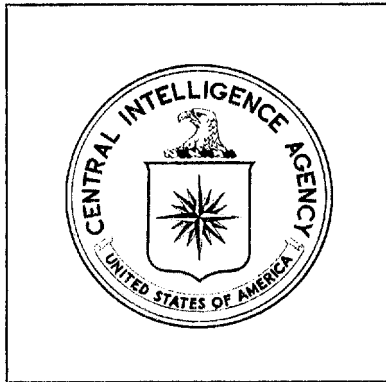


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Law of the Sea Country Study

Japan

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BGI LOS 74-12

May 1974

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FOREWORD

The Law of the Sea Country Studies are prepared to support the NSC Interagency Task Force on the Law of the Sea. The countries to be included in the series are selected on the basis of priorities suggested by the chairman of the Task Force.

Each study has two parts. Part I is an analysis of the primary geographic, economic, and political factors that might influence the country's law of the sea policy, the public and private expressions of that policy, [REDACTED]

[REDACTED] Part II provides basic data and information bearing on law of the sea matters.

This study was prepared by the Office of Basic and Geographic Intelligence. Biographic support was provided by the Central Reference Service. The study was coordinated within the Directorate of Intelligence and with the Department of State. Comments and questions may be directed to the LOS Country Studies Working Group, Code 143, Extension 2257.

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Law of the Sea Country Study Supplement

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Japan

Japan remains vitally interested in the outcome of the Law of the Sea Conference, heavily dependent as that island nation is on all phases of ocean activity. Overall, Japan's stand on LOS matters is now closer than ever to that of the United States, although some minor differences still exist. The Japanese government has been able to reconcile earlier bureaucratic differences over several controversial aspects of its LOS policies, but now faces vexing new problems in this field.

As anticipated, Japan's initial opposition to the concept of a 200-mile exclusive economic zone has given way to a more pragmatic conditional approval. Japan originally opposed the concept because of the anticipated adverse impact on its important distant-water fishing operations, but came to realize that its complete isolation on this foregone issue would only hamper the working out of ad hoc arrangements with the coastal states for continued fishing rights. Japan's strategy now is to rely on economic and technological aid offers to help secure such rights, while insisting on provisions in the LOS Treaty guaranteeing the principle of full utilization of living resources in the economic zone and protection for the established fishing rights of outside states. Vital to Japan in this regard is continued access to its most important traditional fishing grounds, the north Pacific. Reflecting its basic view that coastal state rights in the economic zone should be limited, Japan also supports a 200-mile outer limit for the continental shelf.

This supplement was prepared by the Office of Geographic and Cartographic Research to support the NSC Interagency Task Force on the Law of the Sea. The supplement updates, but is not a replacement for, BGI LOS 74-12. Comments and questions may be directed to Code 143, Extension 2257.

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Paradoxically, while decrying the actions or contemplated actions of other nations to extend their fishing or territorial seas unilaterally, Japan is now talking about possibly taking such action itself. Increased Soviet fishing operations off Japan's Pacific coastline in recent years has brought heavy political pressure on Tokyo to protect Japanese coastal fisheries either by extending the territorial waters to 12 miles from the present three, or by declaring an exclusive fishing zone of similar extent. Although the latter action would present fewer diplomatic and security headaches, the Japanese feel that it would not be as effective because the Soviets could press their traditional fishing rights in such a zone. Extension to a 12-mile territorial sea, however, would bring three important Japanese straits used by world maritime traffic -- including the Soviet Far East Fleet -- within Japan's territorial waters, raising serious political and security problems that would be compounded if this step were taken unilaterally. The Japanese government clearly would prefer to solve this dilemma by means of an LOS Treaty specifying a 12-mile territorial sea and a 200-mile economic zone, but fears that it may not be able to parry internal pressures until a treaty comes into existence.

If the Japanese straits were to come within the territorial waters of Japan, either through unilateral action or under an LOS Treaty, a conflict would arise with Japan's so-called three non-nuclear principles which preclude the making, possession, or presence of nuclear weapons in that country. Because of this inherent problem, and also because of security concerns over the growing strength of the Soviet fleet, Japan was opposed at the time of the Caracas session to the concept of unimpeded transit of straits within territorial waters, preferring instead the regime of innocent passage. Various factors, including the overriding importance to maritime Japan of the principle of freedom of navigation and the strong feelings of its treaty ally, the United States, on the straits issue, led the Japanese government to reach a consensus on unimpeded passage.

Despite expected heavy criticism of this stand by the opposition parties, the government is prepared to finesse the apparent contradiction with the non-nuclear principles on the grounds that international law takes precedence over state policy. Since this argument would be difficult to defend if Japan's territorial waters were extended unilaterally, this amounts to a strong deterrent against such action.

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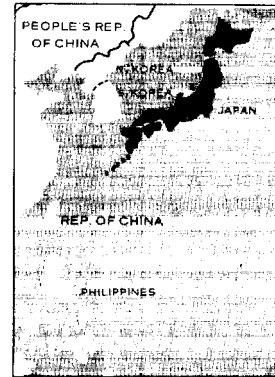
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JAPAN

Part I - Law of the Sea Analysis

A. SUMMARY

As a maritime nation and a treaty ally of the United States, Japan's basic outlook on Law of the Sea (LOS) issues coincides with U.S. views in most respects. Japan, like the United States, sees the successful achievement of a comprehensive law of the sea regime as imperative to end current unilateral actions by various states that threaten freedom of navigation and other traditional uses of the sea. Collaboration with the United States on LOS matters has been close, and coordination of effort can be expected to continue in the conference despite some differences. Certain ambiguities in Japan's position -- particularly concerning fishery and transit matters -- result from domestic political pressures and Japan's desire to enhance its image of impartiality, thereby promoting Japanese worldwide trade interests.



Japan is prepared to support the 12-mile* limit as the maximum breadth of the territorial sea, provided related matters concerning navigation and fisheries are satisfactorily resolved. Essentially, it supports the objective of reinforcing the law of the sea on the basis of the widest possible area of the high seas and the narrowest possible territorial seas. As regards the straits issue, despite its basic views on freedom of navigation, Japan has reservations concerning the free transit of warships, particularly those with nuclear weapons; it also has problems with the concept of submerged transit through straits and unrestricted overflights by aircraft.

On the question of archipelagos, Japan has a fairly sympathetic and relaxed attitude, but conditions its support for this principle on maintaining freedom of navigation in archipelago waters and on achieving agreement on a reasonable phase-out period for foreign fisheries. Japan sees a consensus emerging for a 200-mile-distance

* All distances are in nautical miles unless otherwise specified.

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criterion for the outer limit of a nation's continental shelf and appears willing to accept this. Japan supports coastal state jurisdiction over mineral resources in its economic zone, but opposes proposals for establishing exclusive rights over living resources therein.

Japan attaches great importance to the question of fisheries, traditionally a fundamental industry although comprising only a fraction of the GNP. Given its special role, fisheries will be a key and delicate issue for Japan at the LOS Conference because of domestic political considerations. Historically interested in free access to fisheries, and as a principal distant-water fishing nation, Japan is distressed by the trend toward ever greater unilateral extensions of jurisdiction by coastal states. While opposing the concept that coastal states alone have special interests with respect to coastal species, Japan realistically assumes that some accommodation to that viewpoint is inevitable. Japan seeks to prevent coastal states from claiming broad exclusive fishery zones by proposing certain preferential fishing rights for developing nations.

Japan sees the benefits in acting in concert with the United States on fishery questions, but especially opposes the U.S. position on coastal state control over anadromous species, preferring to handle this problem through regional arrangements rather than including it in the overall LOS regime. In a broader sense also, Japan espouses international fishery commissions as the best instruments for protecting its diversified fishing interests.

Japan's stand on an international Authority for the deep seabed is compatible with U.S. views. At least initially, Japan advocates keeping the machinery uncomplicated; it sees the Authority as a regulatory body for licensing exploitation activities, not an operating entity itself.

The issue of marine pollution is another important one for Japan; as in the case of fisheries, there are domestic political considerations. Japan concedes that coastal states have certain special interests in pollution control, but insists on the importance of applying international standards in order to protect navigation from arbitrary interference. Japan urges a global approach to deal with marine pollution, and, as regards enforcement, it feels that the principle of flag-state jurisdiction should continue to be applicable pending the international establishment of standardized enforcement regulations.

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As an advance nation with extensive marine interests, Japan strongly supports the principle of freedom of peaceful scientific research in the high seas. Nevertheless, it admits the need for some international standards to be applied, and also concedes that coastal states have certain rights in connection with research conducted in waters under their jurisdiction.

B. FACTORS INFLUENCING LOS POLICY

Special Geographic Features

The Japanese arc of islands, comprising the four main islands and about 3,000 smaller ones, extends some 1,700 miles from north to south off the eastern coast of Asia. At its closest point to the mainland, Japan is about 95 miles from the Korean peninsula. The Japanese islands, for the most part, have a fairly extensive shelf out to the 200-meter isobath, and the continental margin extends well seaward in certain portions of both coasts of the principal islands. To the west, Japan shares the continental shelf with the U.S.S.R., South Korea, and People's Republic of China.

Uses of the Sea

Coastal Area Mineral Resources -- Japan already is engaged in limited oil production and exploration close off its coasts, and some of the world's richest deposits of petroleum are believed located on the continental shelf shared with China and Korea. However, exploration and exploitation in many of these areas awaits agreement on jurisdictional lines, particularly in the case of China.

Living Resources -- In terms of annual catch (approximately 10 million metric tons) Japan ranks with Peru among the world's leading fishing countries, but Japanese fishing activities overall are the most diversified, extensive, and important of any nation. More than 90% of Japan's total catch is taken from the Pacific. Notwithstanding Japan's considerable distant water operations, coastal and inland fisheries account for nearly 30% of total Japanese fishing products by weight and over 50% by value. These fisheries are scattered all along the coasts of the Japanese islands and include traditional pearl, oyster, and seaweed cultures. Coastal species include herring, cod, salmon, saury, crab, sardines, mackerel, and croakers.

Offshore trawl and purse seine fisheries, particularly in the East China Sea and Yellow Sea, together with salmon and crab fisheries, produce well over 3 million tons of fish annually.

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The north Pacific salmon and king crab fisheries, regulated by Japan-Soviet and Japan-U.S. agreements, are operated by catcher vessels associated with factory ships. Distant-water activities by trawlers and seiners have considerably increased, particularly in the north Pacific; otter-trawl, factory ship operations range from New Zealand to Africa.

In addition to skipjack, pole, and line fisheries in the western Pacific, Japanese tuna long-line operations are virtually worldwide, covering the Pacific, Indian, and Atlantic Oceans and supported by a network of foreign bases and transshipment centers. Japan is also the world's leading whaling nation, with Antarctic and north Pacific expeditions producing some 120,000 tons of whale meat and coastal whaling activities adding an additional 36,000 annually.

Over 20% of the Japanese fish catch is converted into fishmeal to meet the rapidly growing demands for animal and poultry feeds. Additionally, Japanese annual exports of fish and fish products, particularly canned tuna and salmon, exceed \$330 million in value.

There are about 400,000 Japanese fishing craft -- more than the number registered in any other nation. Nearly 95% of the more than 2 million registered tons of fishing vessels are powered-craft. Despite constant modernization and increasing catches, the relative importance of the fishing industry in the total GNP, as well as in foreign trade, is diminishing as a result of the more rapid growth of other industrial sectors.

Deep Seabed Capabilities and Interests -- Japan is one of the few nations in the world capable of attempting deep seabed mining activities on a commercial scale. As a resource poor nation, there is considerable interest in this new field, and various experiments with equipment and techniques have been conducted in recent years. Although such activities ostensibly are being carried out by private Japanese enterprises, administrative guidance and some financial help is being provided by the Ministry of International Trade and Industry. At this formative juncture, considerable rivalry exists among the Japanese big business interests involved. Thus far at least one collective group has been organized to conduct seabed mining operations, but individual Japanese firms are also forming consortiums with large mining companies in the United States (e.g. Kennecott Copper) and elsewhere. Basically, Japan's views on the projected deep seabed Authority and related matters closely parallel those of the United States.

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Marine Transportation -- Merchant shipping is vitally important to Japan because its economy is so dependent on foreign trade. The Japanese merchant fleet is approaching the 9,000 mark, the largest nationally owned fleet in the world. As of 1 July 1973, the number of vessels 100 gross registered tons (g.r.t.) and over owned by the Japanese was 8,540, totaling 37,500,000 g.r.t. or 58,300,000 deadweight tons (d.w.t.). Of the total tonnage, 43.6% are tankers, 19.5% are ore/bulk carriers, and 14.6% are general cargo carriers. A major number of the tankers are in the 200,000 d.w.t. class. Japan is also engaged in an ambitious container-ship construction program.

The Japanese oceangoing merchant fleet is heavily engaged in worldwide long-haul service, operating on both a scheduled and tramp basis. Coastal shipping is the primary long-distance freight carrier in Japan, accounting for over 40% of the total volume of domestic transport carried by all modes.

Japan has some 50 major ports and more than 2,000 minor ports. With the exception of Sasebo and Yokosuka, where there are U.S. naval bases, the major ports are fundamentally commercial.

Naval and Air Transportation Considerations -- Japan's Maritime Self-Defense Force comprises only about 37,000 personnel and approximately 200 combatant ships, including 44 destroyer types and 14 submarines. The primary mission is defense of coastal waters and close-in sea approaches to Japan. With its limited resources Japan is fundamentally dependent on U.S. naval forces for protection of its maritime interests. Japan's military air arm is relatively parallel to that of the naval force as regards smallness of size and limited capabilities. In terms of civil air, however, Japan is a major world aviation power, with international routes circling the globe.

Political and Other Factors

As a maritime power (Japan is a member of the LOS "Group of Five" along with the United States, U.S.S.R., Britain, and France) and as a military and economic treaty ally of the United States, Japan's basic outlook on LOS issues coincides with American views in most respects. Collaboration and coordination with the United States on LOS matters has been close over the years, and this can be expected to continue through the actual conference sessions. Still, there are some divergencies and ambiguities in Japan's overall LOS stand, particularly concerning fisheries and strait transit aspects. Such differences arise from a combination of

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domestic political pressures and Japan's desire to enhance its neutral image, especially among the lesser developed countries, thereby protecting and promoting vital Japanese trading interests.

C. LAW OF THE SEA POLICY

Territorial Seas

Japan is fully prepared to support the 12-mile limit as the maximum breadth of the territorial sea, provided related matters concerning navigation are satisfactorily resolved. Also, international agreement on the nature and extent of special advantages to be accorded to coastal fisheries apparently will be a sine qua non for Japan's agreement to the 12-mile limit. Japan feels strongly that such special rights should be defined in clear and precise terms so that they will not leave the way open for unlimited and unjustified claims.

In any event, Japan feels that agreement on a standard limit of the territorial sea is of fundamental importance. It deplors the rash of unilateral claims made in recent years, and sees this process as eroding the legal order of the sea to the detriment of all nations. Japan, which presently holds to a 3-mile limit, views broad territorial seas or jurisdictional zones as having serious implications for world trade, conservation of fish resources, and preservation of the marine environment. Essentially, it supports the objective of reinforcing the law of the sea on the basis of the widest possible area of the high seas and the narrowest possible territorial seas.

Japan concedes the possibility that the concept of innocent passage in territorial seas may need redefinition. For instance, it recognizes that the question of the pollution threat from large oil tankers may well require an updating of the innocent passage principle. However, Japan feels strongly that internationally agreed standards on pollution control, prevention of accidents, and damage liability should be applied in the territorial sea to the exclusion of coastal state standards. In this connection, Japan sees as particularly helpful relevant conventions of the Inter-Governmental Maritime Consultative Organization (IMCO).

Straits

As a maritime nation, Japan naturally is attracted to the principle of free transit through international straits, but its position on this aspect is also being influenced by other national interests. For example, the passage of nuclear-powered vessels,

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much less that of warships equipped with nuclear weapons, is a sensitive matter for the Japanese. The concept of submerged transit and that of unrestricted overflight also present problems.

Japan recognizes that the right of innocent passage as codified in the 1958 Convention on the Territorial Sea and the Contiguous Zone is ambiguous as the term "innocent" is susceptible to narrow and arbitrary interpretation by coastal states. In view of the crucial importance of straits for international navigation, the Japanese government feels that the proposal for guaranteed freedom of transit for all ordinary merchant ships merits international support. In peacetime, the same freedom could be enjoyed by warships. Additionally, free transit of nuclear-powered ships might also be feasible provided a widely accepted international regime concerning civil liabilities of such ships could be established.

However, as regards the transit of warships equipped with nuclear weapons, Japan feels that coastal states should have the right to require their prior approval. Japan also feels that exemption of submarines from the requirement of navigating on the surface might create security problems for coastal states. Similarly, for reasons of security and public safety, Japan feels that there should be no derogation from existing rights of states to regulate aircraft flights over their territory, including territorial waters. If the regulation of flights over territorial straits is to be different from International Civil Aviation Organization regulations, then the rights and limitations must be spelled out. Japan believes that unrestricted overflight for military aircraft of narrow straits would be particularly hazardous. In any event, the idea of separate regimes for vessels and aircraft in connection with straits passage is appealing to Japan.

Although Japan does have these reservations on straits passage, it has taken pains thus far to avoid stressing them publically in deference to U.S. efforts to promote the concept of unrestricted passage. In the final analysis, Japan's position on a straits regime appears somewhat flexible, and amenable to compromise.

Archipelagos

Japan, as part of its calculated effort to accommodate the LOS viewpoints of other nations short of detriment to its own basic interests, has a fairly sympathetic attitude toward the archipelago concept. While stressing the need to keep in mind

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those aspects relating to legitimate uses of the sea -- such as freedom of navigation -- Japan feels that the fundamental problem connected with the question of archipelagos is in determining the baselines for measuring the extent of the territorial sea. Japan believes that the essential principle in this regard is that the baselines be drawn in such a way so as not to exceed 100 miles in length between any two points. Japan feels that this approach would allow the application of the archipelago concept to both the Philippines and Indonesia, even though these states might not be wholly satisfied.

Another concern of Japan as regards the archipelago concept is that of fishing rights. Japan will seek protection for its traditional fishing rights in archipelagic waters, possibly in the form of a reasonable phase-out period. This phase-out concept, together with enactment of Japan's expressed wish that there be no effect at all on fisheries in any archipelago until after a LOS convention enters into force, could assure Japanese fishing rights in archipelagos for a long time.

Coastal State Jurisdiction Beyond the Territorial Sea

Japan sees its interests largely as a maritime country, and hence tends to favor narrow limits of exclusive coastal state jurisdiction and the widest possible international seabed area. However, it has some reservations because of certain offshore seabed areas of special interest, i.e., the potentially oil and gas rich East China Sea continental shelf that extends in a long arc off Japan's western coasts.

Japan sees a consensus emerging for a 200-mile-distance criterion for the outer limit of a nation's continental shelf, and appears able to accept this. Whatever the final decision, it advocates the application of a single, uniform criterion of distance. On the question of delimitation of a continental shelf between opposite and adjacent states, Japan favors the principle of equidistance as an equitable method that should be adopted as a general rule. In this connection, Japan has had considerable success in reaching agreement with South Korea over apportionment of the potentially oil rich shelf between the two countries.

Japan fears that if coastal states are allowed to define arbitrarily the extent of the continental shelf over which they claim jurisdiction, the deep seabed area may cease to be of any economic interests from the viewpoint of the international Authority. Such a development, Japan argues, would be detrimental to the entire international community. Japan has been distressed

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by instances of unilateral extensions of jurisdictional claims by various countries in recent years, but has protested only a few of these actions, and has not had a uniform policy in this regard. The problem lies in Japan's desire to appear evenhanded in dealing with the various developing countries so as not to be accused of favoritism or prejudice.

Japan's views on coastal state jurisdictional matters were submitted to the Seabed Committee in August 1973 in its "Principles on the Delimitation of the Coastal Seabed Area" (see Annex). The principles, inter alia, stated the right of a coastal state to establish beyond its territorial sea a coastal seabed area -- extent to be determined by international agreement -- within which it would exercise sovereign rights for the exploration and exploitation of mineral resources.

Japan opposes proposals designed to establish exclusive rights of coastal states over living resources on the basis of patrimonial sea or exclusive economic zones. It argues that the extension of national sovereignty into the high seas would increase rather than decrease existing inequities; furthermore, it would prevent effective international control and management of living resources. Basically, Japan feels that freedom of the high seas should be limited and rectified where necessary, rather than having the entire concept replaced by a poor substitute, i.e., extensive coastal state jurisdiction.

Fisheries

Japan attaches great importance to the question of fisheries, traditionally a basic industry of the Japanese. Because of its limited agricultural potential, Japan has long relied on fish as an indispensable source of food and protein. Fish and fish products, much of it now imported, provide well over half of the total animal protein available.

Given the special role of fisheries in Japan, and partly as a result of foreign pressures and restrictions imposed on Japanese fishermen (fishing negotiations with the U.S.S.R. traditionally have been most difficult), the issue of fisheries will be an extremely important and delicate one for Japan at the LOS Conference. Even though fisheries represent only a tiny percentage of Japan's total GNP, there are important domestic political considerations involved.

Historically interested in free access to fisheries, and, as a principal distant-water fishing nation, Japan is distressed by the trend toward ever greater unilateral extensions of jurisdiction by

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coastal states. At the same time, Japan takes a realistic view of the inevitability of change, and its efforts in this respect have been directed at minimizing the impact on Japanese fishing interests. At LOS preparatory sessions, Japanese representatives have argued the importance of avoiding the two extremes of status quo and exclusive fishery zones. However, again in pragmatic fashion, they have stressed that whatever the final outcome on fisheries may be, the rights of those nations now engaged in fishing on the high seas must be taken into consideration, and no steps taken to cut off such rights precipitiously.

Japan counters the argument that coastal states solely have special interests and responsibilities with respect to coastal species by pointing out that distant-water fishing states also have such interests and responsibilities, i.e., coastal species have a relationship with the entire ecosystem of the seas, of which they form a part. Moreover, distant-water fishing states may equally be economically dependent on fishing for coastal species.

In response to the demands of certain coastal states at the Asian-African Legal Consultative Committee meeting in Nigeria in January 1972, Japan made a compromise proposal for a regime of fisheries on the high seas which it submitted in modified form to the UN Seabed Committee in August (see Annex). Japan proposed that a coastal state -- particularly a developing one -- be granted certain preferential fishing rights in waters adjacent to its territorial sea; the limits of these adjacent waters would be agreed upon internationally. In essence, such fishing rights would ensure the coastal states an allocation of the living resources in terms of the maximum annual catch obtainable on the basis of their individual fishing capacities.

The general rules for the protection of such preferential rights of coastal states should be flexible enough to take individual cases into account, and should be the subject of negotiation between the coastal and other states concerned. If such negotiations failed, the dispute should be referred to a body of experts for a binding decision, unless settled by other means agreed upon by the two parties. Until the dispute is settled, other states should restrain their fishing efforts in accordance with agreed interim measures. As regards highly migratory and anadromous stocks of fish, no preferential rights of catch should be recognized for coastal states.

Japan feels that it is not appropriate for a coastal nation to enforce its fishery claims by unilateral action, but instead should rely on agreement between the states concerned and with

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disputes settled by arbitration. Enforcement jurisdiction under the agreed rules should be retained by the flag states, although coastal states would have the right to inspect foreign vessels and to inform the flag state of any violations.

Japan believes that preferential fishing rights are justified only when a developing state is unable to compete with developed countries in fishing in adjacent coastal waters. Also, such preferential rights are to be temporary and are not to be considered a special right of a coastal state. Generally speaking, Japan feels that there is no need to accord preferential fishing rights to developed countries, which have sufficient financial and technological resources to make their fishing industries competitive. However, it grants that certain fisheries -- usually smallscale -- in developed countries do deserve some degree of protection in terms of the minimum annual catch required for their continued operation on existing scales.

In making its proposals, a basic aim of the Japanese is to establish the right of all nations to fish on the high seas, even though granting that some regulation is necessary because the living resources are not inexhaustible. To line up support for its views, Japan argues that broad exclusive fishing zones would harm the legitimate interests of noncoastal states, and would militate against the sound conservation and management of fish species. In this connection, Japan points out that the living resources of the high seas are not evenly distributed -- even among coastal states -- and that this makes it even more important to consider the interests of all states. Japan notes, moreover, that many developing countries are making great efforts to expand their fishing industries, and that this fact must also be considered.

Japan agrees with the United States that the regulation of highly migratory species should be entrusted to appropriate international organizations. As regards anadromous stocks, however, Japan feels that they should be regulated by special agreements, or through international or regional fishery commissions. Japan argues that the yield of anadromous species should not be reserved for particular countries since the major part of their life cycle is spent in mid-ocean, far from any coast. Japan notes that the problem of anadromous stocks is one which mainly affects the northern hemisphere, and is already being dealt with by a number of organizations, particularly with respect to salmon. Hence, it feels that the question of anadromous species should not be discussed at all in the LOS Conference. Concerning the cost of measures to conserve anadromous species, Japan feels that all interested states should share the burden of such expenses as appropriate according to individual circumstances. It cites the

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efforts of the joint U.S.-Canada Commission for the protection and improvement of spawning grounds of the red salmon resources on the Pacific Northwest coast as a good example of how effective protection can be assured through the cooperation of interested states.

A basic viewpoint of Japan is that the question of conservation should not be treated as an allocation problem. Broadly speaking, Japan feels that all states must cooperate in the formulation and adoption of necessary conservation measures, based on many varied factors such as ecological conditions, biological characteristics of the stock concerned, etc. While endorsing the efforts of the Food and Agricultural Organization (FAO) in this complex field, Japan holds that there is, in fact, no universal solution for the problem of conserving living resources. For this reason, Japan also favors regional approaches wherein individual conservation problems can be handled flexibly through regional fishery commissions. In short, Japan urges that states make maximum use of both international and regional organizations in undertaking conservation measures; states should also strengthen the functions of existing commissions and cooperate in the establishment of new ones as needed. Of the more than twenty international or regional fishery commissions already in existence, Japan is a member of more than half of them.

Japan concedes that there are certain weaknesses in the fishery commissions in terms of ensuring effective conservation measures. For example, not all countries active in a given fishery are necessarily members of a relevant commission. Japan holds that this problem can be overcome by requiring all such countries to become members or at least comply with the conservation measures taken by that commission. Japan notes, for example, that the Inter-American Tropical Tuna Commission has solved this problem by convening intergovernmental meetings outside the commission so that nonmembers also can become involved in the commission's regulations. As regards the argument that international regulations often have been too few and too late because of the difficulty in obtaining acceptance of scientific evaluations, Japan believes that there should be acceptance of the principle that conservation measures must be adopted on the basis of the best evidence available, and that no state should be exempt from the obligation to take conservation measures on the ground that insufficient scientific findings are lacking.

Deep Seabed

Because of the as yet many unknowns concerning the economic potential of the deep seabed, Japan cautions against establishing at the outset an elaborate international machinery, or Authority,

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that might be out of proportion to actual needs, or an expensive machinery that might absorb all or most of the revenues accruing from the exploitation of the seabed resources. In short, the machinery should be both effective and practical. Japan also opposes any interim moratorium on exploratory or experimental activities, arguing that such advance work is vital to the development of an adequate technology by the time the international machinery is established.

Japan sees the role of the Authority as a regulatory body for licensing the development activities of the international seabed. In addition, the Authority should be truly international in nature, and organized in such a way as to accommodate the interests of all member states in an equitable manner. Japan believes that benefit sharing criteria should be specified in the treaty that establishes the Authority.

The principal organs of the machinery should be so composed as to make it possible for the views of member states at varying stages of economic development and with diverse economic interests to be reflected in a fair and balanced manner. With such considerations in mind, the Japanese draft, "Outline of a Convention on the International Seabed Regime and Machinery," (see Annex) presented in November 1971, suggests the establishment of four principal organs within the International Seabed Authority: an Assembly, Council, Tribunal, and Secretariat. As in other draft proposals on this subject, the Assembly would include all members, the Council would have limited membership, and the Secretariat would have a permanent staff.

In the Assembly, each member state would have one vote, and decisions would be on the basis of a majority of those present. The Assembly would exercise general supervision over the work of the machinery and would elect Council members, in addition to having other powers.

The Council would be composed of 24 members: six nations with advanced technology would be designated; the other 18 would be elected, of which at least 12 would be developing countries, and three landlocked nations. Each member would have an equal vote. Voting on procedural questions would be by majority of those present, and by a two-thirds majority on other matters. The Council would have the important powers and functions, inter alia, of establishing rules and procedures in respect of such matters as the issuance of exploration and exploitation licenses; collection and distribution of revenues from license fees, rental fees, and royalties; prevention of pollution resulting from the

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exploration and exploitation of the seabed resources; supervision of resource development activities in coordination with national authorities; and any other matter necessary for the development of the seabed resources. Japan supports the idea of limiting each state to a certain number of mining sites. Presumably, the determination of site quotas would also be a function of the Council.

While recognizing the need to establish a competent and independent Tribunal, the Japanese proposal seeks to avoid the premature establishment of an elaborate institution to settle disputes. Therefore, it suggests the establishment of an ad hoc Tribunal consisting of three arbitrators, of which one each shall be designated by the respective parties to a dispute, and the third member -- who would act as chairman -- to be chosen jointly by them. Decisions of the Tribunal shall be by majority vote. Japan also has privately put forth the idea of some possible role in this for the International Court of Justice.

Japan views the Secretariat as an important organ of the international machinery, and suggests that the Secretary-General be appointed by the Council and entrusted with certain specified functions, possibly including involvement in the issuance and revocation of licenses.

In its proposed method of operations, the Authority would issue licenses only to member states, but members could then issue sublicenses to operators. The Authority would not be involved in actual operations, but would confine itself to a supervisory and regulatory role. The Authority would submit periodic reports of its activities to the appropriate organs of the UN.

Pollution

Japan accords high priority to environmental pollution control, and has been in close consultation with the United States on this subject over the past several years. The problem of marine pollution is of special concern to Japan in view of its heavy dependence on the sea as a source of foodstuffs. In particular, the Japanese government has long been sensitive to the problems of oil spillage from ships and the release of radio-active materials in the sea. In 1970, Japan enacted marine pollution prevention legislation that not only enforces the strict controls over oil discharge by ships adopted by IMCO in 1969, but also prohibits the discharge in Japanese waters of all kinds of harmful wastes by ships and marine installations.

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In the larger sense, Japan feels that the only effective way to deal with marine pollution is through a global approach, in which all nations would observe internationally set rules and standards in every part of the world ocean. While willing to grant coastal states certain powers of investigation and prosecution concerning pollution trespasses in an area -- to be delimited by international agreement -- adjacent to their territorial seas, Japan insists that applicable standards be international, not unilaterally fixed by individual states. Japan argues that the latter case would result in a confusing array of inconsistent and arbitrary controls which would not only prove ineffective in dealing with marine pollution -- which knows no zonal boundaries -- but also would pose a threat to freedom of navigation.

Even after international rules are agreed upon, Japan holds that the powers of enforcement should not be delegated entirely to the coastal states. The proposal submitted by Japan to the Seabed Committee in August 1973 on enforcement measures by coastal states for the purpose of preventing marine pollution (see Annex) reflects in part Japan's appreciation of the desire of coastal states for a greater role in the preservation of the marine environment. However, another important factor behind Japan's proposal is strong domestic pressure, as focused by the Environment Ministry, for combating marine pollution. Ministry spokesmen have argued the need for the enforcement of discharge standards within set pollution control zones in order to protect Japan's coasts. But this argument is also a tactical ploy to encourage broad agreement on international standards for vessels.

Japan feels that the most clear-cut solution for the elimination of marine pollution is the control of pollutants at their source. From this viewpoint, the LOS Conference should endeavor to agree upon a set of rules and standards in the form of a treaty to be applied universally to control the sources of pollution regardless of location; such international pollution standards, however, should take into account special areas. For the comprehensive measures needed to preserve the marine environment, Japan feels that national, regional, and global approaches must be coordinated so as to provide a basis for mutual assistance in data acquisition, exchange of information, and monitoring. While recognizing that measures for the control of land-based pollution should be taken primarily at the national level, Japanese representatives have expressed the hope that the LOS Conference might agree on basic guidelines for rules to combat this major source of marine pollution in order to reduce the present lack of uniformity in national legislation.

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Japan also believes that the serious problem of marine pollution highlights the need for promoting marine scientific research, since this can help identify pollutants and their sources, and aid in analyzing the effects on all forms of marine life. It is also essential in Japan's view, that in preparing a universal treaty on the prevention and control of marine pollution, the LOS Conference utilize fully the various studies and proposals on pollution control made by such international bodies as IMCO, FAO, UNESCO, WHO, and IAEA. In particular, Japan feels that the contributions of IMCO in this field should not be undervalued. Japan suggests that a good starting point for tackling the pollution problem on an international level would be the Declaration on the Human Environment and the General Guidelines and Principles for the Preservation of the Marine Environment adopted by the Conference on the Human Environment in Stockholm in 1972. The concept of joint responsibility of states embodied in that declaration coincides with Japan's view that close cooperation among nations is essential for the prevention and control of marine pollution.

Japan is of the opinion that freedom of navigation can be maintained while attacking the problem of marine pollution by agreement on universal rules and standards to be applied by each state to its vessels. In the matter of enforcement, Japan feels that the principle of flag-state jurisdiction should continue to be applied until such time as detailed enforcement regulations can be standardized concerning judicial proceedings and punitive measures. Port state enforcement is considered by Japan to be inadequate. Japan feels that however complicated the problem of establishing a liability regime may be, such a legal framework is a basic requirement for the protection of the marine environment. Japan has suggested that a basis for the development of international rules of law relating to liability and compensation for marine pollution might well be the International Convention on Civil Liability for Oil Pollution Damage adopted at Brussels in 1969 and the supplementary Convention of 1971. On the problem of oil pollution, Japan feels that a number of pertinent international instruments already exist, including the fixing of civil liability for oil pollution damage; what is now needed is full implementation of the applicable provisions of these instruments.

Research

For Japan, with its advanced technology and extensive marine interests, scientific research in the high seas is of fundamental importance. Japan feels strongly that there is a need to guarantee

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freedom to engage in scientific research for peaceful purposes in as wide a marine environment as possible. It takes the stand that all nations -- regardless of geographic location -- as well as international organizations, should have the right to engage in, or to cooperate with others in, scientific research in the marine environment provided it is carried out in an orderly and rational manner; these views closely parallel those of the United States. Japan, in fact, has stated that it prefers the U.S. notification proposal to the consent regime of the Convention on the Continental Shelf. The U.S. proposal permits the researcher to carry out scientific research in a coastal state's economic zone without the prior consent of the coastal state; but it obligates the researcher to provide the coastal state with: 1) prior notification of plans to conduct surveys, 2) the opportunity to participate, and 3) a share in and an understanding of the resulting data. A consent regime, on the other hand, would require the researcher to secure the consent of the coastal state before conducting the surveys.

In view of greatly increased world interests, and the rather fragmentary understanding of the ocean environment, Japan feels that there is a compelling need for more extensive marine scientific research in territorial waters as well as in the high seas. For example, Japan points out that the battle against marine pollution can be most effectively assisted by the progress of scientific research in identifying pollutants and their sources and in analyzing their effects on all forms of marine life.

Japan supports the concept of the transfer of technology to developing nations, but draws a distinction between research done in the high seas and that conducted in areas within the jurisdiction of coastal states. Japanese representatives have pointed out that publication of the results of scientific research has never been a condition for freedom of such research under existing international law of the high seas. As concerns scientific research conducted within the waters adjacent to coastal states, Japan agrees that adequate information on any such research project should be supplied to the coastal state in advance, and that participation in the research work and access to the results should be guaranteed to the coastal state.

In sum, the Japanese delegation to the LOS Conference will be concerned with protecting the basic concept of freedom of marine research, while respecting certain rights of coastal states as concerns scientific research conducted in waters under their jurisdiction and recognizing the need for some international standards to apply overall.

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D. KEY POLICY MAKERS, LOS NEGOTIATORS AND ADVISERS

Japan, a constitutional monarchy under parliamentary control, is a major independent power with a viable and expanding economy, a relatively stable political and social structure, and an increasingly important world role. Executive powers are vested in the Cabinet, where the Prime Minister acts more as a mediator among competing political factions and viewpoints than as an innovative leader. Particularly as regards such a broad and complex subject as the LOS, full range of debate among the various ministries and departments -- each supported by a powerful professional bureaucracy and influenced by business tie-ins -- must occur before a consensus emerges on which eventual policy is based; this is a time-consuming process. In addition to the Foreign Affairs Ministry, other principally concerned ministries include Agriculture and Forestry (Fisheries), International Trade and Industry, Finance, Transportation, and Environment.

Japan has been extremely active in preparations for the LOS Conference; its delegation is competent and well-versed in all aspects. Japanese representatives at preparatory sessions are as follows:

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Name and Title (as they appear on the latest UN listing)

	Seabed Committee Session						Org. Conf. Dec 73
	Mar 71	Jul Aug 71	Feb Mar 72	Jul Aug 72	Mar Apr 73	Jul Aug 73	
Mr. Kenshiroh AKIMOTO Deputy Head International Economy Division Economic Affairs Bureau Ministry of Foreign Affairs				X	X	X	
Mr. Tetsuto AKUTAGAWA Staff, Office of the Legal Counsel Defense Agency						X	
Mr. Shiro EBISAWA International Affairs Division Fisheries Agency					X	X	
Mr. Hiroaki FUJII Deputy Head, Scientific Affairs Division United Nations Bureau Ministry of Foreign Affairs	X						
Mr. Takashi HASEGAWA Deputy Head International Affairs Division Secretariat to the Minister Environment Agency					X	X	
Mr. Takumi HOSAKI Deputy Director-General Treaties Bureau Ministry of Foreign Affairs			X				
*Mr. Takeo IGUCI Counsellor Permanent Mission to the UN	X	X	X	X	X	X	X
*Mr. Ryuichi ISHII Office for the Law of the Sea Ministry of Foreign Affairs					X	X	



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Name and Title	Seabed Committee Session						Org. Conf. Dec 73
	Mar 71	Jul Aug 71	Feb Mar 72	Jul Aug 72	Mar Apr 73	Jul Aug 73	
Mr. Toshio ISOGAI International Economy Division Economic Affairs Bureau Ministry of Foreign Affairs	X		X				
Mr. Kunio KATAKURA Second Secretary Permanent Mission to the UN			X				
Mr. Hiroshi KAWAGUCHI Deputy Head, Legal Affairs Division Treaties Bureau, Ministry of Foreign Affairs	X						
Mr. Kenzo KAWAKAMI Counsellor Embassy of Japan in USSR				X		X	
Mr. Seiro KAWASAKI First Secretary Permanent Delegation of Japan to the International Organizations	X						
Mr. Atsushi KAWASHIMA Secretary Marine Development Division Mineral, Oil and Coal Mining Bureau Ministry of International Trade and Industry	X						
Mr. Yutaka KAWASHIMA First Secretary Permanent Mission to the UN			X	X	X	X	
Mr. Hirotsune KOIDE Researcher Scientific Affairs Division United Nations Bureau Ministry of Foreign Affairs				X		X	

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Name and Title	Seabed Committee Session						Org. Conf. Dec 73
	Mar 71	Jul Aug 71	Feb Mar 72	Jul Aug 72	Mar Apr 73	Jul Aug 73	
*Mr. Naohiro KUMAGAI Head Legal Affairs Division Treaties Bureau Ministry of Foreign Affairs				X	X		
Mr. Takakazu KURIYAMA Head of Legal Affairs Division Treaties Bureau Ministry of Foreign Affairs		X					
Mr. Keiichi NAKAJIMA Counsellor Production Department Fisheries Agency					X		
Mr. Jun-ichi NAKAMURA Deputy Head Legal Division United Nations Bureau Ministry of Foreign Affairs			X				
Mr. Chusaku NOMURA Deputy Chief Science Division United Nations Bureau Ministry of Foreign Affairs		X	X	X			
Mr. Tohsihiko OBA Director Production Department Fisheries Agency				X			
*Dr. Shigeru ODA Professor of International Law, Tohoku University Special Assistant to the Ministry of Foreign Affairs	X	X	X	X	X	X	X

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Name and Title	Seabed Committee Session						Org. Conf. Dec 73
	Mar 71	Jul Aug 71	Feb Mar 72	Jul Aug 72	Mar Apr 73	Jul Aug 73	
*H.E. Mr. Motoo OGISO Ambassador Extraordinary and Plenipotentiary Deputy Permanent Representative to the UN	X	X	X	X	X	X	X
Mr. Chun-ichi OGUCHI Special Adviser to the Ministry of Agriculture and Forestry						X	
Mr. Toshihiko OHBA Director Marine Fisheries Department Fisheries Agency						X	
Mr. Sozaburo OKAMATSU Deputy Head Marine Development Division Mineral, Oil and Coal Mining Bureau Ministry of International Trade and Industry					X		
Mr. Iwao OKAMOTO Official Marine Development Division Mineral, Oil and Coal Mining Bureau Ministry of International Trade and Industry				X			
Mr. Y. OKAWA Minister Permanent Mission to the UN		X		X			
*Mr. Kenzo OSHIMA Official for the Law of the Sea Ministry of Foreign Affairs		X	X	X	X	X	
Mr. Koji OTA Adviser to the Ministry of Agriculture and Forestry					X		

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Name and Title	Seabed Committee Session						Org. Conf. Dec 73
	Mar 71	Jul Aug 71	Feb Mar 72	Jul Aug 72	Mar Apr 73	Jul Aug 73	
Mr. Hisashi OWADA Head of the Political Affairs Division United Nations Bureau Ministry of Foreign Affairs							X
Mr. Tatsuo SAITO First Secretary Embassy of Japan, Rome	X	X				X	
Mr. Takuji SHINDO Head Marine Development Division Ministry of Transport				X	X	X	
*H.E. Mr. Shinichi SUGIHARA Ambassador Director-General Office for the Law of the Sea Conference Ministry of Foreign Affairs					X	X	X
Mr. Yoji SUGIYAMA Deputy Head International Resources Division Economic Affairs Bureau Ministry of Foreign Affairs			X				
Mr. Katsunari SUZUKI First Secretary Permanent Mission to the UN					X		X
Mr. Michinao TAKAHASHI Deputy Head Marine Development Division Mineral, Oil and Coal Mining Bureau Ministry of International Trade and Industry		X	X				

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Name and Title	Seabed Committee Session						Org. Conf. Dec 73
	Mar 71	Ju1 Aug 71	Feb Mar 72	Ju1 Aug 72	Mar Apr 73	Ju1 Aug 73	
Mr. Kojero TAKANO Second Secretary Permanent Mission to the UN		X					
*Mr. Ryuichi TANABE Deputy Head International Affairs Division Fisheries Agency			X	X	X	X	
Mr. T. TANAKA Vice-Director International Economic Division Ministry of Foreign Affairs		X					
*Mr. Yoshitomo TANAKA Head, Scientific Affairs Division United Nations Bureau Ministry of Foreign Affairs					X		X
Mr. Shunji YANAI First Secretary Permanent Mission to the UN							X
Mr. Mitsuo YOSHIDA Official Specialized Agencies Division United Nations Bureau Ministry of Foreign Affairs					X		

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Part II - Background Information

Geography

World region: East Asia

Category: Island

Bordering bodies of water: Sea of Japan, Pacific Ocean, Sea of Okhotsk, Philippine Sea, East China Sea, Korea Strait, Inland Sea

Bordering semienclosed sea: Sea of Japan, Sea of Okhotsk, East China Sea, Inland Sea

Bordering straits: Soya Kaikyo or La Perouse Strait, Notsuke Strait, Tsugaru Kaikyo, Osumi Kaikho or Ban Diemen Strait, Tanegashima Kaikyo or Vincennes Strait, Suwanose Suido, Anami Strait, Nakanoshima Suido, Tokapa Kaikho, Yakushima Kaikyo, Western Chosen or West Korea Strait, Strait between Oki Gunto Dogo and Honshu, Sado Kaikyo, Okushiri Kaikyo, Rishiri Suido

Area of continental shelf: 140,100 sq. n. mi. (includes insular dependencies); shared with U.S.S.R., South Korea, People's Republic of China, Republic of China

Area to 200 n. mi. limit: 1,126,000 sq. n. mi. (includes insular dependencies); shared with U.S.S.R., South Korea, People's Republic of China, Republic of China

Area to edge of continental margin: 440,900 sq. n. mi.

Coastline: 7,500 mi.

Land: 143,000 sq. mi.

Population: 109,022,000

Industry and Trade

GNP: \$293.8 billion (1972, at 309 yen=US\$1); \$2,770 per capita

Major industries: metallurgical and engineering industries, electrical and electronic industries, textiles, chemicals

Exports: \$28.6 billion (f.o.b., 1972); machinery and equipment, metals and metal products, textiles (79%)

Imports: \$19.1 billion (f.o.b., 1972); fossil fuels, metal ore and other raw products, foodstuffs, machinery and equipment (76%)

Major trade partners: exports - 31% U.S., 8% EC, 6% EFTA, 5% Communist countries, 4% Middle East, 19% Far East; imports - 25% U.S., 6% EC, 4% EFTA, 14% Far East, 5% Communist countries, 15% Middle East (1972)

Merchant marine: 8,540 ships (100 GRT or over) totaling 37,500,000 GRT or 58,300,000 DWT; percentage of total tonnage - 43.6% tankers, 19.5% ore/bulk carriers, 14.6% general cargo

Tanker fleet: 377 tankers

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Marine Fisheries

Catch: 9.9 million metric tons (1971) valued at \$2.77 billion (1970)
Economic importance: national significance (supplies over half the available animal protein); over \$330 million export value; 1.37% of GNP (1969)
Ranking: 1st in diversification value and total tonnage (1972)
Nature: diversified, primarily distant-water fishing, but coastal fisheries also important
Other fishing areas: worldwide
Species: Alaska pollack, mackerel, tuna, squid, and anchovy
Marine fisheries techniques: modern, predominantly mechanized
Other countries fishing off coast: U.S.S.R. and South Korea

Petroleum Resources

Petroleum: production - onshore 4.7 million 42-gal. bbl., offshore .8 million 42-gal. bbl. (onshore .6 million metric tons, offshore .1 million metric tons); proved recoverable reserves - onshore 14 million 42-gal. bbl., offshore 15 million 42-gal. bbl. (onshore 2 million metric tons, offshore 2 million metric tons) (1971)
Natural gas: production - 85.4 billion cubic feet (2.4 billion cubic meters); proved recoverable reserves - onshore 400 billion cubic feet (10 billion cubic meters) (1971)

Navy

Ships: 44 destroyer-type ships, 14 submarines, 31 coastal patrol ships and craft, 46 mine warfare ships and craft, 5 amphibious ships, 8 auxiliary ships, 48 amphibious craft, and 296 service craft (an additional force of over 400 patrol and service craft operates under the jurisdiction of the Maritime Safety Agency)

Government Leaders

Kakuei Tanaka, Prime Minister; Masayoshi Ohira, Foreign Minister

Bilateral Conventions

Japan-New Zealand, Fisheries Agreement, 12 July 1967
Japan-Mexico, Fisheries Agreement, 7 March 1968
Japan-Australia, Fisheries Agreement, 27 November 1968
Japan-U.S.S.R., Fisheries Agreement, Northwest Pacific Ocean, 14 May 1956
Japan-U.S.S.R., King Crabs Agreement, 16 April 1970
Japan-U.S., Fisheries Agreement, 11 December 1970
Japan-U.S., Salmon Fisheries Agreement, 11 December 1970
Japan-U.S., King and Tanner Crabs Agreement, 11 December 1970
Japan-Republic of Korea, Fisheries Agreement, 22 June 1965

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Multilateral Conventions

Japan-U.S.-Canada, International Convention for the High Seas Fisheries of the North Pacific Ocean, 9 May 1952
 Japan-Norway-U.S.S.R., Antarctic Pelagic Whaling Agreement, 29 September 1971
 Japan-U.S.S.R.-U.S., North Pacific Whaling Agreement, 30 July 1971
 Convention on the Territorial Sea and Contiguous Zone, 10 June 1968
 Convention on the High Seas, 10 June 1968
 International Convention for the Prevention of Pollution of the Sea by Oil, 21 August 1967
 Public Law Convention, 6 April 1971
 Nuclear Test Ban Treaty, 15 June 1964
 Seabed Arms Limitation Treaty, 21 June 1971
 IMCO Convention, 17 March 1958
 IHO Convention, 12 June 1969

Present Ocean Claims*

<u>Type</u>	<u>Date</u>	<u>Terms</u>	<u>Source/Notes</u>
Territorial Sea	1870	3 n. mi.	<i>Party to Convention on the Territorial Sea (June 10, 1968)</i>
Continental Shelf			Mining Law of 1950
Exclusive Fishing	1967	3 n. mi.	Law 60 of July 14, 1967 <u>GOJ Gazette of July 14, 1967</u>
Neutrality	1870	3 n. mi.	

*Principal source: Limits in the Seas, National Claims to Maritime Jurisdiction, State Dept./INR, March 1973, and Revisions.

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Action on Significant UN Resolutions

- Moratorium Resolution
(A/RES/2574 D, XXIV, 12/15/69) Against
Pending establishment of international regime, States and persons are bound to refrain from exploiting resources of or laying claim to any part of the seabed and ocean floor beyond the limits of national jurisdiction.
- LOS Conference
(A/RES/2750 C, XXV, 12/17/70) In favor
Convene in 1973 a Conference on Law of the Sea to deal with establishment of international regime for the seabed and ocean floor, and enlarge Seabed Committee by 44 members and instruct it to prepare for the conference draft treaty articles embodying international regime.
- LOS Conference, Timing and Site
(A/RES/3029 A, XXVII, 12/18/72) Adopted w/o vote
- Indian Ocean as a Zone of Peace
(A/RES/2992, XXVII, 12/15/72) In favor
Called upon littoral and hinterland states of Indian Ocean area, permanent members of the Security Council and other major maritime users of Indian Ocean to support concept that Indian Ocean should be zone of peace.
- Landlocked/Shelf-Locked Study Resolution
(A/RES/3029 B, XXVII, 12/18/72) In favor
Called for study of extent and economic significance in terms of resources, of international area resulting from each proposal of limits of national jurisdiction presented to Seabed Committee.
- Peruvian Coastal State Study Resolution
(A/RES/3029 C, XXVII, 12/18/72) Abstain
Called for study of potential economic significance for riparian states, in terms of resources, of each of the proposals on limits of national jurisdiction presented to Seabed Committee.
- Permanent Sovereignty over Natural Resources
(A/RES/3016 XXVII, 12/18/72) Abstain
Reaffirmed right of states to permanent sovereignty over all their natural resources, wherever found.

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Membership in Organizations Related to LOS Interests

ADB.	Asian Development Bank
ASPAC.	Asian and Pacific Council
ECAFE.	Economic Commission for Asia and the Far East
FAO.	Food and Agriculture Organization
GATT.	General Agreement on Tariffs and Trade
IAEA.	International Atomic Energy Agency
IBRD.	International Bank for Reconstruction and Development (World Bank)
ICAO.	International Civil Aviation Organization
IDA.	International Development Association (IBRD affiliate)
IFC.	International Finance Corporation (IBRD affiliate)
IHB.	International Hydrographic Bureau
ILO.	International Labor Office
IMCO.	Inter-Governmental Maritime Consultative Organization
IMF (FUND).	International Monetary Fund
IRC.	International Red Cross
ITU.	International Telecommunications Union
OECD.	Organization of Central American States
Seabed Committee	United Nations Committee on the Peaceful Uses of the Seabed and Ocean Floor Beyond the Limits of National Jurisdiction
UN.	United Nations
UNESCO.	United Nations Educational, Scientific, and Cultural Organization
UPU.	Universal Postal Union
WHO.	World Health Organization
WMO.	World Meteorological Organization

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UNITED NATIONS

GENERAL
ASSEMBLY



Distr.
LIMITED

A/AC.138/SC.11/L.12
14 August 1972

Original: ENGLISH

COMMITTEE ON THE PEACEFUL USES OF THE
SEA-BED AND THE OCEAN FLOOR BEYOND THE
LIMITS OF NATIONAL JURISDICTION

Proposals for a Régime of Fisheries
on the High Seas

Submitted by Japan

Summary of the proposals

This paper, which contains, inter alia, a set of proposals on preferential rights of coastal States in fishing on the high seas, attempts to formulate a broad and equitable accommodation of interests of States in the exploitation and use of the living resources of the high seas, taking into account the dependence on fishing of both coastal and other States. While according a preferential right of catch to developing coastal States corresponding to their harvesting capacities and a differentiated preferential right to developed coastal States, the proposals also take into consideration the legitimate interests of other States. Thus, they seek to ensure that a gradual accommodation of interests can be brought about in the expanding exploitation and use of fishery resources of the high seas, without causing any abrupt change in the present order in fishing which might result in disturbing the economic and social structures of States. The proposals may be summarized as follows:

- (i) The proposed general rules concerning preferential rights of coastal States are intended to ensure sufficient protection for coastal fisheries of States, particularly of developing coastal States, in relation to the activities of distant water fisheries of other States, in areas of the sea adjacent to their 12-mile limit;
- (ii) Preferential rights shall entitle a developing coastal State annually to an allocation of resources that corresponds to its harvesting capacity; the rate of growth of the fishing capacity of that developing

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coastal State shall be duly taken into account to the extent that it is able to catch a major portion of the allowable catch. They shall entitle a developed coastal State to an allocation of resources necessary for the maintenance of its locally conducted small-scale coastal fishery; the interests of traditionally established fisheries of other States shall be duly taken into account in determining the part of the allowable catch thus reserved.

- (iii) Since situations vary greatly according to areas of the sea, the general rules for protection of coastal States interests shall be flexible enough, * as regards the methods to be employed to safeguard such interests, to allow the parties to adopt any measures which are effective and suited to the individual cases. The substance of protection, i.e. concrete applicable measures implementing preferential rights of coastal States, shall be the subject of negotiation between the coastal and other States concerned and shall be finalized in agreement;
- (iv) If negotiation fails, the case in dispute shall be referred to a body of experts for a binding decision unless settled by any other means to be agreed upon between the parties concerned. During the period of dispute, distant water fishing States shall assume obligations to restrain their fishing efforts according to specific plans provided for in interim measures (6.1 of the proposal).
- (v) In concluding agreement on the preferential right of a developing coastal State, international co-operation shall be carried out in the field of fisheries and other related industries between the developing coastal State and other fishing States concerned with a view to improving the effectiveness of protection of the interests of that developing coastal State;
- (vi) No special status in respect of conservation and no preferential rights of catch shall be recognized to coastal States with regard to the harvesting of highly migratory, including anadromous stocks of fish. The conservation and regulation of these stocks shall be made pursuant to international or

regional consultations or agreements, or should such be already the case, through the existing regional fishery commissions.*

- (vii) Enforcement jurisdiction under the rules shall be retained by flag States though the right of coastal States to inspect foreign vessels to identify violation, and to arrest vessels in violation for prompt delivery to the flag States, shall be recognized.

*/ The problem of conservation and regulation of anadromous stocks (e.g. salmon) is a limited one affecting a few countries in certain regions and, as such, it is already dealt with by the existing fishery bodies such as: Japan-USSR Fisheries Commission for the Northwest Pacific; International North Pacific Fisheries Commission (INPFC); International Commission for the Northwest Atlantic Fisheries (ICNAF); North-East Atlantic Fisheries Commission (NEAFC); US-Canada International Pacific Salmon Fisheries Commission.

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GENERAL PROVISIONS

1.1 The proposed régime applies to fisheries on the high seas in the areas adjacent to the limit of 12 miles from the coast of a State, measured in accordance with the relevant rules of international law (such areas hereinafter shall be referred to as "adjacent waters").

1.2 All States have the right for their nationals to engage in fishing on the high seas, subject to the present régime and to their existing treaty obligations.

1.3 The proposed régime shall not affect the rights and obligations of States under existing international agreements relating to specific fisheries on the high seas.

CONSERVATION OF FISHERY RESOURCES

2.1 Objective of Conservation measures

The objective of conservation measures is to achieve the maximum sustainable yields of fishery resources and thereby to secure and maintain a maximum supply of food and other marine products.

2.2 Obligations to adopt conservation measures

(1) In cases where nationals of one State are exclusively engaged in fishing a particular stock of fish, that State shall adopt, when necessary, appropriate conservation measures.

In cases where nationals of two or more States are engaged in fishing a particular stock of fish, these States shall, at the request of any of them, negotiate and conclude arrangements which will provide for appropriate conservation measures.

These conservation measures shall be consistent with the objective of conservation referred to in para. 2.1 above and shall be adopted having regard to the principles referred to in para. 2.3 below.

(2) In cases where conservation measures have already been adopted by States with respect to a particular stock of fish which is exploited by their nationals, a new-comer State shall adopt its own conservation measures which should be as restrictive as the existing measures until new arrangements are concluded among all the States concerned. If the existing conservation measures include a catch limitation or some other regulations not permitting nationals of the new-comer State to engage in fishing the stock of fish concerned, the States applying the existing conservation measures shall immediately enter into negotiation with the new-comer State for the purpose of concluding new arrangements. Pending such arrangements, nationals of the new-comer State shall not engage in fishing the stock concerned.

(3) States shall make use of the international or regional fishery organizations, as far as possible, to adopt appropriate conservation measures.

2.3 Basic principles relating to conservation measures

(1) Conservation measures must be adopted on the basis of the best scientific evidence available. If the States concerned cannot reach agreement on the assessment of the conditions of the stock to which conservation measures are to be applied, they shall request an appropriate international body or other impartial third party to undertake the assessment. In order to obtain the fairest possible assessment of the stock conditions, the States concerned shall co-operate in the establishment of regional institutions for surveying and research into fishery resources.

(2) No conservation measure shall discriminate in form or fact between fishermen of one State from those of other States.

(3) Conservation measures shall be determined, to the extent possible, on the basis of the allowable catch estimated with respect to the individual stocks of fish. The foregoing principle however shall not preclude conservation measures from being determined on some other bases in cases where, due to lack of sufficient data, an estimate of the allowable catch is not possible with any reasonable degree of accuracy.

(4) No State can be exempted from the obligation to adopt conservation measures on the ground that sufficient scientific findings are lacking.

(5) The conservation measures adopted shall be designed so as to minimize interference with fishing activities relating to stocks of fish, if any, which are not the object of such measures.

(6) Conservation measures and the data on the basis of which such measures are adopted shall be subject to review at appropriate intervals.

2.4 Special status of coastal States in conservation of resources

A coastal State shall be recognized as having special status with respect to the conservation of fishery resources in its adjacent waters. Thus, the coastal State will have the right of participating, on an equal footing, in any survey on fishery resources conducted in its adjacent waters for conservation purposes, whether or not nationals of that coastal State are actually engaged in fishing the particular stocks concerned. Non-coastal States conducting the survey shall, at the request of the coastal State, make available to the coastal State the findings of their surveys and researches concerning such stocks.

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Also, except for interim measures (6.1 below), no conservation measure may be adopted with respect to any stock of fish, without the consent of the coastal State whose nationals are engaged in fishing the particular stock concerned (or the majority of the coastal States in cases where there are three or more such coastal States).

A coastal State shall at the same time have the obligation to take, in co-operation with other States, necessary measures with a view to maintaining the productivity of fishery resources in its adjacent waters at a level that will enable an effective and rational utilization of such resources.

PREFERENTIAL RIGHTS OF COASTAL STATES

3.1 Preferential rights

To the extent consistent with the objective of conservation, a coastal State shall have a preferential right to ensure adequate protection to its coastal fisheries conducted in its adjacent waters.

(i) In the case of a developing coastal State:

The coastal State is entitled annually to reserve for its flag vessels that portion of the allowable catch of a stock of fish it can harvest on the basis of the fishing capacity of its coastal fisheries. In determining the part of the allowable catch to be reserved for the developing coastal State, the rate of growth of the fishing capacity of that State shall be duly taken into account until it has developed that capacity to the extent of being able to fish for a major portion^{*} of the allowable catch of the stock of fish.

(ii) In the case of a developed coastal State:

The coastal State is entitled annually to reserve for its flag vessels that portion of the allowable catch of a stock of fish which is necessary to maintain its locally conducted small-scale coastal fisheries. The interests of traditionally established fisheries of other States shall be duly taken into account in determining the catch to be reserved for such small-scale coastal fisheries.

^{*}/ e.g. Approximately 50 per cent.

3.2 Implementation of preferential rights

(1) Measures to implement the preferential rights shall be determined by agreement among the coastal and non-coastal States concerned on the basis of the proposals made by the coastal State. For the purpose of such proposals, the coastal State may seek technical assistance from the Food and Agriculture Organization of the United Nations or such other appropriate organs.

(2) The size of the preferential right of a coastal State shall be fixed within the limit of the allowable catch of the stock of fish subject to allocation, if the allowable catch for that stock is already estimated for conservation purposes. In cases where the estimate of the allowable catch is not available, the coastal and non-coastal States concerned shall agree on necessary measures in a manner which will best enable the coastal State to benefit fully from its preferential right.

(3) The regulatory measures adopted to implement the preferential right of a coastal State may include catch allocation (quota by country) and/or such other supplementary measures that will be made applicable to vessels of non-coastal States engaged in fishing in the adjacent waters of the coastal State, including:

- (a) the establishment of open and closed seasons during which fish may or may not be harvested,
- (b) the closing of specific areas to fishing,
- (c) the regulation of gear or equipment that may be used,
- (d) the limitation of catch of a particular stock of fish that may be harvested.

(4) The regulatory measures adopted shall be so designed as to minimize interference with the fishing of non-coastal States directed to stocks of fish, if any, which are not covered by such measures.

(5) Non-coastal States shall co-operate with coastal States in the exchange of available scientific information, catch and effort statistics and other relevant data.

(6) In cases where nationals of two or more coastal States which are entitled to preferential rights are engaged in fishing a common stock of fish, no coastal States may invoke their preferential right with respect to such stock without the consent of the other coastal State or States concerned. In such a case, those coastal States shall enter into regional consultations with the other States concerned with a view to implementing their preferential rights.

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(7) The measures adopted under this paragraph shall be subject to review at such intervals as may be agreed upon by the States concerned.

3.3 International Co-operation

In order to assist in the development of the fishing capacity of a developing coastal State and thereby to facilitate the full enjoyment of its preferential right, international co-operation shall be carried out in the field of fisheries and related industries between the developing coastal State and other fishing States in concluding agreement on the preferential right of that developing coastal State.

REGULATION OF HIGHLY MIGRATORY STOCKS

4.1 No special status in the conservation of resources (2.4) and no preferential rights (3.1) shall be recognized to a coastal State in respect of highly migratory, including anadromous, stocks of fish. The conservation and regulation of such stocks shall be carried out pursuant to international consultations or agreements in which all interested States shall participate, or through the existing international or regional fishery organizations should such be the case.

ENFORCEMENT

5.1 Right of control by coastal States

With respect to regulatory measures adopted pursuant to the present régime, those coastal States which are entitled to preferential rights, and/or special status with respect to conservation, have the right to control the fishing activities in their respective adjacent waters. In the exercise of such right, the coastal States may inspect vessels of other States and arrest those vessels violating the regulatory measures adopted. The arrested vessels shall however be promptly delivered to the flag States concerned. The coastal States may not refuse the participation of other States in controlling the operation, including boarding officials of the other States on the coastal States patrol vessels at the request of the latter States. Details of control measures shall be agreed upon among the parties concerned.

5.2 Jurisdiction

- (a) Each State shall make it an offence for its nationals to violate any regulatory measures adopted pursuant to the present régime.
- (b) Nationals on board a vessel violating the regulatory measures in force shall be duly prosecuted by the flag State concerned.

- (c) Reports prepared by the officials of a coastal State on the offence committed by a vessel of a non-coastal State shall be fully respected by that non-coastal State, which shall notify the coastal State of the disposition of the case as soon as possible.

INTERIM MEASURES AND DISPUTES SETTLEMENT

6.1 Interim measures

If the States concerned fail to reach agreement within six months of negotiations on measures concerning preferential rights under para. 3.1 and/or on arrangements concerning conservation measures under para. 2.2, any of the States may initiate the procedure for the settlement of disputes. Pending the settlement of disputes, the States concerned shall adopt interim measures. Such interim measures shall in no way prejudice the respective positions of any States concerned with respect to the dispute in question.

- (a) In cases where the limitation of catch is disputed, each State in dispute shall take necessary measures to ensure that its catch of the stock concerned will not exceed on an annual basis its average annual catch of the preceding [five] year period.
- (b) In cases where some other factors are in dispute, e.g. fishing grounds, fishing gear or fishing seasons, in connexion with measures to implement the preferential right of a coastal State, or with arrangements concerning conservation measures, the other States concerned shall adopt the latest proposals of the coastal State with respect to the matter in dispute. However, the other States shall be exempted from such obligation if the adoption of the proposal of the coastal State would seriously affect either its catch permitted under sub-para. (a) above, or its catch of some other stock not related to the preferential right of a coastal State which it is substantially exploiting. In such a case, those other States shall take all possible measures which they consider appropriate for the protection of the coastal fisheries concerned.
- (c) Any of the parties to the dispute may request the special Commission to decide on provisional measures regarding the matter in dispute.

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- (d) Each State shall inform the special Commission established in accordance with para. 6.2 as well as all other States concerned of the specific interim measures it has taken in accordance with any of the preceding provisions.

6.2 Procedure for disputes settlement (special Commission)

Any dispute which may arise between States under the present régime shall be referred by any of the States concerned to a special Commission of five members in accordance with the following procedure, unless the parties concerned agree to settle the dispute by some other method provided for in Article 33 of the Charter of the United Nations.

- (a) Not more than two members may be named from among nationals of the parties, one each from among nationals of the coastal and the non-coastal State respectively.
- (b) Decisions of the special Commission shall be by majority vote and shall be binding upon the parties.
- (c) The special Commission shall render its decision within a period of six months from the time it is constituted.
- (d) Notwithstanding the interim measures taken by the parties under para. 6.1, the special Commission may, at the request of any of the parties or at its own initiative, decide on provisional measures to be applied if the Commission deems it necessary. The Commission shall render its final decision within a further period of six months from its decision on such provisional measures.

OTHER PROVISIONS

7.1 Co-operation with developing States

For the purpose of promoting the development of fishing industries and the domestic consumption and exports of fishery products of developing States, including land-locked States, developed non-coastal States shall co-operate with developing States with every possible means in such fields as survey of fishery resources, expansion of fishing capacity, construction of storage and processing facilities and improvements in marketing systems.

7.2 Co-operation within regional fishery commissions

Co-operation between coastal and non-coastal States under the present régime shall be carried out, as far as possible, through regional fishery commissions. For this purpose, the States concerned shall endeavour to strengthen the existing commissions and shall co-operate in establishing new commissions whenever desirable and feasible.

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COMMITTEE ON THE PEACEFUL USES OF THE
SEA-BED AND THE OCEAN FLOOR BEYOND
THE LIMITS OF NATIONAL JURISDICTION
SUB-COMMITTEE II

Principles on the Delimitation of Coastal Seabed Area
submitted by Japan

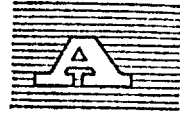
1. The coastal State shall have the right to establish, beyond its territorial sea, a coastal seabed area up to a maximum distance of nautical miles from the applicable baseline for measuring the breadth of the territorial sea. The coastal State exercises sovereign rights for the purpose of exploring the coastal seabed area and exploiting its mineral resources.
2. In cases where the coasts of two or more coastal States are adjacent or opposite to each other, the boundary of the coastal seabed areas appertaining to such States shall be determined by agreement in accordance with the principle of equidistance.
3. Nothing herein shall prejudice the existing agreements between the coastal States concerned relating to the delimitation of their respective coastal seabed areas.

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COMMITTEE ON THE PEACEFUL USES OF THE
SEA-BED AND THE OCEAN FLOOR BEYOND THE
LIMITS OF NATIONAL JURISDICTION

SUB-COMMITTEE

Australia, Canada, Chile, Colombia, Fiji, Indonesia, Japan, Malaysia,
New Zealand, Peru, Philippines, Singapore and Thailand: draft resolution

The Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor Beyond
the Limits of National Jurisdiction,

Recalling the suggested statement of views submitted to Sub-Committee III at the
8th meeting of that Sub-Committee,*/

Further recalling the resolution on the subject of nuclear testing adopted by the
United Nations Conference on the Human Environment, as well as Principle 26 of the
Declaration on the Human Environment adopted by the same Conference,

Acting in furtherance of the principles of the partial Nuclear Test Ban Treaty,

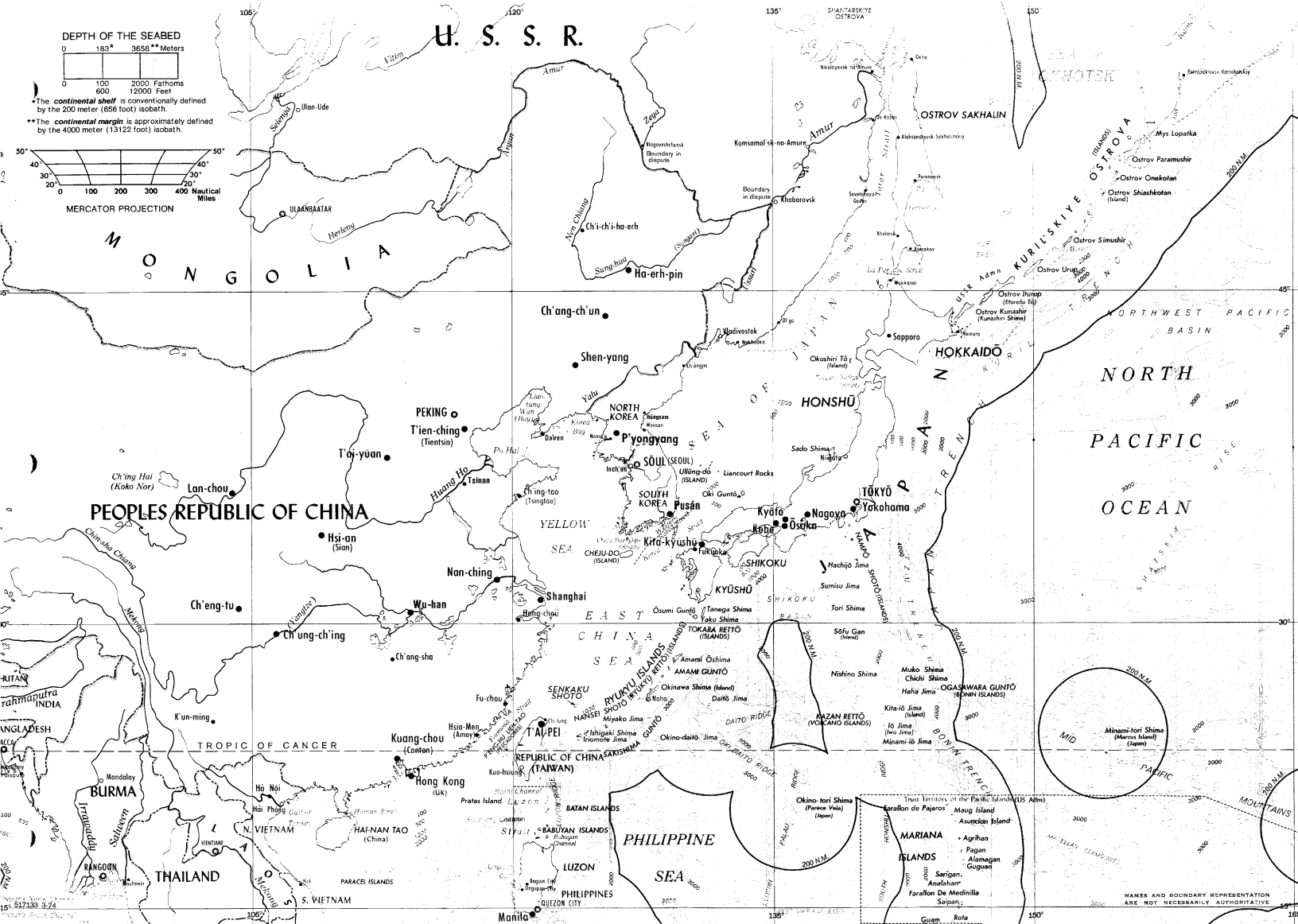
Having noted the concern of the nations and peoples of the Pacific at, and their
opposition to, the conduct of the nuclear weapon tests in that region,

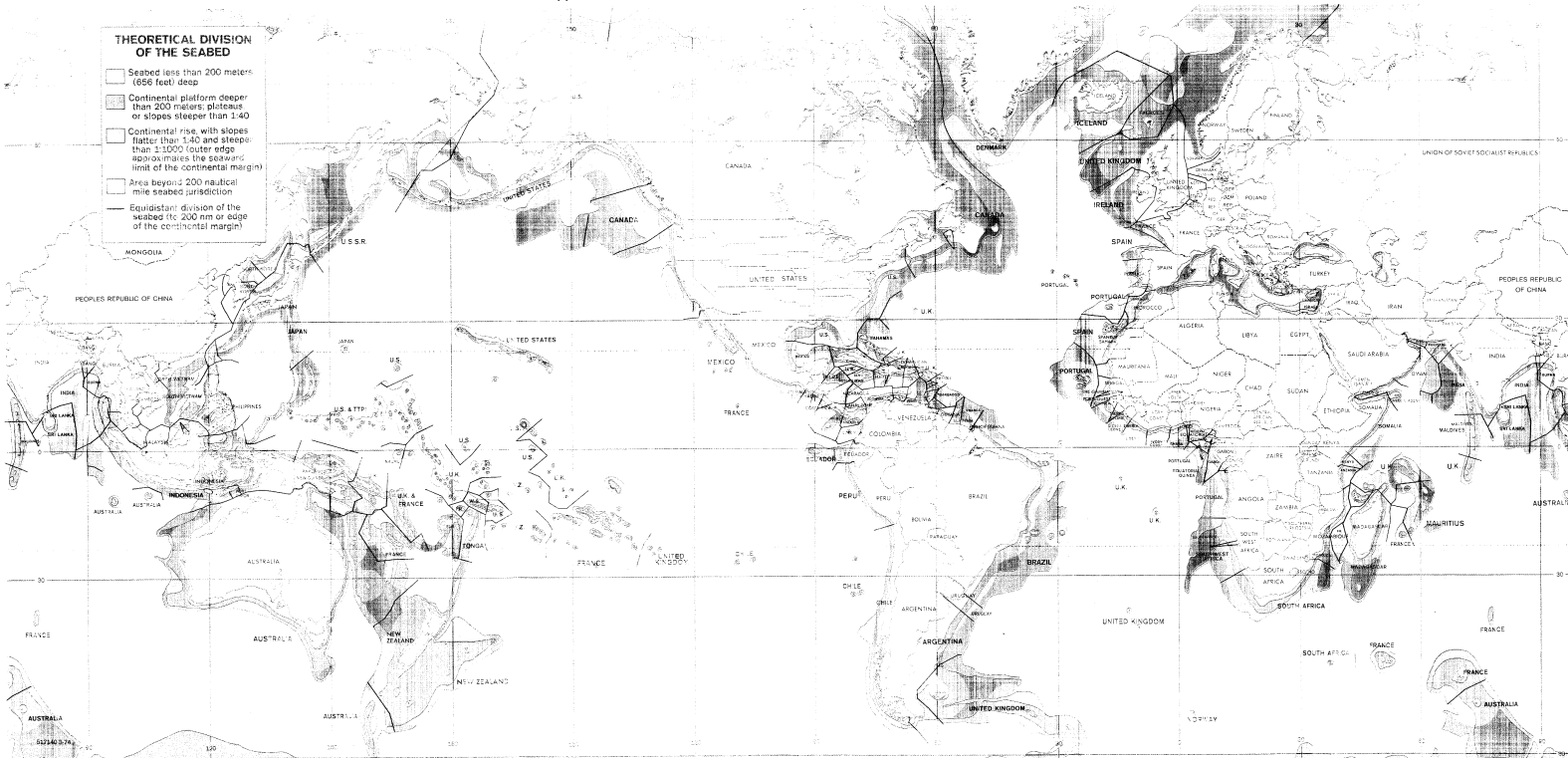
Bearing in mind its obligation to propose legal norms for the preservation of
the marine environment and the prevention of marine pollution;

1. Declares that no further nuclear weapons tests likely to contribute to the
contamination of the marine environment should be carried out;
2. Requests its Chairman to forward this resolution to the Secretary-General of
the United Nations for referral to the appropriate United Nations bodies,
including the Conference of the Committee on Disarmament.

*/ (A/8421, Annex V)

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