

## Legal Problems of Seabed Boundary Delimitation in the East China Sea, by Ying-Jeou Ma, With a Foreword by Louis B. Sohn

Choon-ho Park

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**LEGAL PROBLEMS OF SEABED BOUNDARY DELIMITATION IN THE EAST CHINA SEA.** By Ying-jeou Ma, with a Foreword by Louis B. Sohn. Baltimore, Md.: Occasional Papers/Reprints Series in Contemporary Asian Studies, Inc., 1984, 308 pp., \$15.00.

This volume is, to date, the first monography on seabed boundary delimitation in East Asia so comprehensive in coverage and deep in analysis. The book consists of two parts: Part I, The Setting: The East China Sea Oil Disputes, and Part II, The Maritime Jurisdictional Disputes: Who May Own the Undersea Oil? Many of the book's assets make it a valuable contribution to the literature. First, the extensive footnotes reveal the author's exhaustive research. Second, Professor Ma even devoted a lengthy chapter (Ch. 6) on the "Relevance of the Peking-Taipei Rivalry: The 'Domestic Aspect' of the Seabed Dispute," which evidences the author's effort to "leave no stone unturned." Third, the seven tables and twenty maps in the appendix, the selected bibliography, and the list of cases are also useful not only for understanding the arguments the author presents but also as general reference.

The completion of Dr. Ma's thesis closely coincided with the adoption of the 1982 UN Convention on the Law of the Sea. It has also been followed by the delivery of a series of maritime boundary judgments by the International Court of Justice. The World Court decided the *Libya-Tunisia* case of 1982<sup>1</sup> prior to the publication of this volume, and the *Gulf of Maine* case of 1984<sup>2</sup> between Canada and the United States shortly afterwards. Naturally, the author draws extensively from these precedents as well as from the two earlier cases, namely the North Sea cases of 1969<sup>3</sup> and the *Anglo-French* case of 1977.<sup>4</sup> A fifth precedent, namely the *Libya-Malta* case of 1985,<sup>5</sup> is too new for the author to have been able to refer to.

The author argues primarily from the standpoint of continental shelf boundary delimitation. In doing so, he makes a point of basic importance—that is, the relationship between a continental shelf boundary and an exclusive economic zone boundary between coastal states, adjacent or

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1. Concerning the Continental Shelf (Tunisia v. Libyan Arab Jamahiriya), 1982 I.C.J. 18 (Judgment of Feb. 24), *reprinted in* 21 I.L.M. 225 (1982).

2. Concerning Delimitation of the Maritime Boundary in the Gulf of Maine Area (Can. v. U.S.), 1984 I.C.J. 246 (Judgment of Oct. 12), *reprinted in* 23 I.L.M. 1197 (1984).

3. North Sea Continental Shelf (W. Ger. v. Den., W. Ger. v. Neth.), 1969 I.C.J. 3 (Judgment of Feb. 20), *reprinted in* 8 I.L.M. 340 (1969).

4. Concerning the Delimitation of the Continental Shelf (U.K. v. Fr.), 18 R. Int'l Arb. Awards 3 (1977), *reprinted in* 54 I.L.R. 11 (1979) *and in* 18 I.L.M. 397 (1979).

5. Concerning the Continental Shelf (Libyan Arab Jamahiriya v. Malta), 1985 I.C.J. 4 (Judgment of June 3), *reprinted in* 24 I.L.M. 1189 (1985).

opposite. This is a point which few other observers of the East China Sea disputes had discussed even briefly; the general assumption appears to have been that the two boundaries could not be other than identical. This reviewer has once argued that the two boundaries need not always be the same and that, within the context of the present law of the sea, it is conceivable for the two to be different. The reaction of other observers has generally been negative.

The author of the present volume concludes (p. 131) that "separate EEZ and continental shelf boundaries, though difficult to administer, are not incompatible with the fundamental rationale underlying these two regimes." As a matter of fact, there have already emerged a number of precedents, that is, around Indonesia and between Australia and Papua New Guinea. In the present issue, therefore, administrative convenience or inconvenience is irrelevant. The author is right.

With regard to the relevance of the *Tiao-yu-t'ai* (*Senkaku* in Japanese) territorial dispute between China and Japan to the East China Sea maritime boundary disputes, the author comes up with a theory with which most other observers would seriously disagree. He has been consistently of the opinion that the territorial issue can be detached from the maritime boundary issue. In this regard, two points could not be overlooked. First, China and Japan are involved in other territorial disputes with other coastal states in the region: China with other coastal states of the South China Sea, namely with Malaysia, the Philippines, and Vietnam over the ownership of the *Paracels* and the *Spratlys*; and Japan with Korea over the *Dokto* (*Takeshima* in Japanese) in the Sea of Japan and with the Soviet Union over the so-called *Northern Four Islands* northeast of Hokkaido. This means that neither China nor Japan could isolate any of the territorial issues for settlement independently of other ones; any particular formula advantageous to one claimant in one situation could very well prove to be disadvantageous to it in another.

Second, in East Asia where territories have seldom changed hands peacefully — perhaps with the exception of the Japan-Imperial Russia swap of Sakhalin and the Kuriles in 1875 — national sentiments easily flare up over territorial issues, a fact which the author is sufficiently aware of. As a result, in East Asia parties to such disputes are extremely cautious not to do anything that might imply a compromise in territorial issues. The two parties have, in fact, tried to feel out the attitude of each other twice but their endeavor failed even before they could test the merits of what they had in mind.<sup>6</sup> In brief, a boundary issue could not be settled without first settling the ownership of what is claimed by both parties. The precedents of

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6. Japan Times, Nov. 1, 1979.

“half-effect” or “full effect” to be given to obscure offshore islands without physical value merely concern the legal status to be awarded to such islands, not the problems of their territorial ownership. The author’s points are of course well taken, but this would be on the assumption that neither China nor Japan would insist on using any of the islands in dispute as base-points for the measurement of their continental shelf or EEZ limit. The attitude of either party remains to be seen.

Since the author’s argument concerns itself with the continental shelf boundary, it is important to look at the East China Sea disputes with reference to the EEZ regime. This is essential because of the particular geographical circumstances of the region. Throughout the entire East China Sea, nowhere does the distance from one headland or island to another reach 400 nautical miles. In other words, if all the coastal states come up with their 200-mile zones, the entire East China Sea falls under the EEZ jurisdictions of the coastal states. A basic question arises here as to why any of them would choose to argue over its continental shelf boundary with the others, because it could claim what it wants under the EEZ regime.

This assumption would presuppose that any of the coastal states would unlikely be interested solely in the mineral resources at the expense of the living resources in the superjacent water column. Then a simple question remains as to why a coastal state would opt for one instead of both. Ultimately, it can be argued that, with the adoption of the 200-mile EEZ regime finally at Montego Bay, Jamaica, on December 10, 1982, the basic issues in the East China Sea disputes were thrown into a new situation where the applicability of the equidistance rule for the settlement of the boundary disputes has been greatly enhanced, and on balance, this would be more in Japan’s favor than the other parties’.

In closing, in spite of what has been noted above, this book is indisputably definitive in the literature on this topic, a standing that would not be affected by a few factual errors. For instance, the Republic of Korea (ROK) did not sign the 1982 UN Convention of the Law of the Sea on December 10, 1982 (note 21, p. 5), but on March 14, 1983, for reasons not in need of elaboration here. Also, the Japan-Korea joint development zone does not lie entirely on the Japanese side of what would be the median-line between the two parties (ex. pp. 21 and 61); a fraction of it happens to lie on the other side as well. Australia and Indonesia also renegotiated their 1972 boundary agreement relating the Timor Sea (p. 242), so that the author’s point on it would need to be reviewed.

*Choon-ho Park\**

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\* Ph.D. in Public International Law, Edinburgh University; Professor of Law at Korea University; Director, East Asia Law of the Sea Institute.

