

28 October 2016

Maritime Boundary Delimitation between South Korea and China



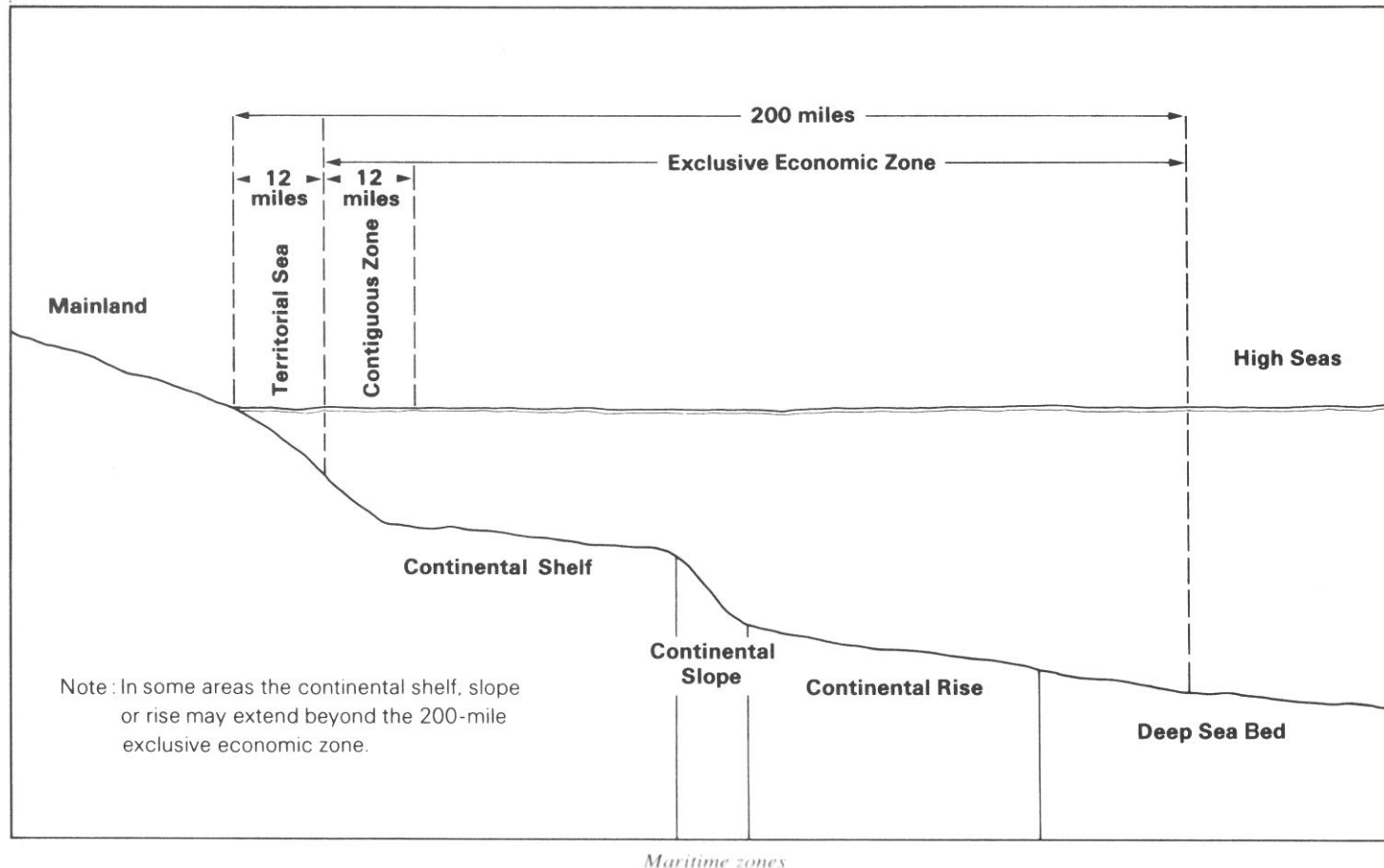
Dr. Ki Beom LEE

Research Fellow (The Asan Institute for Policy Studies)



GENERAL INFORMATION

- **A Cross-sectional View of Maritime Areas**



[Extract from *The Law of the Sea*, 3rd ed. (R.R.Churchill & A.V.Lowe, 1999), p.30]

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The Rules Governing Maritime Boundary Delimitation

● **Articles 74(1) and 83(1) of the UNCLOS**

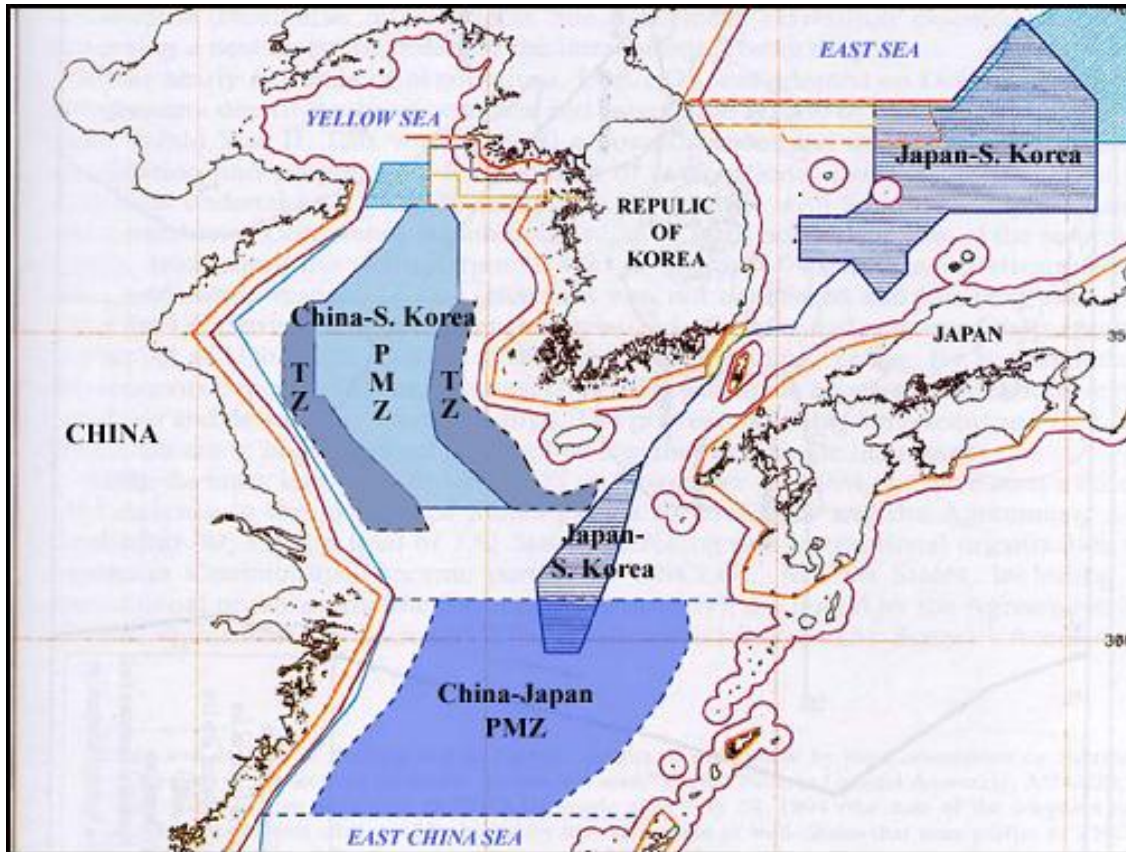
“The delimitation of the EEZ [Continental Shelf] between States with opposite or adjacent coasts shall be effected *by agreement* on the basis of international law, ..., *in order to achieve an equitable solution.*”

☞ First, ‘agreement’

☞ Second, the achievement of an ‘equitable solution’
(Necessary to take into account all the *relevant circumstances*)

Picture of the Case

- Sino-Korean Fisheries Agreement



[Extract from *China's Response to International Fisheries Law and Policy: National Action and Regional Cooperation* (Guifang Xue, 2004), p.204]

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Relevant Circumstances?

- **Arguments of South Korea**

- ☞ No relevant circumstances to adjust a provisional equidistance line
- ☞ Necessary to define the relevant areas of delimitation

- **Arguments of China**

- ☞ Population
- ☞ Disparity in the lengths of the relevant coasts
- ☞ Fisheries



Analysis on the Arguments of China (I)

● Population

- ☞ No cases of international courts and tribunals to take into consideration the matter of population

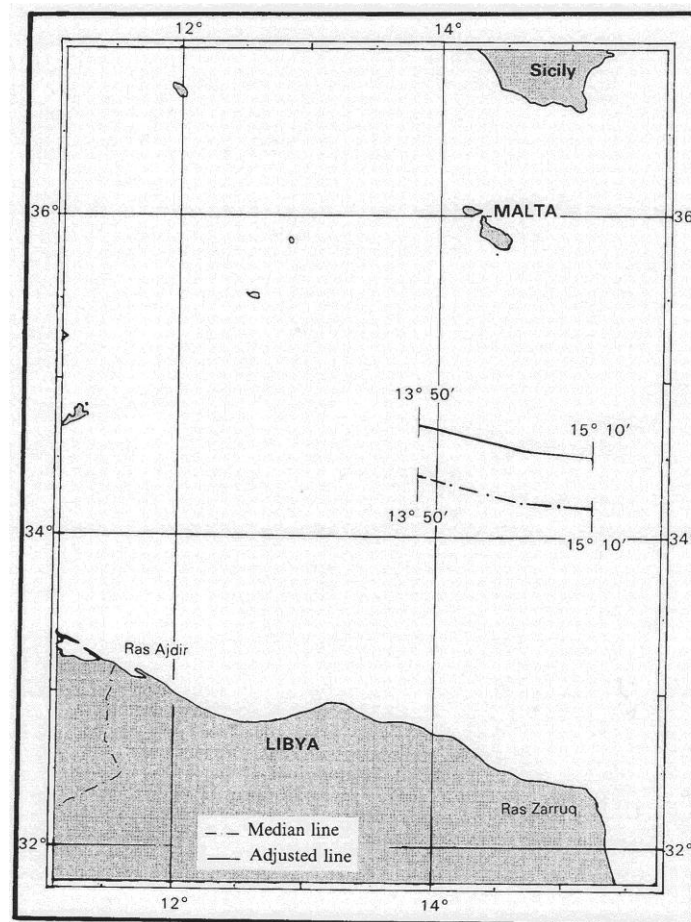
● Disparity in the Lengths of the Relevant Coasts

- ☞ Some cases of considering disparity in the lengths of the relevant coasts
 - : The 1985 *Continental Shelf (Libya/Malta)* case,
 - the 2012 *Nicaragua v. Colombia* case etc.
- ☞ Not disparity but *great or significant* disparity
 - : About 1:8



Picture (I) of Delimitation Cases

- **The 1985 *Continental Shelf (Libya/Malta)* Case**



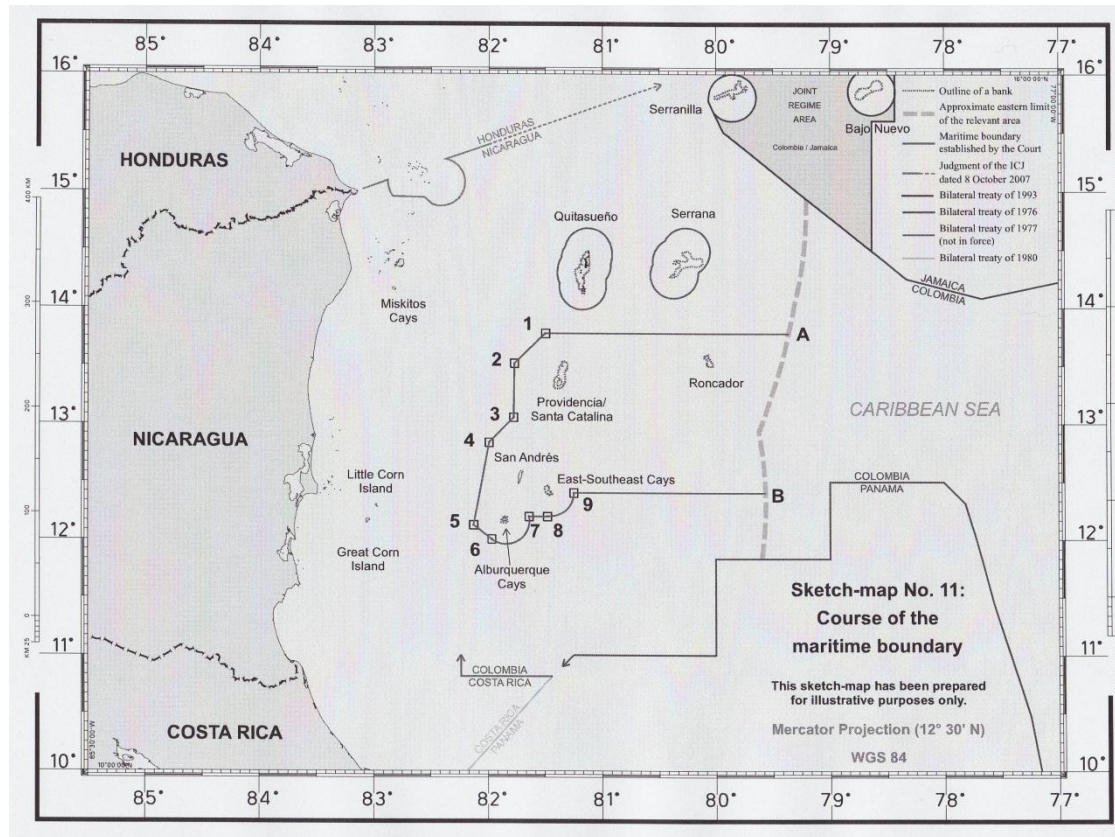
[Extract from *I.C.J. Reports 1985*, p.54]

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Picture (II) of Delimitation Cases

- The 2012 *Nicaragua v. Colombia* Case

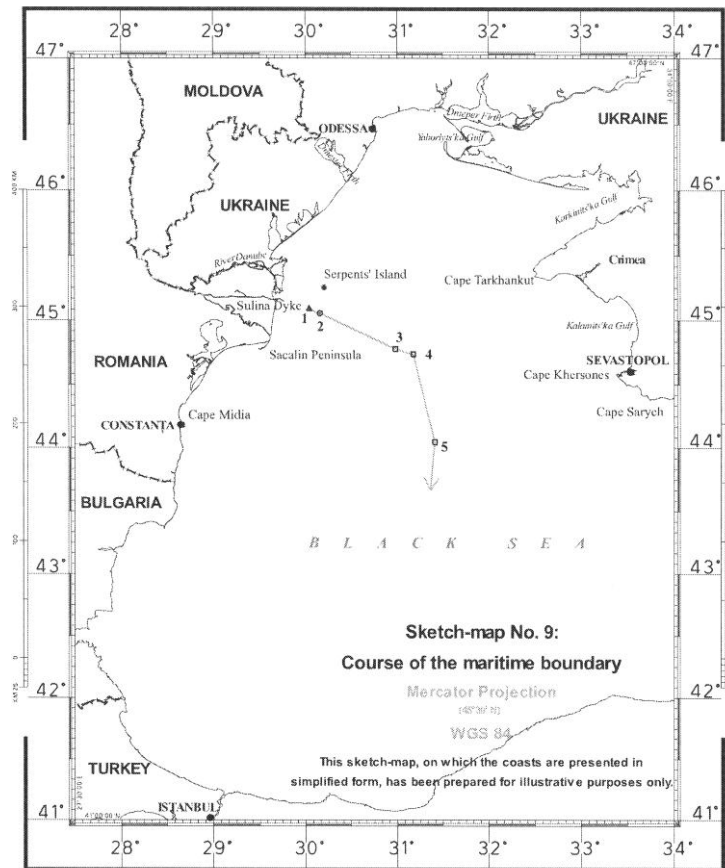


[Extract from *the Judgment*, p.89]



Picture (III) of Delimitation Cases

- **The 2009 *Black Sea Case***



[Extract from *I.C.J. Reports 2009*, p.133]

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Analysis on the Arguments of China (II)

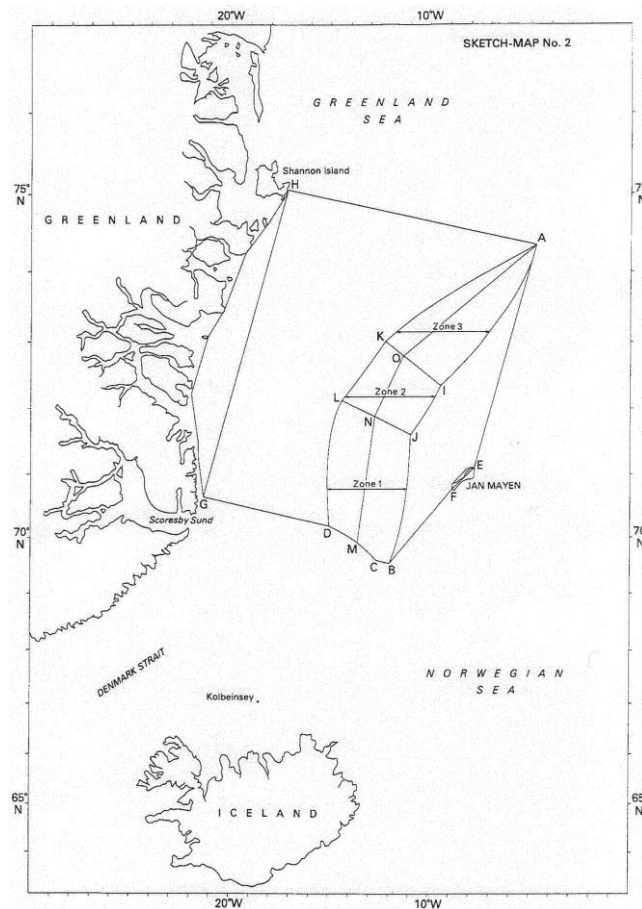
● Fisheries

- ☞ No cases of international courts and tribunals to take into consideration fisheries issues in the case of the establishment of a single maritime boundary
- ☞ What is the 1993 *Jan Mayen* case of the ICJ?
 - : The construction of two separate but coincident lines



Picture (IV) of Delimitation Cases

- **The 1993 *Jan Mayen* Case**



[Extract from *I.C.J. Reports 1993*, p.80]



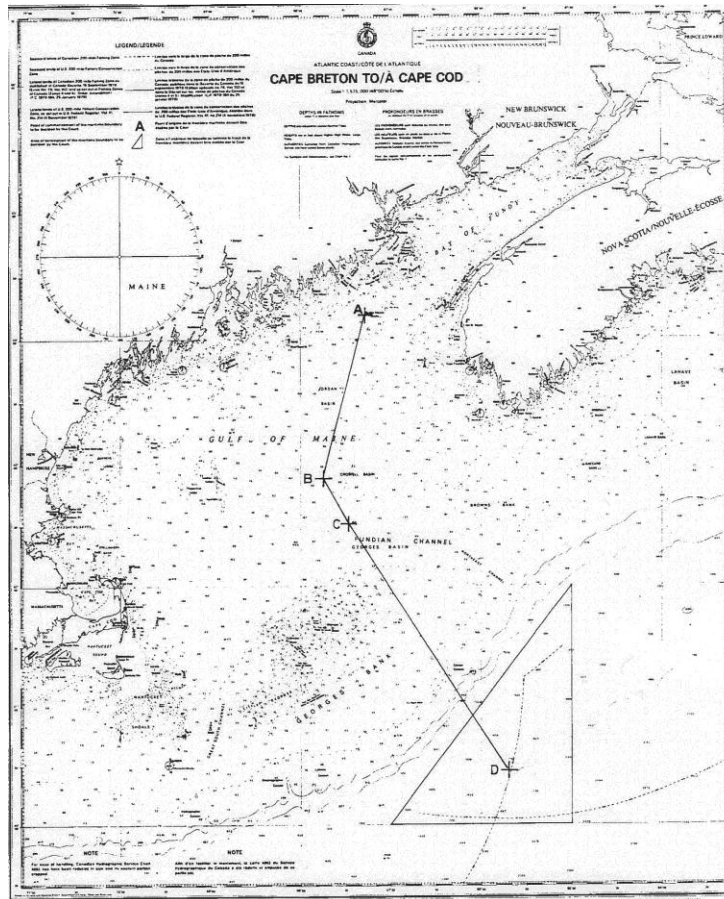
Analysis on the Arguments of China (III)

● Fisheries

- ☞ In general, the consideration of 'neutral' circumstances (that is, the concept indicated by the 1984 *Gulf of Maine* Case) in the case of the establishment of a single maritime boundary
- ☞ The standard of 'catastrophic repercussions'?
 - : No cases of international courts and tribunals to employ the concept of catastrophic repercussions

Map (V) of Delimitation Cases

- The 1984 *Gulf of Maine Case*



[Extract from *I.C.J. Reports 1984*, p.346]

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Impact of the Sino-Korean Fisheries Agreement

● How Would the PMZ BE Dealt with?

- ☞ In theory, no impact
- ☞ However, the equal division of the PMZ is also an equitable solution?
 - : The TZ was changed into the EEZ of each State in 2005.
 - If only the issue of the PMZ could be dealt with in the process of negotiation, an equitable solution could easier be achieved.