okinawa Trough belongs to China. (See Diagram 4.)

Peking is also sensitive about the legal status of the Tiao-yu-t'ai Islands in the knowledge that, should Japan win legal title to them, China could lose sovereignty over a potentially oil rich part of the shelf.

But China's claim to the offlying continental shelf in the East China Sea has been somewhat undermined by its support for a 200-mile economic zone at Caracas and at subsequent law of the sea conferences. As we shall note later, it is difficult to apply the 200-mile economic zone concept without also applying the median line principle for defining boundaries between coastal states less than 400 miles apart. Peking's support for a 200-mile economic zone, therefore, undermines its 'natural prolongation' position.⁸

Taiwan's claims are based largely on the same legal arguments as those of Peking. Taipei asserts that its ownership of large areas of the East China Sea are based on the 'natural prolongation' argument. As William Hartley points out 'The extensive claims, of course, are based on Taiwan's insistence of sovereignty over the Chinese mainland.'⁹

DIAGRAM IV
OKINAWA TROUGH AND SENKAKU ISLANDS (Tiao-yu-t'ai)



200 meter isobath
1,000 meter isobath

Japan, as a major maritime and fishing nation, was opposed to broad zones of national jurisdiction over offshore waters. However, as the world's largest importer of oil, Japan was naturally anxious that, if a carve-up of the globe's continental shelves was inevitable, it would claim ownership of as large a portion of the East China Sea as possible. Japan realised that, given the nature of the topography of the offlying seabed, its national interests were best served by adopting the solution in the 1958 Convention suggesting that the continental shelf between two countries should be divided along the median line - the equidistant principle. Japan's legal argument is that the Okinawa Trough should be ignored, and the median line principle applied so that large areas lying to the west of the Trough could be claimed as Japanese.

The Japanese have also been anxious to claim ownership of the Tiao-yu-t'ai Islands (the Senkakus). Tokyo argues: one, that these islands do, in fact, belong to Japan and, two, that they should be used as base points for the measurement of the median line vis-a-vis China (or Taiwan).¹⁰ (See Diagram 4.) Japan also takes a similar stand with respect to the small, uninhabited islands of Danjo Gunto and Tori Shima, lying between Japan and South Korea.

The South Koreans have taken a legal position that is a hybrid of both the Chinese and the Japanese approaches. Blocks 1, 2 and 3 in the Yellow Sea and Block 4 in the East China Sea are delimited according to the median-line principle. Block 7 seems to have been delimited under the 'natural prolongation' formula.

From the legal debate the discussion returns to the political controversy over offshore oil claims in the East China Sea. Again emphasis will be given to the dispute between China and Japan.

The Japanese were both surprised and dismayed by the strength of China's protest of December, 1970. Peking's displeasure was registered again in March, 1971, in a joint communiqué issued in the Chinese capital at the conclusion of the annual Sino-Japanese memorandum trade talks. Park notes that two paragraphs in it referred to 'the attempt by Japan, Korea, and Taiwan to develop jointly the continental shelf resources of the Yellow Sea and the East China Sea. This plan ... constituted an overt encroachment on the sovereignty of China and would not be tolerated.'¹¹

The Japanese reacted quickly to the Chinese protests. Once the United States Department of State (which was then working for détente between Peking and Washington) advised American oil companies not to explore for oil in the waters of the East China Sea, Japan followed suit.

While anxious not to antagonise Peking unduly, Tokyo still took a strong stand over its claim to the Senkaku Islands. Prime Minister Sato was quoted as saying at a meeting of the Budget Committee of the Upper House of the Diet on 9 November 1971, that 'the Senkakus were "the territory of Japan and the issue should not be meddled in by the Chinese." Mr Sato rejected an idea ... that the Japanese Government should hold talks with the Chinese over claims to the Senkaku Islands.'¹² Early in 1972 the

Japanese government was reported to be irritated by Washington's 'evasive position' on the Senkaku Islands. (The United States - which had just re-established diplomatic links with China - had in March stated that it took a neutral position over the Japanese/Chinese claim to the Tiao-yu-t'ai Islands.¹³)

Following Prime Minister Tanaka's visit to Peking in September that year, however, the Japanese position over the Senkakus softened noticeably. Obviously the Japanese government was not prepared to let squabbles over offshore oil claims jeopardise their growing political (and economic) links with the Chinese.

A hint of the new mood could be detected in Yasuhiro Nakasone's (then Minister of International Trade and Industry) warning to Japanese oil companies of March, 1973, that his Ministry would not permit oil development in the area until the controversy over territorial claims to the Senkakus was settled.¹⁴

By mid-1973, other observers were noting that, in the wake of the Sino-US and Sino-Japanese détente, disputes over the control of the potentially oil-rich underwater resources in the East China Sea had quietened.¹⁵

At the height of the oil crisis of late 1973/early 1974 there was a danger that this new, less antagonistic, mood might be shattered. Faced by oil supply shortages and sharply increased prices of oil, Japan and South Korea entered into an agreement in January, 1974, for the joint development of oil in areas where offshore claims by the two countries overlapped. The boundary issue was to be suspended for future negotiation.

Only five days after the Japanese-Korean agreement was signed Peking registered its protest. The Chinese held 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 divided by China and the other countries concerned through consultations.'¹⁶

Compared with China's protest of 4 December, 1970, this statement was much milder in tone. Moreover, it showed that Peking was not totally inflexible, for China had declared its willingness to consult with the other coastal states over shelf boundaries.

The Japanese must have been relieved that the Chinese protest was not as strong as it might have been. Once the worst of the oil crisis was over (by March, 1974) the Japanese moved to rectify some of the damage caused by the hastily concluded agreement with South Korea. As early as March, 1974, the Korean Times was reporting that the Japanese government might be dragging its feet over ratification of the agreement in the Diet for fear of 'unfavourable consequences which might affect the Sino-Japanese relationship.'¹⁷ As of December, 1975, ratification had still not been approved by Tokyo.

Choon-Ho Park, however, believes that fear of China's reaction might explain in part Tokyo's slowness to ratify, but he believes there might have been other reasons. Japan might, he suggests, feel that it is best to wait for the outcome of the current Third Law of the Sea Conference

especially with respect to the 200-mile economic zone proposals. The 200-mile zone might, in fact, give Japan a bigger share of the East China Sea presently in dispute with South Korea.¹⁸

The present writer suspects that Japan never wanted to conclude a joint oil development agreement with South Korea - not, at least, at the risk of severely offending China. The Japanese only entered into the agreement as a result of panic at the height of the oil crisis. It had then seemed that the Japanese economy would grind to a halt for lack of oil.¹⁹ When, in spring 1974, it was obvious that oil supplies would soon return to normal levels (if at a very high price) the Japanese quickly dropped interest in developing such politically sensitive areas as the East China Sea.

In its end of year assessment, the Far Eastern Economic Review detected a movement in 1975 towards closer cooperation between China and Japan in offshore oil exploration in the East China Sea. The Review believed that some de facto if not de jure understanding over shelf conflicts is increasingly possible.²⁰

The more cooperative attitude presently existing between China and Japan with respect to East China Sea oil should, therefore, be viewed against the wider political background. Unlike the period before 1972 which was marked by hostility, recently there has been a desire by both countries to strengthen their relationship. China's determination to wean Tokyo away from the Soviet Union has been evidenced by increased exports of Taching crude oil to Japan.²¹

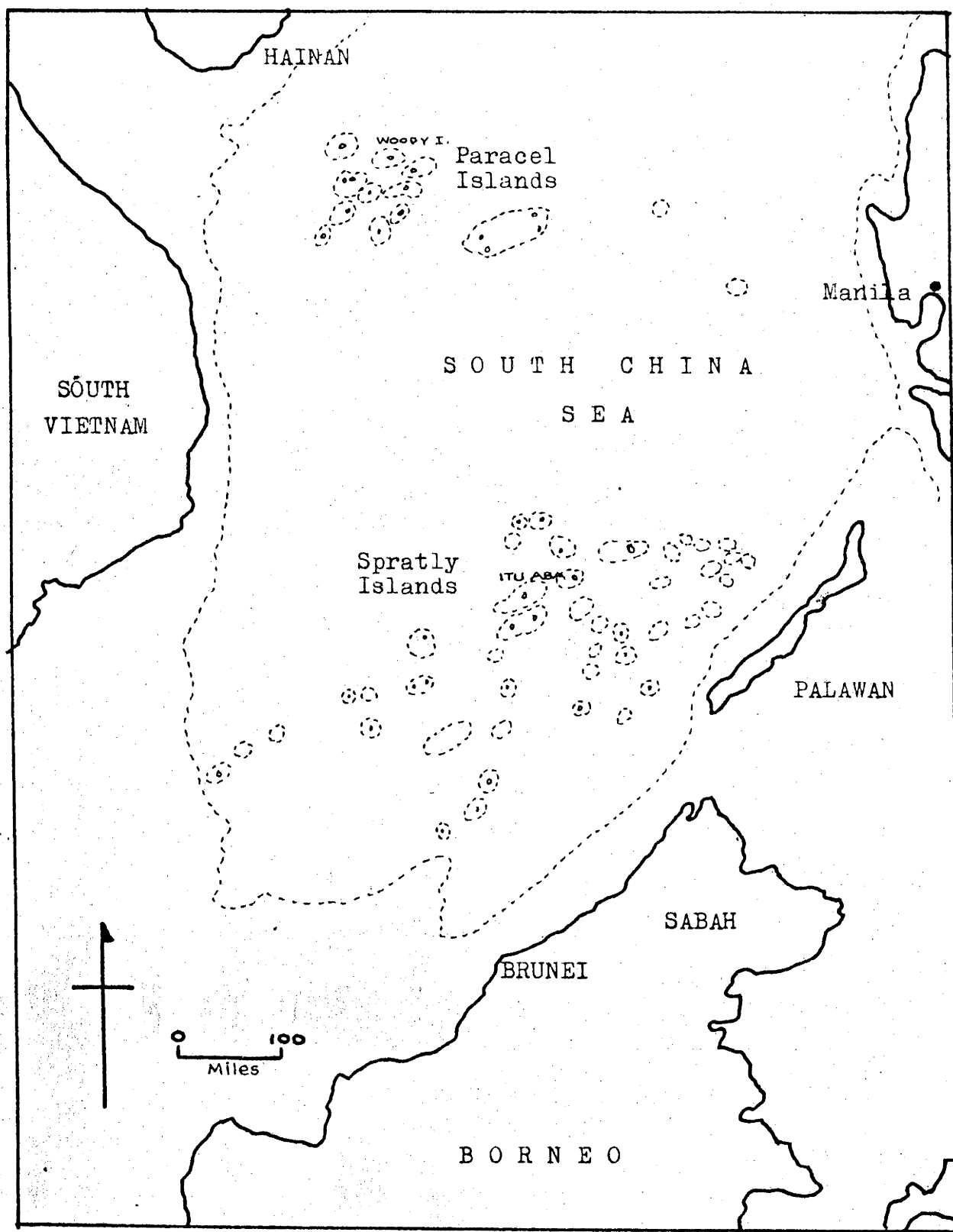
In their turn the Japanese are anxious to cultivate their links with Peking. The multipolar world ushered in by Nixon's visit to Peking seems, in fact, to demand it. Further, the uncertain political climate existing in East Asia; the slow progress of détente with Moscow; the age-old attraction of the China market; and the more recent attraction of Chinese oil imports; have all helped to push Tokyo closer to Peking.

South China Sea

The disputes over offshore oil claims in the South China Sea differ somewhat in character from those in the East China Sea. In the former area, the debate (and even conflict) is not so much over the delineation of boundaries on the continental shelf but about the ownership of groups of islands believed lying above large reserves of oil. There are two main groups of islands in dispute - the Paracels and the Spratlies. (See Diagram 5.) The major claimants to these islands are China, Taiwan, Vietnam (Hanoi and Saigon), and the Philippines. As in the East China Sea disputes, the role of China, and that country's claims vis-a-vis the other disputants, provides the focus of attention. Again, emphasis will be given to those aspects of the controversies which help to trace (and, perhaps, explain) the changing political relationship between China and the other states.

It will be recalled that the 1968/69 CCOP survey covered the South China as well as the East China Sea. Results of the survey suggested that under those waters bounded by Vietnam and Malaysia to the west, China to the

DIAGRAM V
PARACEL' AND SPRATLY ISLANDS



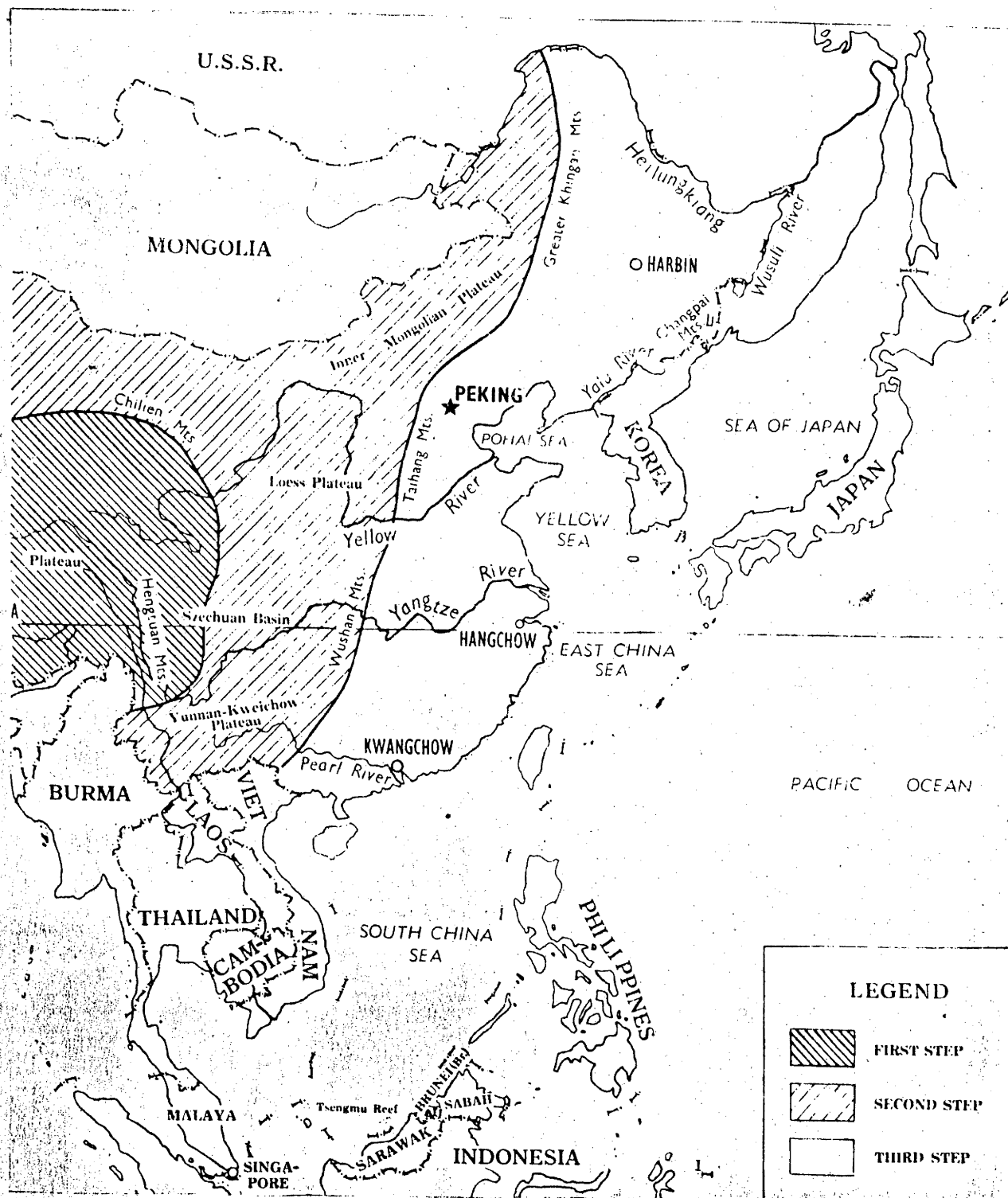
north, the Philippines to the east, and the island of Borneo to the south, there were good prospects of discovering major oil reserves. So enthusiastic were oil men about the region's potential that there were almost no bounds to their claims. One went so far as to say 'The potential here is as large if not larger than the Middle East.'²² Another survey, conducted off the coasts of South Vietnam in 1969-70 by Ray Geophysical of the USA on behalf of 11 international oil companies was equally promising in its findings.

Not surprisingly, there was a sudden interest by the countries bordering on the South China Sea in those areas believed most suitable as drilling sites for oil. As shallow areas are the most attractive places in this respect, the Parcel and Spratly Islands obviously attracted great attention.

Peking, Manila, Saigon and Taipei were most vocal in claiming ownership to one, or both, of these two island groups. Each country claimed that the historical record supported their case. It might be useful to outline, very briefly, the various claims.

China claims sovereignty over a very large part of the South China Sea. The claims were forcefully reiterated in an article with accompanying map (see Diagram 6) appearing in China Reconstructs, September, 1971. The magazine stated 'The Tsengmu Reef, the southernmost part of China is close to the equator and stays hot the year round.'

DIAGRAM VI
MAP SHOWING CHINA'S CLAIMS IN THE SOUTH CHINA SEA



SOURCE: China Reconstructs, September, 1971, P.21.

••••• National boundary

The Chinese assert, quite correctly, that they have had centuries of contact with the islands. Chinese trading junks were using these islands as navigational marks long before Christ. General Shih Po is documented as having sailed with 1,000 ships via the Paracels en route to Java at the command of Emperor Kublai Khan in the twelfth century A.D. The Chinese Mohammedan, Ma Huan, claimed in the Ying yai sheng lau (General Account of the Shores of the Ocean - written around 1420) that these islands were Chinese.²³

More recently, the Chinese have exercised sovereignty over the islands. They established a weather station on the Paracels in the 1930s; and in 1971 it was reported that the Chinese had 'for many years' maintained a small observation and communications site on Woody (Yunghsing) Island in the Paracels.²⁴

The Nationalist Government in Taipei bases its claim to the islands on the same historical (pre-1949) records as Peking. Taiwan has had a military presence on the Spratlies (on Itu Aba Island) since 1956.

The Vietnamese also present historical records in support of their claim to these islands. (As we shall note later, it has been Saigon, not Hanoi, that has vigorously promoted the Vietnamese case.) It is claimed that, in 1802, Emperor Gia Long had created a Dai Hong Sa (Company of the Paracels) to supervise the exploitation of guano on the islands. In the 1930s the French, on behalf of the Vietnamese, officially took possession of the Spratly Islands. Moreover, it has been claimed by

Saigon, during the San Francisco Peace Conference in 1951, none of the 51 powers attending objected to a statement issued at the time by the Vietnamese that the Spratly and Paracel Islands belonged to Vietnam.²⁵

The Filipinos are most concerned about establishing sovereignty over the Spratly Islands. Manila does not (and cannot) go far back into the historical records in support of its claim. Under the San Francisco Peace Conference, Japan renounced 'all right, title and claim to the Spratly Islands and to the Paracel Islands.' The Filipinos claim that as these islands were not then ceded to any country they were res nullius - 'and may be acquired by any nation according to the modes of acquisition recognised under international law.'²⁶

In 1956, a Manila lawyer, Thomas Cloma, claimed ownership of the Spratlies and sought protectorate status from the Philippines. At that time the Chinese dismissed Cloma's claim as 'nonsense' and said the Spratlies belonged to China. Saigon made a similar announcement, saying the islands were Vietnamese.

Although there was a host of bilateral disputes among the Chinese, Vietnamese, Taiwanese and Filipinos over ownership of the Spratlies and Paracels, two of these disputes are particularly relevant in the context of this paper. The first, concerns the competing claims between Peking and Manila over the Spratlies. The second, and more violent, dispute involves the claims of the Chinese and the Vietnamese to both groups of islands.

These two case studies are particularly interesting for they involve two countries - the Philippines and North Vietnam - with whom China has a delicate relationship.

It was about two years after the CCOP survey, that serious disputes broke out in the South China Sea. In July, 1971, President Marcos protested that Taiwanese troops had illegally occupied Itu Aba Island in the Spratlies. He ordered the removal of these troops 'from Filipino territory.' No doubt, the Filipinos were more interested in the islands' oil potential than in their security value. The Manila Chronicle was said to have reported - perhaps wishfully - in July that year 'an influential American oil syndicate with strong connections in the US Government had been negotiating with Cloma to explore and develop the area considered to be a potential oil producing region.'²⁷

Given Peking's sensitivity over sovereignty to other offshore islands (the Tiao-yu-t'ai dispute with Japan had only just surfaced), it is not surprising that the Chinese reacted strongly to Marcos' statement. Peking asserted 'This is a grave infringement upon Chinese sovereignty' and urged Marcos to 'withdraw all troops from the Nanshas.'²⁸

Since 1973, however, both Peking and Manila have been less forceful in pushing their claims against the other. As noted in Part II, each country has been keen to develop closer bilateral ties. The Chinese were disturbed by the Soviet Union's improving relations with the Marcos government. No doubt it was a Soviet mission in September, 1973, to

Manila to discuss cooperation in oil exploration off the Philippines' coast that prompted Peking's offer to sell oil to the Filipinos.

Both Manila and Peking still stand by their claims to the Spratlies. Yet neither has returned to the harshly worded statements of mid-1971. At the height of the oil crisis - in February 1974 - the Philippines felt prompted to reiterate its claims to the islands. Peking's counter-claim was relatively mild and appeared little more than a diplomatic formality.

The dispute between the Chinese and Vietnamese has been a much more serious and complex affair. While Peking felt it could take a tough stand over ownership of the Spratlies and Paracels vis-a-vis Thieu's Saigon, it had to be careful not to alienate unduly its communist neighbour, Hanoi. This has involved the People's Republic in a strange blend of policies varying from total inactivity to military action.

It will be recalled that it was the clash between Filipinos and Taiwanese in the Spratlies in July, 1971, that prompted all the interested parties to reaffirm their ownership to various islands in the South China Sea. China immediately replied that it was the legal owner of both the Spratlies and Paracels. The Chinese also began to develop what appeared to be a new naval base in the Paracels.²⁹ Of course, these islands were of moderate strategic significance to Peking, located as they were off the entrance to the Gulf of Tonkin and only about 170 miles from Hainan. But, as shall be noted below, the Chinese were also attracted to the Paracels for their oil potential.

The South Vietnamese at this time were also showing great interest in the potential oil wealth off their coasts. In December, 1970, Public Law No.011/70 was passed in Saigon with the objective of attracting foreign oil capital. The Law had the desired effect and companies from the USA, Japan, Canada and France competed for offshore oil concessions. It was almost three years later when, in August 1973, Saigon signed contracts with four major oil companies to explore for oil in the South China Sea. In September, the Thieu government announced that it had incorporated 11 of the 33 islands of the Spratly group into the province of Phuoc Tuy.

Most significantly, the Chinese made no comment with respect to Saigon's claim. The Economist speculated that China's strange silence could be because the Chinese were 'reluctant to confront Hanoi, which could not afford to let its nationalism fall behind Saigon's.'³⁰

China's ally, Hanoi, was in a terrible dilemma over this issue. On the one hand, North Vietnam did not wish to alienate its giant neighbour by contesting China's claim to the islands. On the other hand, as it dared not appear to be any less nationalistic than the South, Hanoi could hardly recognise Peking's claims. Both Hanoi and the Provisional Revolutionary Government (PRG) in the South took the wisest course and remained silent. President Thieu, naturally, tried to exploit this issue, hoping to create a rift between Hanoi and Peking.³¹

Thieu, however, pushed Peking too far when he dispatched a naval assault force to the Paracels in mid-January, 1974.

The Chinese proved too strong and sank at least one Vietnamese gunboat and routed the Vietnamese troops remaining on the barren islands. The New China News Agency said that China was determined to defend its territorial integrity and sovereignty and warned that unless the Saigon authorities 'stop their encroachment upon Chinese territory immediately, they are bound to eat their own bitter fruit.'³²

Significantly, shortly after this clash the Chinese were reported to have sent in oil drilling equipment to the Paracels.³³

The focus of attention then shifted to the Spratly Islands. Undeterred by the recent setback to the north, Saigon dispatched a task force to dig in and establish themselves in the Spratlies. It was not so easy for the Chinese to take strong action this time: first, Taiwan, the Philippines, and now South Vietnam all had a military presence in the island group; and second, the Spratlies are much more remote from the Chinese mainland than the Paracels.

Even as late as mid-February, 1975, Saigon was trying to make political capital over the South China Sea issue. The Vietnam Press on 14 February issued a declaration by the Thieu government reaffirming its claim to the Paracel and Spratly Islands which, it said, had been occupied illegally by China. The declaration regretted that Hanoi 'placed ideological considerations above national interests,' and had not spoken out against Peking.³⁴

The fall of Saigon in April, 1975, and the establishment of a communist regime in South Vietnam has not necessarily resolved this issue. The big question is, will Hanoi and the PRG contest Peking's claim to sovereignty over the two island groups?

If the earliest actions by the new South Vietnamese administration are an accurate guide, there could well be a future confrontation (verbal if not military) between Vietnam and China over these islands. One of the first tasks of the new government in Ho Chi Minh City was to replace ARVN troops on the Spratlies with Viet Cong units. Moreover, the new administration in the South has not ruled out the possibility of foreign oil companies participating in the exploration and production of offshore oil. There appears to be no strong ideological objection by the Vietnamese communists to cooperation with Western companies. Hanoi has relied on the USSR for many years, and on the Italian State Oil Company (ENI) since 1973, to undertake oil exploration both onshore and offshore.³⁵

Since the fall of Saigon, however, the Spratlies and Paracels have not made headline news in Asian newspapers. It appears that Peking on the one hand, and Manila and Hanoi/Ho Chi Minh City on the other, are determined not to let these islands undermine their delicate political relationships.

Peking is obviously careful not to lay itself open to the charge of being the regional 'bully boy.' Leon Howell and Michael Morrow believe Peking's attempts at building

bridges to the Third World could suffer a setback if China took an inflexible stand over the sovereignty issue. 'As the champion of small nations against "big-power hegemonism" China cannot afford even a caricaturised image as the centre kingdom imposing itself on tribute states.'³⁶

China is ever-conscious of the danger that too strong a stand on the Paracels and Spratlies could drive the Philippines and Vietnam irretrievably into the arms of the Soviet Union. Some two years ago, the USSR showed itself hopeful of gaining political advantage from China's South China Sea problems. A statement by Tass in February, 1974, observed that 'it is difficult to regard as accidental the fact that the stepping up of the Maoists' subversive activity in independent countries coincided with Peking's action in the Paracel Islands.'³⁷ China then could have replied that it was merely punishing the aggressive actions of the corrupt Thieu regime. With the removal of Thieu, and the establishment of a Communist government in Saigon, Peking no longer has that excuse.

Footnotes

¹ See Asia Research Bulletin, March, 1975, p.62.

² World Oil, Vol.169, No.1, July, 1969, p.86.

³ ibid., p.86.

⁴ See Asia Research Bulletin, 31 January, 1975, p.41.

⁵ Peking Review, Vol.50, 11 December, 1970, pp.15-16.

⁶ Choon-Ho Park 'The Sino-Japanese-Korean Sea Resources Controversy and the Hypothesis of a 200-mile Economic Zone', Harvard International Law Journal, Vol.16, No.1, Winter, 1975, pp.45-6.

- 7 Peking Review, No.10, 1972, p.14.
- 8 For a more detailed treatment of this complex issue see Choon-Ho Park, op.cit., pp.37-8.
- 9 William Hartley 'Taiwan: Offshore Hunt Resumes' Far Eastern Economic Review, 14 February, 1975, p.39.
- 10 The problem of islands and the manner in which they affect the delimitation of continental shelves is discussed in J.R.V. Prescott, op.cit., 1975.
- 11 Choon-Ho Park 'Oil Under Troubled Waters: The Northeast Asia Sea-bed Controversy', Harvard International Law Journal, Vol.14, 1973, p.233.
- 12 Asia Research Bulletin, November 1971, p.488.
- 13 See Choon-Ho Park, op.cit., 1973, p.255.
- 14 Asia Research Bulletin, March, 1973, p.1717.
- 15 See, for example, Asia Research Bulletin, August 1973, p.2066.
- 16 Hsinhua Weekly, 11 February, 1974, p.27, quoted in Choon-Ho Park, op.cit., 1975, pp.43-4.
- 17 Quoted in the Asia Research Bulletin, March, 1974, p.2545.
- 18 See Choon-Ho Park, op.cit., 1975, pp.44-5.
- 19 The Nihon Keizai Shimbun, 11 November, 1973, stated that MITI had warned that even if the restrictions on oil production were lifted by the Arabs, there was a possibility that mining and manufacturing production would plummet so far that the real economic growth rate would fall to 'zero' in February 1974.
- 20 Far Eastern Economic Review, Asia 1976 Yearbook, Hong Kong, December, 1975, p.83.
- 21 The Chinese trade in oil to Japan for 1975 was estimated to be about 7.8 million tons.
- 22 Quoted in Malcolm Caldwell, op.cit., p.18.
- 23 For more on China's historical claims to these islands see Cheng Huan 'A Matter of Legality' Far Eastern Economic Review, 25 February, 1974, pp.25-8.
- 24 Asia Research Bulletin, December, 1972, pp.1489-90.
- 25 See the Vietnamese (Saigon) Foreign Ministry declaration of 15 July, 1971, which appeared in Asia Research Bulletin, July, 1971, p.170.

- 26 President Marcos quoted in *ibid.*, p.170.
- 27 Leon Howell and Michael Morrow 'Formidable Task for Peking' Far Eastern Economic Review, 31 December, 1973, p.40.
- 28 Barry Pearton 'The Disputed Islands: Is it Politics or Oil?' Insight, May, 1972, p.44.
- 29 See Asia Research Bulletin, December, 1972, pp.1489-90.
- 30 Economist, 27 October, 1973, p.63.
- 31 Chinese/Vietnamese rivalry goes back centuries. In fact, this rivalry had once - some 200 years ago - involved a dispute over ownership of birds nests and turtles on the Spratlies and Paracels. See Cheng Huan, *op.cit.*, p.25.
- 32 Quoted in Asia Research Bulletin, January, 1974, p.2366.
- 33 Asia Research Bulletin, June, 1975, p.98.
- 34 Quoted in Asia Research Bulletin, February, 1975, p.80.
- 35 See 'Vietnam's Postwar Oil Search' The Petroleum Economist, Vol.XLII, No.6, June, 1975.
- 36 Leon Howell and Michael Morrow 'Formidable Task for Peking' Far Eastern Economic Review, 31 December, 1973, p.40.
- 37 Tass statement of 8 February, 1974, quoted in Asia Research Bulletin, March, 1974, p.2567.

IV. CONCLUSION

A study of offshore oil claims in East Asia is, therefore, a useful vantage point for examining intra-regional political relations. The disputes between China and some other countries of the region over sovereignty to parts of the East and South China Seas closely parallel the broader political debate involving these countries.

It will be recalled that China's relations with most of non-communist Asia were, until the early 1970s, marked by suspicion and some degree of hostility. Since 1972, and especially during the past two years there has been a general improvement in Peking's relations with some of the region's less violently anti-communist states. The initiative for this thaw has not been completely one-sided. Peking - as well as Tokyo, Manila, Bangkok and Kuala Lumpur - has been anxious to establish a better relationship with many of its neighbours. What prompted this more cooperative relationship was the atmosphere of political flux and uncertainty engendered by the continuing Sino-Soviet dispute, the American military withdrawal from mainland Asia, the Sino-American detente, and the fall of Saigon.

This trend from hostility to greater cordiality in China's relations with some East Asian nations is reflected in the offshore oil disputes considered in Part III.

Immediately after CCOP released the findings of its survey in 1969 there was a frantic scramble for sovereignty over offshore areas by the coastal states. China was no

less eager than the others in claiming ownership of large sections of the offlying continental shelves, and strongly contested competing claims by Tokyo, Taipei, Seoul, Saigon and Manila. For a while, in the early 1970s, it appeared that disputes over the Senkakus, Paracels and Spratlies could lead to major confrontation between China and some of its neighbours.

One might have imagined that the growing world oil crisis would provide the catalyst for such a major confrontation. Such has not proved to be the case. It is true that in January 1974, at the height of the 1973-4 crisis, relations between some of these states became strained over offshore oil claims. But the general trend of the past two or three years - at least in the case of oil disputes involving countries (the Philippines and Japan) with which China has a steadily improving relationship - has been towards somewhat less hostility and greater cooperation.

Such is not the case with respect to those disputes involving countries which continue to have poor, or bad, political relations with Peking. Again, the history of offshore oil controversies parallels broader political trends. China's dispute with Thieu's regime over ownership of the Paracels and Spratlies was always marked by inflexibility and hostility on each side. This culminated in the bloody clashes of mid-January 1974.

The history of South Korea's dispute with China has also been marked by continued suspicion and a degree of

hostility on both sides. 'Seoul has shown itself to be far less concerned than Tokyo with China's reaction to oil development in the East China Sea. Unlike the Japanese, who have still not ratified the Japanese-Korean agreement of January 1974, the South Koreans did not hesitate in doing so. There are signs that the South Koreans might be prepared to develop the oil off their continental shelves even without Japanese participation. Peking, together with Pyongyang, continues to denounce strongly Seoul's plans to 'plunder the oil resources of the East China and Yellow Seas.'

The close connection between oil disputes and international politics was demonstrated again by Hanoi's stand over ownership of the Paracels and Spratlies. The case study in Part III revealed how the delicate nature of North Vietnam's (and the PRG's) political links with China was paralleled by the offshore sovereignty issue. On the one hand, the Vietnamese communists have been unwilling to alienate their giant neighbour (and war-time ally) by pushing their claims to the disputed islands too forcefully. On the other hand, Vietnamese historical suspicion of China, together with a desire to appear at least as nationalistic as President Thieu, prevented Hanoi and the PRG from recognising Peking's territorial claims.

The debate over offshore oil disputes might also provide a useful barometer of future changes in interstate relations in East Asia. Just as Tokyo's and Moscow's attitude towards the 'Northern Islands' issue reveals much about the state of Russo-Japanese relations, so might the

Senkaku Islands problem act as a litmus of Sino-Japanese relations. The continuing debate over ownership of the Paracels and Spratlies might also act as a signpost to future relations between Peking and Vietnam.

This paper has focussed on those oil controversies in which China was one of the disputants. There have, of course, been many offshore oil disputes in East Asia in which China has not been involved. A study of these 'non-Chinese' controversies might provide interesting perspectives on other intra-regional relationships. Claims to oil in the East China Sea might help to explain further Japan's relations with Taiwan and South Korea. In Southeast Asia, an examination of offshore oil disputes might be helpful in describing evolving relations among ASEAN members, for example, between Malaysia and Indonesia, Thailand and Malaysia, and the Philippines and Sabah. Again, controversies in the South China Sea and Gulf of Thailand might reveal trends in political relations between the non-communist and communist states of Southeast Asia - for example between Thailand and Cambodia, and between Indonesia and South Vietnam. Further, the continuing controversy over ownership of Wai Island and the surrounding waters, is likely to reflect the broader political relationship between the new regimes in Ho Chi Minh City and Phnom Penh.

Other approaches to the study of offshore oil activities in East Asia recommend themselves to the student of international relations. Instead of focussing on disputes over offshore oil claims, as this paper has done,

the student could usefully examine some of the political implications of offshore oil production. For example, the role of the overseas oil development company in the East Asian offshore oil industry might be treated in the context of the transnationalist debate. Such an examination could consider the degree to which foreign oil companies impinge upon the host country's political sovereignty, and determine whether foreign oil company investment aggravates existing political alienation between the local elites and the mass of the population.

Disputes over sovereignty and development of other (non-oil) resources could also be studied for what they might reveal about inter-state relations. The newly emerging problem of manganese nodule exploitation could, in the near future, provide one example of such disputes. The potential for political confrontation over the ownership and development of these minerals lying on the deep ocean bed has been widely recognised.¹ Not unlike the problem of offshore oil, the nodules are of great potential value; the technology for their exploitation is being developed; and they are located in areas the sovereignty of which is, at best, vaguely defined in international law.

¹ See for example:

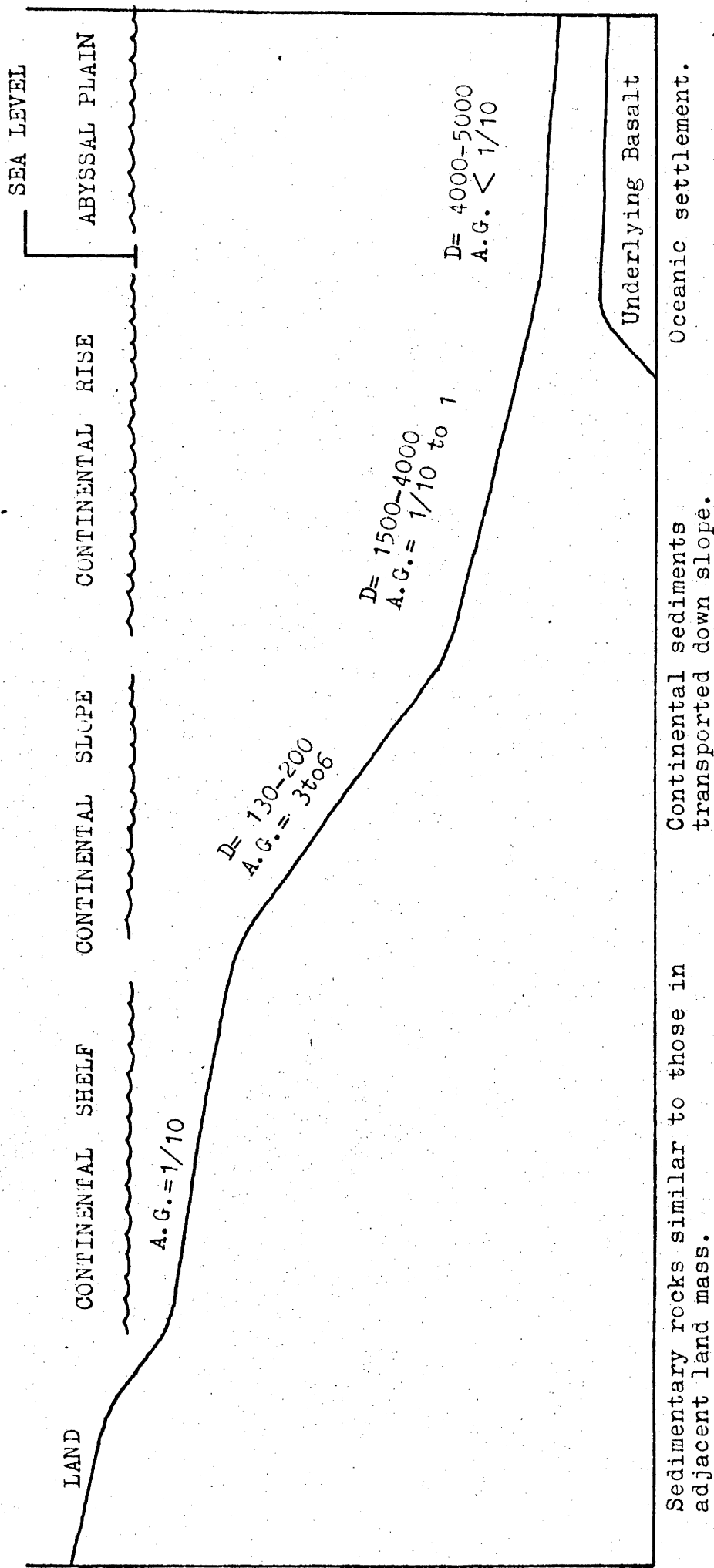
Evan Luard 'Who Gets What on the Seabed?' Foreign Policy, No.9, Winter, 1972-3;
 Kim Traavik, op.cit.
 Ann L. Hollick 'What to Expect from a Sea Treaty', Foreign Policy, No.18, Spring, 1975;
 Seyom Brown and Larry L. Fabian, op.cit.

APPENDIX I

DIAGRAMMATIC PROFILE
OF
THE CONTINENTAL MARGIN
(the Geological Definition)

DIAGRAMMATIC PROFILE OF THE CONTINENTAL MARGIN

CONTINENTAL MARGIN



Sedimentary rocks similar to those in adjacent land mass.

D= Depth in meters

A.G.= Average gradient in degrees

SOURCE: Based on a diagram appearing in Evan Luard "Who Gets What on the Seabed?" Foreign Policy, No.9, Winter, 1972-73, P.133.

APPENDIX IISOME PROPOSALS RELATING TO THE LAW OF THE SEANOTES:

- 1) This is an unofficial classification according to types which appeared in UNITAR News, vol.6, No.1, 1974.

Two subjects are considered:

- A) Continental Shelf
- B) Economic Zone

- 2) This material has been included to demonstrate the highly ambiguous nature of the Law of the Sea especially where it relates to areas of the seabed containing mineral resources presently, or likely to be soon, exploited.

- 3) The following abbreviations are used:

Con Sh	Continental Shelf
Cs	Coastal State
DCS	Disadvantaged Coastal State
EEZ	Exclusive Economic Zone
EZ	Economic Zone
LLS	Land-Locked State
NOS	National Ocean Space
PS	Patrimonial Sea
TS	Territorial Sea

A. CONTINENTAL SHELF

1. NATURE AND CHARACTERISTICS

Type A - Sovereign Rights

- (i) [CS exercises sovereign rights for exploring the shelf and exploiting its natural resources.] [Sovereignty of CS extends to the shelf.]
- (ii) Such rights are exclusive in the sense that no one may undertake these activities, or make claim to it, without its express consent, even if it does not explore the shelf or exploit the resources.]
- (iii) Rights of CS over the shelf do not depend on occupation, effective or notional, or on any proclamation.]
- (iv) CS is obliged to undertake, in the safety zones, all appropriate measures for the protection of the living resources of the sea from harmful agents.]

Type B - Exclusive Rights

- (i) CS shall have exclusive right to explore and exploit and to authorize the exploration and exploitation of natural resources of sea-bed and subsoil in accordance with its own laws and regulations in coastal sea-bed economic area.
- (ii) CS may take measures to ensure compliance with its laws and regulations and apply standards for protection of marine environment higher than those required by applicable international standards pursuant to (iii).
- (iii) In exercising its rights, CS to ensure its laws and regulations and any other actions taken pursuant thereto are in strict conformity with provisions of this convention and in particular;
 - (a) no unjustifiable interference with other activities; taking measures to prevent pollution of marine environment from these activities; compliance with international standards in existence or promulgated by the Authority or IMCO to prevent such interference or pollution;
 - (b) not to impede but to co-operate with the Authority in exercise of its inspection functions in connection with prevention of pollution;
 - (c) to ensure licenses, leases, or other contractual arrangements entered into for exploring for and exploiting sea-bed resources strictly observed according to their terms; property of contractual parties shall not be taken except for a public purpose, on a non-discriminatory basis;

making prompt payment of just compensation in effectively realizable form representing full equivalent of property taken; adequate provision shall have been made at or prior to taking to ensure compliance with these provisions.

- (iv) Application of compulsory dispute settlement procedure and 1962 Rules of Arbitration and Conciliation for Settlement of International Disputes Between Two Parties of which One is a State.

Type C - Exclusive Jurisdiction

- (i) The shelf is the natural prolongation of continental territory; CS has exclusive jurisdiction over it.
- (ii) CS may enact all necessary laws and regulations for effective management of its shelf.
- (iii) LLS have right to pass through territory, TS and other waters of adjacent CS in order to have access to and from international sea area; CS and adjacent LLS shall conclude bi-lateral or regional agreements on relevant matters.

Type D - Jurisdiction

- (i) Jurisdiction of a state may extend to a belt of ocean space adjacent to its coasts.
- (ii) Contracting parties to surrender against equitable and appropriate compensation claims to jurisdiction over sea-bed and waters beyond limits; such compensation to be determined by international ocean space institutions upon all relevant factors; failing that, by binding adjudication of international maritime court.
- (iii) No compensation may be proffered by the institutions to areas adjacent to: reefs and low-tide elevations, man-made islands, fixed or floating installations, under-water installations or works, islets situated within national ocean space of a state other than the state exercising sovereignty or control over them.
- (iv) Ocean space not within limits to form part of international ocean space, no part of which subject to national jurisdiction for any purpose.

Type E - Right to Establish

CS shall have the right to establish, beyond its TS, a coastal sea-bed area.

Type F

CS right to retain, where its ConSh (namely, the natural prolongation of its land mass) extends beyond economic zone, sovereign rights with respect to that area of sea-bed and sub-soil thereof which it had under international law before entry into force of the convention.

Type G

Islets and small islands, uninhabited and without economic life, situated on the shelf of coast, not to possess any of shelf or other marine space of same nature.

2. LIMITSType A - 200 m./40n.m.

- (i) [Area of sea-bed and subsoil adjacent to coast outside TS] [ConSh] may be established within a seaward limit formed by the 200 metres isobath line or a line 40 n.m. equidistant from baselines of TS according to choice between the two methods of delimitation made at ratification, the choice to be final and method chosen to apply to its whole coastline.
- (ii) In international area, a CS preferential zone or intermediate zone may be established within a seaward limit formed by a line not more than 40 n.m. equidistant from outer limit of the area or the shelf.

Type B - 500 m./100 n.m.

- (i) The outer limit of the shelf may be established by CS within 500 m. isobath.
- (ii) Where isobath situated less than a distance of 100 n.m. measured from baselines for territorial sea, the outer limit may be established along a line every point of which is not more than 100 n.m. from nearest point of said baselines.
- (iii) Where there is no shelf, CS may have same rights in respect of seabed as in respect of the shelf, within limit indicated in (ii).

Type C - 200 n.m.

Outer limit of NOS is the line every point of which is at a distance from the nearest point of baseline equal to breadth of NOS (i.e. 200 n.m.).

Type D - Continental Margin

The outer limit of the shelf shall not extend beyond the outer edge of continental margin.

OR

The shelf comprises the bed and subsoil of the sub-marine areas adjacent to territory of state but outside area of territorial sea, up to outer lower edge of continental margin adjoining abyssal plains, or, when that edge is less than 200 n.m. from coast, up to the distance.

Type E - Submarine Areas

- * The shelf refers to: [(a) sea-bed and subsoil of submarine areas adjacent to coast but beyond TS, which constitutes a natural prolongation of land territory into and under the sea;]
- (b) sea-bed and subsoil of [similar] submarine areas adjacent to coasts of islands.

Type F - X n.m.

Coastal sea-bed economic area: the area of the sea-bed which is seaward of ...; and landward of an outer boundary of

OR

Coastal sea-bed area, beyond TS, up to a maximum distance of X n.m. from applicable baseline for measuring TS.

Type G - X m./X n.m.

The ConSh: not to extend beyond maximum limit of the X Zone, breadth of which is X n.m. measured from baselines, or the depth of which does not exceed X m. isobath, whichever limit coastal state may choose to adopt.

Type H - Consultation

Maximum limit of the shelf may be determined among states through consultations.

3. DELIMITATION BETWEEN ADJACENT AND OPPOSITE STATES

Type A

- I. (i) by agreement in accordance with equitable principles.
- (ii) Where there is an agreement, questions relating to delimitation to be determined by the agreement.
- (iii) No state by reason of this convention to claim or exercise rights over natural resources of any area of sea-bed and subsoil over which another state had under international law immediately before coming into force of the convention sovereign rights for exploring it or exploiting its natural resources.
- (iv) Subject to provisions above, and unless another boundary is justified by special circumstances, boundary to be an equidistant line in case of adjacent coasts and a median line in case of opposite coasts.

OR

- II. (i) Where two or more states whose coasts are opposite each other, by agreement between them; in the absence of agreement and unless another boundary justified by special circumstances, boundary to be median line, every point of which is equidistant from nearest points of baselines for measuring TS.
- (ii) Where the shelf adjacent, by agreement between them; in the absence of agreement, by principle of equidistance from nearest points of baselines.
- (iii) In determining boundaries, any lines drawn in accordance with (i) and (ii) to be defined with reference to charts and geographical features as they exist at a particular date, and reference made to fixed permanent identifiable points on the land.

Type B

- (i) by agreement among them in accordance with equitable principles, taking into account all relevant circumstances.
- (ii) During negotiation, states to take into account special circumstances (e.g. general configuration, existence of islands or inlets and physical and geological structure of marine area involved, including sea-bed and subsoil thereof.)

- (iii) States to make use of methods envisaged in Article 33 of UN Charter or other peaceful means and methods open to them to resolve differences during negotiations.
- (iv) In absence of special circumstances, due regard be given to principles of median line or equidistance.

Type C

- (i) by agreement among themselves.
- (ii) Failing agreement, no state entitled to extend sovereignty over the shelf beyond median line every point of which is equidistant from nearest points on the baselines, continental or insular, from which breadth of shelf of each of the two states is measured.

Type D

- (i) Islands, mutatis mutandis, in same position as continental territories so far as rights and obligations are concerned, under rules of international law.
- (ii) This principle to apply equally to where coasts of two or more states opposite or adjacent to each other.

Type E

- (i) by agreement in accordance with principle of equidistance.
- (ii) nothing to prejudice the existing agreements.

Type F

- (i) between neighbouring states, by agreement based on equitable principles, taking into account all circumstances affecting maritime area concerned and all relevant geographical, geological and other features.
- (ii) Islets and small islands not to be taken into account for delimitation of shelf between neighbouring states concerned.
- (iii) Where two states are both adjacent and opposite to each other, by appropriate principles and methods.

Type G

States adjacent or opposite each other shall jointly determine limits of jurisdiction of shelf through consultation on an equal footing.

4. NATURAL RESOURCESType A

- (i) CS [shall have sovereignty over] [exercises sovereign rights for exploring the shelf and exploiting its] natural resources: mineral and other non-living resources of sea-bed and subsoil together with living [vegetable] organisms [and animals] of sedentary species (i.e. [animals] [organisms] which at harvestable stage, either immobile on or under sea-bed or unable to move except in constant physical contact with sea-bed or subsoil).
- (ii) Prospecting, exploration and exploitation of natural resources subject to regulations of CS concerned and may be reserved to themselves, their nationals, or engaged by third parties according to internal laws and international agreements.]
- (iii) Protection and conservation of renewable resources subject to CS regulations and such agreements as they may conclude, taking into account co-operation with other states and recommendations of international technical bodies.]
- (iv) CS to enact measures to prevent, mitigate or eliminate pollution of or from the shelf and of its natural resources, taking into account co-operation with other states and recommendations of international technical bodies.]

Type B

- (i) CS possession of natural resources including mineral resources of sea-bed and subsoil and living resources of sedentary species.
- (ii) States adjacent or opposite to each other to conduct necessary consultation to work out reasonable solutions for exploitation, regulation and other matters relating to natural resources in their contiguous parts.

Type C

CS sovereign rights for exploring the coastal sea-bed area and exploiting its mineral resources.

Type D

- (i) CS exclusive right to explore, exploit and authorize exploration and exploitation of natural resources of sea-bed and subsoil according to its own laws and regulations.
- (ii) CS to make available such share of revenue in respect to mineral resource exploitation from such part of the area as specified in article ...
- (iii) If any single geological structure or field of any mineral deposit (e.g. gas or petroleum) extends across line dividing NOS of two or more CS, they shall seek to reach agreement as to manner in which such structure or field can be most efficiently exploited and manner in which costs and proceeds relating thereto shall be apportioned; disagreement be submitted to international maritime court for advisory opinion.

Type E

- (i) CS to make contributions to international authority out of revenue derived from exploitation of non-living resources of its X zone.
- (ii) Rate of contribution to be X per cent of revenues from exploitation carried out in that part of the zone and X per cent of revenues from exploitation carried out beyond X miles or X metres isobath within the zone.

Type F

- (i) CS to have obligation to transfer to international institutions a portion of financial benefits received from exploitation of natural resources of NOS.
- (ii) Provisions relating to living resources under other headings.
- (iii) CS responsibility to formulate and implement necessary programmes of conservation of mineral and other non-living resources of NOS and may reserve to its nationals exploitation of such resources; CS obliged to provide adjacent LLS with access to mineral and other non-living resources on conditions similar to those applicable to its nationals.

- (iv) CS obligation to take special precautions before authorizing or undertaking exploitation of petroleum and natural gas in areas subject to frequent natural disasters; non-compliance with this provision entails legal responsibility.

B. ECONOMIC ZONE

1. NATURE AND CHARACTERISTICS

Type A - Exclusive Right

I.

- (i) All states have right to establish EZ.
- (ii) Exclusive rights over EZ; no other state to explore and exploit resources therein without obtaining permission.
- (iii) Jurisdiction over EZ; third state or its nationals to bear responsibility for damage resulting from their activities therein.
- (iv) No state exercising foreign domination and control over a territory to be entitled to establish EZ or to enjoy any other right or privilege with respect to such territory.
- (v) Each state to ensure exploration and exploitation activity to be carried out exclusively for peaceful purposes and not to interfere unduly with legitimate interests of other states in the region or those of international community.

OR

II.

- (i) Coastal sea-bed area; CS's exclusive right to explore, exploit and authorize exploration and exploitation of natural resources of sea-bed and subsoil according to its own laws and regulations.
- (ii) CS may take measures to ensure compliance with its laws and regulations subject to provisions of this chapter and apply standards for protection of marine environment higher than those required by applicable international standards pursuant to (iii).
- (iii) In exercising rights above, CS to ensure its laws and regulations and any other actions taken pursuant thereto in the area are in strict conformity with provisions of this chapter and other applicable provisions of this convention, and in particular: (a) no unjustifiable interference with other activities; taking measures to prevent pollution of marine environment from the activities; compliance with international standards in existence or promulgated by the Authority or IMCO to prevent such interference

or pollution; (b) not to impede but to co-operate with the Authority in exercise of its inspection functions in connexion with prevention of pollutions; (c) to ensure licenses, leases, or other contractual arrangements entered into for exploring for and exploiting sea-bed resources strictly observed according to their terms; property of contractual parties not be taken except for a public purpose, on a non-discriminatory basis; making prompt payment of just compensation in effectively realizable form representing full equivalent of property taken; adequate provision shall have been made at or prior to taking to ensure compliance with these provisions.

- (iv) Compulsory dispute settlement procedure and by 1962 Rules of Arbitration and Conciliation for Settlement of International Disputes Between Two Parties of which One is a State.

Type B - Exclusive Jurisdiction

I.

- (i) CS shall have exclusive jurisdiction over EZ for protecting, using, exploring and exploiting its resources.
- (ii) Other state may engage in fishery, mining or other activities pursuant to its agreement.
- (iii) CS may enact necessary laws and regulations for effective regulation of the zone.
- (iv) Other states required to observe such relevant laws and regulations.
- (v) CS right to deal with unauthorized fishery, mining or other activities in the zone and with violations of its laws and regulations.

OR

- II. CS may determine the extent of its exclusive jurisdiction and control over natural resources of maritime area adjacent to its TS.

Type C - Sovereign Rights

CS right to establish, beyond its TS, EZ/PS in which it shall have sovereign rights over natural resources.

OR

CS sovereign right over an area of sea adjacent to TS.

OR

CS to exercise full sovereignty over PS (maximum breadth 200 n.m.)*

- * provided that CS right to establish the breadth of TS within a limit of 12 n.m.

Type D - Jurisdiction

CS right to establish X zone adjacent to TS and shall have jurisdiction for exploring and exploiting living and non-living resources therein.

Type E

CS to establish beyond TS*, coastal sea-bed area up to X n.m.

- * CS right to determine breadth of TS with a limit of 12 n.m.

Type F

- (i) CS right to establish PS.
- (ii) CS to authorize and regulate emplacement and use of artificial islands and any kind of facilities on surface, in water column, and on sea-bed and subsoil of PS.
- (iii) Other states in exercising freedom and rights conferred by the convention not to interfere in CS activities relating to natural resources.
- (iv) In exercising its jurisdiction and supervision over exploration and exploitation of natural resources, CS to take measures to ensure such activities to be carried out with due consideration for other legitimate uses by other states.

Type G

Within the limit of TS (200 n.m.) each state has right to establish other modalities or combinations of legal regimes of sovereignty, jurisdiction or specialized competence in marine area adjacent to its coasts.

2. LIMITS

Type A - 200 n.m.

- (i) Beyond and adjacent to its TS within the maximum limit of 200 n.m.* measured from [applicable] baselines for measuring TS.
- (ii) [To be reasonable] taking into account [local] regional, geographical, geological, ecological, economic and social factors and preservation of marine environment.

OR

- (ii) On the basis of regional factors, taking into account resources in the region, and rights and interests of developing geographically DS, without prejudice to limits adopted by any state therein.

OR

- (ii) In accordance with its geographical and geological conditions, state of its natural resources and needs for national development.

* Some states have indicated that this limit is proposed together with a territorial sea with a limit of 12 n.m. and that they must be considered as a whole.

Type B - 200 n.m. and more

- (i) Beyond and adjacent to its TS within the maximum limit of 200 n.m. measured from [applicable] baselines for measuring TS.
- (ii) or where continental margin extends beyond 200 n.m. from such baselines, beyond outer edge of continental margin where continental rise joins abyssal plain.

OR

- (ii) CS to retain, where its ConSh (i.e. natural prolongation of land mass) extends beyond (EZ/PS), the sovereign rights with respect to that area of sea-bed and subsoil thereof which it had under international law before entry into force of the convention; such rights do not extend beyond outer edge of continental margin.

OR

- (ii) or up to a greater distance coincident with epicontinental sea (i.e. the column of water covering sea-bed and subsoil situated at an average depth of 200 metres).

Type C - X n.m.

Coastal sea-bed area: beyond limit of its TS (not exceeding 12 n.m.) to the maximum limit of X n.m. from applicable baselines for measuring breadth of TS.

OR

Coastal sea-bed economic area: the area of the sea-bed which is seaward of ...; and landward of an outer boundary of

Type D

The regime of TS is also applicable to EZ.

3. DELIMITATION BETWEEN ADJACENT AND OPPOSITE STATESType A

- (i) To be determined in accordance with international law [including application of median line of equidistance.]
- (ii) Disputes arising therefrom to be settled in conformity with UN Charter and any relevant regional arrangements.

Type B

- (i) by agreement among them in accordance with equitable principles, taking into account all relevant circumstances.
- (ii) During negotiations, states to take into account special circumstances (e.g. general configuration, existence of islands or islets and physical and geological structure of marine area involved, including sea-bed and subsoil thereof).
- (iii) States to make use of methods envisaged in Article 33 of UN Charter or other peaceful means and methods open to them, to resolve differences during negotiation.
- (iv) In absence of special circumstances, due regard be given to principles of median line or equidistance.

Type C

- (i) Agreement among themselves.
- (ii) Failing such agreement, no state is entitled to extend its jurisdiction over EZ beyond median line every point of which is equidistant from nearest points on baselines, continental or insular, from which breadth of EZ of each of two states is measured.

Type D

I.

- (i) Islands are, mutatis mutandis, in same position as continental territories insofar as rights and obligations are concerned, under rules of international law set out herein.

- (ii) Above principle to apply equally where coasts of two or more states are opposite or adjacent to each other.

OR

- II. EZ of an island to be measured as a continental land mass, except as otherwise specified for delimitation of ocean space of adjacent or opposite states.

Type E

- (i) in accordance with equitable principles.
- (ii) When there is an agreement, questions relating to delimitation to be determined in accordance with provisions of agreement.
- (iii) No state shall by reason of this convention claim or exercise rights over natural resources of any area of sea-bed and subsoil which another state had under international law immediately before coming into force of this convention sovereign rights for exploring it or exploiting its natural resources.
- (iv) Subject to (i) and (iii) above and unless another boundary line is justified by special circumstances, boundary to be an equidistant line in the case of adjacent coasts and a median line in the case of opposite coasts.

Type F

- (i) through consultations on an equal footing.
- (ii) CS concerned, on basis of safeguarding and respecting sovereignty of each other, to conduct necessary consultations to work out reasonable solutions for exploitation, regulation and other matters relating to natural resources in contiguous parts of EZs.

4. NATURAL RESOURCES

Type A

- (i) CS sovereign rights over renewable and non-renewable natural resources of waters, sea-bed and subsoil thereof.
- (ii) CS right to adopt measures to ensure its sovereignty over resources.]
- (iii) CS jurisdiction and supervision over exploration and exploitation of such resources and over allied activities.]

Type B

- (i) CS sovereign right over renewable and non-renewable natural resources, living and non-living, in the area.
- (ii) Prospecting and exploration of the area and exploitation of natural resources subject to CS regulations and such activities may be reserved to themselves or to their nationals, or allowed to be engaged by third parties in accordance with provisions of internal laws and of international agreements.
- (iii) Protection and conservation of renewable resources subject to CS regulations and to agreements as they may conclude, taking into account co-operation with other states and recommendations of international technical bodies.

Type C

- (i) CS sovereignty over renewable and non-renewable natural resources for exploration and exploitation; exclusive jurisdiction to control, regulate and exploit living and non-living resources and their preservation.
- (ii) CS sovereignty and jurisdiction to encompass all economic resources, living and non-living, on water surface, in water column, or on soil or subsoil of seabed and ocean floor below.
- (iii) CS to establish special regulations for exclusive exploration and exploitation, and for protection and conservation of renewable resources.

Type D

- (i) CS ownership over all natural resources, living or non-living, of whole water column, sea-bed and subsoil.
- (ii) Exclusive jurisdiction over the zone for protecting, using, exploring and exploiting such resources.
- (iii) Other state may engage in fishery, mining or other activities pursuant to its agreement.

Type E

CS sovereign rights for exploring coastal seabed area and exploiting its non-living resources.

Type F

- (i) CS jurisdiction for exploring and exploiting living and non-living resources in the zone.

- (ii) CS to make contributions to international authority out of revenues derived from exploitation of non-living resources.

OR

- (ii) CS to make available such share of revenue in respect of mineral resources exploitation from such part of the coastal sea-bed economic area.
- (iii) Rate of contribution to be X per cent of revenues from exploitation carried out in the zone, and X per cent of revenues from exploitation carried out beyond X miles or X metres isobath within the zone.
- (iv) Contributions to be distributed by international authority on basis of equitable sharing criteria.

Type G

No state shall by reason of this convention claim or exercise rights over natural resources of any area of sea-bed and subsoil over which another state had under international law immediately before entry into force of this convention sovereign rights for exploring it or exploiting its natural resources.

Type H

- (i) Nationals of DCS to have right, in the region, to exploit, on a reciprocal and preferential basis, renewable resources within PS or EZ of states of the region; procedures for such preferential regime to be determined by regional, subregional and bilateral agreements.
- (ii) Nationals of geographically DCS to have right of equal access to living resources of PS or EZ in convergent areas.
- (iii) Above provisions not to apply to territories under foreign domination or forming an integral part of metropolitan powers outside the region.

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