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THE PEOPLE'S REPUBLIC OF CHINA AND THE LAW OF THE SEA: CARACAS 1974 AND GENEVA 1975

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INTRODUCTION

Geneva, May 12, 1975—The third session of the 3rd United Nations Sea Law Conference ended May 9 after the Third World and other small and medium-sized countries waged a fierce struggle against the maritime hegemonism of the two superpowers and again forced them into a passive and isolated position.¹

Viewed through the People's Republic of China's prism of a bipolar world, the Sea Law Conferences held at Caracas and Geneva were victories. China and the "oppressed nations" had stood united to thwart the ambitions of the superpowers who were portrayed as completely to blame for the failure to reach an agreement. It was the super-

powers who wanted to "... maintain their positions of hegemonism and who assiduously cling to the outdated legal regime of the seas and refuse to abandon their control and monopoly over the seas and oceans."²

Despite repeated Chinese protestations to the contrary, however, an examination of a number of key criteria would suggest that maritime strength of the PRC may stand closer to the ranks of the superpowers she is wont to attack than to the developing nations she claims to support.

According to *Jane's Fighting Ships*, and *The Military Balance, 1974-1975*, published by the International Institute for Strategic Studies in London, for example, Peking's navy has more than tripled in size since the early sixties, with submarine and naval aircraft forces

¹The opinions shared in this paper are those of the author and do not necessarily reflect the views and opinions of the U.S. Naval War College, the Dept. of the Navy, or Dept. of Defense.

ranking third in the world. Her coastal defense fleet of fast missile, torpedo, and gun boats is considerably larger than that of the Soviet Union or the United States.³

Although the PRC's navy is primarily designed for coastal defense, China's emerging ability and readiness to conduct amphibious operations were dramatically demonstrated in her recent seizure of the Paracel Islands in the South China Sea—an operation that avoided confrontation with the superpowers but nonetheless suggests that China may be more capable today of backing up her strong words about sovereignty and jurisdiction than was the case in the 1950's and early sixties when the U.S. Navy continued to ply the waters between Taiwan and the mainland despite more than 200 "serious warnings" from Peking.⁴

China's fishing industry also borders on the superpower range. The major part of her effort is inland, but even discounting their fresh-water catch, the PRC is fourth among the world's ocean fishing nations and conducts fishing operations in 9 of the 19 major world fishing areas defined by the United Nations Food and Agriculture Organization.⁵

China's salt-water fishing fleet has been progressively motorized with modern vessels equipped with telecommunications equipment, fish shoal detectors, and storage facilities, all of which has enabled most fishing villages to report increases in each subsequent annual catch.⁶

Crude oil output, a significant factor in determining potential as well as actual power, was more than six times greater in 1974 than in 1965, permitting the PRC not only to meet its domestic needs but allowing for an exportable surplus.⁷ According to Western oil specialists, China is on the verge of becoming one of the world's biggest oil producers and exporters.⁸ The shallow floor of the Continental Shelf off the

coast of China, extending from the Yellow Sea through the Paracel and Spratly Islands in the South China Sea, is considered one of the most geologically promising of the yet largely unexploited offshore areas.⁹ Indeed, in December 1974, the maiden voyage of China's first domestically designed and built drilling vessel, the *Kantan* (Prospector) was not only successful in striking oil, but also provided training for a technical force and experience in marine geological prospecting.¹⁰

Keeping within the basic principle of "maintaining independence and keeping the initiative in our own hands and relying on our own efforts,"¹¹ China's trade with the outside world has increased 5.66 percent since 1952. The PRC has trade relations with more than 150 countries and trade agreements with more than 50 other nations.¹² According to Lloyd's list of qualifying flag states, China ranks 23rd in the world in shipping tonnage,¹³ with estimates ranging from Lloyd's official 1.5 million, to Hong Kong shippers determination of about 4 million tons.¹⁴

In terms of growth, although the Hutung Shipyard in Shanghai boasts of setting new records in 1973 with a total output value of 2½ times that of 1965, China still relies on foreign acquisitions in the building of her merchant fleet. Japan and Great Britain currently dominate the Chinese market for transport and communications equipment, followed by Holland and the United States. In 1974 orders were placed for 70 cargo ships, including freezer and refrigerator vessels, with Japan and a number of Western European countries as the principal contractors.¹⁵ It is also claimed in Hong Kong that Peking is the biggest ship charterer on the London market.¹⁶

In anticipation of an increase of international trade, the Chinese have expanded and modernized the port of Shanghai and have improved harbor facilities in nine major ports along

China's coast, from Laien in the north-east to Chanchiang in the south.¹⁷

It would appear then that, judging from actual and potential maritime strength, China's interests at Caracas and Geneva should have been consistent with, if not parallel to, those of the United States, the Soviet Union, and other seapowers. Yet the PRC's position at these meetings was in support of the most radical opponents of the maritime nations—those who called for a new regime which would severely restrict the freedom of navigation for warships and for some commercial vessels, limit the scope of operations for the major fishing nations, and hobble exploitation of the mineral resources of the deep seabed.

CARACAS—1974

In 1958 the United Nations Conference on the Law of the Sea convened in Geneva. In the same year, the People's Republic of China, a member of neither the United Nations nor the Law of the Sea Conference, issued its own "Declaration on China's Territorial Sea." It established a 12 nautical mile limit, which it defended against American and British criticism as being a sovereign right, consistent with economic and defense needs. Further, it decreed that all vessels must observe the relevant laws and regulations laid down by the PRC and that no foreign warship might enter China's territorial waters without prior permission.¹⁸

These restrictions contrary to the convention produced at Geneva, were aimed primarily at the activities of the U.S. 7th Fleet operating in waters around Taiwan.¹⁹

In addition, the Chinese applied the straight baseline method of measuring the breadth of their territorial waters, a method authorized by international agreements for countries such as Norway, with large stretches of indented coastline. The result of using this mea-

suring system was to convert the Chiunghow Strait and Pohai Bay, normally within China's territorial sea, into internal waters, precluding the rights of innocent passage for foreign vessels.²⁰

By the end of 1971, however, China's isolation from the world community was over, and her security concerns now encompassed not only the U.S. 7th Fleet but the increased activity of a growing Soviet Navy in Asian waters.

Territorial Sea. By the time the second session of the Third United Nations Conference on Law of the Sea convened in Caracas, Venezuela, the issue of conversion from a 3-mile to a 12-mile territorial sea was all but passe. Most participants, including the United States, had reached a consensus on including the 12-mile limit in an international convention. The PRC, however, virtually ignored the question of the 12 miles, and, along with their Albanian spokesman,²¹ addressed themselves only to limits placed on the 200-mile economic zone. China constantly repeated its position that a nation had the sovereign right to determine the extent of its territorial sea.

In his opening remarks to the conference, Chia Shu-fan, leader of the Chinese delegation and Vice Minister of Foreign Trade, stated:

We hold that to define the territorial sea and scope of national jurisdiction is the sovereign right of each country and brooks no dictation from one or two superpowers. Coastal states are entitled to reasonably define their territorial sea of an appropriate breadth and, beyond it, their exclusive economic or fishery zones of appropriate limits in the light of their specific natural conditions and the needs of their national economic development and national security.²²

Straits. The breadth of a nation's territorial sea is particularly significant because an extension from 3 to 12 miles would overlap more than 100 straits which had been considered part of the high seas.¹³ The United States, expressing the impact of this change on most of the maritime nations, argued that straits used for international navigation were connecting points for large areas of the oceans and that unimpeded transit through these straits fell under the existing rights of the high seas regime.²⁴

The PRC, on the other hand, defined a strait lying within a territorial sea as an inseparable part of that territorial sea, with the coastal state having full authority to enact laws regulating passage of commercial ships and aircraft through and over these straits. A coastal state could also require prior approval for the passage of military vessels.²⁵

The principal thrust of China's stance on innocent passage through straits centered on the growing strength of the Soviet Navy and the rivalry between the United States and the U.S.S.R. for what the PRC charged was "world hegemony." "For many years Soviet social-imperialism has regarded the straits of other countries as a life line for its aggression and expansion abroad and its contention with the other superpower for dominance over the sea as well as the world," wrote a correspondent for the New China News Agency. "It tries by every means to secure unimpeded passage for its warships and nuclear submarines through the straits of other countries in order to cruise at will in all the oceans, threatening the peace and security of many countries."²⁶ In doing so, the Chinese further accused the Soviets of "contempt" for the sovereignty of other nations.²⁷

One example of such contempt, offered by the Chinese, was a Soviet-Japanese announcement in March 1972 that the two countries had come to an "official understanding" on making the

Straits of Malacca an "international strait" in spite of an agreement among Malaysia, Singapore, and Indonesia in November 1971 that a cooperative organization to safeguard the navigation in the Malacca and Singapore straits should be created and that "internationalization of the Straits of Malacca"²⁸ was unacceptable.

The Chinese also chided the Russians for revisionist inconsistencies, citing both a 1949 decision by the Soviet Judge on the World Court affirming the right of coastal states to formulate regulations for navigation in their territorial straits and the refusal by the Russians to allow free transit of foreign icebreakers and frigates through their own Vilkusky Strait.²⁹

The deputy leader of the Chinese delegation, Ling Ching took further issue with the "smokescreen" effort by the superpowers to obliterate the distinction between commercial and warships by the use of the term "all ships." He also pointed out that while freedom of navigation through straits was ostensibly aimed at developing international trade and that such trade was the legitimate desire of the peoples of the world, this could hardly be brought about by the free passage through straits of warships and nuclear submarines.³⁰

The Economic Zone. Both the Russians and Americans attempted to resolve the issue of a 12-mile territorial sea and a 200-mile economic zone in an "overall treaty package" which would include, "provisions for unimpeded transit of international straits, and a balance between coastal state rights and duties within the economic zone."³¹ The PRC repudiated this "conditional recognition" in exchange for free passage through sovereign straits of warships and submarines.³²

Fishing. Fishing rights in the economic zone brought the strongest challenge from the Chinese. Again the

United States and the Soviet Union presented similar plans which provided the licensing and regulation of foreign fishing fleets by an international authority where a coastal state was unable to utilize fully its fishery resources in the economic zone.

Almost predictably, the People's Republic of China once again accused the superpowers of knavery, in this case of reintroducing the discredited concept of preferential rights in the economic zone at the expense of the sovereignty of the smaller coastal states. In an article in the *Peking Review*, the Chinese labeled the Soviet Union as a "super-fishing despot" whose outer sea and distant water catches, those in Asian, African, and Latin American waters, made up to three-quarters of her total catch. The Chinese accused the Russians of exhausting the fishery resources in these areas.³³

Ling, in addressing the conference on this question, denounced the superpowers for paying only lipservice to the concept of an economic zone but at the same time denying the coastal states their exclusive economic rights. "We are of the opinion," he said, "that a coastal state may, in accordance with its wish and needs, allow foreign fishermen to fish in the areas under its jurisdiction by bilateral or regional agreements . . . but it must not be provided beforehand that the coastal state shall have the obligation to grant foreign states any such rights."³⁴

Scientific Research. Peking's commitment to exclusive jurisdiction clashed once again with the American and Russian proposals in the area of scientific research within an economic zone. The United States argued that not only did many developing countries lack the resources to conduct research, but that a "consent regime" supported by China and other developing nations would increase costs and would undermine the validity of scientific findings by virtue

of the fact that research teams could be excluded from some areas of the oceans by the coastal states. "Oceanic processes do not respect man-made jurisdictional boundaries," was the position of American Ambassador John Stevenson.³⁵

The United States then proceeded to set forth proposals designed to protect the rights of coastal states, including advance notification of proposed research, the right of a coastal state to participate, the sharing of data and samples with the coastal state, assistance in interpreting results, publication of significant findings, compliance by researchers with international environmental standards, flag state certification that the research will be purely scientific and conducted by a qualified institution, and respect for the jurisdiction of the coastal state within its economic zone.³⁶

The Chinese countered with an assertion that: "... in the hands of the superpowers, marine scientific research is a tool of contending for maritime hegemony and pushing policies of aggression and plunder."³⁷ Four alternative principles guiding such research were then offered by the PRC. They included the prerequisite of prior consent; the right of the coastal state not only to participate in research projects, but the right of prior approval on the publication or transfer of all data and results; regulation of scientific research in the international sea area by an international regime; and assistance by the sophisticated maritime community to developing nations to enhance the latter's capability to conduct research independently.³⁸

Pollution Control. Once more, on the matter of marine pollution prevention, the effective difference between Peking and developed maritime nations hinged on the scope of a coastal zone's jurisdiction. The United States, concerned that navigation over almost one-third of the oceans' surface would be subjected

to a multitude of conflicting rules, proposed that standards for vessel-source pollution should be set internationally through the Inter-Governmental Consultative Organization (IMCO), by flag states for their own vessels, or by port states for vessels using their ports.³⁹ American delegates also tendered proposals which would establish different environmental obligations for developing and developed states.⁴⁰

The PRC response to these proposals, as articulated by Lo Yu-ju, that "under the pretext of 'international standards' and 'global measures,' [the superpowers] attempt to deny the jurisdiction of coastal states and their role in the prevention and control of marine pollution." Lo conceded that measures on an international or regional basis were needed, but these measures can in no way substitute for antipollution regulations by coastal states. He also alluded to the proposed "double standard" of environmental control by stating that "global measures" would restrict the economic and industrial development of the developing countries."⁴¹

The Deep Seabed. The issue of the regime and the machinery governing the international seabed area was particularly contentious, widening the gulf between the advanced nations and the Third World, with the People's Republic of China vociferously in the latter camp. The conflict revolved around the questions of who shall exploit the resources in the area, and what shall be the structure, powers, and functions of the international machinery.

The United States took the position that access to the rich manganese nodules in the deep seabed be guaranteed on a nondiscriminatory basis, under reasonable conditions which would provide the security needed to attract the private investments essential for development. A portion of the revenues earned from this exploitation

would be used for international community purposes, particularly for developing countries.

The United States, supported by eight Western Europe countries and Japan, favored development through a system of licensing to private investors having the requisite scientific capability. Control, rather than regulation, as proposed by the opponents to the U.S. plan, would rest with an international authority with policy guidance coming from a broadly representative assembly but with decisionmaking authority in the hands of a smaller executive body.⁴²

Over 100 nations, including the People's Republic of China, supported a counterplan submitted by the Third World's Group of 77. Under this proposal, all rights to the deep seabed would be vested in an international authority "on behalf of mankind as a whole." The international authority would be entitled to exploit the deep seabed resources directly, through contracts, joint ventures, and other forms of associations, with complete and effective control in the hands of the authority.⁴³

Ke Tsai-shue, speaking for the PRC, further stated that pending the establishment of an international regime and machinery, no state or person should be allowed to exploit the deep seabed and that all such activities already underway should be stopped.⁴⁴

Ke and others extended the scope of the debate on the deep sea area by citing relevant United Nations General Assembly resolutions calling for peaceful uses of the deep seabed. "Therefore," said Ke, "we must oppose the superpowers conducting military operations in the area under whatever cover. The emplacement of nuclear weapons as well as activities of nuclear submarines in the area shall be prohibited. Scientific research and other related activities... shall also be subjected to appropriate regulation. We are opposed

to military espionage carried out under cover of scientific research."⁴⁵

The American delegation came to Caracas hopeful that at least the political substance, if not the technical details of a treaty, could be hammered out. As it was, however, Ambassador Stevenson could only take heart from the fact that most countries wanted to conclude a treaty. He saw hope in the fact that traditional regional and political alignments of states were gradually being replaced by informal groups whose memberships were based on issues and that the number and tempo of private meetings, essential to any real bargaining, had increased considerably. Some of the participants had moved beyond their previous formal positions at these unpublicized meetings. Most important, according to Stevenson, was the organization in each committee of comprehensive sets of working papers, making it clear what the structure and general content of the treaty will be.

"What was missing in Caracas," said Stevenson, "was sufficient political will to make hard negotiating choices . . . we must now move from the technical drafting and preliminary exploratory exchanges of views . . . to the highest political levels, involving heads of states themselves, to make accommodations on these critical issues possible."

A general declaration of agreement on such specific issues as the 12-mile territorial sea and the 200-mile economic zone could have been achieved at Caracas, but the United States opposed piecemeal decisions which did not spell out key details. American support for the 12-mile territorial sea and the 200-mile economic zone was conditioned on the satisfactory resolutions of such issues as the unimpeded passage of straits and the rights and responsibilities of coastal states in these areas.⁴⁶

The single package concept was opposed by the People's Republic of China. Less concerned than the United States over a successful conclusion at

Caracas, the PRC chose to view trade-offs and compromises as superpower tactics designed to divide the Third World and to erode the sovereignty and jurisdictional rights of coastal states.

GENEVA—1975

The third session of the Law of the Sea Conference opened in Geneva, Switzerland, on 18 March 1975. There were few formal speeches—this was a negotiating session where the general outlines developed at Caracas were to be expanded into a new treaty on law of the sea. Despite serious bargaining efforts, however, the delegates were unable to conclude a convention acceptable for signature. The only important document to emerge from the session was a single text on virtually all LOS topics prepared by the chairman of each of the three committees. This was not a negotiated text, but represented, in the view of each chairman, the prevailing sentiments on the various issues, leaving out extreme positions. For the U.S. delegation, this procedure is viewed as a positive procedural accomplishment which should make it easier to negotiate an agreement at the next session of the LOS conference scheduled for the spring of 1976.⁴⁷

Although there were few substantive changes in the positions taken by the People's Republic of China, the United States, or the Soviet Union, Geneva did expose much of China's hollow rhetoric regarding the single-mindedness of the Third World's opposition to the superpowers. Self-interest, disinterest, or trade-off possibilities were as much motivating factors behind national positions as was identification with a regional or developing group. The PRC's apparent major interest—use of the LOS conference as a platform for attacks on the Soviet Union and the United States—required little shifting from her previous support for the more radical proposals made at Caracas.

Territorial Sea. The single text emanating out of the second committee reflected consensus for a 12-mile territorial sea. China did not comment on article 7 of this text which states: "Where the establishment of a straight baseline . . . has the effect of enclosing as internal waters areas which previously had been considered as part of the territorial sea, of the exclusive zone or of the high seas, a right of innocent passage . . . shall exist in these waters."⁴⁸ As cited earlier, China's adoption of the straight baseline method in 1958 removed the right of innocent passage from the Chiunghow Strait and Pohai Bay, both formerly within China's territorial waters, but now considered internal waters.⁴⁹

Peking did comment, however, on Ecuador and Peru's insistence that they had the right to extend their territorial waters up to 200 miles. While still maintaining their insistence on the sovereign right of nations to set their own territorial sea limits, the 200-mile claim found so little support at Geneva from other nations that the Chinese used obfuscating language when they spoke of "resolutely" supporting the struggle of Third World countries to safeguard their national resources, economy, and sovereignty. They then substituted the term "200 mile maritime right" in place of territorial sea and proceeded to describe, not the territorial sea, but the economic zone.⁵⁰

Other provisions for the territorial sea found in the single text evinced no special response from the Chinese despite the fact that they ran counter to the positions normally taken by the PRC. These single text provisions included: no restrictions against the surface navigation of submarines through territorial waters; no coastal state restrictions on the design, construction, manning or equipment of foreign ships transiting territorial waters; the same right of innocent passage for warships as for commercial vessels; and limitations

on the criminal jurisdiction of coastal states to foreign ships passing through territorial waters.⁵¹

Straits. The American delegation saw increasing support at Geneva for its position stressing the necessity of guaranteed transit for all ships and aircraft through straits used for international navigation.⁵² The Chinese held to their previous position that: "a strait within the limits of a territorial sea, no matter whether it is frequently used for international navigation, constitutes an inseparable, component part of the territorial sea of a coastal state." They argued that innocent passage through such a strait should not apply to foreign warships.⁵³

What the PRC refused to recognize was that many nonstrait states simply were not concerned about innocent passage of warships or the exercise of coastal state sovereignty and jurisdiction in these areas except as restrictions on free navigation of straits might affect the prices of imports and exports. Other nonstrait states, while unwilling to be placed on record, recognized that their own security depended on the right of free transit for either the Soviet or American navies.⁵⁴

Probably the greatest consideration that divided the developing world on the straits issue was an appreciation by some nations that they could use free passage through straits as a bargaining lever with the superpowers for trade-offs on other law of the sea issues.⁵⁵ It was on this willingness to compromise that the PRC found itself out of step with many of the members of the Third World.

Economic Zone. Treatment of the economic zone in the single text appears to be more in line with the positions supported by the People's Republic of China than with those of the United States or the Soviet Union. However, U.S. Ambassador Stevenson held a more

sanguine view of the text, asserting that to a large degree it did establish a balance between the rights and duties of coastal states and other states having vital interests in these areas.⁵⁶

Contrary to the previously held American position, the term "exclusive" is applied to the economic zone in the title and throughout the second committee report. Sovereign and jurisdictional rights to exploration, exploitation, and scientific research within the zone are granted to the coastal state. There are passages, however, which mitigate the impact of coastal state control. For example, the PRC made much in Geneva of the Soviet insistence that the exercise of coastal state rights in the economic zone give due regard to other legitimate uses of the high seas. The Chinese argued that inclusion of high seas rights distorts the status and nature of the economic zone, charging the Soviets with wanting to threaten the sovereignty and security of these coastal states.⁵⁷

Article 47 of the single text provides, however, that high seas rights of navigation and overflight shall apply to the exclusive economic zone as long as the exercise of these rights is not incompatible with the provisions outlined in the section on the economic zone.⁵⁸

The article also protects the right of foreign nations to lay cables and submarine pipelines in the 200-mile economic zone of another coastal state.⁵⁹ In conformity with overwhelming sentiment in favor of freedom of navigation and the laying of cables and pipelines, the PRC conceded this point in the last days at Geneva.⁶⁰

Fishing. On fishing rights in the economic zone, the single text attempts to strike a middle ground between the position of complete sovereignty of coastal states over fishing resources, a stance supported by the PRC, and the "preferential rights" proposal of the United States and the Soviet Union. The

text provides for the coastal states, not an international authority, to determine the allowable catch of living resources in the exclusive economic zone, but also provides that, "where the coastal state does not have the capacity to harvest the entire allowable catch, it shall, through agreements, give other states access to the surplus of the allowable catch."⁶¹ The PRC contribution to the debate was limited to a continuation of her attacks on the Soviet Union as a pillager of the fishery resources of others.⁶²

Landlocked Nations. Throughout the Caracas conference and again at Geneva, Chinese accounts of the proceedings contained oblique remarks about superpower efforts at dividing the unanimity of the developing world. These comments referred to a continuing dispute within the Group of 77 over access to the resources in the economic zone for landlocked and geographically disadvantaged states. The single text article on this issue provides for participation of noncoastal states in the exploitation of "living resources" in the economic zone of a neighboring coastal state but leaves the terms and conditions of such participation to subsequent bilateral or regional agreements.⁶³ The Chinese wholly subscribe to this position. The landlocked states supported by the United States, do not, however, feel that the interests of these geographically disadvantaged countries have been adequately protected.⁶⁴

Missing from the single text provision, for example, as well as from PRC and other coastal state commentaries, are any references to the sharing of "nonliving" or mineral resources in the economic zone. Most of the coastal developing countries completely rejected the demands of their landlocked neighbors for a share of mineral resources, and the Latin American coastal states were not even willing to share access to fishery resources.⁶⁵

Scientific Research. The dispute over the requirement of prior consent by the coastal state for scientific research in its economic zone continued at Geneva. The Soviet Union modified its position by proposing that only fundamental scientific research unrelated to exploration and exploitation of resources be exempt from prior notification. The PRC refused to accept this distinction, arguing again that any deviation from the principle of prior notification nullified the jurisdiction of the coastal state and gave the superpowers "a free hand to carry out all furtive activities under the pretext of scientific research."⁶⁶

The third committee dealt directly with the issue of scientific research, apart from concern over rights in the economic zone, and made a sharp distinction between research related to the exploration and exploitation of living and nonliving resources, for which prior consent is mandatory, and pure scientific research. For the latter purpose, notification is required only in order to give the coastal state an opportunity to participate in the research project. The coastal state cannot prevent pure research unless it determines that the project is not, in its estimation, fundamental in nature. In such instances, the dispute can be submitted to settlement machinery.⁶⁷

The Deep Seabed. As in Caracas, no compromise could be found in Geneva for the issue of control over the exploitation of the deep seabed. The single text coming out of the first committee fairly well encompassed the proposals of the Group of 77, providing for an international authority to explore and exploit the deep seabed directly and for control over the authority to be, in effect, in the hands of the majority of smaller nations. These proposals were opposed by the United States and other technologically advanced nations but supported by the PRC.

Ambassador Stevenson, in a final

statement at Geneva, expressed the American delegation's dissatisfaction with the apparent trend on a seabed protocol when he said:

The investment in this type of project is, as you know, an enormous one. And, in a world where we have all felt the effects not only of scarcity of vital raw materials, but of uncertainty of access to them, nations are not prepared, in my judgement, to subject their access to seabed minerals to a system of exploration and exploitation and to a decision-making process in which they do not have reasonable assurances of security of access and may not be adequately represented. Moreover, I do not think it will be possible, seen against the background of today's developments in raw material matters, to agree to give ultimate powers of exclusive exploitation to a single, new international entity . . .⁶⁸

The inability of the Geneva conference to meet its previously assigned deadline for a completed convention seemed to affirm the skepticism of some observers that no conference involving more than 140 countries and over 97 different issues could ever conclude a single treaty acceptable to a majority of delegations.⁶⁹ The major stumbling block to an overall consensus was the issue of deep seabed exploitation. The impact of the oil cartel on Western economies and on the world's political balance was apparent to the developing countries. They were, therefore, acutely conscious of the importance of controlling the untapped mineral wealth of the seas. For many of these countries, including the People's Republic of China, Third World domination of the deep seabed was crucial if they were to create what, in their eyes, would be a new, more equitable, world economic order.

Nevertheless, the American delegation was still hopeful that a more favorable accord could be reached at the 1976 continuation of the Law of the Sea Conference. The United States may resubmit, in a revised form, a compromise proposal that would divide the deep seabed into areas—some reserved for direct exploitation by the international authority and others to be worked through licensed companies. Even though a similar American proposal was rejected at Geneva by the Group of 77, the United States believes that agreement is so close on other issues that a breakthrough on the deep seabed impasse could result in a comprehensive treaty.⁷⁰

On the other hand, the People's Republic of China expressed no similar optimism or concern for a successful conclusion. The closed negotiating atmosphere at Geneva denied them the wide propaganda platform they enjoyed in Caracas, and consequently, on many of the law of the sea issues debated at Geneva, the Chinese were silent. The issues on which they chose to comment were those that afforded an opportunity to demonstrate solidarity with the Third World in opposition to the superpowers and to repeat their litany of invectives against the Soviet Union.

CONCLUSION

The contributions of the People's Republic of China at Caracas and Geneva were neither creative nor constructive. Her positions were often extreme, and despite frequent assertions about solidarity with the Third World, it is the opinion of some members of the U.S. delegation that China's bellicose rhetoric had little impact, except on the radical minority of the developing world.

Indeed, one member of the U.S. delegation feels that the PRC was not interested one way or another in the outcome of Geneva and may not even

become a party to a treaty should one eventually evolve.⁷¹

Dr. Tao-tai Hsia, Chief of the Far Eastern Law Division of the Library of Congress, maintains that China does not want to be shackled by legal norms such as treaties, and even in their formal speeches, the PRC delegates were very careful to keep their own options open.⁷²

Peking recognized that these conferences, as have most international gatherings in recent years, pitted the newly arrived against the powerful and established. Exhibiting little respect for tradition, for the rules of the past; resentful of the leadership positions of the superpowers; cognizant of their group strength in an international forum; taking at face value the Western-sponsored concept of sovereign equality; and caught up in an irresistible momentum for change; the Third World was determined to rewrite the rules governing the use of the seas. China made much of this undercurrent to pose as the apostle of progress in opposition to superpower machinations designed to maintain the status quo.

Even before the second session at Caracas came to grips with substantive matters, the United States and the Soviet Union were cast in the roles of selfish obstructionists by the PRC. The Chinese accused the Soviets of being in concert with the Americans to "obtain the right of veto in a disguised form." The issue was one of reaching agreement on major topics through "consensus," which was characterized by the Chinese as a ploy by which the superpowers hoped to block the will of the majority and thereby "maintain their interests as hegemonic powers."⁷³

By virtue of her naval strength, her ranking among the leading fishing nations, her potential as one of the foremost oil producers and exporters, her rapid growth as a shipping and trading nation, and her position as a permanent member of the United

Nations Security Council, the People's Republic of China should qualify, at least, for potential status as a superpower, seeking the same prerogatives and advantages as the United States and the U.S.S.R. Instead, the PRC has vehemently declared that "China is one of the countries of the third world . . . China will never be a superpower . . ." ⁷⁴ Even the new "Constitution of the People's Republic of China" proclaims, "In international affairs, we should uphold proletarian internationalism. China will never be a superpower." ⁷⁵

Apart from the PRC's obvious desire to ally with and eventually lead the majority of states lumped together in the Third World, these protestations against superpower status can also be explained in the way China perceives its strengths and interests vis-a-vis her two major rivals, the Soviet Union and the United States.

The PRC may be a principal naval power in her part of the world, but she does not consider herself as having worldwide naval ambitions. Capt. John R. Dewenter, USN, writing in the May 1975 issue of the *United States Naval Institute Proceedings*, states that in about 5 years the PRC will have saturated the Yellow Sea with about a hundred submarines, a thousand coastal defense craft, and a large number of aircraft. He speculates that their objective is the complete control of the adjacent seas rather than the embarkation into distant deepwater ventures. ⁷⁶ China does not consider herself as number three in naval power to the United States and U.S.S.R., but as a smaller and weaker state. ⁷⁷

In addition, she considers herself as a strait state, with concerns over Soviet and American encroachment in the passages between the Hainan Islands and the mainland and through the Formosa Straits and Islands. ⁷⁸

Although the Chinese are fourth in the world in tons of saltwater fishing

catches and are fishing in 9 of the world's 19 major fishing zones, the great bulk of their saltwater catch is taken out of the Northwest Pacific zone, offshore of the Chinese mainland. Even in this area, the PRC trails behind Japan, the Soviet Union, and the Republic of Korea. ⁷⁹ Compared to Japan, the Soviets, and the United States, China is not equipped for large-scale, long-distance fishing expeditions. She lacks technology, exploratory fishing vessels, and the requisite number of factory ships.

The PRC is also moving very slowly in her oil exploitation. She still relies greatly on coal and wood for fuel and appears not eager to jump into the world market as a major oil exporter. Rather than turn to more developed oil producing countries for the technology necessary to exploit its resources fully, China rejects joint ventures and relies on its own expertise. ⁸⁰

Captain Dewenter contends that China is "stringently husbanding" its oil resources in recognition of its potential as a source of foreign exchange to finance imports necessary for the systematic development of its industries. China is also aware of the political importance of oil in a world of increasing need and decreasing supply. ⁸¹

While her merchant marine grows, her port facilities expand, her trade and trade agreements for foreign countries increase, China, for her size and potential, is still a minor commercial nation on the international scene. Once again, this is partly by design. An article in *Jen-min Jih-pao* explains the principles governing China's foreign trade:

. . . the state must be in control of it and the condition of dependence on or control of it by foreign powers must be thoroughly demolished. While mainly relying on her own manpower, material and wealth, and trying to increase her exports, the country may import a certain amount of materials for

construction and consumer goods according to the needs and possibilities. In no circumstances should a country rely on imports to meet the needs of national construction and daily necessities . . . We hold that political independence cannot be separated from economic independence . . .⁸²

China exports an insignificant proportion of its national product, but even that is done mainly for the purpose of raising the foreign exchange required to import goods and equipment to supplement the general development strategy of self-reliance.⁸³

On the evidence, therefore, China is not yet a superpower in a class with the Soviet Union and the United States, but neither is she a part of the relatively impotent developing countries in whose interests China purportedly spoke. Peking skirted this dichotomy during the Caracas and Geneva negotiations by constant and repetitious attacks on the superpowers to emphasize her support for the Third World. At the same time, she never fully committed herself so as to allow flexibility of position.⁸⁴ Flexibility through the lack of international constraints may be viewed by Peking as preferable to a law of the sea regime, which, on the surface, might appear to be more advantageous. For example, a 200-mile exclusive economic zone, which the Chinese have supported, could serve to exclude the Japanese fishing fleet from most of the Yellow Sea and parts of the East China Sea.⁸⁵ This would leave the Koreans and Taiwan as contenders with China for the fishery resources in that area. Would the exclusion of Japan be in China's best interest: For 20 years both nations have peacefully worked these waters under provisions of a nongovernmental fisheries arrangement and are currently negotiating a new agreement at a governmental level.⁸⁶ In spite of the fact that at Caracas and Geneva, Japan was

the most implacable foe of the 200-mile exclusive economic zone, reflecting her worldwide fishing interests, the Chinese never singled out Japan, as they did the Soviet Union, for attack as a selfish exploiter of these resources.

A 200-mile exclusive economic zone, together with recognition of a coastal state's jurisdiction over that portion of the Continental Shelf that extends beyond the 200 miles, could also be to China's advantage. The shallow waters of her contiguous seas provide her with a Continental Shelf as far as the Okinawa Trough. Taken together with her claim to ownership of the Senkaku-Tiasyut'ai Islands (contended by Japan),⁸⁷ the PRC, under a new law of the sea mandate, effectively could control much of the potentially oil-rich areas under her adjacent seas. These are areas presently being mapped for exploitation by Japan and South Korea, under strong Chinese protest.⁸⁸

While supporting the 200-mile exclusive economic zone, the Chinese were unwilling to compromise on the issues of straits, fisheries, and scientific research within the zone. China also supported the principle of coastal state jurisdiction over the extended Continental Shelf, but opposed the American proposal that profits extracted from this area be shared internationally. If the People's Republic of China truly wanted a convention that would legalize the 200-mile economic zone, she might have played the "trade-off" game as did most of the delegate nations. That she did not choose to compromise, even on issues of peripheral concern to her, such as pollution, suggests that China does not view a definitive treaty on law of the sea as being consistent with her interests or *modus operandi*.

Much of East Asia is either under Communist rule or is intimidated by the fear of an extending Communist influence. Within this geographic area and in such an atmosphere, the People's Republic of China must feel a sense of

ascendancy. It would appear, therefore, that whatever arrangements are to be made on fishing rights and oil exploitation, the PRC would rather have control over its bargaining prerogatives than be confined by provisions of an international convention.

Finally, the PRC's performance at the Caracas and Geneva conferences demonstrates the profound impact of tradition, history, and Marxism on modern China's attitude toward international relations.

The ruling principle of order in dynastic China was the Sinocentric ideology of the Heavenly Mandate, a concept which recognized no equals to the Emperor. That being the case, there existed no basis for international relations that were understood to be agreements among equals. Foreign policy, such as it was, revolved around ritual and tribute.^{8 9}

China's early experience with rules of international conduct imposed by the West left an additional legacy of suspicion and cynicism. One of China's early diplomats wrote in 1891: "International law is just like Chinese statutory law—reasonable but unreliable. If there is right without might, right will not prevail."^{9 0}

From 1949, when the Communists assumed power, to 1971, when they were admitted into the United Nations, the PRC was in virtual isolation from most international forums. In this period, Chinese scholars began to examine international law in the context of Marxist-Leninist doctrine. Starting with the assumption that existing international law was designed by Western nations to sanctify their encroachments upon non-Western people, Chinese legal scholar Chu Li-ju wrote:

International law is an instrument for settling international problems. If this instrument is useful to our country, to the socialist cause, or to the cause of peace for peoples of the world, we will use it. But if it is disadvantageous

... we will not use it, and we should create a new instrument to replace it.^{9 1}

It is worth noting that the Chinese word for international law is Cheng-fa, literally translated as "politics-law."^{9 2}

Another Sino-Marxist concept holds that the ultimate objective of international relations is not designed to achieve stability, a position underlying most Western diplomacy, but continuous friction as represented in the class struggle and permanent revolution.^{9 3}

Prime Minister Chou En-lai, in a speech delivered at the 4th National People's Congress, characterized the present international situation as "great disorder under heaven." The Peking publication *Jen-min Jih-pao* picked up this phrase when it wrote:

The international situation marked by great disorder under heaven is a good thing. It has upset the old world order, imperialism and colonialism, and especially the formations of the two superpowers. It has aroused the people of various countries and enabled them to get steeled through struggle and march forward with big strides.^{9 4}

There is some doubt that the differences that separated the various nations at Caracas and Geneva can be compromised sufficiently at the next scheduled session of the law of the sea conference in April 1976. It is doubtful too that should a document emerge, the People's Republic of China would become a signatory. As long as some of the nations of the world observe the old regime of the seas, the PRC can retain its flexibility by continuing to reject principles of international law to which, she may argue, she is not a party. And as long as other nations of the world contribute to a growing anarchy of the seas through unilateral deviations from accepted international legal norms, the Chinese can continue to exult in "great disorder under heaven."

NOTES

1. U.S. Dept. of Commerce, *Foreign Broadcast Information Service—Daily Report, People's Republic of China*, 14 May 1975, p. A1. (Hereinafter cited as FBIS.)
2. *Ibid.*, p. A4.
3. John E. Moore, ed., *Jane's Fighting Ships 1974-1975* (New York: Franklin Watts, 1974), pp. 76-82, 641; International Institute for Strategic Studies, *The Military Balance 1974-1975* (London: International Institute for Strategic Studies, 1974), pp. 53-54.
4. *Survey of the China Mainland Press*, 8 May 1962, p. 27. (Hereinafter cited as SCMP.)
5. United Nations Food and Agriculture Organization, *Yearbook of Fishery Statistics—Catches and Landings, 1972* (New York: Unipub, Inc., 1973), p. 96.
6. SCMP, 2 August 1972, p. 115; SCMP, 2 March 1973, p. 18; SCMP, 12 April 1973, p. 142; *Survey of the People's Republic of China Press*, 11 April 1974, p. 115 (hereinafter cited as SPRCP); SPRCP, 1 May 1974, p. 133; SPRCP, 18 July 1974, p. 184; SPRCP, 8 November 1974, p. 256.
7. SPRCP, 14 January 1975, p. 64.
8. Clyde H. Farnsworth, "Big Rise in China Oil Output Foreseen," *The New York Times*, 12 May 1975, p. 2.
9. John R. Dewenter, "The East China and Yellow Seas," *United States Naval Institute Proceedings*, May 1975, p. 197.
10. SPRCP, 13 January 1975, p. 30.
11. *Ibid.*, 6 November 1974, p. 143.
12. *Ibid.*
13. Lloyd's Register of Shipping, *Statistical Tables 1974* (London: Lloyd's Register Printing House, 1974), p. 3.
14. Dewenter, p. 199.
15. Dick Wilson, "Orders: China Shopping Spree in Britain and Japan," *Far Eastern Economic Review*, 15 November 1974, p. 62.
16. Dewenter, p. 199.
17. SPRCP, 12 June 1974, p. 113; SPRCP, 21 August 1974, p. 114.
18. *Peking Review*, 18 September 1958, p. 21.
19. Jerome A. Cohen and Hungdah Chiu, *People's China and International Law, A Documentary Study* (Princeton, N.J.: Princeton University Press, 1974), p. 6.
20. *Ibid.*, pp. 467-468.
21. SPRCP, 16 July 1974, pp. 108-109.
22. *Ibid.*, 15 July 1974, p. 41.
23. John Norton Moore, "U.S. Position on Law of the Sea Reviewed," *The Department of State Bulletin*, 15 April 1974, p. 398.
24. *Ibid.*
25. United Nations, *Summer Session, Seabed Committee, A/AC.138/SC.II/L.34* (New York: 16 July 1973), p. 72.
26. SPRCP, 8 August 1974, p. 120.
27. United Nations, Third Conference on the Law of the Sea, *Second Session, Second Committee, Provisional Summary Record of the Thirteenth Meeting, A/CONF.62/C.2/SR.13* (Caracas: 26 July 1974), p. 11. (Hereinafter cited as A/CONF.62.)
28. SPRCP, 9 September 1974, p. 33.
29. *Ibid.*
30. A/CONF.62/C.2/SR.13, 26 July 1974, p. 12.
31. John R. Stevenson, "Address to the Plenary Session of the Law of the Sea Conference," *United States Department of State Press Release 301*, 11 July 1974, p. 3.
32. SPRCP, 31 July 1974, p. 119.
33. *Peking Review*, 12 July 1974, p. 16.
34. SPRCP, 19 August 1974, p. 39.
35. John R. Stevenson, "Address Before Committee Three of the Law of the Sea Conference," *United States Department of State Press Release 317* (Caracas: 26 July 1974), pp. 1-6.
36. *Ibid.*
37. United Nations, Third Conference on the Law of the Sea, *Second Session, First Committee, Provisional Summary Record of the Eighth Meeting, A/CONF.62/C.1/SR.8* (Caracas: 19 July 1974), p. 11.
38. SPRCP, 1 August 1974, p. 195.

39. Moore, p. 401.
40. Carlyle E. Maw, et al., "Department Reports to Congress on Law of the Sea Conference and Discussed Legislation on 200-Mile Fisheries Jurisdiction," *The Department of State Bulletin*, 23 September 1974, p. 394.
41. *Peking Review*, 26 July 1974, p. 8.
42. John R. Stevenson, "Address Before Committee One of the Law of the Sea Conference," *United States Department of State Press Release 313*, 17 July 1974.
43. SPRCP, 6 September 1974, p. 177.
44. *Peking Review*, 2 August 1974, p. 12.
45. *Ibid.*, pp. 11-12.
46. Maw, et al., pp. 390-391.
47. *United States Department of State Press Release 248*, 12 May 1975, p. 1.
48. United Nations, Third Conference on the Law of the Sea, *Informal Single Negotiating Text, A/CONF.62/WP.8/Part II* (Geneva: 9 May 1975), p. 6.
49. Cohen and Chiu, pp. 467-468.
50. FBIS, 6 May 1975, pp. A20-21.
51. A/CONF.62/WP.8/Part II, 9 May 1975, pp. 8-13.
52. *Department of State Press Release 248*, 12 May 1975, p. 3.
53. FBIS, 1 April 1975, p. A16.
54. Interview with Professor Robert Friedheim, Center for Naval Analysis, Rossly, VA., 20 May 1975.
55. *Ibid.*
56. *Department of State Press Release 248*, 12 May 1975, p. 3.
57. FBIS, 30 April 1975, p. A24.
58. A/CONF.62/WP.8/Part II, 9 May 1975, pp. 19, 20.
59. *Ibid.*
60. Interview with Myron Nordquist, Office Director, Office of Law of the Sea Negotiations, Department of State, Washington, D.C., 21 May 1975.
61. A/CONF.62/WP.8/Part II, 9 May 1975, p. 21.
62. FBIS, 1 May 1975, p. A36.
63. A/CONF.62/WP.8/Part II, 9 May 1975, p. 24.
64. SDPR 248, 12 May 1975, p. 3.
65. Nordquist interview.
66. FBIS, 22 April 1975, pp. A30-A31.
67. A/CONF.62/WP.8/Part III, 9 May 1975, p. 18.
68. *Department of State Press Release 248*, 12 May 1975, p. 4.
69. Friedheim interview.
70. Nordquist interview.
71. *Ibid.*
72. Interview with Dr. Tao-tai Hsia, Chief, Far Eastern Law Division, Library of Congress, and lecturer on International Law, George Washington University, Washington, D.C., 23 May 1975.
73. *Peking Review* 5 July 1974, pp. 9-11.
74. SPRCP, 17 July 1974, p. 149.
75. *Ibid.*, 21 February 1975, p. 121.
76. Dewenter, p. 208.
77. Friedheim interview.
78. *Ibid.*
79. United Nations Food and Agriculture Organization, p. 96.
80. SCMP, 21 March 1973, p. 126; SPRCP, 23 May 1974, p. 205; 2 October 1974, p. 74; 7 October 1974, p. 32; 14 January 1975, p. 64.
81. Dewenter, p. 197.
82. SPRCP, 6 November 1974, p. 144.
83. Leo Goodstadt, "Oil Provides China's Solution," *Far Eastern Economic Review*, 13 December 1974, p. 53.
84. Friedheim interview.
85. Choon-Ho Park, "The Sino-Japanese-Korean Sea Resources Controversy and the Hypothesis of a 200-Mile Economic Zone," *Harvard International Law Journal*, Winter 1975, p. 40.
86. FBIS, 20 June 1974, pp. A5-A6.
87. Park, p. 42.
88. *Ibid.*, pp. 42-43.

89. Adda B. Bozeman, "Law, Culture and Foreign Policy: East Versus West," *Asian Affairs, An American Review*, November-December 1973, pp. 114-115.

90. Cohen, p. 10.

91. James Chieh Hsiung, *Law and Policy in China's Foreign Relations, A Study of Attitudes and Practice* (New York: Columbia University Press, 1972), pp. 16-19.

92. Hsia interview.

93. Bozeman, p. 116.

94. SPRCP, 19 February 1975, p. 54.

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