CHAPTER THIRTEEN

THE CHINA-JAPAN DISPUTE OVER ENTITLEMENT IN THE EAST CHINA SEA: LEGAL ISSUES AND PROSPECTS FOR RESOLUTION

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INTRODUCTION

The East China Sea is less than 400 nautical miles broad and is surrounded the People’s Republic of China (China), the Republic of Korea (Korea), Japan and by the Republic of China (Taiwan). It is reportedly rich in both seabed hydrocarbon and fishery resources, however, overlapping claims in the East China Sea by the coastal States have hindered the effective exploitation and management of such resources, and the unilateral actions of the countries concerned have threatened to undermine peace and stability in the region.

One of the major challenges for the delimitation of the overlapping claims between China and Japan is the difference in their respective positions on continental shelf entitlement. China has consistently argued that the natural prolongation of its continental shelf in the East China Sea extends up to the Okinawa Trough, a depression in the seabed which is closer to Japan. In 2009, it submitted Preliminary Information to the Commission on the Limits of the Continental Shelf (CLCS) stating that the Okinawa Trough represented the extent of its outer continental shelf entitlement. In December 2012, China followed up its

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Preliminary Information with a Partial Submission to the CLCS in part of the East China Sea which also showed the outer limits of its continental margin terminating at the axis of the Okinawa Trough.\(^4\) Japan, on the other hand, argues that under present principles of international law, States are not entitled to an extended continental shelf in areas less than 400 nautical miles, and has issued strong protests against China’s CLCS submissions.\(^5\)

China’s submissions to the CLCS raise a difficult issue under international law, namely, whether a State can have an extended continental shelf beyond 200 nautical miles in areas less than 400 nautical miles. This chapter will examine the issues arising from China’s claim that it is entitled to an extended continental shelf in the East China Sea. After examining the basis of China’s extended continental shelf entitlement, it will argue that international law presently has no clear-cut answer to the question of whether a State is entitled to an extended continental shelf in areas less than 400 nautical miles and arguments can be made to support either position. However, until China’s entitlement in the East China Sea is decided, it is not possible to determine the nature of overlapping entitlements between China and Japan. This will, in turn, have consequences for delimitation as the overlapping entitlements will dictate the applicable delimitation principles. In light of this, the Chapter suggests that China and Japan should explore avenues to definitively settle the issue of entitlement in the East China Sea, so as to pave the way for negotiations on delimitation.

**Maritime Claims in the East China Sea**

The *United Nations Convention on the Law of the Sea (LOSC)*\(^6\) allows States to claim an exclusive economic zone (EEZ) up to 200 nautical miles where it has sovereign rights over living and non-living resources in the seabed and subsoil as well as the superjacent waters.\(^7\) *LOSC* also grants coastal States sovereign rights over the mineral and non-living resources of the seabed and subsoil of the continental shelf, which is defined in Article 76(1) of *LOSC* as:

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\(^7\) See generally, Part V of *LOSC* as well as Article 56.