

The background of the cover features several stylized, light green leaf motifs scattered across a pale yellow gradient. These motifs are positioned at various angles and sizes, adding a naturalistic touch to the design.

CHINA AND INTERNATIONAL LAW

The Boundary Disputes

Byron N. Tzou

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THE BOUNDARY DISPUTES

Byron N. Tzou

PRAEGER

New York
Westport, Connecticut
London

Library of Congress Cataloging-in-Publication Data

Tzou, Byron N.

China and international law : the boundary disputes / Byron N. Tzou.

p. cm.

Includes bibliographical references.

ISBN 0-275-93462-4 (alk. paper)

1. China—Boundaries. I. Title.

D737.T96 1990

911'.51—dc20 89-23098

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Library of Congress Catalog Card Number: 89-23098

ISBN: 0-275-93462-4

First published in 1990

Praeger Publishers, One Madison Avenue, New York, NY 10010

A division of Greenwood Press, Inc.

Printed in the United States of America



The paper used in this book complies with the Permanent Paper Standard issued by the National Information Standards Organization (Z39.48-1984).

10 9 8 7 6 5 4 3 2 1

To
My Family

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ACKNOWLEDGMENTS

There are a number of people to whom I am deeply indebted for support, assistance, encouragement, and guidance in completing this book. First there is my teacher, Professor C. Neale Ronning, who closely read the entire manuscript. He provided me with invaluable suggestions and careful corrections, and without his wisdom and guidance I could not have completed this work.

I also owe a deep debt of gratitude to Professor Stanford Lyman. He taught me to gear theory with practice, and provided me with invaluable resources. I remain indebted to Professor Jacob Landynski whose exacting methodology prepared me for the academic world.

A special debt of gratitude goes to Professor Adamantia Pollis, whose continued encouragement led me to complete my studies and whose warm concern helped me throughout this endeavor.

Special thanks, too, to Professors Jerome A. Cohen and Hungdah Chiu who stirred my interest in China and international law when I was doing research at Harvard Law School. Both have enriched my life as a scholar.

My thanks also to Tom Lane, freelance writer, and one of my best friends, who helped with organization, style, and general editing. His tireless counsel and patience are greatly appreciated. I am indebted, too, to Ms. Lilian Solzman, who substantially improved the final manuscript. Despite their help, inevitable errors remain, and for these I take full responsibility.

Last but not least, my indebtedness goes to my family: to my parents whose love and expectations have always motivated me to achieve; and to my wife, Joan, with two small children, who gave me understanding and support, and endured many domestic hardships so that I could complete this work. To her I will be forever grateful.

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China and International Law

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INTRODUCTION

One of the most intractable issues in the People's Republic of China's (PRC) foreign policy has been her boundary questions. As each nation may have its own peculiar questions regarding its boundaries, China has her own. How has China worked to settle her boundary disputes and how successful has she been?

Scholars may approach China's boundary questions through different perspectives. They can examine China's cultural heritage and historical status because the Chinese empire before the middle of the nineteenth century controlled a large part of the Asian continent, extending from Siberia all the way to Indochina. Scholars have found that nationalism is a supremely important factor, contributing to contemporary China's determination of boundary claims.¹ The Chinese have never lost their fundamental conviction that they would ultimately dominate Asia.² Harold C. Hinton said that "the Chinese seem traditionally to have been unwilling to concede that territory once gained by the Chinese empire could ever be permanently lost, even if it was formally ceded to a foreign power."³ Therefore, China's effort to consolidate her territorial integrity has been termed, by an Indian writer, "territorial Sino-centralism."⁴

The Chinese territorial grievance was demonstrated in a map published in a school textbook in Shanghai, 1954, showing China's lost territories comprising of Siberia, Outer Mongolia, Korea, Ryukyu, Indochina, and islands in the Indian Ocean.⁵ This map raised intense academic interest. A. Doak Barnett, for example, observed:

It is difficult to predict what other territorial claims Communist China might attempt to assert by force. . . . Peking has not made any official claims to other territories

which China has controlled or claimed at sometime in the past, including parts of Vietnam and Korea, Outer Mongolia, and the Soviet Khabarovsk and Maritime provinces. It seems unlikely to do so now, but it might decide to put forth irredentist claims to some of these areas in the future.⁶

This historical and cultural approach reveals the nationalistic feeling of the Chinese people. Barnett's observation implied that China might go to any lengths to settle boundary disputes in her favor. Only the lack of military strength has kept her in check to date. If China puts the slogan of "recovering the lost territories" into practice, then, she will work to change the status quo of the world order and will definitely be condemned as an imperialist.⁷ A. M. Halpern has criticized this *a priori* condemnation of China:

The "Middle Kingdom" thesis: The real policy of CPR[Chinese People's Republic] is to restore traditional Chinese suzerainty is a defined portion of Asia and nothing more, this thesis seems clearly not to correspond to the record. If it were true, it would imply that Chinese Communist foreign policy is not oriented towards the international system that now exists, but towards one that expired over a century ago.⁸

The 1954 map was also read as "designed merely to convey the PRC's sense of historical grievance vis-à-vis the imperialist West and Japan," and not as a project of irredentism.⁹

Writers also have studied diplomatic history to discover China's intentions regarding her boundary questions. They have seen the Sino-Indian border conflicts as the result of ideological¹⁰ and power struggles in Asia.¹¹ The Chinese-Soviet border conflicts in the Ussuri River they saw as a by-product of ideology,¹² a conflict of nationalism,¹³ or a fusion of ideology and territorial demand.¹⁴ They have concluded their studies branding either Russia,¹⁵ India,¹⁶ or China as the aggressor.¹⁷ They have used the same sources but have drawn different conclusions.¹⁸

Diplomatic historians have also discussed the formation of China's present boundaries in general studies of international relations¹⁹ or monographs on China's boundaries.²⁰ From their studies, we know how the present Chinese boundaries were shaped; which boundaries were defined, uncertain, demarcated, and undemarcated, and what the problems are.

The second approach to the study of the Chinese boundary questions is to view the questions from the perspective of international law. Socialist states have argued that traditional norms of international law were formed among capitalist states in order to meet the needs of a capitalist world order. Scholars of international law severely criticized the capitalist concept of territorial acquisition.²¹ Early statements made by revolutionary government and articles published by scholars of international law have raised questions as to whether or not traditional norms of international law would be accepted by the emerging socialist segment of international society.²² Studies of socialist attitudes toward

international law have provided some of the answers. This study seeks to shed additional light on the matter.

Early study in the 1960s of Communist China's general attitude toward international law was provided by Hungdah Chiu, who observed that "China's past experience . . . has some influence on the view of the Communist Chinese towards international law,"²³ and that "Communist Chinese theory and practice with respect to the conclusion of treaties is different from that of the West."²⁴ Both in theory and practice, James C. Hsiung concluded that the PRC accepted "certain norms of the established code of international conduct but rejected others."²⁵ Still another scholar observed that "while it [the PRC] showed no desire to be confined by legal technicalities, the Chinese government did not demean international law as a regulator of interstate behavior or attack it on ideological ground."²⁶ No study specifically deals with Chinese boundary questions except a few paragraphs in James Hsiung's book.²⁷

After the Sino-Indian boundary disputes accelerated, the legal advisor to the Indian Ministry of External Affairs, R. Krishna Rao, discussed the entire Sino-Indian boundary questions based on international law,²⁸ and an Indian writer published his own "perspective."²⁹ Undoubtedly, the legal arguments they presented were one-sided in favor of advancing Indian boundary interests. Yet another writer accused the PRC for violating international treaty obligations.³⁰ The Chinese, too, denied the legal binding force of the so-called McMahon Line.³¹

There are unbiased observations of the Sino-Indian boundary disputes written by Western scholars of international law.³² But these works have dealt with the Chinese boundary questions in a partial manner. None of them has ever systematically analyzed the entire Chinese boundary question taking all her neighbors and international law into consideration. This book examines how the Chinese have employed international law to protect their boundary interests; it includes an examination of boundary claims, border policies, boundary settlements, boundary alignments, and armed conflicts. In order to do this, we have to first understand the Chinese Communists' attitude toward international law in general. Chapter 2 approaches this task. Chapter 3 analyzes China's border situations and the border policy in light of international law. Chapter 4 looks at the shaping of some of her boundaries, the troublesome frontiers, the disputes and some settlements. Chapter 5 specifically deals with the issue of the unequal boundary treaty; its legal problems and the ways to solve them. Chapters 6 through 8 discuss the technicalities of the boundary settlements in detail; namely, the attitudes toward the old boundary treaties, the practices involved in concluding new boundary treaties, the tangible elements determining a nation's boundary lines, the means to solve boundary questions, and the armed conflicts. Chapter 9 returns to the assumption set forth in the Introduction.

This study focuses on China's land boundaries, excluding maritime boundaries, which belongs to another field: the law of the sea. Thus, the status of islands, such as the Sino-Japanese disputed Tiao-yü-tai Islands, the Sino-