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THE SINO-JAPANESE FISHERIES AGREEMENTS OF 1975: A COMPARISON WITH OTHER NORTH-PACIFIC FISHERIES AGREEMENTS

Song Yook Hong

School of Law
University of Maryland
## CONTENTS

<table>
<thead>
<tr>
<th>I. INTRODUCTION</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>II. GENERAL BACKGROUND</td>
<td>3</td>
</tr>
<tr>
<td>A. Geographic Facts</td>
<td>3</td>
</tr>
<tr>
<td>B. Fishing Industry</td>
<td>4</td>
</tr>
<tr>
<td>1. China</td>
<td>4</td>
</tr>
<tr>
<td>2. Japan</td>
<td>6</td>
</tr>
<tr>
<td>C. Political and Legal Need for Non-Governmental Arrangements</td>
<td>8</td>
</tr>
<tr>
<td>1. Restrictions on Japanese Fisheries</td>
<td>8</td>
</tr>
<tr>
<td>2. The Need for Reconciliation</td>
<td>10</td>
</tr>
<tr>
<td>3. Sino-Japanese Relations</td>
<td>11</td>
</tr>
<tr>
<td>4. Korea-Japan Relations</td>
<td>11</td>
</tr>
<tr>
<td>D. Attitude Toward Coastal Jurisdiction</td>
<td>16</td>
</tr>
<tr>
<td>1. China</td>
<td>16</td>
</tr>
<tr>
<td>2. Japan</td>
<td>20</td>
</tr>
<tr>
<td>III. STRUCTURE OF NON-GOVERNMENTAL ARRANGEMENTS</td>
<td>21</td>
</tr>
<tr>
<td>A. Fishing Zones</td>
<td>23</td>
</tr>
<tr>
<td>B. Regulation of Safe Fishing Operations</td>
<td>26</td>
</tr>
<tr>
<td>C. Enforcement Measures</td>
<td>28</td>
</tr>
<tr>
<td>D. Emergency Rescue</td>
<td>32</td>
</tr>
<tr>
<td>IV. COMPARISON OF NON-GOVERNMENTAL ARRANGEMENTS WITH THE GOVERNMENTAL AGREEMENT</td>
<td>33</td>
</tr>
<tr>
<td>A. Fishing Zones</td>
<td>34</td>
</tr>
<tr>
<td>B. Enforcement Measures</td>
<td>38</td>
</tr>
<tr>
<td>C. Fisheries Commission</td>
<td>43</td>
</tr>
<tr>
<td>D. Other Problems</td>
<td>44</td>
</tr>
<tr>
<td>V. COMPARISON OF GOVERNMENTAL AGREEMENT WITH OTHER NORTH-PACIFIC FISHERIES CONVENTIONS</td>
<td>46</td>
</tr>
<tr>
<td>A. Fishing Zones</td>
<td>50</td>
</tr>
<tr>
<td>1. The Korea-Japan Convention</td>
<td>51</td>
</tr>
<tr>
<td>2. The Soviet-Japanese Convention</td>
<td>54</td>
</tr>
</tbody>
</table>
THE SINO-JAPANESE FISHERIES AGREEMENT OF 1975: A COMPARISON WITH OTHER NORTH-PACIFIC FISHERIES AGREEMENTS

SONG YOOK HONG*

I. INTRODUCTION

As the restrictions imposed on the Japanese fishing industry by the Allied Powers were relaxed in early 1950's, the longstanding fishery disputes in the East Asian Seas began to reopen. The fishery talks between China and Japan were directly motivated by successive Chinese seizures of Japanese fishing vessels operating off Chinese coasts in the Yellow and East China Seas. The seizures began on December 7, 1950. As far as Japan was concerned, it was desirable in the absence of formal diplomatic relations to have such incidents avoided in every reasonable way.¹ For a practical solution, an agreement between the Fisheries Association of China (the Chinese Association) and the Japan-China Fisheries Association of Japan (the Japanese Association) Concerning Fisheries in the Yellow and East China Seas (the non-governmental arrangement) was first made in April 1955.²

* S.J.D. candidate, Harvard Law School. The present paper was prepared under the guidance of Professor Louis B. Sohn in partial fulfillment of the requirements of the S.J.D. The views expressed here are those of the author.

¹ However, for a particular purpose, the form of the non-governmental agreement has sometimes been used, in spite of maintaining diplomatic relations. For example, the Japan-Indonesia Fisheries Agreement was made as a provisional non-governmental agreement in order to avoid disputes over the Indonesian archipelagic waters and 12-mile territorial sea measured from straight lines joining the outermost islands. It was signed on July 27, 1968 at Djakarta between the Director-General of Fisheries of Indonesia and the Representative of the National Federation of Fisheries Association and the Federation of Japan Tuna Fisheries Co-operative Association. See 17 Jap. Ann. Int'l L. 136-7 (1973). Another non-governmental agreement was made in accordance with Article 8 of the Korea-Japan Fisheries Convention on December 7, 1965 between Korean and Japanese civilian fishing industries to deal with the safety regulation of fishing operation. See Korean Office of Fisheries, A Collection of Decrees on the Korea-Japan Fisheries Convention (in Korean) 135–39 (1968). Even under the present Sino-Japanese governmental agreement, a new non-governmental arrangement concerning the safety regulation and navigational rules, will be agreed between the civilian Fisheries Associations of the two states. For details, see infra at text accompanying note 105.

² For convenience in making distinctions between the Sino-Japanese non-governmental and governmental agreements, on the one hand, and between the
In June 1958 when the first non-governmental arrangement expired, the Chinese Association refused its renewal on account of the unfriendly Japanese foreign policy toward China. Therefore, there was no agreement between the two parties from June 1958 until December 1963 when the second arrangement came into force. The second arrangement expired in December 1965, and was replaced by a third one. The third arrangement of 1965 remained in effect until June 22, 1975. 3

In late 1960's, Chinese fishermen began to show their interest in seineing operations off their coast. In December 1970, the Regulation of the Chinese Association and the Japanese Association Concerning Purse-Seining with Lighting Ships (the non-governmental seine fishing arrangement) was signed to deal with newly arising problems of seine operations in the form of a supplement to the third arrangement of 1965. As a result, from the beginning until 1970, the three arrangements dealt with the regulation of trawl fishing only; beginning in 1971, the operations of seine fishing also have been regulated in a mutually agreed upon form. 4

In accordance with Article 9 of the Joint Communique between China and Japan, signed at Peking in September 1972, 5 Japan has made many efforts to transform the non-governmental arrangements into a governmental one before the former expired on June 22, 1975. Eventually the governments of Japan and China signed an Agreement on Fisheries between Japan and the People's Republic of China (the governmental agreement) on August 15, 1975, at Tokyo, which replaced the earlier non-governmental arrangement on December 22, 1975, when the parties exchanged notes. 6

Sino-Japanese governmental agreement and the other fisheries agreements in the North Pacific Ocean, on the other hand, three different terms are employed hereafter. The “arrangement” will denote the Sino-Japanese non-governmental agreement, while the “agreement” will refer to the Sino-Japanese governmental agreement and the “convention” will mean the three fisheries agreements concerning the North Pacific Ocean.

3. For the Sino-Japanese non-governmental fisheries talks, see infra note 65.

4. In this paper, trawlers represent the double-dragger and single-boat purse-seines (Art. 2(1) of the third non-governmental arrangement) and seiners mean purse-seiners with lighting ships (preamble of the non-governmental seine fishing arrangement).

5. The Fishery Agreement was the fourth and last pending administrative agreement to be signed between the Chinese and Japanese governments under the China-Japan Joint Communique of September 1972. For the text of the Communique, see 17 Jap. Ann. Int'l L. 81–83 (1973).

Previously, Japan made several fisheries agreements with other states such as the Republic of Korea, the Soviet Union, Canada and the United States. But the governmental agreement contains its own distinctive features, because it relates to a semi-enclosed sea, and was concluded at the turning point in the history of the law of the sea, when the majority of the nations were approaching a general consensus on the concept of a 200-mile economic zone.

This paper intends to describe the general background of fisheries in China and Japan and the structures of the previous non-governmental arrangements; to compare the governmental and non-governmental agreements; and to compare the governmental agreement with other fisheries agreements dealing with the disputes over the North Pacific fishing grounds. An analytical comparison will be made about the Chinese military zones with some other maritime security zones and the legal connection of the zones with the fishing rights will be discussed. Last, the paper will analyze the possible influences of the present Agreement on hypothetical situations arising from the advent of a 200-mile economic zone, as applied to the East Asian Seas.

II. GENERAL BACKGROUND

A. Geographical Facts

The legal problems of fisheries always have a close interrelation with the facts of geography. Thus, it may be useful to describe the geographical factors which influence the fishery species in the Yellow and East China Seas.

The Yellow Sea. Properties of the water in the region are important factors affecting the habitats of fisheries. About 50% of the suspended sediments in the Yellow Sea is detrial clay and silt; the rest is organic material derived from land areas or produced in the sea from nutrients contributed by the rivers such as the Yangtze, Yellow, and Liao Rivers of China and the Han, Taedong and Yalu Rivers of Korea.7

The East China Sea. The distribution of sediments is similar to that of the Yellow Sea, i.e., silt and clay on the inner half and sands of the outer shelf.8

In addition, currents and tides are also influential factors by which the two fishing grounds have become richer in fisheries. A stream of the North Equatorial current (black current) moves northward through these regions up to the Pohai Bay of China; it is some 300 kilometers wide and 200 meters deep, and moves at the rate of 50 to 75 kilometers a day, depending on the wind and the season. When it returns back to southward from Pohai Bay, it flows along the mainland coast of China as a cold current, having been cooled down by the Kamchatka Current (cold current) flowing southward along the Siberian and Korean coasts. The mixing of the warm current and the cold current produces optimum fishing grounds. To this mixture of currents is added a phenomenal tide, which is also an important factor of fishing life. On the average, the difference between high and low tide along the west coast of Korea is about six meters, with a maximum of 9.7 meters at Inchon; along the east coast of China the difference is about three meters, with a maximum of fifteen meters at Hangchou Bay south of Shanghai.9

These optimum conditions for a habitat of fisheries in the Yellow Sea and the East China Sea have traditionally aroused the interest of fishing industry, particularly those of Japanese who long landed various fish in these grounds. Thus, disputes over fishing rights in the regions are regarded as in part a natural result of the geography which arouses competing interests of the fishermen concerned.

B. Fishing Industry

The fishing industry in China and Japan is of special importance. Fish is the most cheaply produced form of protein food and a valuable supplement to these countries' diets. The Japanese as well as the Chinese are less fastidious than Westerners about the kinds of fish they eat. In view of world fish catches, Japan has become the first magnitude state, while China the second magnitude.

1. China

The Chinese fishing industry has not only been resuscitated but also has been completely reorganized and expanded since the establishment of the Peking regime in 1949.10 The fishing industry

was helped in several ways. The fishermen were instructed to form cooperatives and, later, communes, and they were advanced loans to build vessels and facilities such as trawlers, canneries and fish-processing plants. By improving of transportation of fish production, vast fish markets were formed, and scientific research on fisheries was not neglected. The industry thus became unified and centralized and, to a considerable extent, modernized.

The fisheries of China may be classified into three categories, viz., coastal, offshore and inland waters. Not many Chinese people have traditionally ventured a fishing voyage far from their coastal waters; hence, deep-sea fishing was not highly developed. But coastal or inland fisheries, in contrast, have always been highly developed. Due to coastal topography and pressure of population, most of the Chinese fishermen have historically engaged in the inshore fisheries since the eleventh century B.C. The fresh-water fisheries account for about a third of the total annual catch of fish.

Fish farming goes back two thousand years. The Yangtze delta has been used for fish-breeding, especially the rearing of the carp. The chief fishing bases here are Luta, Chefoo and Tsingtao. The offshore fisheries, however, are best developed in the Chousan.
Archipelago, where Chousan is a great fishing center and market, and along the greatly articulated south coasts (map 1). 15

2. Japan

In Japan, there are two natural conditions by which many Japanese people have been forced to engage in fishing industry. 16 One is the pressure on the available cultivable land, 17 and the other is comparatively favorable conditions for coastal fisheries due to the abundance of plankton and marine life arising from the mixture of cold and warm waters.

Over 85% of the Japanese fishing industry is, like those of Korea and South Africa, substantially regulated by laws. 18 The Japanese regulations, however, are not as rigidly imposed and inflexible as the centrally planned Soviet schemes. Nor are the regulations as limited as in Canada and in the United States.

The fisheries may be classified, by location of fishing grounds, into four categories, namely, the distant-water, offshore, coastal and inland fisheries. The distant-water fisheries consist of the large-scale mothership-type bottomfish fishery in the northern Pacific, the bottomfish fishery in the Atlantic Ocean, the tuna longline fishery (including skipjack pole-lining), and the mothership-type salmon fishery and king crab fishery in the northern North Pacific. The offshore fisheries comprise middle-seized trawling, purse seining and other net fishing in the offshore waters around Japan. The coastal fisheries include smaller-scale operations by various types of gear. The fresh water fisheries are not so conspicuously developed, compared with those of China. 19

For meeting the great home demand, approximately 90% of the fish catch is presently consumed as food internally; the remainder is used for the preparation of oil, meal and fertilizer. 20

15. For details, see Robinson, supra note 11, at 415–16.
16. For the number of persons engaged in fishing industry and number of fishing enterprises, see The Japanese Ministry of Foreign Affairs, Fishing Industry in Japan 15 (1968).
17. See Robinson supra note 11, at 508 et seq.
20. For example, even the isopod is sometimes eaten in Japan, though it is not well suited for human consumption. See The New York Times, p. 56, col. 4 (January 13, 1976).
China's Major Fishing Areas  (Map 1)

- Major Fishing Ports
- Ningpo Marketing Centres

1,000,000
500,000
250,000
100,000

(Est. fish production in 1964 in metric tons.)

Sources: H. Robinson, Monsoon Asia: A Geographical Survey 415 (1967)
The consumption of fish per capita thus is the highest in the world. 21

C. Political and Legal Need for Non-Governmental Arrangements

The need for a fisheries agreement between Japan and China was a regional problem in the East Asian Seas. It seems therefore necessary to discuss the regional fisheries relations as a whole. Japan, as a distant-water fishing nation, has traditionally caused fisheries frictions with its two neighbors (Korea and China). The regional disputes will be explained in the light of post “MacArthur Line” effects on the fisheries relations between Japan and China, on the one hand, and between Korea and Japan on the other hand.

1. Restrictions on the Japanese Fisheries

During the allied occupation of Japan (1945–52), the Japanese fishing industry had been restrictively affected by several orders of the Occupation Authorities. At the beginning, the orders were intended to prohibit but later only to limit Japanese fisheries within certain areas. The restrictive measures were implemented, among others, by the so-called “MacArthur Line,” by which Japanese fishing activities were limited in terms of the period, area, fishing instruments and species designated. The building of fishing vessels was also under control.

Due to a food crisis in Japan, however, such restrictions soon became lessened. On September 14, 1945, the first decree was issued to allow Japanese fishing vessels of limited capacity to operate within 12 miles of the coast. 22 Again, on September 27, 1945, the second decree was issued to allow Japanese fishing vessels of limited capacity to operate within 12 miles of the coast. 22

21. See Office of the Prime Minister, Japan Statistical Yearbook 602 (1966). For example, a comparative table shows the daily consumption of fish per capita in 1964:

<table>
<thead>
<tr>
<th></th>
<th>Food (in grams)</th>
<th>Protein</th>
<th>Calories</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>1239.1</td>
<td>74.4</td>
<td>222.6</td>
</tr>
<tr>
<td>Fish</td>
<td>86.3</td>
<td>17.5</td>
<td>116.4</td>
</tr>
</tbody>
</table>

1945, the fishing zone was significantly expanded eastward to 150 degrees of east longitude and southward to 30 degrees of north latitude. This line of delimitation was then called the "MacArthur Line" (map 2). In June 1946, the second large-scale extension and in September 1949, the third were made and thus the fishing areas reached the central Pacific as far eastward as 180 degrees of east longitude. Finally, in May 1950, tuna fishing was allowed as far south as the Equator. The line of demarcation on the west between Korea and Japan did not change to any significant extent because of the narrowness of the Korea Strait (map 2).

In about two years after surrender, many Japanese fishing vessels were newly built, due largely to the positive support of the Japanese Government. The total fishing capacity, with 57 otter trawlers and 963 bull trawlers, exceeded by the end of 1951 that of

relating to Japan-Korea Fisheries Agreement) 146–147 (Tokyo, 1965); G. Weissberg, Recent Developments in the Law of the Sea and the Japanese-Korean Fishery Dispute 6–7 (1966); and Park, supra note 13, at 101–103.
the pre-war peak of 1936. In this regard, it is interesting to note a remark by some Japanese observers:

The natural outcome of the increase in the number of the fishing-boats and the decrease in the catch within the restrictive waters by the Orders of the Allied Powers, was for such vessels to operate beyond the "MacArthur Lines." 23

This remark seems to indicate that even during the occupied period, some Japanese fishing vessels had admittedly violated the MacArthur Line.

2. The Need for Reconciliation

When the MacArthur Line was finally suspended in April 1952, the need for fishery talks among the East Asian countries suddenly became serious. Similar circumstances occurred in the other parts of the oceans where the Japanese fishing interests were involved. In this regard, it was noted succinctly that "[t]he near approach of peace with Japan necessitates careful consideration and prompt action with respect to Pacific Ocean Fisheries relations." 24

The political relations among the three coastal countries (Korea, Japan and China) were not ready to meet such newly emerging situations. The effect of these relations on fishing was evidenced soon by the intensification of the Chinese capture of the Japanese fishing vessels operating off its coasts 25 and the Korean "Presidential Proclamation of Sovereignty over the Adjacent Sea."

23. See Ohira and Kuwahara, supra note 22, at 110.
25. The number of seized vessels and detained fishermen in December 1950-July 1954 was illustrated as below:

<table>
<thead>
<tr>
<th>Year</th>
<th>Vessels Captured</th>
<th>Crewmen Detained</th>
<th>Vessels Unreleased</th>
</tr>
</thead>
<tbody>
<tr>
<td>1950</td>
<td>5</td>
<td>54</td>
<td>5</td>
</tr>
<tr>
<td>1951</td>
<td>55</td>
<td>671</td>
<td>54</td>
</tr>
<tr>
<td>1952</td>
<td>46</td>
<td>541</td>
<td>32</td>
</tr>
<tr>
<td>1953</td>
<td>24</td>
<td>311</td>
<td>13</td>
</tr>
<tr>
<td>1954</td>
<td>28</td>
<td>329</td>
<td>—</td>
</tr>
<tr>
<td>Total</td>
<td>158</td>
<td>1,909</td>
<td>104</td>
</tr>
</tbody>
</table>

Source: Ohira and Kuwahara supra note 22 at 111.
3. Sino-Japanese Relations

Since the establishment of the Communist Government on the mainland, Chinese leaders had adopted an anti-Japanese policy by which Japan was regarded as an imaginary enemy nation. This anti-Japanese policy was physically first shown by the Chinese seizure of Japanese fishing vessels on December 7, 1950. The seizures continued until August 1954, when the Sino-Japanese fisheries talks were advanced enough to conclude the first non-governmental arrangement.

Apart from the antagonistic policy issues between the two states, there were two additional grounds causing the fishery conflicts. As briefly shown above, the Chinese Government made many efforts to reorganize and modernize its fishing industry. As a result, with the advancement of fishing equipment, vessels and skills, Chinese fishermen had begun to show increased interest in the coastal fisheries and they wanted other fishermen to stay off their coastal areas. On the other hand, Japan had regarded the Yellow Sea and the East China Sea together as one of her eight coastal and offshore fishing grounds (map 3). Needless to say, the two fishing grounds are the most important areas to the Chinese. These were probably the most basic elements naturally causing the fishery troubles between the countries concerned.

4. Korea-Japan Relations

The main source of the dispute between the two states turned out to be the Korean Presidential Proclamation of Sovereignty over the Adjacent Sea, made on January 18, 1952, which appeared to be a “Korean version” of the Latin American claims to extensive maritime jurisdiction. The extent of the Proclamation ranged approximately 20 to 200 miles from the Korean coasts.

First of all, Korea believed that the Proclamation was necessary for the preservation of peace. Its other purposes were claimed to be: (1) to regulate all natural resources over, on and beneath the continental shelf adjacent to Korean Peninsular and insular coasts of the National Territory; (2) to prevent, in particular, the exhaustible type of resources and natural wealth from being exploited to the disadvantage of inhabitants of Korea.

or decreased or destroyed to the detriment of the country; and (3) to safeguard the principle of the non-interference with free navigation of the high seas.  

*Japan's Major Fishing Areas* (Map 3)


The most crucial issues in regard to the Proclamation seemed two.  

27. For the full text of the Korean Declaration, see 2 U.N. Leg. Ser., *Laws and Regulations on the Regime of the Territorial Sea* 30-1 (1957); U.N. Doc. ST/LEG/SER.B/6, (1956).

28. For the discussions of these issues, see the Korean Bar Association, "We Contend These: Concerning the Problem of Japanese Fishermen Who Violated Our
cover jurisdiction over the natural resources even over the continental shelf, it constructed a basis for Japan to argue that it constituted a violation of the freedom of the high seas fisheries, an established principle of international law. This was the weakest point of the Japanese-Korean dispute, but one which Korea could have defended. Thus Korea might have responded to it as follows: The development of the law of the sea at that time was at such a stage that even the International Law Commission recognized, in 1951, that "the existing law on the conservation of the living resources of the high seas provided no adequate protection of marine fauna against waste or extermination." During the Japanese occupation of Korea, Korea suffered severe damage from the Japanese overfishing around its coasts; Korean coastal areas were very badly depleted by the Japanese trawlers. Thus fisheries in the areas were practically unproductive due to the destruction of bottom feeding grounds and sea grasses. Also, the right of fishing on the high seas cannot be exercised without any limitation. Its exercise is always accompanied by an obligation imposed by the principle prohibiting an abuse of right. In other words, any state enjoying the freedom of high seas fishing is bound to refrain from any acts which may adversely affect the use of the high seas by nationals of other states. In consideration of


30. See H. Brittin, International Law for Sea-Going Officers 78-79 (1956). Quite recently, Korean fishermen on the east coast (the Sea of Japan) seriously complained of another gradual depletion of fishery resources by overfishing by Japanese fishermen operating in the Joint Regulation Zone. For details, see Tong-A Ilbo (Korean Daily), at 6 (Oct. 6, 1975); The Joong-ang Ilbo, at 7 (Nov. 7, 1975).

31. Of course, from the principle of the freedom of the high seas, there have been several variations for various purposes, e.g., limitation of jurisdiction of, and policing by, the coastal state; defense; protection of neutrality rights; coastal navigation and commerce; customs inspection; protection against smuggling; public health control; regulation and protection of fisheries; and exploitation of subsoil riches. For further discussion on the variations, see T. Fulton, The Sovereignty of the Sea 651-52 (1911), and for some state practice on the matter, see P. Jessup, The Law of Territorial Waters and Maritime Jurisdiction 75-96 (1927).
the past experience with respect to Japanese overfishing and the understanding of the developmental stage of the law of the sea at that time, Korea could have justified its marine policy on the ground that the Proclamation of the "Peace (Rhee) Line" was an exercise of right to take some anticipatory measures for the prevention of another immediate possible overfishing by Japanese fishermen around its coasts.

The second issue was whether the method and scope of the Proclamation were "appropriate," once the necessity for the Korean anticipatory measures was supposedly admitted. As to the question of method, it would no doubt have been more desirable to compromise the conflicting interests between the two countries, rather than to take a unilateral action by a nation. When Korea proposed to hold a fisheries talk in October 1951, Japan showed no positive reaction. Then Korea suggested an interim measure for recognizing the continued existence of some parts of the MacArthur Line until the time of reaching a new fisheries treaty.32

When the Allied Powers started negotiations for the peace treaty with Japan, Korea, from the beginning, made strenuous efforts toward obtaining all possible assurances that its problems with Japan would gain fair treatment by the treaty. As a result, two articles are related, in part, to the Korean fisheries problems. Article 9 obliged Japan to negotiate with the Allied Powers so desiring for the conclusion of bilateral and multilateral fisheries agreements on the high seas. Article 21 provides: "Notwithstanding the provisions of Article 25 of the present Treaty, China shall be entitled to the benefits of Article 10 and 14 (a); and Korea to the benefits of Articles 2, 4, 9 and 12 of the present Treaty." Also, Article 25 provides, in part, that: "For the purposes of the present Treaty, the Allied Powers shall be the States at war with Japan, or any State which previously formed a part of the territory of a State named in Article 23 . . . Subject to the provisions of Article 21, the present Treaty shall not confer any rights, titles or benefits on any State which is not an Allied Power as herein defined."33 In accordance with Article 25, Korea was not a party to the treaty, but by virtue of a proviso of the Article 21, Korea was conferred the right to enjoy the status of a third party beneficiary provided

in Article 9. Thus Korea was entitled to demand as much right, title or interest in relation to Japan as the Allied Powers were entitled to as far as fishing interests, among other things, were concerned.34

On the one hand, Japan actually performed, regardless of the voluntariness of it performance, the relevant treaty obligations in relation to Canada and the United States by accepting the so-called “principle of abstention.”35 On the other hand, in relation to Korea, Japan was not as faithful to its pertinent obligation of the Treaty; she also raised technical objections to some parts of the substantial Korean proposals for fishery talks.36

In addition to those pending political and legal considerations, Korea was seriously faced with maritime security problems during the period of 1950-1953 when it was involved in the conflict with the northern part of its Peninsula. Under such stalemate circumstances, the method taken unilaterally by Korea might be possibly understood in terms of urging the other party to observe the international minimum standard for conservation of marine resources, thus preventing another threat of extermination of fishery stocks, and securing the war-time safety around Korean coasts. There remained, however, room for arguing whether the scope of the Proclamation was acceptable to the community of nations in light of international law of the time. From Korea’s viewpoint, there was no doubt that some sort of conservation measures should be taken under those circumstances. But it was also conceivable that Korea might have had a much better chance of obtaining “universal acceptance” from the majority of nations if it had more seriously considered the maximum limit of the Line. Finally, as a practical matter, the ability of the Korean police patrol ships was not sufficient to enforce the whole Proclamation area.37 As a result, even in practical sense of national interest, it did not appear that the Proclamation had served its national benefits as much as had been intended.

36. Korea probably regarded it as one of the Japanese precedents showing that Japan tends to possess stronger attitudes toward the weak, and weaker attitudes toward the strong.
37. In 1952 when the Peace Line was proclaimed, Korean patrol ships could seize only ten Japanese fishing vessels with 132 fishermen, while as many as 2,400
It may be noted, by the way, that since the Korean-Japan Fisheries Agreement of 1965, the issue about the validity of the Peace Line has in a practical sense been dead, even though the Korean Government has never officially suspended it, since the Line was tacitly modified by the Joint Regulation Zone and the Joint Fishery Resources Survey Zone in accordance with the Agreement without regard to its validity.\footnote{38}

D. Attitude Toward Coastal Jurisdiction

China and Japan have adhered to different practices with respect to coastal jurisdiction.\footnote{39} The practices in fact reflect the differently emerging national interests of each state. In general, the contracting states’ views on the coastal jurisdiction determine the character of fisheries agreements. It seems therefore useful to describe briefly, among other things, the historical background of the adoption of each country’s policies with respect to the territorial sea limit and their current views on the issue.

1. China

China has utilized the law of the sea for over a century in order to secure its maritime zones by obliging other states to refrain from unwanted military action in whatever coastal waters can legitimately be claimed as Chinese.\footnote{40} In 1930, long before vessels with 38,000 fishermen were estimated to be operating within the Line. For detailed statistics see Park supra note 13, at 103 and Korean Government, Commentary on the Treaties and Conventions between Korea and Japan 47, 56 (1965).

38. For details, see infra text accompanying notes 143–49.
40. See 1 J. Cohen and H. Chiu, People’s China and Int’l L. 467 (1974). It is interesting to note that the Chinese concept of coastal jurisdiction seemed to be
China was split into the People's Republic and the Republic of China (Taiwan), China claimed a three-mile territorial sea. Since then, Taiwan has never changed its policy of the breadth of the territorial sea. Following the establishment of the PRC on the mainland, in October 1949, the Chinese territorial sea limit was not made public until September 1958, when China issued the Declaration on the Territorial Sea, which reads in summary as follows:

(1) The breadth of the territorial sea of the People's Republic of China shall be twelve nautical miles (1 nautical mile = 1.852 kilometers); (2) the straight baseline method shall be adopted to delimit the breadth of the territorial sea; (3) Taiwan and its surrounding islands, the Penghu, the Tungsha, the Chungsha, the Nausha Island and all other islands shall belong to China; (4) the water areas inside the baseline, including the Pohai Bay and Chiung Chow Straits, are Chinese inland waters.41

From the Chinese point of view, this Declaration was an important measure for national security and economic interests. China suggested three reasons for the Declaration: (1) under international law every nation has the right to extend its territorial sea up to twelve miles; (2) each nation is free to determine its territorial limits, since there is no universally recognized breadth of the territorial sea; and (3) the three-mile limit of the territorial sea has long become obsolete.42

As far as the numerical extension of the twelve-mile limit is concerned, it seems useless at this moment to discuss the pros and cons of the Chinese justification, since a majority of nations have already claimed or shown their willingness to support the twelve-mile limit.43 It does not, however, necessarily mean that state expressed in terms of "whatever coastal waters can legitimately be claimed as Chinese." Cf. infra, text accompanying notes 52–54, 69–71.


43. For the current data relating to the number of states claiming each specified breadths of territorial waters, see the latest revision of "National Claims to Maritime Jurisdictions," U.S. Dept Of State, Limits in the Seas series (No. 36).
practice and theory have not been diversified on the question whether a twelve-mile breadth is sanctioned by customary international law.44

What is most controversial at this juncture is the method of drawing the straight base line and limiting inland waters. The Chinese base line was drawn by the straight lines connecting base-points on the mainland coast and on the outermost of the coastal islands. Thus the water area extending twelve nautical miles outward from this base line is China's territorial sea, and the areas inside the base line are inland waters.

It may be said that the drawing of the base line and thus the setting of the boundaries of internal and territorial waters are primarily a function of combined geographical and predispositional factors.45 But the geographical factor has generally been given more weight than the dispositional factor. Chinese coasts are, of course, so irregular and indented that, on the mainland alone, they run to almost 11,000 kilometers (km). Along its coastal and offshore areas are found 3,416 islands, over two-thirds of them in the coastal waters of the East China Sea. It might also be true that the food supply for the Chinese coastal inhabitants had, in some measure, depended on the coastal fisheries in the past. Furthermore, it might be recognized that the future anticipated dependence of the coastal inhabitants' nutrition on the coastal fisheries is likely to increase conspicuously. In spite of all of these factors, it would not be easy to determine whether these Chinese geographical and predispositional factors along the entire coastal line would constitute a special circumstances in which such a deviation could be justified.46

In some places like the southern section where the coastline is deeply indented or dotted with a fringe of islands (map 4, infra),

According to it, 29 states claim three miles, 52 states twelve miles, and 9 states 200 miles.


46. For the affirmative answers, see Cheng, supra note 11, at 58; for negative answers, see the reactions of the United States and Great Britain, found in the U.S. Dep't of State, For. Policy: Current Documents 1198 (1958) and The Time at 6 (Sept. 6, 1958) respectively.
the method of straight baselines may be accepted with the possible exception of a dispute as to the proper length of the straight base line.\footnote{47} In some other places, such as the northern parts where the coasts are straight, or gently rounded, the adoption of straight base lines may not be reasonable. In the Chinese coastline, therefore, it seems suitable to employ the method of mixed base lines, i.e., drawing the base line in turn by the methods of low-water line and straight base line to suit different conditions.\footnote{48}

As to the claim that its bays and straits are internal waters, China seemed not to pay much attention to the existing law of nations.\footnote{49} Some Chinese bays may involve the problems of definition, distance of a closing line, methods of drawing a straight base line, the status of islands at the mouth of a bay, etc.\footnote{50} According to the Chinese claim, those problems did not arise since the whole water area inside the straight base line is to be regarded as internal waters. Furthermore, China also maintained that Pohai Bay was a "historic bay."\footnote{51}

The basic Chinese position on the limit of territorial sea taken in the Declaration of 1958 was reiterated in China’s first address at the U.N. Sea-Bed Committee on March 3, 1972,\footnote{52} and it was confirmed at the "Caracas Conference."\footnote{53}

The Chinese policy on the coastal jurisdiction, which can be decided by the coastal state subject to the requirements of reasonableness and necessity, has been unchanged from the beginning. Thus it seems consistently short of the noble


\footnote{48} For mixed baseline, see Art. 6(2) of Part II of the Informal Single Negotiating Text, U.N. Doc. A/CONF. 62/WP.8/Part II at 6 (1975). This paragraph of the article was proposed by China.

\footnote{49} See Art. 7(1)–(5) of the Geneva Convention on the Territorial Sea and the Contiguous Zone.


\footnote{51} For Chinese claim over historic bay, see Cheng, supra note 11, at 61, particularly nn.75, 76.


understanding that the delimitation of sea area always has international aspects, and should be acceptable to the majority of nations.\textsuperscript{54}

2. Japan

As soon as Japan’s door was opened to the Western states by the conclusion of the Treaty of Peace and Amity (Perry’s Treaty) with the United States in 1854,\textsuperscript{55} Japan encountered the problem of defining the breadth of the territorial waters. When the Crimean War extended to the seas of the Far East, the belligerent states made clear their intention not to engage in hostilities within the range of a cannon shot from the Japanese coasts.\textsuperscript{56} Thus Japan was in some measure acquainted with the necessity for adopting the Western concept of the breadth of the territorial sea to observe the rule of neutrality under international law in time of war. It was not, however, until 1870 that Japan adopted the three-mile limit of the territorial sea, when it was again involved in the problem of neutrality at the outbreak of the Franco-Prussian War (1870–71).\textsuperscript{57} In order to adjust itself to these new circumstances, the Meiji Government, after some trial and errors, on August 29, 1870, finally enacted Neutrality Regulations and issued a Proclamation of Neutrality containing a policy of the breadth of the territorial sea, by providing in Article 1 that:

The contending parties are not permitted to engage in hostilities in Japanese harbours or inland waters, or within a distance of three ri from land at any place, being the distance to which a cannon-ball can be thrown. Men-of-war or merchant vessels will, however, be allowed free passage as heretofore.\textsuperscript{58}

This policy of narrowing the limit of territorial sea to three miles was in accord with the Japanese national interest in

\textsuperscript{54} See the Anglo-Norwegian Fisheries Cases, \textit{supra} note 47 at 132.

\textsuperscript{55} For the general background, see I F. Treat, \textit{Diplomatic Relations between the United States and Japan} 1853–95 (1932); for the text of the Treaty, see 6 H. Miller, \textit{Treaties and Other International Acts of the United States of America, Documents} 152–172; 1852–55, 439 et seq. (1942).

\textsuperscript{56} See “Neutrality” [Non-Intervention], found in Kozai’s unpublished paper on \textit{Breadth of the Territorial Sea}.

\textsuperscript{57} 3 \textit{Dai Nippon Ciaiko Bunsho} (Diplomatic Documents of the Great Japan) 12, found in \textit{id}.

\textsuperscript{58} 1 F. Deák and P. Jessup, \textit{A Collection of Neutrality Laws, Regulations and Treaties of Various Countries} 736–7 (1939).
obtaining more food and other raw materials from the oceans than any other country. 59

Beginning in 1973, the major Japanese ocean policies vividly began to be challenged by the new trends in the law of the sea. The first Japanese response appeared, in March 1973, at Subcommittee II of the U.N. Sea-Bed Committee indicating that "it would consider the issue of a twelve-mile territorial sea to be of second importance compared with the other related problems of areas adjacent to the territorial sea." This position became more definite at the "Caracas Conference" on the Law of the Sea. 60

Quite recently, on March 30, 1977, the Japanese Government announced that it would expand its three-mile territorial sea limits to twelve miles and that it also would adopt a 200-mile exclusive fishing zone. 61

III. STRUCTURE OF NON-GOVERNMENTAL ARRANGEMENTS

The non-governmental fisheries arrangements usually consisted of a main text, four to five appendices, two memoranda, and two exchanges of letters. 62 The main features of the arrangements were to place an emphasis on the safety regulation of fishing operations and on the establishment of various regulated (fishing or security) zones. Throughout the treaty period, China had enforced strict regulation of the military zones, and fishing zones in general had remained unchanged with slight expansion. 63 Enforcement measures were based on flag state jurisdiction in relation to trawl fishing and on mutual jurisdiction in relation to seine fishing. But this jurisdiction was not strong enough to control violations. The provision for dispute settlement was not well framed and thus there was no way for solving disputes in case each party had a different view on the matter. Free navigation in the fishing zones was at all times safeguarded.

63. For expansion, see map 4 infra.
The arrangements were, in form, non-governmental and provisional but, in function and operation, were comparable to a formal treaty or standing agreement. The forms and the substance of the non-governmental and governmental fisheries agreements are quite similar. At this point, therefore, the chief components of the non-governmental arrangements will be described, with discussions limited to a few legal issues which do not coincide with those of the governmental agreement, in order to

64. For the problems concerning the negotiations of the first fisheries agreement, see Ohira and Kuwahara supra note 22, at 109–25 (1959); for discussions on the non-governmental arrangements, see Park supra note 13, at 110–22; for the non-governmental fisheries talks, see the following table:

Evolution of the Non-Governmental Arrangements

<table>
<thead>
<tr>
<th>Conferences</th>
<th>Date</th>
<th>Place</th>
<th>Effective Period</th>
<th>Regulating Fisheries</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st</td>
<td>06-13-55</td>
<td>Peking</td>
<td>One year</td>
<td>Trawl fishing</td>
</tr>
<tr>
<td>2nd</td>
<td>06-13-56</td>
<td>&quot;</td>
<td>One year renewed</td>
<td>&quot;</td>
</tr>
<tr>
<td></td>
<td>06-13-57</td>
<td>By exchange of notes</td>
<td>&quot;</td>
<td>&quot;</td>
</tr>
<tr>
<td>3rd</td>
<td>06-13-58</td>
<td>&quot;</td>
<td>Invalid</td>
<td>&quot;</td>
</tr>
<tr>
<td></td>
<td>01-04-63</td>
<td>Peking</td>
<td>Agreed to hold a talk by the end of the year</td>
<td>Trawl fishing</td>
</tr>
<tr>
<td>4th</td>
<td>12-23-63</td>
<td>&quot;</td>
<td>Two years</td>
<td>&quot;</td>
</tr>
<tr>
<td>5th</td>
<td>12-23-65</td>
<td>&quot;</td>
<td>Two years renewed</td>
<td>&quot;</td>
</tr>
<tr>
<td></td>
<td>12-23-67</td>
<td>By exchange of notes</td>
<td>One year renewed</td>
<td>&quot;</td>
</tr>
<tr>
<td></td>
<td>12-23-68</td>
<td>&quot;</td>
<td>&quot;</td>
<td>&quot;</td>
</tr>
<tr>
<td></td>
<td>12-23-69</td>
<td>&quot;</td>
<td>Six months renewed</td>
<td>&quot;</td>
</tr>
<tr>
<td>6th</td>
<td>06-23-70</td>
<td>Peking</td>
<td>Two years renewed</td>
<td>&quot;</td>
</tr>
<tr>
<td>7th</td>
<td>12-31-70</td>
<td>&quot;</td>
<td>One and a half years renewed</td>
<td>Seine fishing</td>
</tr>
<tr>
<td></td>
<td>06-23-72</td>
<td>By exchange of notes</td>
<td>One year renewed</td>
<td>Trawl and seine fishing</td>
</tr>
<tr>
<td></td>
<td>06-23-73</td>
<td>&quot;</td>
<td>&quot;</td>
<td>&quot;</td>
</tr>
<tr>
<td>8th</td>
<td>06-24-74</td>
<td>Peking</td>
<td>&quot;</td>
<td>&quot;</td>
</tr>
<tr>
<td></td>
<td>06-22-75</td>
<td>&quot;</td>
<td>Expired</td>
<td>&quot;</td>
</tr>
</tbody>
</table>

Source: Hae-woe Soo-san Jung-bo (Overseas Fisheries Information, a Korean Fisheries Monthly) 49 (Jan. 1975).
avoid overlapping discussion in the following sections IV and, in part, V.

A. Fishing Zones

As regards the delimiting of fishing grounds, the original Chinese idea was to create three areas. The area west of the 124th eastern longitude would be designated for the Chinese fishermen only; that east of the 125th for the Japanese fishermen exclusively; and the buffer zone between the 124th and 125th eastern longitude for joint controls. Japan opposed the idea because it excluded the Japanese fishermen from large high seas areas (the longest distance from the Chinese coasts ranges about 150 miles) and it would have weakened the Japanese position in fisheries relations with other countries. In order to compromise the conflicting interests, Japan and China agreed that the fishing vessels of both sides might operate at the same time, but the fishing areas were to be divided into small areas and the fishing period was to be short and the number as well as, in some cases, the horsepower and luring lights of fishing vessels were to be limited. In allocating the areas, a particular consideration was given to protecting the special interest of China existing solely by reason of geographical adjacency. In addition, certain waters were to be closed to all fishing for security reasons. Yet the Japanese gained considerable benefit from the allocation since the final lines were more advantageous to them than those under either the original Chinese proposal or the later governmental agreement.

Trawling Operations. Six principal trawl fishing zones were established (map 4). Each fishing zone was specifically regulated by way of limiting the maximum number of trawlers and the fishing period.

A memorandum also delineated a fishing area (memorandum zone) densely inhabited by fish and located in the central part of the Yellow Sea (map 4). In order to prevent a serious decline in fishery productivity, the number of trawlers there was limited to eighty during the four months of October, November, January, and February. This zone was established by a Chinese unilateral suggestion in a form of memorandum. Nevertheless, the Japanese Association unreluctantly accepted it by merely pointing out that it would be in the mutual interest to preserve fishery production.

65. For details, see infra, text accompanying notes 191–92, 209.
66. See Article 1 of the main text and appendix 1 of three non-governmental arrangements.
The Sino-Japanese Non-Governmental Fisheries Arrangements
(Map 4)

- Military Warning Zone
- 6 Trawl Fishing Zones
- Fishing Zone expanded by the third non-governmental arrangement
- Memorandum Zone (Conservation Area)
- Military Navigational Zone
- Trawl Fishing Prohibition Line
- Military Operational Zone
- 3 Seine Fishing Zones
By means of an exchange of letters, an area (the trawl fishing prohibited zone) was designated wherein trawl fishing would be prohibited (map 4). This created a source of potential difficulty since it was not an area covered by the non-governmental arrangements but in fact was an area excluded from the arrangements by a Chinese domestic law. It was a provisional conservation measure subject to alteration by general provisions to be made by the respective governments. By establishing the zone, the Chinese view turned out to be similar to that of Russians. Each declared that a coastal state should establish its own regime over its neighboring waters in accordance with the need to protect the economic interests of the nation and that a state's conservation measures belong to its domestic affairs and do not require the concurrence of another state. In this case also, the Japanese were not daring enough to reject the Chinese unilateral action on the ground that it encroached upon freedom of the high seas. As a result, all Japanese and Chinese trawlers were prohibited from conducting operations throughout the year in the conservation zone.

Moreover, trawlers were required to observe the other conservation measures, in terms of restrictions on the sizes of young fish and net, and on the amount of fish catches. Trawlers also had to observe a vague rule which stated that “trawlers must move to another fishing ground when they meet concentrations of young fish.” However, the rule was not explicit as to the degree of concentration of young fish. Therefore, it was not clear from the provision how trawlers had to abide by the rule. From the point of view of enforcement measures, this rule seemed meaningless since

67. See the memoranda exchanged by the Fisheries Association of both sides on December 17, 1965, attached to the third non-governmental arrangement.

68. It was drawn by the Fisheries Management Bureau of the East China Military Administration Committee on December 16, 1956.

69. In March 1956, the Soviet Union proclaimed the “Bulganin Line” whereby provisional conservation measures were adopted to limit the fishing zone, to designate the annual maximum amount of catches, closed seasons for fishing and fishing instruments, and to stipulate a penal provision for the violation of these regulations. For further discussion, see Ohira, “Fishery Problems Between Soviet Russia and Japan,” 2 Jap. Ann. Int'l L. 10–13, particularly 9 (1958).


71. See Letters exchanged in connection with the third non-governmental arrangement.

72. In the first and second non-governmental arrangements, there was no provision regulating the size of the mesh of trawl nets and the size of young fish. The third arrangement first dealt with the conservation of young fish.
the non-governmental arrangements did not provide for an enforcing agency.\textsuperscript{73}

\begin{quote}
\textbf{Seining Operations.} The seine fishing arrangement of 1970\textsuperscript{74} was, in form, a supplement to the existing third arrangement, but it was a separate and unique agreement in terms of function and substance. It designated three seine fishing areas (areas A, B, and C on map 4). Conservation measures for seiners were more restrictive than those for trawlers. In addition to the orthodox regulations concerning the number of vessels, areas and seasons\textsuperscript{75} as well as concerning the sizes of young fish and nets,\textsuperscript{76} seiners had to observe regulations relating to horsepower and luring lights of vessels. The maximum capacity of the main engine of each seiner was limited to 660 horsepower, and the maximum luminosity of the lights for luring fish was restricted to 10,000 candles. Each team of seiners operating with lighting ships was allowed two such ships.
\end{quote}

\textbf{B. Regulation of Safe Fishing Operations}

The provisions for maintaining orderly fishing operations were explicitly expressed in each arrangement. These may be noted since the Japanese gave their own implied significance to the meaning of the safety regulations by interpreting them to mean that the regulation made their vessels secure from seizure.

\begin{quote}
\textbf{Trawling Operations.} Trawlers were obliged to observe two kinds of safety regulations: (1) the treaty regulations stipulated by the non-governmental arrangements, and (2) the international navigational rules recognized by their govern-
\end{quote}

\textsuperscript{73} See Clause 1 of the seine fishing arrangement; for discussion on enforcement measures, see infra, text accompanying notes 81–91.

\textsuperscript{74} For the text, see SCMP, No. 4811, 234–39 (Jan. 4–8, 1971).

\textsuperscript{75} On June 21, 1972 when the arrangement was first renewed, the number of Japanese vessels was increased to eighty (sixteen teams). And the numbers remained equal after the increase of June 21, 1972. For details, Clause 1 of the seine fishing arrangements.

\textsuperscript{76} Fish smaller than those stipulated were supposed to be landed in excess of 15\% of a haul. Otherwise, the haul was requested to be promptly put back into the sea and fishermen should move to another fishing ground. It was not, however, explicit as to whether “fifteen percent of a haul” meant a haul from the same species or from any kind of species. With regard to this question, the provision of the trawl fishing arrangement left no doubt by describing a haul from the “same” species.
ments.\textsuperscript{77} It was not known what rules of the international navigation were accepted by each government. On that question, China seemed especially selective, advocating or renouncing some principles of international law when such action inured to her benefit. At the "Geneva Session" of the Third Conference on the Law of the Sea in May 1975, the Chinese attitudes toward the principles of international law were, in part, elucidated by her delegate stating that:

His delegation disagreed with the general and indiscriminate references to . . . the rules of international law. Many of those rules had been established before the majority of developing countries became independent and did not conform with their interests. The world had changed, and developing countries could not be asked to accept out-of-date laws.\textsuperscript{78}

The other treaty rules that trawlers were required to observe were safety regulations concerning methods of marking vessels, giving signals, fishing operations and making way for each other.\textsuperscript{79}

\textit{Seining Operations.} The safety regulations of seiners were simpler than those of trawlers. Seiners also were required to observe two kinds of safety regulations: (1) the treaty rules stipulated by this seine fishing arrangement and (2) the international navigational practice. The present treaty rules dealt with methods of markings and rules for fishing operations. The ways for using of luring lights were especially stipulated in terms of a distance measured between one vessel and the other.\textsuperscript{80} As far as the international navigational rules were concerned, however, seiners were required to abide by more broad regulations since they had to observe all the international navigational rules, regardless of their being recognized by the Contracting States respectively.

\textsuperscript{77} In regard to the international navigational rules, the first and second arrangements required compliance with all the international rules, while the third one required only compliance with certain rules recognized by their governments. Compare appendix 2 of the first arrangement with appendix 3 of the third arrangement.


\textsuperscript{79} For details, see Clause I-IV of the appendix 3 of the third arrangement.

\textsuperscript{80} See Clause (1) and (2) of the seine fishing arrangement.
C. Enforcement Measures

There were two different enforcement methods for trawlers and seiners.

*Trawling Operations.* Enforcement measures of the first and second arrangements were identical to each other. Therefore, further discussion will be based on the first and third arrangements. The first arrangement envisaged three categories: (1) infractions of the number of vessels and the limit of the fishing zones; (2) disputes between trawlers of the two parties; and (3) damage inflicted on the vessels in violation of safety regulations. The third arrangement regulated violation of the size of catchable young fish, in addition to the first and third categories under the first arrangement.

In the event of violation of regulations concerning the number of vessels and the limit of fishing zones, any trawlers, when the infraction was discovered, were obliged to report the violation to the Fisheries Association of the foreign vessel through their own Fisheries Association. In other words, there was no official inspection agency. Each Fisheries Association was responsible only for taking action against violation by its own vessels upon receipt of such a report. Sanctions against violation under the first arrangement were warning or punishment, but they were not specified later in the third arrangement. The only obligation of the Fisheries Association under the latter arrangement was to take prompt, effective and proper action. 81 Of course, no provision was made as to what actions ought to be considered “prompt, effective and proper.”

The disputes between the vessels of the two parties were dealt with only by the first arrangement. The disputes were to be settled by mutual discussion or decision reached on the spot. This unique method of dispute settlement seemed an oriental form of a gentleman’s agreement, which might have been conceived in a thought of emphasizing courtesy. If the disputes could not be solved in either way, both Fisheries Associations were obliged to take mutual action to settle them after investigating the actual situation. 82

In the event of collision or damage to the vessels due to non-observance of operational safety rules, under the third arrangement the trawlers involved were to take prompt steps to safeguard

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81. Art. 7(1), id. and Art. 6(1) of the first arrangement.
82. Art. 6(2) of the first arrangement.
the damaged vessels and, whenever possible, they had to consult the other vessels on the spot and to exchange written statements. The first arrangement imposed only an obligation to report the incident to the respective Fisheries Associations.\textsuperscript{83} As shown earlier, in case of trawlers, in order to avoid collision due to fault or negligence in observing international navigational rules, the first arrangement required vessels to observe all the international navigational rules without limitation, but the third arrangement obligated them to abide by only some of the rules recognized by their own governments. As a result, it is assumed that if the collision happened due to a violation of the international rules recognized by the Government of the violating vessel, the vessel would be liable for any damage arising therefrom in accordance with the rules.\textsuperscript{84} But the solution of any matters of collision according to the normal procedures of litigations, if the rules recognized by China and Japan were different from each other, would be much more problematical. Likewise, if the collisions occurred without relation to the international navigation rules, the non-governmental arrangements provided no guidelines for assessment of damages.

In regard to trawlers' violation of conservation measures concerning young fish, a "quasi-port state jurisdiction" was conferred to implement such regulation.\textsuperscript{85} This was not complete exclusive port state jurisdiction, but it did seem that such a provision might be most effective in implementing the enforcement measures under the non-governmental arrangements. The effectiveness of this jurisdiction arose from the fact that the Fisheries Association of the state in which the port was located had been authorized to send special personnel to discover any possible violation, in the event the suspected vessels entered the port. Even if any infraction was found in the port, however, the Association had no authority to prosecute or punish it. Instead, the Association had to report it to the other Association, to which the violating vessels belonged.

The non-governmental arrangements provided for negotiations as a final stage of dispute settlement. In case of failure of negotiations, the settlement of the dispute was entirely in the hands of the Fisheries Association of the flag state. All the other

\textsuperscript{83} Art. 6(3), \textit{id.}, and Art. 7(2) of the third arrangement.

\textsuperscript{84} For the rule of dividing damages, see Arts. 1–5 of the International Convention for the Unification of Certain Rules Relating to Collisions between Vessels, signed at Brussels, Sept. 23, 1910.

\textsuperscript{85} Clauses (1)–(4) of the appendix 2 of the third arrangement.
party could expect in that regard was that the Fisheries Association of the flag state would take action in good faith.

**Seining Operations.** The seine fishing arrangement did not have provisions for enforcement measures in case of violations of conservation measures and collision problems due to non-observance of international navigation rules. It was assumed, however, that violations of conservation measures would be disciplined in conformity with provisions for trawlers since the seining arrangement was a supplement to the third trawling arrangement. Moreover, it seems unquestionable that the collision problems due to violation of international rules would be solved in accordance with international practices since seiners were required to observe all the international navigational rules.

In general, the seining arrangement provided stronger enforcement measures than those envisaged by any other arrangements and even by the later governmental agreement. Both Fisheries Associations were obliged to take measures for supervising their seiners. The primary responsibility for enforcing regulations, therefore, was placed on the two Associations. Inspection agencies were ordinary seiners and four inspection ships appointed by the two Associations (each Association appointed two ships). Each Inspection Ship was required to be conspicuously marked as "Inspection Ship" on the outer walls of the vessel and had to carry three inspectors with certificates approved by each Association. The two Associations had to notify each other in advance of the types, horsepower, etc. of the Inspection Ships and the lists of inspectors. As a result, the function of and responsibility for enforcing rules seemed to be mutually divided very well between the two parties.

At this moment, in order to have a better understanding of the enforcement tools, the present arrangement is briefly compared to the 1882 North Sea Fisheries Convention. Both were the first

86. Compare infra, text accompanying notes 164–75.
87. Articles 28–34 of the 1882 Convention elaborated the general principle of mutual enforcement. The Convention was signed at Hague, May 6, 1882, and entered into force May 14, 1884. The contracting parties were Belgium, Denmark, France, Germany, the Netherlands and the United Kingdom. Effective in May, 1964, Great Britain withdrew from the Convention for the reason of establishing a larger exclusive fishery zone than the three-mile limit accepted in the 1882 Convention. A new conference met in 1963 and 1964 in London and it adopted the European Fisheries Convention of 1964, which was primarily concerned with exclusive fishery zones. For the text of the North Sea Fisheries Convention of 1882, see I U.N. Legislative Series, Laws and Regulations on the Regime of the High
agreements for a mutual enforcement system in the respective regions — in the East Asian Seas and the North Sea. In the event infractions by foreign vessels were found in the East Asian Seas, the Inspection Ships were entitled only to demand a written statement from the vessel concerned and then were to report the incident to their own Fisheries Association. The Association receiving the report had to notify the other Fisheries Association of the offence. In contrast, in the event of an infraction of the North Sea regulations, the patrol vessels of any signatory nations were empowered not only to authenticate all infractions of the regulations but also to seize the offending vessels of other nationalities, if serious infractions occurred. The Japanese or Chinese inspector was not allowed to go on board a fishing vessel of the other side for any purpose. As a result, even if the inspector had reasonable cause to believe that a violation had occurred, he was not competent to inquire into the suspected violation. In contrast, commanders of the North Sea cruisers, under the same circumstances, might require the master of the vessel to exhibit the official document establishing her nationality. Commanders could board and search the vessel if necessary to obtain proof of an offence. Furthermore, in similar cases under most other fisheries conventions, inspectors have the power to investigate the conduct of fishing vessels prior to the discovery of an infraction.

In regard to sanctions, both the present arrangement and the North Sea Convention left the prosecution and punishment of offenses in the hands of the flag state. According to the present arrangement, no physical imprisonment was imposed on the persons in charge of the vessels. The punishments were only warnings, a fine or disqualification of the vessel's operator. In contrast, under the North Sea Convention, either fine or imprisonment, or both, had to be imposed in accordance with the domestic laws of each contracting state.

The North Sea Convention of 1882 was a multinational convention reached under circumstances showing the percepti-
ble decline of certain fish and inadequate fisheries regulation in the region. Yet it was intended only to keep order and to protect fishermen and their applicances, and not as a conservation measure. It seemed natural, therefore, that the North Sea Convention was more restrictive than the non-governmental arrangement.

**D. Emergency Rescue**

Generally, the scope of the emergency rescue and mooring provisions of the Sino-Japanese arrangements included (1) marine disaster; (2) other irresistible calamities; (3) a serious injury to, or critical illness of, the crew on board the fishing vessels; and (4) the need for emergency shelter or assistance. 92

In the first arrangement, there was no limit on the maximum number of Japanese fishing vessels to be allowed simultaneous emergency moorings at the designated ports of China. Such a limit appeared in the second and third arrangements, i.e., fixing the maximum number of vessels to fifty overall and to thirty at each port. However, there were no restrictions on the number of Chinese fishing vessels permitted emergency mooring under the listed circumstances in any Japanese ports. Such different treatments by Japan and China, however, were understandable since Chinese fishermen seldom fished near the Japanese coastal areas.

In order to get permission for mooring at the Chinese ports, the Japanese fishing vessels ordinarily had to file an application in advance and they were allowed to cast anchor only after approval. But fishing vessels of either party were permitted to enter directly the nearest port of the other party without prior applications, in the following three emergencies: serious damage to a vessel; a complete loss of engine power; and no other vessels to tow her to a designated port. 93 Thus a fishing vessel which was in immediate and imminent danger of marine disaster but had not yet sustained any physical damage could not escape the immediate calamity by entering directly the nearest port.

In most marine disasters requiring emergency shelters, it would be extremely difficult to draw a line between the four circumstances, 94 allowing emergency moorings at the designated

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92. See infra, text accompanying notes 120–21.
93. See Clause III of the appendix 4 of the third arrangement.
94. The four emergencies are as follows:
ports only and the three situations allowing direct entry into any nearest port. If the “direct entry” provision (clause III) were narrowly interpreted so as to cover only the three categories, thus excluding such situations as necessary for any precautionary protective measures, it would be in conflict with the purpose of Article 5 (1) of the same arrangement which requires the Fisheries Associations to provide to fishing vessels in distress every assistance necessary for rescue and emergency mooring prior to suffering physical damage. Clause IX of the same appendix required vessels to observe strictly different rules with respect to direct entry and the other types of entry. The vessels which entered any port not in conformity with the rules were to be tried by the local laws of the coastal state and such vessels had to bear all the consequences arising therefrom. To the same extent, therefore, clause IX would be inconsistent with the spirit of Art. 5 (1), if clause IX were restrictively applied to each case.

The mooring time was limited to the duration of typhoon or the duration of repairs. In the event the local repair facilities were not satisfactory, the vessels under repair should be towed to their own country with the help of their own Fisheries Association within 10 days under the first arrangement. The third arrangement, however, removed the 10-day-limit provision. When a fishing vessel entered or left the designated mooring port and during the mooring period, it had to observe certain rules stipulated by the local laws and this arrangement. Fishing vessels rescued had to pay the telegraphic charges and other expenses in accordance with the relevant provisions of this arrangement.

IV. COMPARISON OF NON-GOVERNMENTAL ARRANGEMENTS WITH THE GOVERNMENTAL AGREEMENT

The governmental agreement is similar to the non-governmental arrangement, but its contents are simpler. It

(1) When the safety of the vessel is obviously in danger because its hull is seriously damaged or its engine is in serious trouble;
(2) When a typhoon or inclement weather is encountered, and there is really no other way to ward off danger except by emergency mooring;
(3) When a crew member is seriously wounded or critically ill (not including infectious diseases) and urgently needs medical care;
(4) When it is necessary to escort the rescued crew members or vessels in distress to a port of the other side.

For details, see Clause (1) of appendix 4 of the third arrangement.

95. Cf. Clause 5 of appendix 3 of the first arrangement and Clause 5 of appendix 4 of the third arrangement.
consists of a main text (consisting of eight articles), two appendices, three exchanges of notes, an agreed minute, and two exchanges of letters. Significantly, the governmental agreement voices a more conspicuous concern about conservation than does the non-governmental agreement. The accord lays down stricter rules for ensuring preservation and effective utilization of fisheries resources. Interestingly enough, the safety regulation of fishing operations, which was one of the main characteristics of the non-governmental arrangements, is not stipulated in the present agreement. It is to be made non-governmentally by the civilian fishing circles of the two parties. Enforcement measures are based on a typical national jurisdiction of flag state. Since states have become enforcing agencies, such an inefficiency as may arise from national jurisdiction might be partially supplemented. The government accord provides for emergency rescue and shelter, and a joint fisheries commission is newly established. The functions and obligations of this commission are discussed in the following section, where they are compared with those contained in the agreements in the North Pacific Ocean.

The comparison between the non-governmental and governmental agreements will largely deal with four fields: (1) fishing zones, (2) enforcement measures, (3) the fisheries commission and (4) miscellaneous problems. The 1965 non-governmental arrangement, which was the latest one, will serve as a basis for the following comparison with the governmental agreement.

A. Fishing Zones

As was the case in the non-governmental arrangements, the present agreement is applicable only to the agreed fishing zones in the Yellow and East China Seas; its applicability is also excluded from the territorial waters and coastal fisheries of each Contracting State. The basic fishing line delimiting the agreed fishing zones and the coastal fisheries areas has not been changed. However, the agreed fishing zones, to which a 600-horsepower limit is to be applied, have been substantially expanded up to 100 to 150 miles east of the Chinese mainland ("horsepower regulation zone"). As a result, the most controversial issue during the negotiation of the non-governmental arrangements, i.e., the allocation of fishing zones, is solved in the present agreement in favor of the Chinese original intent not only from the geographic point of view but also from the point of view of the fishing regulation.
In the horsepower regulation zone, trawlers with engine capacities of 600 horsepower or more and seiners with 660 horsepower or more are respectively prohibited to operate throughout the year (map 5). It may be noted that the horsepower regulation zones are agreed-upon areas in line with the eventual advent of a 200-mile economic zone, even though the distance is shorter than 200 miles and the degree of exclusivity of coastal jurisdiction in the zones is less rigid than that of the economic zone concept under discussion at the current sessions of the Law of the Sea Conference.\textsuperscript{96}

Some sections of the horsepower regulation zone are designated by various names for specific fishing regulations.\textsuperscript{97} In relation to trawling operations, the agreement designates areas closed for certain periods to fishing (two “fishery fallow zones”)\textsuperscript{98} as well as three fishery protection zones in which restrictions are placed on both the number of vessels and the fishing period.\textsuperscript{99} The total size of the areas covered by the two fishery fallow zones and the three fishery protection zones is approximately the same as that of the main six fishing zones under the non-governmental arrangement.\textsuperscript{100} In relation to seining operations, the horsepower regulation zone is divided by the line of the 32nd degree northern latitude into two seine fishery protection zones (map 5).\textsuperscript{101}

\textsuperscript{96} Cf. Art. 45(1) and (2) and Art. 50(2) and (3), particularly (4) of Part II of the Informal Single Negotiating Text, U.N. Doc. A/CONF.62/WP.8 (1975).

\textsuperscript{97} Exceptionally, some parts of the first fishery fallow zone and the first protection zone spread over beyond the limit of the horsepower regulation zone.

\textsuperscript{98} The fishery fallow zones are regulated both in terms of the fishing period and the kind of fishing operation. For details, see Clause 1(2)(i)-(ii) of appendix 1 of the governmental agreement.

\textsuperscript{99} See Clause 1(3)(i)-(iii) of appendix 1 of Clause 1(1) of the agreed minute of the governmental agreement.

\textsuperscript{100} The first fishery fallow zone is approximately half the total of the first and second zones under the non-governmental arrangement. The zone spreads over an area roughly three-fourths the total area of the non-governmental third and fourth fishing zones. The first fishery protection zone is a new area the most part of which thus does not overlap with any agreed fishing areas under either the non-governmental or governmental agreement. The second fishery protection zone is approximately half the area of combined fifth and sixth fishing zones under the non-governmental arrangement. The third fishery protection zone is located in the southern-most area.

\textsuperscript{101} In the first protection zone, all Japanese seiners are to abstain from fishing throughout the year. In the second zone, during August through December, the maximum number of seiners may not exceed 25 teams for the Japanese and 70 teams for the Chinese. For the first zone, see Clause 2(2) of appendix 1 of the governmental agreement and the Japanese note regarding Clause 2(2) of the appendix 1; for the second zone, see Clause 2(3) of the appendix 1 and Clause 1(2) of the agreed minute, id.
The Sino-Japanese Governmental Fisheries Agreement of 1975
(Map 5)

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Military Warning Zone  Seine Fishery Protection Zones
Horsepower Regulation Zone  Trawl Fishing Prohibition Zone
Trawl Fishery Fallow Zones  Military Operational Zone
Trawl Fishery Protection Zones
The trawl fishing prohibited zone as well as the military zones are still recognized by the present agreement. These two special zones were established in conformity with Chinese domestic laws. The military zones will be explained later. The present trawl fishing prohibited zone is the same area as the previous one under the non-governmental arrangement. The dispute over the legality of the zone has not, in legal sense, been resolved, as was the case under the non-governmental arrangement. Here again, Japan was not strong enough to reject the Chinese unilateral claim. The controversy ended as a result of Japan’s promising to impose self-restraints on her fishermen. Thus, Chinese as well as Japanese fishermen were banned from fishing in the zone.

Furthermore, trawlers have to observe other conservation measures in terms of restrictions on the sizes of fish and mesh of net, and on the amount of young fish. Seiners also must observe the other conservation measures in terms of restrictions on the numbers of lighting and netting ships and on the luminicity of light, in addition to the same restrictions on trawlers.

In short, the governmental conservation measures in regard to trawlers are exactly the same as the non-governmental ones. Likewise, the present conservation measures concerning seiners are not much changed. The only changes are a new restriction on the number of netting ships and more restrictions on the sizes of fish and net. As regard the size of fishing zones, the seining zones in fact are not much changed since the present 660 horsepower limit is the same as the previous limit and the size of areas is almost identical in both the governmental and non-governmental agreements, except for a slight variation of marginal line of the horsepower regulation zones toward the northeast. However, the horsepower regulation zones relating to trawlers are largely different in the governmental and non-governmental agreements since the 600 horsepower limit and the zones connected with it are newly established for the purpose of trawl fishing regulations.

102. This zone is east of the basic fishing line drawn from the northern-most point at 37 degrees 3 minutes down to the southern-most point at 27 degrees and 121 degrees 10 minutes east longitude.

103. The provision about the netting ship is new. The non-governmental arrangement did not limit the number of netting ships. Thus, more young fish will be protected as much as such restrictions are increased. Cf. Clause 2(5) of appendix 1 of the governmental agreement and Clause 2 and 3 of the non-governmental seine arrangement.
B. Enforcement Measures

By enforcement is meant the procedure through which the obedience of fishing vessels to the governmental and non-governmental agreements is to be secured. The present enforcement of both trawling and seining operations is considered in one provision (Art. 3). The assessment of the present enforcement measures is largely based on the regulations applicable to fishing zones, and relates to the following issues: (1) conservation methods (2) safety of fishing operations (3) methods of inspection and (4) sanctions. The first two are concerned with the scope of enforcement measures and in consequence they set the criteria for determining violations, and the latter two are related to the legal form and effect of the present enforcement measures.

1. Scope of Enforcement

As has already been shown, the conservation measures accepted by the present agreement have not changed from those contained in the non-governmental arrangements. Thus, in the event of violation of the number of vessels in the agreed fishing zones or of the limit of the fishing zones, each Contracting State as an enforcing agency is now obliged to find such violation and to report to the other State. But in regard to infringement of restriction on the amount of young fish caught, the "quasi-port jurisdiction" contained in the non-governmental arrangement is not provided in the governmental agreement. The safety regulations, navigational rules and the regulation concerning the settlement of marine incidents are to be agreed on a non-governmental basis in the future. At this point, therefore, the non-governmental enforcement measures for collision or damage disputes can not be comparatively discussed.

The scope of the governmental measures has become more restrictive than that of the non-governmental ones, in view of the

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104. Art. 1 and Clause 3 of the agreed minute of the governmental agreement. These provision raise a question how violations of fishing vessels in the coastal fishing zone will be controlled. For example, as to “hot pursuit” see infra note 143.

105. See Art. 4 of the main text and Clause of the agreed minute of the governmental agreement. The matters are now left to the civilian fishing industries of the two states for further negotiations. The subjects to be agreed are as follows: (1) marks and signals; (2) rules to be observed in operation; (3) provisions for making way for each other; (4) provisions for mooring; (5) customary rules for safe fishing operations; and (6) provisions dealing with marine incidents. Also, compare with the relevant provisions of the Korea-Japan Fisheries Convention at supra note 1.
increase in the size of the regulated fishing zones and of the
decrease in the amount of catchable young fish. Also, the subject
of enforcement has shifted from the Fisheries Associations under
the non-governmental arrangements to the States under the
present agreement. Thus the responsibilities for the enforcement
of such conservation methods are entrusted primarily to each
Contracting State. This shift of the power of enforcement from one
body to another seems to increase the function of enforcement
since means and powers exercised by a State are generally
regarded more inclusive and broader than those exercised by a
civilian fishing association.106 But the effectiveness of the present
methods of conservation remains to be compared with other types
of conservation measures such as quotas, gear restrictions, entry
limit, etc.107

2. Legal Form and Effect of Enforcement

The effectiveness of conservation measures is closely related
to the mutual cooperation of fishermen and the legal system of
enforcement. The present agreement does not provide any details
concerning the duties of enforcements, but lays down in general
terms that each state is obliged in the first place to supervise and
instruct all fishing vessels under its own jurisdiction in order to
ensure the implementation of the agreement and to avoid any
violations of the agreement. In addition, each state is obliged to
take action against any violations by its own fishing
vessels.108 Moreover, all fishing vessels, both trawlers and seiners, operating
in the agreed fishing zones have to cooperate with each other in
order that they may secure the enforcing of this agreement.109 In
this regard, it seems appropriate to assume that such an
obligation of vessels to cooperate would be limited to that of
notification of violations by foreign vessels through the channel
of their own government to the other state to which violating
vessels belong, since the notification obligation is to be dealt with
on the governmental level under the present agreement. As a
result, the current notification obligation of trawlers is identical to
that under the non-governmental arrangement. On the other

106. Cf. Art. 3(1), id. with Art. 9 of the third non-governmental arrangement
and Clause 6(1) of the non-governmental seine arrangement.

compare with the conservation measures under the Northwest Pacific Fisheries
Convention, infra at 64–72.

108. Art. 3(1) of the governmental agreement.

109. Art. 3(3) of the governmental agreement.
hand, seiners under the present accord have a mere notification obligation but seiners under the non-governmental arrangement had not only notifying but also supervising obligations in the course of their operations.

In regard to the definition of enforcement agency, most other fisheries conventions ordinarily provide that certain types of vessels or certain kinds of authorized officers have to be designated in order to find infringements. Since the present agreement is silent on the question, the two contracting parties are given some discretion in interpreting the term "state" as an agency for finding or determining violations. In modern treaty practice, the enforcement function does not necessarily belong to the navy of the state. However, if Japan or China is somewhat overenthusiastic in exercising enforcement, the possibility has not been ruled out that the present agreement may include, as an inspection agency, naval vessels, in addition to the state-run vessels commanded by a specially appointed officer, aircraft and civilian ships.


111. As far as trawl fishing is concerned, compared with the non-governmental arrangement, the present agreement has developed a step forward since it provides at least some procedures for finding any violations of regulations. Under the non-governmental trawl fishing arrangement, there were neither supervising authorities nor any other enforcement agencies. For further discussion, see supra, text accompanying note 81.

With respect to the powers of the enforcement agency, a general requirement is that authorized officers must carry documents of identity and that their vessels must show a special flag or pennant. Under the present agreement, however, it is not clear whether each contracting state as an inspection agency should be obliged to observe such limitations. The previous non-governmental seine fishing arrangement had a provision requiring inspection ships and inspectors to comply with the above conditions. As far as seining operations are concerned, therefore, it seems that the present provision in regard to the powers of the inspection agency is a backward step compared with the previous one. A critical question with respect to the authority of the inspectors is whether inspectors under the present agreement have power to visit and search any ship suspected of violations before they are established as infractions. In this connection, it is not easy to answer whether a "reasonable cause" would be sufficient for the inspectors under the present agreement to act on suspected infringements. Even after an infraction is established, it is still problematic to decide how far the enforcement agency under the present agreement can exercise its authority in order to obtain evidence and to deter further infractions on the spot. In other words, the question in these circumstances is whether the inspectors have authority to arrest or seize such persons or vessels. It is also imaginable that a state may often encounter some dissatisfaction in relation to the punitive measures taken by the other state if the latter, while exercising the jurisdiction of the flag state over its own vessels, acts on prosecution and punishment in an arbitrary fashion.

With respect to all of those questions, the pertinent paragraph 2 of Article 3 of the agreement simply stipulates as follows:

Either of the contracting states is entitled to notify the other contracting state of the facts and circumstances of the violations by foreign fishing vessels of the provisions of appendix I of this agreement. The contracting state thus notified shall promptly inform the other aggrieved state of the results of the action it has taken.\textsuperscript{113}

From this paragraph, some implications may be drawn to give at least some general answers to the above questions. First, the agreement stresses the exclusive jurisdiction of the flag state with respect to prosecution and punishment of infractions. If

\textsuperscript{113} Art. 3(2) of the governmental agreement.
inspection agencies such as naval vessels or government-owned vessels have a reasonable cause to believe that fishing vessels of the other state have violated a provision of the agreement, they might exercise their enforcement authority to the extent allegedly "necessary or appropriate" for obtaining evidence or witnesses. In this connection, if there is a dispute between the two parties about the proper exercise of enforcement authority, the agreement does not provide for guidelines for the solution. Instead, the agreement, in a considerable measure, indicates that the state as an inspection agency may have discretion in choosing and exercising the instruments of inspection, since the inspection power is conferred on the state without specifying the scope of the discretion. And in the special circumstances where the two contracting states want to exercise concurrently the enforcement authority relating to finding infractions, the agreement indicates the primacy of the flag state jurisdiction; the latter would prevail over in light of the responsibility of the flag state for supervising and instructing its vessels in order to have them observe regulations.114

Even though flag state jurisdiction is established with respect to prosecution and punishment, the agreement is still silent on the sanctions against any infractions. The non-governmental arrangements provided at least for three different sanctions, i.e., warning, punishment (in case of trawlers) and warning, fine, or disqualification (in case of seiners), depending on the merits of each case. In view of primary responsibility of each contracting state for exercising surveillance over its own fishermen, a question is raised as to whether sanctions should be imposed on fishermen or state if a state fails to implement such an obligation.

The present agreement does not establish a legal channel for settling disputes arising from enforcement measures. The previous arrangement provided at least negotiations as a final method of dispute settlement, but the governmental agreement does not mention any method at all. Therefore, the current method of dispute settlement is exclusively in the hands of the contracting flag state as it was in the previous arrangement.

The agreed fishing zones under the present agreement are larger than those under the non-governmental arrangements. If the methods of enforcements are restrictively defined so as to comprise only a certain kind of inspection vessels or a certain kind of inspectors holding certain commissions, the policing of the

114. Id., Art. 1.
presently enlarged fishing zones is likely to be much less effective in proportion to the increased fishing areas and the restricted methods of enforcement. Under the present agreement, however, China may exercise an unrestricted discrentional power in selecting and exhausting its available instruments and means for an inspection purpose. This is one of the ambiguous provisions that China might utilize for its expedience. On the other hand, the methods of enforcement, without naming the kinds of punishments, may enable Japan, while exercising the exclusive jurisdiction of the flag state over its vessels, to exercise a discretionary power in assessing or imposing the penalties for the infringements by its own vessels.

Insofar as state power tends to be abused, the success of the present enforcement system depends largely on the political relations between the two states, since on the one hand, the authority of determining of any infringements is entrusted to the policing state and, on the other, the authority for imposing any penalties for violations is given to the flag state, without any limitations on such authority. If diplomatic relations between the states should deteriorate for whatever reasons, then the enforcing power of the state in accordance with the present agreement could be enlarged without being checked by means of treaty provisions; on the other hand, a certain degree of checking power is exerted by the binding authority of the treaty provisions under normal treaty relations.

C. Fisheries Commission

Since the fisheries agreement has been transformed from a non-governmental to a governmental accord, in theory all the problems derived from the governmental agreement should be dealt with by the government. The establishment of a fisheries commission, however, provides an intermediate instrument for resolving fishery problems. A comparison of the non-governmental and governmental agreements about the problems of the fisheries commissions cannot be made at this stage since the non-governmental arrangements had no fisheries commission. In this section, only the most important functions of the Commission are introduced.

First, the Commission is to review the implementation of the agreement and, if necessary, to recommend to both contracting states the revision of the appendices of the agreement. The legal capacities of the Commission are to be limited to the recommenda-
tions for the revision of the conservation measures since the appendices deal only with matters relating to conservation measures. All the resolutions, recommendations and other decisions of the Commission are to be made only by the mutual agreement of the commissioners attending the meeting. The requirement for "mutual agreement or concurrence" for those purposes is commonly provided in most of the fisheries conventions.\textsuperscript{115} The Commission is not vested with an extensive power to enter into agreement as an independent entity, which often may be seen in other international fisheries conventions.\textsuperscript{116} The recommendations are to be binding on member states if they are accepted by the contracting states through an exchange of notes.\textsuperscript{117} In short, the Commission has no decision-making function.

Another function of the Commission is to exchange data concerning fisheries and to review the conditions of fishery resources in the agreed fishing zones.\textsuperscript{118} The Fisheries Associations of both parties under the non-governmental arrangements were not obliged but willing to exchange data concerning fishery investigations and research, etc. When it is deemed necessary, the Commission is to review the conservation measures with respect to fishery resources and any problems related to conservation. Similarly, the Fisheries Associations under the non-governmental arrangements were to enforce the conservation measures. In this regard, the previous Fisheries Associations appeared more like an enforcing agency, while the present Commission appears to be more like a reviewing agency.\textsuperscript{119}

D. Other Problems

As shown above, the present agreement does not yet contain provisions concerning the regulation of safety operations, and the provisions about the marine research data under the non-governmental arrangements are shortened into a provision concerning the functions of the Fisheries Commission. Thus the remaining problems of the present agreement which need to be compared relate to emergency rescue and mooring.

\begin{footnotes}
\item 115. \textit{Id.}, Art. 6(3).
\item 116. See, for example, the International Commission for the Northwest Atlantic Fisheries (1950); the Northeast Atlantic Fisheries Commission (1963).
\item 117. Art. 7(2) of the governmental agreement.
\item 118. \textit{Id.}, Art. 6(4)(iii).
\item 119. For further discussions on the Commission, see \textit{infra}, text accompanying notes 176–86.
\end{footnotes}
The present agreement lays down two situations in which each state ought to provide assistance and protection to fishing vessels in distress: marine disaster and irresistible calamities.\textsuperscript{120} The previous non-governmental arrangement stipulated four specific marine emergencies. In the case of emergency, the present agreement further obliges each coastal state to inform authorities of the accident. The agreement does not, however, specify what kinds of marine disasters ought to be considered as justifying an emergency shelter. Instead it explicitly mentions only bad weather and irresistible calamities as situations where sheltering is required.\textsuperscript{121}

In circumstances where it would be impossible for a fishing vessel in distress to reach its designated port, the present agreement does not state what kind of emergencies would justify a direct entry into the nearest port of the coastal state. Rather, it defines the situation as an event in which the vessels in distress “cannot enter any designated ports.” The non-governmental arrangement enumerated in a restrictive manner three situations for direct entries.\textsuperscript{122}

In any emergency, the only requirement under the present agreement for entering the designated ports is the notification of such an emergency situation.\textsuperscript{123} Vessels are, of course, required to act in good faith in making such reports. But in more serious circumstances, where the fishing vessels cannot enter the designated ports, they have to explain the reasons by means of notice to the authorities concerned prior to making direct entry into any nearest port. Thus, under the present agreement, a situation meeting the characteristics of marine disaster or irresistible calamities would allow entry into designated port with requirement of notification, while a situation in which a vessel in distress “cannot enter any designated ports” would allow direct entry into any nearest port with requirement of explaining the reasons. Once fishing vessels have entered the ports of the coastal

\textsuperscript{120} Art. 5(1) of the governmental agreement.
\textsuperscript{121} Id., Art. 5(2). It is not explicit as to what are bad weather and irresistible calamities.
\textsuperscript{122} Id., Clause 1(3) of the appendix II, and see supra, text accompanying note 94.
\textsuperscript{123} The contents of a notice must include the following: the name of vessel, a call sign, present location, a port registration, a net tonnage, name of captain, number of crew, destination of sheltering port, the expected time of arrival, and the reasons for shelter. See Clause 3 of the appendix II of the governmental agreement. For the other methods of contacting the harbor authorities, see id., Clause 2 and 4 of the appendix II; and for the designated ports, see id., Clause 1.
states, they must abide by the pertinent provisions of the agreement, the local regulations and instructions. In this connection, two hypothetical questions arise. First, for example, in the event of a serious injury to, or critical illness of, the crew, it is uncertain whether the authorities of the coastal state could refuse request for entry into designated port on the ground that the situation does not fall under the two categories such as marine disaster or irresistible calamities. Second, it is also uncertain whether the local judicial authority could punish any vessels of the other party which had directly entered the nearest ports complying with the requirement for explaining the reasons for allegedly more serious circumstances where the vessels cannot enter the designated ports. In regard to the latter question, the provisions of the non-governmental and governmental agreements may be compared. The three categorical emergencies provided in the non-governmental arrangement might set the criteria for assessing the severity of emergencies and for sanctioning any violations thereof.\textsuperscript{124} On the other hand, they might cause some inflexibility in interpreting the spirit of the emergency rescue provisions since they required the existence of a certain damage or damages prior to making any direct entry into the nearest port.

The present agreement, without naming categorical emergencies, seems more flexible in allowing direct entry since the situation where vessels cannot enter designated ports may be interpreted more flexibly than the enumerated situation. From that point of view, the provisions of the present agreement seem to serve better the purport of rescuing and protecting human lives and properties from the marine disaster than those of the previous arrangement, as far as direct entry is concerned.

V. COMPARISON OF GOVERNMENTAL AGREEMENT WITH OTHER NORTH PACIFIC FISHERIES CONVENTIONS

The North Pacific fisheries conventions chosen to be compared with the governmental agreement are the 1965 Korea-Japan Fisheries Convention, the Soviet-Japanese Northwest Pacific Fisheries Convention, and the International Fisheries Convention on the North Pacific Ocean. The comparison focuses on the main

\textsuperscript{124} Under the non-governmental arrangement, some sanctional measures might be imposed on fishing vessels, if the vessels entered designated or non-designated ports not in conformity with the each allowable emergency. For details, see \textit{supra}, text accompanying notes 92–94.
legal issues contained in each convention, namely, (1) fishing zones, (2) enforcement measures and (3) fisheries commissions.

The Korea-Japan Fisheries Convention (the Korea-Japan Convention). This convention is the result of 14 years of hard negotiations between the two states since the Korean Proclamation of Peace (Rhee) Line in 1952 until the conclusion of the Convention in 1965. The mandatory life of the Agreement was 5 years, which elapsed in December, 1970; and it is now terminable one year after the date of giving notice.

The remarkable features of the Convention are, among others, that: a most stanch supporter of the three-mile limit virtually for all purposes, Japan recognized for the first time an exclusive 12-mile fisheries zone off the coast of a foreign country (Korea); both parties agreed to the establishment of a third party arbitration for the settlement of disputes; and they set up the joint fishery resources survey zone without deciding upon the subjects and contents of the survey (map 6).

The Soviet-Japanese Northwest Pacific Fisheries Convention (the Soviet-Japanese Convention). Since World War II, the Soviet Union and Japan have not been able to agree on a peace treaty; thus, in legal sense, a state of war had existed

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125. For the text, see 4 Int'l Legal Mats 1128 (1965).
127. Prior to this convention, Japan accepted the prohibition of drift net fishing operations within 40 miles off the coasts of either party, in accordance with the Japan-U.S.S.R. Fishery Convention of 1956. This, therefore, should be noted as a precedent for the extension of coastal jurisdiction accepted by Japan. For details, see infra, text accompanying note 152-53. And for another type of fishery zones recognized by a multinational fisheries convention, see Arts. 2 and 3 of the European Convention on Fisheries, of 1964. For its text, see supra note 87.
128. This arbitration clause may be regarded as unique except for a similar provision of the European Convention on Fisheries of 1964 (Arts. 13 and Annex II 1-15). The article of the Korea-Japan Convention seems to indicate that both states had met earlier some complicated and hard fishery problems; and that they intend to solve such problems in an agreed legal framework. Such a legalistic method for the settlement of disputes seems significant at least to the East Asian peoples who have traditionally preferred the diplomatic channel for solution of conflicting interests. In this connexion, compare the provisions of the Japanese-Chinese non-governmental arrangement at supra, text accompanying note 81.
129. For the text, see supra note 110.
The diagram illustrates the Korea-Japan Fisheries Convention. Key features include:

- **Peace (Rhee) Line**
- **12-Mile Exclusive Fisheries Zone**
- **Joint Regulation Zone**
- **Drag-net Prohibition Line**
- **Trawl Fishing Prohibition Line**
- **Straight Base Line**

The map delineates territorial waters and zones of cooperation and prohibition, providing a visual representation of the fisheries agreements between Korea and Japan.
until October 1956 when the two states signed a Joint Declaration terminating the state of war.\textsuperscript{131} Particularly in the early 1950's, the safety of the Japanese fishing activities in the Northwest Pacific Ocean was not guaranteed because of the state of war. For protection of the Japanese fishing industry in that region, as an initiative of Japan, the fishery negotiations between the two states started in 1955 at London, and finally the agreement was reached on March 14, 1956.\textsuperscript{132} The mandatory life of this Convention was 10 years, which expired in March 1966; it is now terminable through a one-year termination notice.

\textit{The International Fisheries Convention on the North Pacific Ocean} (the Tripartite convention between Canada, Japan, and the United States).\textsuperscript{133} This convention was the first fruit of the 1952 San Francisco Peace Treaty imposing on Japan an obligation to negotiate with the Allied Powers about the fisheries problems.\textsuperscript{134} Since the convention was signed prior to the signing of the Peace Treaty, there have been some arguments about the sovereign equality of Japan in the process of concluding it.\textsuperscript{135} The treaty had a mandatory life of 10 years, which elapsed in June 1963; it is now terminable on one year written notice.\textsuperscript{136}

\textsuperscript{131} For the text, see 263 \textit{U.N.T.S.} 112 (1957).


\textsuperscript{133} For the text, \textit{supra} note 125.

\textsuperscript{134} See \textit{supra}, text accompanying notes 32–34.

\textsuperscript{135} Although the Allied Commander issued a memorandum to the Japanese government for the purposes of negotiating, signing and ratifying the Convention, the Japanese delegation was given the status of a sovereign delegation. For the Japanese arguments, see Oda, \textit{supra} note 126, at 64; and for the excellent discussion of the positions of Canada and the United States, see Johnson, “The Japan-United States Salmon Conflict,” 43 \textit{Wash. L. Rev.} 1–43 (1967).

\textsuperscript{136} Since the Tripartite convention was made, nine bilateral fisheries-related agreements have been made between Japan and the United States. Most of them have directly or indirectly modified the Tripartite convention in relation to Japan and the United States. Two of them directly related to this convention are: An Exchange of Notes May 9, 1967 whereby Japan agreed to curtail certain fisheries within the 12-mile U.S. fisheries zones, and to limit some fisheries altogether, 6 \textit{Int'l Legal Mats} 745 (1967); Agreement between the United States and Japan Concerning Salmon Fishing, Dec. 24, 1974, U.S.L.C. Congressional Research Service, \textit{Treaties and Other International Agreements on Fisheries} 795 (1974). For further information, see Windley, “International Practice Regarding Traditional
The convention has two distinctive features: (1) the initiation of the "abstention principle," whereby Japan, and to a lesser extent Canada, agreed to abstain from fishing stocks of certain species of salmon in certain areas;\(^\text{137}\) and (2) the arbitration clause providing for a "special committee" consisting of scientists from neutral countries.\(^\text{138}\)

### A. Fishing Zones

A common feature of the Sino-Japanese governmental agreement and all the other fisheries conventions mentioned, is that they do not apply to the territorial waters of the contracting states.\(^\text{139}\) Another common distinction among them, except for the Soviet-Japanese Convention, is that they do not apply to the coastal fisheries.\(^\text{140}\) A third distinction is that while the fishing

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\(^{139}\) Art. 1(1) and Clause 3 of the agreed minute, the governmental agreement; Art. 1(1), Korea-Japan Convention; Art. 1(1), Soviet-Japanese Convention; and Art. 1(1) and (2), the Tripartite Convention.

\(^{140}\) *Id.* The Soviet-Japanese Convention prohibits fishing operations by drift net in the waters within 40 miles off the coasts of the territories of either party. It may thus be said that the Convention also does not apply to coastal fisheries in narrow sense.
zones under both the Sino-Japanese and the Korea-Japan conventions are defined in detail in terms of longitude and latitude, those under the Sovieit-Japanese and Tripartite conventions are designated by several lines and the names of the areas.

1. Korea-Japan Convention

The Korea-Japan Convention involves more legal issues with respect to defining the fishing zones than the Sino-Japanese agreement and the other conventions. Since the Convention recognizes a 12-mile exclusive fishing zone of either party, one area in the Korean Strait overlaps between Tsushima Island (Japan) and the southern part of Korea. The longest and shortest distances of the Korean Strait between the Japanese Island and the Korean coast are 26.2 and 23.2 miles, respectively. The fishing zone was divided into two parts by compromise, and thus the method of delimiting the zone deviates from the median-line principle stipulated by Article 12 of the Geneva Convention on the Territorial Sea and Contiguous Zone. With regard to the baseline, the Korea-Japan Convention has a peculiar provision stipulating that the straight baseline shall be determined through "consultation" with the other party. The Korean Peninsula is surrounded by the sea in the east, south and west. The east coast has no indentations or islands which could cause problems in relation to drawing straight baselines or closing lines. But the south and west coasts have many highly irregular indentations as well as over 3,000 islands. The geography itself would justify the drawing of reasonable straight baselines. The four straight baselines drawn by Korea did not incur any objections from Japan or other countries. Thus it does not appear that the southern and western coasts of Korea need consultation with the other interested countries for the purpose of drawing straight lines in accordance with international standards.

The Korea-Japan Convention provides for a joint fishery regulation zone which excludes in fact the Japanese 3-mile territorial sea and the Korean 12-mile exclusive fishery zone.\(^\text{143}\)

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\(^{141}\) Japan did not object to the closing lines at the mouths of the two bays along the Korean east coast (the Yongil Bay and Ulsan Bay).

\(^{142}\) Compare with the Chinese straight baseline, at supra text accompanying note 41.

\(^{143}\) The Korean Government has never enunciated the policy on the breadth of the territorial waters. Customarily, Korea has observed the 3-mile limit. As a result, Korea became involved in a question as to whether the right of "hot pursuit" could be exercised from the fishery zone. In March, 1966, the Kaiyomaru
The joint regulation zone is the main convention area comparable to the fishing zones under the Sino-Japanese agreement for the purpose of conservation measures. In addition, joint resources survey zones were established outside of the joint control zone by the 1967 exchange of letters at the recommendation of the Korea-Japan Joint Fisheries Commission at its first session of 1966. The conservation measures in the joint regulation zone are principally of a provisional character since they will cease to apply whenever the scientific surveys show that the measures do not provide for the maximum sustainable productivity of fishery resources.

As No. 53, a Japanese fishing vessel, was caught by a Korean patrol boat for allegedly violating the limit of the 12-mile exclusive fishing zone. Japan argued that "since there were no provisions in the Korea-Japan Convention concerning the rights of hot pursuit, the question had to be regulated by the rules of general international law, and that under international law, it was not recognized that a State can exercise the right of hot pursuit starting from the exclusive zone. For a counter argument, Korea claimed that "in any case the vessel had been fishing within the exclusive fishery zone of Korea established under this convention, and that the vessel could be caught in the exercise of the right of hot pursuit by the Korean patrol boats." See Japanese practice in international law, 13 Jap. Ann. Int'l L. 83–84 (1969). With regard to the same issue, on June 17, 1975, a United States District Court, in the cases of United States v. Fishing Vessel Taiyo Maru No. 281 and United States v. Kawaguchi, held that "nothing in the Convention on the Territorial Sea and the Contiguous Zone affirmatively prohibits a coastal state from creating a contiguous zone for purposes other than the four enumerated ones." The Court pointed out that "nothing in Article 24 of the Convention precludes the establishment of such a zone for other purposes, including the enforcement of domestic fisheries law." In the case, it is worth noting that Japan did not protest with specific reference to hot pursuit originating in the contiguous fisheries zone. For details, see U.S. Senate, 93rd Cong., 2nd Sess., Hearings before the Comm. on Armed Services, Extending Jurisdiction of the U.S. Over Certain Ocean Areas 185 (1974); Fidell, "Hot Pursuit From a Fisheries Zone," 70 Am. J. Int'l L. 95, 98, 99 (1976). Finally, the idea contained in the Informal Negotiating Text of the 1975 Geneva session of the Third Law of the Sea Conference seems to indicate the possible future guideline on the problem. Article 97(2) and (4) stipulate that the right of hot pursuit shall apply not only to violations of the territorial sea and the contiguous zone but also to those of the 200-mile exclusive economic zone and continental shelf. See U.N. Doc. A/CONF.62/WP/8/Part II, at 36 (1975).

144. Korea has been implementing a whaling license system to conserve whales in the joint regulation zone and according to the Convention, Korea has been maintaining the number of whale licenses as it was on the date of the Convention. See M. Savini, Report on International and National Legislation for the Conservation of Marine Mammals: Part I. International Legislation 57 (Rome, 1974), FAO, Doc. FIRD/C326 (1974).

145. The 8th Annual Meeting of the Korea-Japan Joint Fisheries Commission, held at Tokyo on July 25 through July 28, 1973, reported that, except for the stability of high level of mackerel, the productivities of the following fish: horse mackerel, yellow corvenia, hail tail, shrimp and red sea beam, etc., showed gradual
has been done in other fishery conventions, the conservation measures depend on typical regulations concerning certain types of fisheries (the dragnet fishing, seine fishing, and mackerel-angling fishing), and limiting the gross tonnage (not less than 60 tons), the number of fishing vessels, the size of mesh and the power of the luring lights. In this respect, the Korean-Japanese methods of regulation are not much different from the Sino-Japanese methods. Both conventions are oriented to the power of the vessel, i.e., the Korea-Japan convention concerns gross tonnage and the Sino-Japanese agreement the horsepower, and the other orthodox methods of conservation are identical in each agreement.

The Korea-Japan convention contains a notable provision relating to the so-called idea of “equal sharing” of sea resources. Each contracting party is equally obliged not to land more than 150,000 tons of the above-mentioned three kinds of fish altogether (map 6). In this respect, it is questionable whether Korea, as a coastal state, has been denied some sort of special interest generally recognized by the international conventional rules and practices. In normal situations, it is unquestionable that most of the fisheries agreements have given weight to the interests of coastal states, when they allocate the amount of fish catch, the fishing zones or the number of fishing vessels, etc. As earlier shown, the Sino-Japanese agreements, all consistently gave a favorable consideration to the interests of China.

In addition, the Convention has another remarkable provision in relation to the estimation of the total annual quota of fish catch. For that purpose, each party is obliged to report to the other party at least four times every year the amount of fish monthly caught in the zone. Furthermore, the convention provides that if the total amount of the annual fish catch is likely to exceed 150,000 tons with allowance of 10% or less, each government has to administratively readjust the number of vessels or teams of

debates. It thus recognized the necessity for further studies and investigations of the fisheries for reasonable evaluation as well as the need for specific reviews of the rational management of fishery resources. See Korean Association of Fisheries Technics, The Fisheries Annual of 1974 (in Korean) 64-65 (1974).

146. The mackerel is regarded as the most important fish in the joint regulation zone.
147. Clause 2(a) of the Agreed Minute.
149. See supra, text accompanying notes 65–76.
150. Clause 2(c) of the Agreed Minute.
fishing vessels even during the fishing periods in order to keep the total annual catch of fish at not more than 165,000 tons. As a result, the checking on the proper implementation of the annual quotas remains principally under the voluntary control of each party. It is thus questionable whether the main theme of the convention, viz., the effectiveness of controlling the maximum quota of annual fish catches, would be achieved as it was originally intended.151

2. The Soviet-Japanese Convention

The fishing zones are to be designated according to the kinds of fish stocks (salmon, king crab and herring), and a certain type of fishing zones (prohibited areas) can be amended upon further scientific evidence. The annual quota for the salmon catch in the regulatory areas is to be determined by the Joint Fisheries Commission. The Convention mainly concerns the salmon fishing operations and thus sets up in detail the salmon fishing zones. As regards the king crab fishing, two prohibited areas are set up but there are not yet herring fishing areas.

Salmon Fishing Zones. These zones cover all the Northwest Pacific Ocean (including the Okhotsk and Bering Seas) and are divided into the prohibited and regulatory area. The prohibited areas were primarily intended to cover any areas within 40 miles (40-mile prohibited areas) from the coastline of the islands belonging to either party and from the continental coast within the original convention area.152 As shown in map 7, the extent of the prohibited areas is to be revised, if necessary, on the basis of scientific evidence presented by the Soviet-Japan Fisheries Commission. In 1957 the areas ranging 20 miles from the region south of the 48th northern latitude were absorbed in the prohibited areas, and in 1959 the entire Sea of Okhotsk and the other areas adjoining the Commandory Islands and the Kuril Islands were added to them.153 As a result, up to 1962, the prohibited areas for salmon fishing were expanded so as to encompass the Sea of Japan north of the 45th northern latitude and the Okhotsk Sea and the western part of the Bering Sea (map

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151. For the effectiveness of the enforcing of the provisions, see infra, text accompanying notes 164–71.
152. For the original convention area, see Clause 1(a) of the annex of the Soviet-Japanese Convention and for the 40-mile prohibited areas, see id., Clause 1(b).
7). In these areas, any Japanese salmon fishing operation is prohibited throughout the year.

The Soviet-Japanese Fisheries Convention (Map 7)

In 1962, the Soviet-Japanese Commission agreed that the regulatory areas (in fact the convention areas excluding the entire prohibited areas) should be divided into two parts, Area A and Area B (map 7). From then onward, the conservation measures in the two areas have been adopted in terms of allocating the annual quota of salmon catch and in terms of restricting the gross tonnage of fishing vessels, the fishing period and the size of nets. As for the salmon fishing period, the convention stipulated only the closing date of the fishing period (August 10). But in 1957, according to the type of fishing operations, the opening and closing dates were fixed by the Commission as follows: (1) for mothership operations in Area A, May 15–August 10; (ii) for drift-net operations in Area A by vessels operating from Japanese ports, June 21–August 10; (iii) for drift-net and long-line opera-
tions in Area B, by vessels operating from Japanese ports, April 30–June 30.154

King Crab Fishing Zones. The convention had no provisions concerning prohibited areas. Since 1958, however, a king crab fishing prohibited area has been designated between 53 degrees and 51 degrees north longitude; and since 1959 the area between 56 degrees 55 minutes and 56 degrees 20 minutes has also been so designated. In other regulatory areas, the catching of female crabs and small male crabs less than 13 centimeters in carapace width is prohibited. But the incidental catch of such crabs has been allowed, for example in 1957, at the ratio of one-tenth each haul. In addition, the size of nets must be limited in accordance with the decision of the Joint Commission.

Herring Fishing Zones. Actually all the convention areas may be called herring fishing zones since herring fishing operations are not prohibited in any place. Only the size of the herring (originally less than twenty centimeters but twenty-one in 1958) is limited, and the incidental catch of the undersized herring is only allowed up to 10% of the total catch per trip.

The Soviet-Japanese convention has never been concerned with the power of the engine of fishing vessels for conservation purposes. Yet the Sino-Japanese agreement has primarily given consideration to this approach. Thus, the Sino-Japanese agreement intends to limit the maximum amount of annual fish catches, among other things, by means of restricting horsepower, while the Soviet-Japanese convention intends to do so by means of fixing the annual quota.155

Salmon, the principal fish under the convention, is an anadromous fish largely residing at the time of catch in the Soviet territorial waters where the applicability of this convention is excluded. Thus the Soviet-Japanese convention naturally protects the coastal interest in favor of the Soviet Union since the annual quota, a result of hard bargaining every year by the Fisheries

154. The relevant regulations apply only to a fixed percentage of the nets on board. See FAO Dep't of Fisheries, Report on Regulatory Fishery Body 13 (Rome, 1972), FAO, Doc. F10/C/138 (1972).

155. For the control of the annual quota, the gross tonnage of fishing vessels allowed has gradually been reduced from 180,400 tons in 1957 to 87,000 tons in 1975. For the same purpose, each state is obliged to issue licenses or certificates allowing fishing operations in the convention areas to its own vessels and to inform each other of all such licenses and certificates issued. See Art. V(2), the Russo-Japanese Convention.
Commission, will extend only to the convention areas, which means that only Japanese fishermen will be affected by the quota.\textsuperscript{156}

In addition, the zonal approach in this case, such as closed areas, closed season and limited tonnage and fish size, etc., is in form similar to the zonal approach of the Sino-Japanese agreement; in substance, however, the Soviet-Japanese approach is much stricter than that under any other conventions under discussion, since stronger enforcement measures are implemented by the Soviet enforcing authorities. From the point of view of effectiveness, the Soviet-Japanese zonal approach seems to be the most effective of the conventions discussed here.

3. The Tripartite Convention

The convention areas include all the waters of the North Pacific Ocean. In regard to salmon fishing operations by the United States and Japan, the convention areas were modified to exclude the United States 12-mile fishery zone declared in 1966, in accordance with the 1974 agreement between the United States and Japan concerning salmon fishing.\textsuperscript{157} The three parties (the United States, Canada and Japan) agreed in principle that salmon of North American origin in the North Pacific, halibut in the Northeast Pacific, and herring stocks in the Northeast Pacific satisfied the criteria for the so-called abstention principle. The convention provides for an annual review of the extent to which a certain stock of fish continues to qualify for abstention.\textsuperscript{158}

The abstention principle was formulated by drawing a line in the Bering Sea and North Pacific Ocean at meridian 175 degrees west longitude, east of which Japan agreed to abstain from fishing for salmon. The line was established on a provisional basis subject to the later recommendation of the Commission. In 1957 herring of Alaskan origin, and in 1962 halibut in the Bering Sea, respectively, were removed from the abstention formula since they no longer met the criteria for the principle.\textsuperscript{159} At the annual meeting in November 1974, Japan agreed to ban trawling in specified areas and periods during 1975 in the eastern Bering Sea

\textsuperscript{156} Otherwise, it would be questionable whether the convention would have contained such provisions equally controlling the annual quotas of both parties.
\textsuperscript{157} Supra note 136.
\textsuperscript{158} Art III 1(a) and (b) of the Tripartite Convention.
\textsuperscript{159} For halibut in the North Pacific Ocean and Bering Sea, Canada and the United States signed in 1953 the Convention for Preservation of Halibut Fishery of the Northern Pacific Ocean and the Bering Sea, 222 U.N.T.S. 77 (1955).
where halibut are taken in substantial quantities as an incidental catch.\textsuperscript{160} To a lesser extent, Canada also agreed to abstain from fishing a certain kind of salmon within a certain convention area of the Bering Sea east of the provisional line (map 8).\textsuperscript{161}

The abstention principle\textsuperscript{162} seems to largely represent the "species approach" favored by the United States. This principle is not directly comparable to the conservation measures under the Sino-Japanese agreement, but the fishery fallow zones under the Sino-Japanese agreement may be compared with the abstention areas in light of prohibition of fishing operations. The most convincing arguments for the principle seem to be that certain stocks of fish are now being fully utilized as a result of keeping up productivity through great expenditure of money and time, etc., and through restraints imposed by each party on its own fishermen. But Japan may say that it will participate in the conservation measures only as much as necessary for maintaining the present level of productivity and that beyond the zone it should be allowed to fish on the basis of the free competition on the high seas. Even in this zone, the conclusive criterion for keeping the status quo between the conflicting interests seems to turn on the special interest of the coastal state existing solely by reason of the geographical vicinity.\textsuperscript{163}

\textsuperscript{160} See Jacobs, \textit{supra} note 137, at 486–7, especially n.75.

\textsuperscript{161} Protocol to the Tripartite Convention and Annex Clause 2, \textit{id}. A proviso in Article IV(1) provides for three exceptions not applicable to the abstention principle with regard to: (1) any stock of fish under substantial exploitation by a contracting state having conditions expressed in the section 2 of the same Article during 25 years next preceding the entry into force of the Convention; (2) any stock of fish harvested in greater part by a state or states not party to this Convention; (3) and waters in which there is historic intermingling of the stocks of fish exploited by these operations, and a long-established history of joint conservation and regulation.


\textsuperscript{163} Cf. Agreement Concerning Shrimp between the United States and Brazil whereby the United States conceded a considerable interests in high seas fisheries to Brazil, U.S.L.C. Congressional Research Service, \textit{supra} note 136 at 629.
The North Pacific Fisheries Convention (Map 8)
B. Enforcement Measures

First, the Sino-Japanese agreement has a special feature which obliges ordinary fishing vessels to cooperate for enforcement purposes; this feature does not appear in the three North Pacific fisheries conventions. Second, the Japanese-Korean enforcement measures are not to be applied to the domestic trawl and seine fishing ban areas of each state, even though some small parts of the Korean domestic fishing ban areas in the south extend slightly beyond the 12-mile exclusive fishery zone. Third, a feature common to all the conventions is the exclusive jurisdiction of the flag state in regard to prosecution and sanction.

On the question who is to enforce the convention, as shown earlier, the Sino-Japanese agreement is silent; it provides only for the right of each state to notify any violation to the other.\(^{164}\) Under the Korean-Japanese convention, the right of control and jurisdiction in the joint control zone is to be exercised only by the flag state of the fishing vessels.\(^{165}\) The Soviet-Japanese convention is silent on the question. The Tripartite convention provides that enforcement may be carried severally or jointly.\(^{166}\) However, the provision does not explicitly prescribe how observers are to be appointed in case of joint enforcement. Therefore, the effectiveness of the joint enforcement scheme under the Convention is uncertain. The enforcing authority under the Korean-Japanese convention is conferred specifically on “inspection ships” and “authorized officials” of either party.\(^{167}\) Finally, the Soviet-Japanese convention and the Tripartite convention merely provide for “authorized officials” as an enforcing agency.\(^{168}\)

When a “reasonable cause” is found as to a suspected violation by a fishing vessel, the authorized officials under the Korean-Japanese convention have merely the authority to notify the infringements to the competent officials of the other state who are on board their inspection ships. In other words, the right to halt and inspect any suspected violators is entrusted only to the flag state of the vessels. In the same situation, the Soviet-Japanese convention allows such officials to board and search the

\(^{164}\) In the absence of specific provisions, the general provision of Art. 6, para. 1 of the Convention on the High Seas of 1958, relating to the jurisdiction of the flag state, may be applicable.

\(^{165}\) Art. VI(1).

\(^{166}\) Art. X(2).

\(^{167}\) Agreed Minute Clause 3(a).

\(^{168}\) Art. VII(1) of the Soviet-Japanese Convention; Art. X, 1(b) of the Tripartite Convention.
vessels. If the search yields evidence that the fishing vessel is actually violating the convention, the convention allows the officials to seize the vessel or arrest the crew. Under the Tripartite convention such officials have the right to arrest or seize such person or vessel if they were engaged in illegal operations before the officials boarded the vessel.\footnote{169. Art. X(1)(b).} In addition, the mere presence of fishing vessels in the abstention areas is sufficient cause to allow officials to board the vessels in order to inspect them and question the crew on board.\footnote{170. Art. X(1)(a).} Thus the enforcement measures provided in the Tripartite convention are unusually strong and may possibly give rise to a question about the requirement that vessels suffer the minimum interference or inconvenience in the course of fishing operations. Before starting to board or search any suspected violators, the Soviet-Japanese convention and the Tripartite conventions require inspectors to present credentials issued by their government if requested by the master of the vessel.\footnote{171. The incomplete functions of Korean or Japanese inspectors in relation to finding a suspected violation are, in an agreed minute, a little more supplemented by allowing inspectors of one state to board on the patrol ships of the other state, and by providing the authorized officials of the other state with opportunities and data for inspection purposes.} But the inspectors under the Korea-Japan convention and the Sino-Japanese agreement are not asked to present their identities since they are not authorized to board the suspected vessel. It may not be true that Japanese fishermen tend to observe treaty rules for the East Asian Seas more strictly than those for the Northwest or North Pacific oceans. It is therefore highly desirable that Chinese and Korean enforcing authorities receive parity of powers with the American, Canadian and Soviet authorities for the purpose of effective inspection of Japanese fishermen.

After seizure or arrest of vessels or persons as a result of evidenced violations, under the Tripartite convention, the state to which the officials belong is required to notify the other state of such seizure or arrest, and must immediately deliver the vessels or persons to the authorized officials of the state to which such vessels or persons belong at a place to be agreed upon by the two states. If, however, the other party cannot accept the delivery and request, the party giving such notification may keep such vessels or persons under surveillance within its own territory, under the conditions agreed upon by the contracting states. In the same
situation, the Soviet-Japanese convention requires immediate delivery at the place of seizure or arrest unless another place is agreed upon by the two states. If the other party cannot accept such delivery and request, the convention imposes the same obligations as those under the Tripartite convention. In this regard, the only difference between the two conventions is the matter of choosing the place of delivery of arrested or seized vessels. The Tripartite convention provides for the place of delivery to be agreed upon, while the Soviet-Japanese convention designates the place of seizure or arrest unless otherwise agreed. This seems to indicate that the immediacy of delivering action under the Soviet-Japanese convention may be better secured than that under the Tripartite convention. The reason is that in the event of an initial failure to the place of seizure or arrest is the place of delivery under the former convention but another place has to be agreed under the latter convention. In spite of such strong enforcement tools, the effectiveness of policing the Northwest and North Pacific fisheries has been frequently questioned. In this sense, the inarticulate provisions on the enforcement measures under either the Sino-Japanese or Korea-Japan conventions seem to make it even harder to determine or deter infringements of the conventions on the spot.

With regard to imposing sanctions, the Sino-Japanese agreement provides only that the flag state of vessels is obliged to report the result of the action to the other state, while the other three conventions require the flag state to impose penalties in furtherance of domestic laws. In particular, the Tripartite and Korea-Japan conventions stipulate that each state must impose equivalent penalties for the same violations. In regard to the burden of proof, the Soviet-Japanese convention requires written evidence and proof establishing the offense, while the Tripartite convention provides for the presentation of witnesses and evidence necessary for establishing the offense. Both conventions lack provisions regarding what evidence or witnesses have to be submitted but require only that they be submitted as promptly as possible. The Korea-Japan convention and the

172. See Jacobs, supra note 137, at 488.
173. Art. 3(2), the Sino-Japanese agreement; Art. VI(4), the Soviet-Japanese convention; Art. XI(c), the Tripartite convention.
175. Cf. Art. 9(11), the Scheme of Joint Enforcement and the Conduct Convention of 1967, which provides, in part, that . . . no state would be required to submit higher evidential value than it would possess. For the text, see 6 Int'l Legal Mats 760 (1967).
Sino-Japanese agreement have no provision relating to the burden of proof.

C. Fisheries Commission

There are several features shared by the joint commissions under the Sino-Japanese agreement and the other North Pacific conventions, even though the substance of each common characteristic is not identical. In regard to voting procedure, the requirements are similar. Under the Tripartite convention, a unanimous vote is required if the matters are related to all three contracting states, but if they are concerned with two of the states a unanimous vote is not necessarily required. The Sino-Japanese agreement, the Soviet-Japanese convention and the Korea-Japan convention require only a mutual agreement or concurrence.\textsuperscript{176}

Normally it may be said that fishery commissions do not possess supranational authority and thus the conservation measures they formulate and adopt are not directly binding on individual fishermen without local legislation.\textsuperscript{177} This is true to the extent that recommendation is the key function performed by all the Commissions under consideration and the decision-making function is confined only to certain fields.\textsuperscript{178} The power to make decisions usually concerns technical matters such as the rules of procedure and the conduct of meetings.\textsuperscript{179} Any broad decision-making function would thus constitute an exception to the generally recommendatory authority of a fisheries commission.

The Commission under the Sino-Japanese agreement may review matters concerning the fishery control measures; if necessary, the Commission may recommend to the contracting states a revision of the conservation measures. The contracting governments may revise such measures by means of an exchange of notes accepting the Commission’s recommendation. Another function of the Commission is to exchange fishery data and to

\textsuperscript{176} See Art. 6(2) of the Sino-Japanese agreement; Art. VI(3) of the Korea-Japan convention; Art. III(3) of the Soviet-Japanese convention; and Art. II(3) of the Tripartite convention.

\textsuperscript{177} See G. Knight, supra note 44 at 687.


\textsuperscript{179} Except for the Sino-Japanese Agreement, the other three conventions lay down identical provisions which read as follows: “the Commission may decide upon and revise, as occasion may require, rules for the conduct of its meetings.” For an example, see Art. VI(4), the Korea-Japan convention.
review the current status of fisheries in the fishing zones. In addition, if necessary, the Commission may review matters concerning the preservation of fishery resources and related problems, and it may recommend to the two states measures to be taken as a result of such review. Thus the Sino-Japanese agreement does not confer on the Commission any decision-making authority and it is only empowered to make recommendations which have binding force on member states.

The function of the Commission under the Korean-Japanese convention lies between the Sino-Japanese Commission on the one hand the Soviet-Japanese and the Tripartite Commissions on the other hand. In regard to the conservation measures enforced in the fishing zones, the Korea-Japan Commission is authorized to review and, if necessary, recommend to the contracting states new measures. The recommendation concerning new measures may include proposals for a revision of the current conservation measures. However, the Commission is not empowered to decide directly on any new measures. Furthermore, the contracting states are not obliged to accept all the recommendations made by the Commission; they are only required to respect the recommendations to the extent possible. Thus the recommendatory function of the Korean-Japanese Commission is just about the same as that of the Sino-Japanese Commission. In that regard, the Soviet-Japanese is authorized not only to consider and to revise, if necessary, the coordinated measures upon the scientific basis, but also authorized to make recommendations to the contracting states concerning conservation and increase of fishery resources. The most important function performed by the Soviet-Japanese Commission is that the Commission is given legal authority to determine the annual quotas of fish catches. These quotas are binding on each member state upon notification. On the same matter, in the Tripartite convention the Commission may determine to continue the abstention principle in relation to fish specified in the annex; it may also decide to apply or cease to apply the abstention principle to other stocks of fish. Such determinations must be based, in the first place, on scientific evidence and then must be accompanied by a consideration of the

180. Art. VII(a) and (c).
181. Art. IX(b). Salmon is the only stock the total amount of the catch of which shall be determined by the Commission.
182. It was, however, understood that no determination or recommendation is to be made for 5 years after the entry into force of this convention. See Art. III(1)(a) and (b).
effect of strikes, wars or exceptional economic or biological conditions.\textsuperscript{183} Another key function is to determine whether the stock of fish under control of the abstention formula is being fully utilized since the current full utilization of fish is an important ground for justification of the principle. Moreover, the Tripartite Commission is authorized to decide and recommend the need for joint conservation with regard to any stock of fish under substantial exploitation by two or more contracting states, and not covered by a conservation agreement between the parties at the time of conclusion of the convention. The Commission is also entitled to request the contracting states to report regularly the conservation measures taken for the stocks of fish specified in the annex. Recommendations made by the Tripartite Commission are not directly binding on member states. Instead, member states recognized only the desirability of such recommendations and the necessity of imposing restraints on their nationals and fishing vessels in conformity with the recommendations. Thus, recommendations have only an advisory function to member states.

In regard to the legal capacity conferred upon the Commissions, only the Tripartite convention empowers the Commission to employ personnel\textsuperscript{184} and acquire facilities and to utilize the technical and scientific services from any public or private institution of the contracting states and their political subdivisions. Other questions concerning the privileges and immunities of the commissions in the course of performing their missions in each contracting state have not been answered by any of the conventions under discussion.\textsuperscript{185}

Another important function of fisheries commissions is to study and secure information in order to serve as a basis for decision, recommendation or general policy. Except for the Sino-Japanese agreement, the conventions under consideration all stipulate the intelligence functions of their commissions. The Korean-Japanese convention provides that the Commission is to compile and study records and to review the necessary matters concerning conservation measures, while the Soviet-Japanese convention provides that for the purpose of studying the fishery resources, the Commission is to prepare and adjust coordinated

\textsuperscript{183} Art. IX 1(b)(ii) and 2.  
\textsuperscript{184} Art. II(13).  
\textsuperscript{185} Cf. the legal capacity of the International Pacific Halibut Commission within the United States. It is designated as an international public organization entitled to privileges and immunities, and it possesses the capacity to make contracts, to acquire and dispose of property, and to bring suit. See 22 U.S.C. \$ 288 (1964).
scientific research programs. The Tripartite convention requires the Commission, first, to study specified stocks of fish, in order to determine whether they meet certain abstention conditions provided for one or two of the parties, or to determine whether there is a need for joint conservation measures. Second, the Commission is obliged to investigate the waters of the convention area to determine whether there are areas in which salmon originating in the rivers of Canada and of the United States intermingle with salmon originating in the rivers of Asia. Third, the Commission is required to conduct further studies with the purpose of recommending new areas in which the exploitation of salmon should be forbidden by abstention. Lastly, the Commission is to compile data and study records which it might obtain from the parties and to submit reports of its activities to the parties.

In general, gathering information and planning studies are essential to all the rest of the functions of fisheries commissions. The authority and responsibility for information gathering and planning are different among the commissions. This information and study function is usually decentralized and given to a subcommittee or special panel. For example, the Korean-Japanese Commission is authorized to establish its own research program without consulting the agencies of the two member governments. In accordance with such a research program, the Subcommittee on Fishery Resources is to conduct research and information activities and to report them to the Commission. But the Tripartite Commission is to establish the research program in general outline only, after consulting the agencies of the three member states. The major intelligence function is undertaken in various committees. The two major committees involved are the Committee on Biology and Research and the Ad Hoc Committee on Abstention.\footnote{186}

D. Maritime Security Zone

The problem of protecting the maritime security interests is one of the difficulties to be solved in the law of the sea.

\footnote{186. See Int'l North Pacific Fisheries Comm'n, [1974] Proceeding of the 21st Annual Meeting 119-26, 277-85 (1974). In this regard, the Food and Agriculture Organization (FAO) is the only world-wide organization performing intelligence functions on fisheries. See FAO Dep't of Fisheries, Report on FAO, the FAO Committee on Fisheries and International and Regional Fishery Bodies 9-11 (1975), FAO Doc. FID/C/331.}
conferences. In short, two conflicting interests are involved: (1) free transit of straits and narrower territorial waters,\footnote{187} and (2) broader national sovereignty over the areas.\footnote{188}

As a national expression of this interest, Japan first instituted maritime security zones in accordance with the Imperial Act of 1907, which extended to a distance of seven miles beyond the territorial waters.\footnote{189} Currently, there are about 20 maritime security zones in the world under the names of neutrality zones, defense zones and marine control zones.\footnote{190} In 1917, the United States and Panama proclaimed certain “defensive sea areas,” some of which were later discontinued. During World War II, the nations of the Western Hemisphere purported to establish a “neutrality zone” for continental protection (the Declaration of Panama of 1939). In the early 1950’s, China designated three military areas for the sake of defense security. In 1952, a Korean sea defense zone was established around the Korean Peninsula. In 1950 and 1951, respectively, United States and Canadian air defense identification zones were promulgated.

The Chinese military zones are unique in view of their acceptance in the bilateral fisheries agreement. Thus, it seems worth discussing the legality of the zones and the relation between the security right and the fishing right. The issues involved herein are so delicate and important that lengthy discussions are needed. At this point, however, only a brief comment will be made on the issues, after looking at some state practices on the matter.


\footnote{188. For example, see Anand, “The Tyranny of the Freedom of the Seas Doctrine,” 12 Int’l Studies 416 (1973); for particular positions of some developing states, see U.N. Doc. A/CONF.62/C.2/L.4, 5, 7, 8, 9, 10, 12, 16, 19, etc. (1974).

\footnote{189. For details, see Tausing, “Territorial Control and Jurisdiction over Sea Area,” 71 U.S. Naval Institute Proceedings, No. 6 at 815–23 (1945).

1. Chinese Military Zone

In the early 1950's, China unilaterally designated three areas on the high seas adjacent or along its coast as "military areas" for the purpose of defense security and military necessity.\textsuperscript{191} All the three zones were incorporated into the non-governmental arrangements, but the Military Navigational Zone has been discontinued since December 22, 1975 in conformity with the present governmental agreement. The Military Navigational Zone was situated in the coastal waters south of Shanghai wherein no vessel was admitted at any time (map 4). Thus, the Chinese military zones currently in force are as follows:

(1) In the Military Security Zone on the northern part of the Yellow Sea, all vessels can enter only with the permission of the Chinese Authorities concerned; and

(2) in the Military Operational Zone in the waters north of Taiwan and south of 29°N, vessels are advised not to fish, otherwise they should bear risks arising from their entries (map 5).

In principle, China seems to think that any coastal state may establish its marine security zone whenever it deems it necessary. From the Chinese viewpoint, in reality, the physical environment in relation to North-South Korea is in such a stance that China would feel some potential threat to its security in the Yellow Sea and the East China Sea because of complications in political relations among the countries to which peace in the Korean Peninsula is an important security concern.

In legal terms, the provision of the military zones raises the crucial issue of whether the zones are applicable only to Japanese fishing vessels or all vessels regardless of nationality. When Japan accepted the military zones with an understanding that "the regulation of the zones shall be applied to all vessels regardless of nationality," China acquiesced in it without any condition. In contract terms, the Japanese acceptance with understandings (conditions) may be regarded as a counteroffer. Since the Japanese counteroffer was accepted without any modification, the contract (treaty) should be interpreted in accordance with the terms. As a result, it seems appropriate to understand the issue in the sense that Japanese fishing vessels as

\textsuperscript{191} For the background of the Chinese experience in the security issue in the early 20th century, see J. Wheeler-Bennett et al., \textit{Information on the Problem of Security (1917-1926)} 210-18 (1927).
well as other vessels regardless of nationality and mission would be controlled by the regulation of the Chinese military zones when they entered the zones. 192

2. Korean Sea Defense Zone

The Sea Defense Zone was proclaimed in September 1952 by the Commander of the United Nations Forces in Korea during the height of the Korean War and thus the line of its delimitation was sometimes called the "Clark Line" after the Commander's name (map 9). 193 It encircled the Korean coastal waters within the Peace (Rhee) Line limits starting at a point twelve miles offshore from the Soviet border on the east and reaching a point twelve miles from the Manchurian border on the west. The zone existed for eleven months. In August 1953, it was suspended due to the Armistice Agreement prohibiting coastal blockade. 194

As a war-time measure, the defense zone had two main purposes. One was to safeguard the Korean coastline and the communication lines of the United Nations forces. The other was to suspend trouble between Korean police patrol ships and Japanese fishing vessels that crossed over what was then called the "MacArthur Line" and later the "Peace Line" which divided Korean and Japanese waters. According to the Proclamation, all ships were to be subject to search by the United Nations forces if they entered the blockade. Japanese fishing vessels also were completely barred from entering it.

Japan and the Soviet Union immediately protested against the Proclamation of the Zone. 195 In a legal sense, it is interesting to note the difference between the Japanese and Soviet protests. Japan argued that the zone as specified in the announcement had nothing to do with fishing rights. But the Soviet Union basically denied that a belligerent had the right 196 in time of war to establish a security zone on the high seas close to shores.

193. See M. Clark, From the Danube to the Yalu 154 (1954).
194. See Art. 2(15), Korean Armistice Agreement, signed at Panmunjom, Korea, on July 27, 1952.
195. For the Japanese and Soviet protests and the United States State Department's answer to the Soviet protest, see Clark supra note 193, at 156, 155–6, respectively. For further discussions, see infra, text accompanying note 206.
The Korean Sea Defense (Clark) Line   (Map 9)
3. Other State Practices

**Latin America.** In October 1939, the American Republics (including the United States) adopted the "Declaration of Panama." The Declaration referred to the past proposals during the World War of 1914–18, by which the Governments of Argentina, Brazil, Chile, Colombia, Ecuador, and Peru had urged belligerents to refrain from hostile acts near the shores of America, and it referred to the protection needed for a "zone of security including all the normal maritime routes of communication and trade between the countries of America." The Declaration claimed that the American republics were, as of inherent right, entitled to have those waters free from any hostile act by any non-American belligerent nation.197

The legal issue involved in the neutral zone is how to reconcile jurisdictions between belligerents and neutral states. In state practice, there is evidence that neutral states may exercise jurisdiction over foreign vessels beyond the territorial limits to safeguard their national defense. Yet the belligerent may visit and search neutral craft, may capture enemy merchant ships, and may attack enemy warships on the high seas.198 In this situation, another serious issue would be whether the neutral states had the ability to control the entire neutral zone effectively.

**United States and Canada.** In the United States, there were thirty-three defensive sea areas in force between 1917 and 1918. With one exception of one area (off the coast of North Carolina), they were all outside the United States continent. Those areas have generally been limited to the territorial waters. During World War II there were 17 maritime control zones. Pursuant to the Anti-Smuggling Act of August 5, 1935, customs enforcement areas were set up. In addition, there were some harbors closed to foreign vessels. But they were all discontinued either in 1945 or in 1946.199

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197. For the text of the Declaration, see U.S. Naval War College, 1939 International Law Situation with Solutions and Notes 66–8 (1940); 1 Dep't State Bull. 331–3 (1939).


In 1950 and 1951 the United States and Canada promulgated Air Defence Identification Zones (ADIZ and CADIZ) for security purposes in the air spaces over the domestic and coastal areas of the United States and Canada. Both the Canadian and United States legislation have the same aim, national security, and both seek to achieve it by the same general method. In a legal sense, the main differences between the United States and Canadian ADIZs are: First, the United States regulations do not impose any altitude limitation for flights entering the Atlantic ADIZ, though a 4000 feet limitation is imposed in the other United States ADIZ. The Canadian ADIZ regulations apply only to flights at or above 4000 feet; second, the Canadian ADIZ applies to any aircraft entering a CADIZ, while the United States ADIZ applies only to aircraft destined for the United States. As regard the legality of the zones under international law, it was argued that the Canadian and the United States security regulations would be justified on the basis of self-preservation.

**The Soviet Union.** The Soviet Union established fortified zones in certain areas contiguous to the Union. It is not explicit about the maximum limit of the zones. All merchant vessels, whether of U.S.S.R. or foreign nationality, are not allowed to enter without previous permission. All vessels proceeding through a fortified zone are required to observe special rules provided by the Soviet Union. In addition, “Soviet writers claimed, with approval of their government, that certain seas bordering the Soviet Union were closed. Included in this category are the Black

200. For the text of the Executive Order Concerning United States Security Control of Air Traffic, see 51 U.S. Naval War College, [1956] International Law, Situation and Documents 579–92 (B. MacCheaney ed. 1957); for the Canadian Rules for the Security Control of Air Traffic, see id. at 592–600.

201. For the theoretical justification of the zones, authors have invoked the difference between right of self-defence and right of self-preservation, which means that the exercise of self-defence by a state must be accompanied by the imminent danger of attack before taking measures for its protection, while the concept of self-preservation is not so strict and would permit preventive measures for the safety of the state. For details, see Martial, “State Control of the Air Space Over the Territorial Sea and the Contiguous Zone,” 30 Can. B. Rev. 245, 263 (1952); J. Murchison, The Contiguous Air Space Zone in International Law 55, et seq. (1956).

Sea, Caspian Sea, and Baltic Sea. The Soviet 'Sea of Peace' campaign concerning the Baltic Sea was essentially a program to 'neutralize' that sea by declaring it out of bounds to warships of all countries except those bordering on it.\textsuperscript{203} Many Soviet jurists also consider the Okhotsk Sea to be both a closed and historic sea and would prohibit the navigation of foreign warships therein.\textsuperscript{204} As regard the Sea of Japan, the Soviet Union proposed in the draft U.S.S.R. peace treaty with Japan to close the straits leading into the Sea to the warships of non-contiguous states.\textsuperscript{205}

\textbf{Comment.} In the modern context, most of the marine security zones were instituted in furtherance of wartime measures. They are not directly related to the fishing rights of the neutral vessels since such fishing operations are, in most cases, excluded from those areas in time of war. In a practical sense, it seems doubtful whether neutral fishing vessels are entitled to claim affirmatively their fishing rights vis-à-vis the security rights of coastal states on the high seas relatively close to the shores, when the coastal states are engaged in hostile activities. But it seems another question whether vessels used exclusively for fishing along the coast should be exempt from capture by the belligerent, no matter whether the fishing vessels are enemy or neutral.\textsuperscript{206}

It is, in any event, highly desirable that the conflicting interests between security uses and other uses such as fishing, navigation or "really pure" scientific research, etc. are to be minimized by using such criteria as reasonableness and relativity.\textsuperscript{207} In a prize case, the United States Supreme Court, invoking

\begin{itemize}
\item \textsuperscript{203} B. Brittin and L. Watson, \textit{supra} note 197, at 143; W. Butler, \textit{The Law of Soviet Territorial Waters} 19–24 (1967).
\item \textsuperscript{204} Id. at 79.
\item \textsuperscript{205} \textit{Pravda}, Sept. 7, 1951, cited in \textit{id}.
\item \textsuperscript{206} Compare Art. 21 and 22 of the Draft Convention on Rights and Duties of Neutral States in Naval and Aerial War, found in 33 \textit{Am. J. Int’l L.} 361 (1939), with Art. 3 of the 11th Hague Convention of 1907 on Rights and Duties of Neutral Powers in Naval War, signed at Hague, on October 18, 1907, found in 1 C. Bevans, \textit{Treaties and Other International Agreements of the United States of America} 1776–1949, 719 (1968); for the right of requisitioning of neutral ships, see the Proclamation of President Wilson, found in 6 Hackworth, \textit{Digest of International Law} 648–9 (1943); Bullock, "Angary," 3 \textit{Brit. Y.B. Int’l L.} 99 (1922–23); for the general discussions on the international law of neutrality, see Kunz, "Neutrality and the European War, 1939–40," 39 \textit{Mich. L. Rev.} 719 (1941); 2 L. Oppenheim, \textit{International Law} 287–447a (Lauterpacht 7th ed. 1952); 11 Whiteman, \textit{International Law} 138–475 (1968); and Bishop, \textit{supra} note 34, at 1034.
\end{itemize}
the international precedents and authorities on the subject, held, in 1900, that "coastal fishing vessels, with their implements and supplies, cargoes and crews, unarmed and honestly pursuing their peaceful calling of catching and bringing in fresh fish, are exempt from capture as prize of war." This judgment contains criteria by which such security versus non-security interests ought to be resolved.

In reality as applied to the East Asian seas (or elsewhere), no clear answer may be made as to how far coastal states may exercise their security jurisdiction over the neutral fishing vessels in time of "quasi-hostility" or cease-fire. A Chinese claim that her military zones are an expression of sovereign right seems excessive, since sovereignty on the high seas is accompanied by an obligation prohibiting an abuse of right. But if China relied on the theory of self-preservation rather than on that of self-defence, it would be in a secure position for arguing the pros and cons in an academic forum. As earlier interpreted, Chinese enforcement of the regulation of the military zones on all foreign vessels could impair the legal rights of third nations. Under international law no treaty has binding effect on a third party without the consent of the latter. This issue, however, has never been tested. Lastly, it is to be pointed out that the current Conference on the Law of the Sea seems not to pay much attention to the specific problems involved in the maritime security zones.

VI. CONCLUSION

If the economic zone concept is adopted on a universal basis, the entire East Asian Seas will fall under the 200-mile limit of the respective coastal states. In geographical sense, therefore, Japan would be completely excluded from the Chinese and Korean economic zones in the Yellow Sea. In the East China Sea and the Sea of Japan, Japanese fishermen would be allowed to enter only their section of the economic zone divided by median lines between the respective neighboring states. This also means that

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208. This was a case of condemning two Spanish fishing vessels and cargos as prize of war. For details, see the Paquete Habana and The Lola, 175 U.S. 677 (1900); for a treaty provision, see the first part of Art. 3 of the 11th Hague Convention of 1907, cited in supra note 206.

209. See Osgood, supra note 187, at 31-6.

210. At the outset, it should be noted that the important issues which have arisen with respect to the economic zone have not yet been compromised by the negotiating nations. For details, see Taft, "The Third U.N. Law of the Sea Conference: Major Unresolved Fisheries Issues," 14 Col. J. Transnat'l L. 112, 113 (1975).
Japanese fishermen would be excluded from the agreed fishing zones (including the Chinese military and conservation zones) under either the Sino-Japanese or the Korea-Japan agreement.\(^{211}\) Thus, it is assumed that the present level of Japanese fishing participation in the region would be affected by the new limit even if it is coupled with the concept of full utilization of living resources\(^{212}\) and by the policies of the respective coastal states toward the limit.

According to statements presented in the current sessions of the Law of the Sea Conference, China and North Korea, in principle, adhere to rigid exclusivity of jurisdiction within the zone, while South Korea and Japan basically support the concept of the zone coupled with the full utilization principle. With regard to the Sino-Japanese fishing relations, two things may be predicted. First, China might extend the limit of fishing areas regulated under the Sino-Japanese agreement by the influence of the economic zone concept since the present agreement does not prejudice the position of the two states on jurisdiction over the seas. Second, in addition to the horsepower limit, China might take advantage of the new zone for banning larger Japanese fisheries companies from participating in the Yellow and East China Seas, allowing only smaller fisheries firms to operate in the regions. With respect to Japanese-Korean fishing relations, the two states have met a new era. Recently there emerged a reverse trend whereby Japanese coastal fishermen have begun to be adversely affected by the presence of Korean fishermen operating off the coasts of Japanese islands of Hokkaido and Honshu. The Korean-Japanese convention does not cover these areas. The Japanese Government therefore asked the Korean Government for three things: (1) self-restraints on the fishing operation by Korean fishermen, (2) establishment of a dispute settlement commission on a non-governmental basis, (3) and conclusion of a new agreement to deal with the matters such as prevention of marine incidents and emergency rescue, which arise from the new trend.


Such newly emerging situations and the hypothesis of the economic zone concept would lead the two governments to review the overall problems relating to readjustment of the Korean-Japanese convention.  

If no international agreement is reached on the economic zone, it seems likely that China would probably respect the first three-year duration of the Sino-Japanese agreement without being much influenced by the newly emerging state practices extending fishing limits to 200 miles. The reason would be that the accord was ratified at the time when the world-wide consensus on the economic zone was already evident. On the other hand, it does not seem likely that Korea would request a substantial revision of the Korean-Japanese convention in order to utilize the new limit since Korea would not want to weaken its position with other states in relation to distant-water fishing. It seems probable, however, that Korea would reinforce its position on the coastal jurisdiction for specific purposes such as security or more strict conservation, etc. In short, if (1) the Conference adopts the treaty but Japan does not sign it and (2) the Conference cannot reach any agreement, it does not seem likely that, ignoring the world-wide evidence in favor of the new limit and the recently unilateral or regional extensions of the limit by several states such as Canada, the European Common Market Countries, the United States, and the Soviet Union, Japan would challenge its neighbors' extensions of coastal jurisdiction in the same manner as it contested the Korean Peace (Rhee) Line in the 1950's and early 1960's.  

The impacts of the new limit on the coastal state's economy would not be identical in all situations. In general, China and North Korea, which do not have distant-water fleets, seem likely to increase their fish catches because there would be less competition within their coastal areas. But in the short term, Japan, South Korea and to a lesser extent Taiwan, with significant distant-water fleets, would be adversely affected because their distant-water fleets' fishing would be restricted by.

213. For the other view, see Johnston, supra note 211, at 142.  
214. Japan itself already announced a 200-mile exclusive fishing zone. However, Japan may rely on the concept of “historic right” to continue fishing operations in the regions. But the continuing validity of the concept does not seem to be certain. For details, see L. Alexander, Offshore Geography of Northwestern Europe 101–4 (1966); for comment on the I.C.J. ruling on the concept in the United Kingdom v. Iceland; Federal Republic of Germany v. Iceland, see Churchill, “The Fisheries Jurisdiction Cases: The Contribution of the International Court of Justice to the Debate on Coastal States’ Fisheries Rights,” 24 Int’l Comp. L. Q. 82, 98 (1975).
the new limit. In the long term, however, the three countries would recover their temporary decline of fishing industry by reorganizing their domestic fisheries management into more commercially profitable forms, and by expanding fisheries joint ventures with foreign states which want to lease fishing rights within their economic zones. It is not entirely improbable that the current fisheries regulations in the East Asian region, which are solely based on biological goals such as catch quotas, closed areas, closed seasons and other restrictions on the sizes of fish, vessel and gear, etc., might be combined with some new managerial schemes, if the latter prove more efficient in fish catches in other regions.

The extensive use of the economic zone without the coastal state’s exercising its responsibility for preventing environmental deterioration would eventually contribute to the realization of the common need to establish regional controls for pollution abatement. The flow of the North Equatorial Current (black current) is regular and directional in the South and East China and Yellow Seas. A coastal pollution is therefore likely to disseminate in the entire region. This environmental physical element might serve as a factor by which all the coastal states would be forced to cope with pollution problems together in disregard of ideological and political differences in the region.

The fisheries conflicts in the economic zone might not be satisfactorily ended without solving disputes over non-living resources in the continental shelf. The continental shelves of the Yellow and East China Seas are considered as potential areas for oil and gas deposits. Thus, controversies between the coastal states over the shelf limits have been heated. In general, the limit of the economic zone based on the distance concept might help to soften the pending disputes based on other geographical factors such as the idea of natural prolongation of land mass and the median line principle. In part, it is assumed that Japan and South Korea are likely to develop jointly a shelf area overlapped by their unilateral claims in accordance with a new agreement concerning joint development, without being much influenced by the new economic zone limit.

215. In the East Asian areas, the regional controls of marine pollution are virtually non-existing; there is a “vacuum” in this respect.
216. See supra text accompanying note 9.
218. The Agreement was signed at Seoul, on January 30, 1974. Korea already ratified it. Finally, the Japanese Diet acted on the ratification of the Agreement on
From the security point of view, the East Asian seas are regarded as one of the regions susceptible to international power politics. As shown, since the first Sino-Japanese non-governmental fisheries arrangement in 1955, Japan has accepted the Chinese military zones in accordance with the previous non-governmental and current governmental agreements. Late in October 1975, South Korea unilaterally banned Japanese fishing operations in its demilitarization line waters in the Yellow Sea and the Sea of Japan, declaring them to be "waters contacting the enemies." In consequence, it seems likely that the geographical feature arising from the region's character as a semi-enclosed sea, the susceptibility to international politics, and the state practices in the region might possibly lead to tighter security regulations as the coastal jurisdiction expands further.

Even if the Law of the Sea Conference successfully adopts the international conservation measures, such a formulation might not provide specific guidelines appropriate for and applicable to every region of the oceans. It is already known that prevention of waste of fisheries economy might be achieved by removing the condition of free and open access to the oceans and by limiting the amount of fishing efforts. Moreover, the existing bilateral schemes might not comprehensively deal with the future regional problems which will arise from the extensive use of the economic zone. In order to avoid conflicts and achieve better economic goals, it seems highly desirable that each state in the region

May 28, 1977. Thus, the Japanese ratification would be in effect as of June 8, 1977. See Tong A Ilbo at 1 (May 31, 1977). This Agreement would unprecedentedly open an era of a resource cooperation between the two States. What results the persistent Chinese protest to it would bring about, however, remain to be seen.

220. For the character of regional arrangements in semi-enclosed seas, see Alexander and Hodgson, supra note 211, at 598.
221. For susceptibility of these regions, see Osgood, supra note 187, at 12.
222. For details, see F. Christy, Jr, Alternative Arrangements for Marine Fisheries: An Overview 16, et seq. (1973). A report of the FAO Dep't of Fisheries shows that in the Yellow and East China Seas the stocks of both demersal and pelagic fish are probably close to being fully exploited, though the statistical and other data are not reliable, and that it is likely that some increase in sustained catch could be obtained from further management measures, especially those based on better scientific and statistical data. For details, see FAO Dep't of Fisheries, Review of the Status of Some Heavily Exploited Fish Stocks 11–2 (1973), FAO, Doc. FID/C/313 (1973); FAO Dep't of Fisheries, Review of the Status of Exploitation of the World Fish Resources 7–9 (1974), FAO Doc. FIRS/C328 (1974).
should be ready to discuss an effective regional agreement.\textsuperscript{223} Regional arrangements would, of course, require some modification of national jurisdiction and less emphasis on ideology between conflicting states. But the appropriate regional arrangement probably would better serve the interests of the region as a whole as well as those of each coastal state in the long run since such arrangements would deal with problems arising out of similar interests by means of regional uniformity by which conflicts would be reduced and fair benefit and treatment would be received by all. The regional rule seems more desirable in the light of the idea that a well-formed legal channel will reduce political and economic pressures existing between the larger and smaller states and will enable such disputes to be solved by the principle of equality before the law.\textsuperscript{224}

\textsuperscript{223} For a discussion of the regional agreements, see Bishop, \textit{supra} note 162, at 1206–7; Johnston, \textit{supra} note 137, at 102; Ottenheimer, "Patterns of Development in International Fishery Law," 11 \textit{Can. Y.B. Int'l L.} 37, 40 (1973).

\textsuperscript{224} This idea was suggested by an author while discussing problems relating to dispute-settlement. For details, see Sohn, "Settlement of Disputes Arising Out of the Law of the Sea Convention," 12 \textit{San Diego L. Rev.} 495, 516 (1975).