Japan and the Four Multilateral Maritime Conferences
－ 1930 to 1982 －

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This article focuses on the role of Japan in the Codification Conference on the Law of the Sea in the 1930 Hague Conference, and the three United Nations conferences on law of the sea (LOS) in 1958, 1960 and 1973-1982. In each of these four multilateral meetings, Japan joined with other maritime powers to preserve freedom of the seas, and it advocated a strong practical and philosophical defense of the right of all nations to use the global commons. Japan was one of the five major maritime powers, together with the United States, United Kingdom, France and the USSR that advanced the principle of free seas during the negotiations for UNCLOS.

Japan's booming postwar economy, reliance on fishing, and military security under American extended deterrence shaped its maritime diplomacy beginning in the 1960s. The country's heavy reliance on pelagic fisheries and drive for food security influenced the country's position during the Third UN Conference on the Law of the Sea from 1973-1982. Japan was the last state to accept the establishment of the EEZ because Japanese fishing vessels routinely fished within 200 nm of coastlines worldwide. Fisheries politics were a major problem between the United States and Japan prior to World War II, and in Japan's post-war relationships with South Korea, China and the USSR. While the earlier disputes with the United States concerned salmon fisheries in the Bay of Biscay, Alaska, the disputes after the war were more vexing because they were mixed with disagreements over maritime boundary delimitation. [1] For China and the USSR the disagreements also contained security dimension within the context of the Cold War, making them especially difficult to resolve.

[1] Shigeru Oda, International Control of Sea Resources (2d ed, 1989); Tsuneo Akaha, Japan in Global Ocean Politics (1985), and Nobukatsu Kanehara and Yutaka Arima, Japan's New Agreement on Fisheries with the Republic of Korea and with the People's Republic of China, 42 Japanese Annual of International Law 8 fn. 21 (1999).

The four treaties adopted in 1958 and the comprehensive UN Convention on the Law of the Sea (UNCLOS) adopted in 1982 reflect a peacetime legal architecture that does not explicitly affect national security. The negotiations were only obliquely related to security issues in terms of rules for shipping, fisheries and offshore development. Japan and the United States favored avoidance of national security issues in the negotiations for the oceans treaties in order to bypass the pitfalls of political-military interests and facilitate an agreement. Most developed States, as well as the Soviet bloc states, suggested that security issues were best addressed by the UN Security Council and disarmament conferences, so the three law of the sea conferences avoided explicit references to security issues. Yet security issues do arise in the peacetime international law of the sea, which sets forth navigational rights and freedoms, a permissive regime for military activities in the Exclusive Economic Zone (EEZ) and on the continental shelf, and exclusive flag state jurisdiction over vessels.

I. Multilateral Conferences on the Law of the Sea

Japan was a key player in the four major codification efforts to develop a comprehensive and universal law of the sea. The following sections recount the role and policy of Japan in the League of Nations Codification Conference on the Law of the Sea in 1930, and the three United Nations conferences on law of the sea in 1958, 1960 and 1973-1982. The 1930 Codification Conference was the first major attempt by the international community to restate the international law of the sea.

The *travaux préparatoires* of the four major multilateral conferences trace the path of Japan's approach to the law of the sea. Japan was an especially influential participant in the first (1958) and second (1960) Geneva conferences on the law of the sea. Throughout this period, Japanese views toward the law of the sea matured with acceptance of the EEZ.

II. Hague Codification Conference 1930

The 1930 Codification Conference was the first major attempt by the international community to restate or codify the rules for the international law of the sea. After World War I, the League of Nations turned toward the task of codification of international legal issues that were viewed as less contentious, and therefore more amenable to widespread agreement. Terms of reference for a Codification Conference were adopted on September 27, 1927, and the following day a Preparatory Committee was appointed to draw up bases of discussion for the conference.[2] A Preparatory Committee for official codification of international law was preferred over the American suggestion to develop a "restatement" of law by a group of experts, with the latter concept satisfied with simply restating existing law, while the former was more ambitious and focused on not just restating existing law, but establishment of new rules as well.

The Preparatory Committee solicited replies from governments on three sets of questions, namely: the law of nationality, legal aspects of territorial waters, and the responsibility of states for damage caused on their territory to the person or property of foreigner nationals.[3] After receipt of replies from thirty states, the committee drafted a statement of the law for each area that had either nominal agreement, or a divergence of views that were not so "serious as to make it impossible to anticipate that an agreement may be reached after consideration…."[4]

At the 1930 Hague Conference, Japan proposed text to strengthen the test of internal waters from mere coastal state "usage" to "long established and universally recognized usage."[5][6] In doing so, Tokyo

[2] League of Nations Doc. C. 73 M. 38 1929 V, reprinted in American Journal of International Law Supplement Vol. 22 (1929): 231-232.
[3] First Report Submitted to the Council by the Preparatory Committee for the Codification Conference, American Journal of International Law, Vol. 24, No. 1, Supplement: Official Documents (Jan., 1930), pp. 1-3.
[4] First Report Submitted to the Council by the Preparatory Committee for the Codification Conference, American Journal of International Law, Vol. 24, No. 1, Supplement: Official Documents (Jan., 1930), pp. 1-3.
[5] Series League of Nations Pub. 1929 V. 2, p. 168.
[6] UN Doc. A/CONF.13/1, Historic Bays: Memorandum by the Secretariat of the United Nations, Sept. 30, 1957, p. 29, para. 145.

hoped to establish greater fidelity for the lingering concept of coastal state sovereignty over historic waters.[7] In 1894, the Paris-based *Institute of International Law* recognized the theory of historic bays as areas of continuous and longstanding usage of the coastal state.[8] Similarly, in 1925 the *American Law Institute* recognized areas of "continued and well-established usage" as historic waters.[9] The following year the *Japanese International Law Society* used the expression "immemorial usage" to describe historic bays.[10] In 1929, Japan stated that a bay or gulf could be historic internal waters only if it was regarded so by "time-honored and generally accepted usage."[11]

The Preparatory Committee for the 1930 conference addressed a series of questions to participant States to obtain their views ahead of the negotiations. The first basis of discussion concerned the existence of a zone of coastal state sovereignty over a belt of sea around coasts, called "territorial waters."[12] Point I of the information addressed to governments by the concerned the nature and content of the rights possessed by a State over its territorial waters. The Committee suggested in Point I that States agree with the proposition, as an initial position for beginning negotiations, that coastal States possess a belt of sea around their coasts. Within the belt, the coastal State enjoys the "totality of those rights which constitute sovereignty."[13]

Because of the sovereign nature of the territorial sea, the Preparatory Committee deemed it not essential to enumerate the precise sovereign rights enjoyed by the coastal state within it, and instead found it necessary only to indicate that such sovereignty and

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[7] UN Doc. A/CONF.13/1, Historic Bays: Memorandum by the Secretariat of the United Nations, Sept. 30, 1957, p. 29, para. 145.
[8] Id., p. 14, para. 74, citing 13 *Annuaire de l'Institut de Droit International* 329 (1894-95).
[9] Id., p. 14, para. 80, citing 20 American Journal of International Law, Special Supplement 318 (1926).
[10] Id., p. 15, para. 82, citing J. Mochot, *Regime des baies et des golfes en droit international*, Paris 144 (1938) and Id., p. 28, para. 141.
[11] Series League of Nations Pub. 1929 V. 2, p. 168.
[12] Territorial Waters, American Journal of International Law, Vol. 24, No. 1, Supplement: Official Documents (Jan., 1930), pp. 25-46, at 26.
[13] Territorial Waters, American Journal of International Law, Vol. 24, No. 1, Supplement: Official Documents (Jan., 1930), pp. 25-46, at 25.

jurisdiction included prescriptive or legislative authority as well as the power to grant concessions.[14] In short, the coastal State was seen to have plenary authority over the territorial sea, except for those areas limited by international law. The Preparatory Committee also inquired of governments whether special rights that inure to another state may restrict or exclude the rights of the coastal state in its own territorial waters. Furthermore, States were requested to reply whether any such special rights concerning the territorial sea were claimed by them, and if so, the extent and legal grounds of the claim, and whether the claim was accepted by the international community.[15]

In their replies, States generally accepted the proposition that coastal States enjoy a belt of sovereign area along the coastline. Governments indicated that there might be some disagreement over the theoretical basis for recognition of territorial waters, as well as some anxiety over whether coastal States would respect limitations on its power in the area since states jealously guard their sovereignty. Japan replied that it hoped responses from governments on the issue of the territorial sea (and maritime piracy) "might provide a satisfactory basis for discussion," even though it expressed disagreement with some of the reports submitted by other states.[16]

Point II of the Committee focused on the rights of the coastal State to the airspace above the territorial sea, and the seabed and subsoil below it. More than 20 states replied to this query, and they were unanimous that coastal State sovereignty included the airspace and the seabed of territorial waters.[17] Thus, States were in widespread agreement that coastal States were entitled to sovereignty over the

[14] Territorial Waters, American Journal of International Law, Vol. 24, No. 1, Supplement: Official Documents (Jan., 1930), pp. 25-46, at 25.
[15] Territorial Waters, American Journal of International Law, Vol. 24, No. 1, Supplement: Official Documents (Jan., 1930), pp. 25-46, at 25-26.
[16] Questionnaire No. 2 – Territorial Waters, Analysis of Replies Submitted by M. Schücking, Report to the Council of the League of Nations on the Questions Which Appear Ripe for International Regulation, 22 American Journal of International Law, Supplement: Codification of International Law 4, 10, 25, 29 (Jan. 1928).
[17] Territorial Waters, American Journal of International Law, Vol. 24, No. 1, Supplement: Official Documents (Jan., 1930), pp. 25-46, at 26-27.

territorial sea, and that such sovereignty extended vertically from the airspace through the water column and into the seabed and subsoil.

Point III proved the most contentious issue; it addressed not the existence of the territorial sea, but its breadth. Historically, most states accepted that the breadth of the territorial sea extended three-sixtieths of a degree of latitude – three nautical miles (nm).[18] Not all States agreed, however, on a three-nm territorial sea. Governments were asked their view on the breadth of the zone, such as three, four, six, or 12 miles, as well as associated questions concerning special circumstances that might suggest an even broader breadth or the exercise of coastal State jurisdiction beyond the territorial sea.

Tokyo responded to the Preparatory Committee that "generally accepted international law" recognized territorial waters to an outer limit of three nautical miles (nm) from the coast.[19] Japan forwarded evidence of its State practice on this issue, which was reflected in two Sasebo prize court cases from the Russo-Japanese War. During that conflict, Japanese naval forces captured *The Rossia*, a Russian warship just six nm from the coast of Kushingham, Korea. The Sasebo Prize Court ruled the seizure was lawful since it occurred in international waters.[20] The Sasebo Prize Court also awarded prize for the capture of the fishing vessel *The Michael*, which was taken at sea five and one-half nm from Korea, and therefore lawful since it was beyond three nm.[21]

This position reflected the view of the majority of states, and the Preparatory Committee proposed a three nm breadth as the third basis of discussion for the Codification Conference. Several states contemplated breadth greater than three nm, particularly in areas

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[18] Territorial Waters, The American Journal of International Law, Vol. 24, No. 1, Supplement: Official Documents (Jan., 1930), pp. 25-46, at 28-29 and Richard W. Hale, Territorial Waters as a Test of Codification, The American Journal of International Law, Vol. 24, No. 1 (Jan., 1930), pp. 65-68.

[19] The Law of Territorial Waters, American Journal of International Law, Vol. 23, No. 2, Supplement: Codification of International Law (Apr., 1929), pp. 241-380, at 260.

[20] *The Rossia*, Sasebo Prize Court, May 26, 1904; Cecil James Barrington Hurst and Francis Edmond Bray, 2 Russian and Japanese Prize Cases (1913), pp. 39-45.

[21] *The Michael*, Sasebo Prize Court, May 26, 1904; Hurst and Bray, 2 Russian and Japanese Prize Cases, pp. 80-85.

subject to historic rights, or because of geographic or economic necessity. The States disagreed on whether a breadth in excess of three nm was consistent with international law. The United States and the United Kingdom[22] joined Japan and a majority of states in the view that territorial waters have a three nm breadth.[23] It is no surprise that the three greatest maritime powers of the era steadfastly supported the three nm standard for territorial waters to ensure the maximum ocean space for naval mobility and maneuverability.

Governments also disagreed on whether a coastal State may exercise certain rights beyond the territorial sea – on the high seas – for customs, "sanitary police measures," and reasons of national security.[24] The United States and Japan opposed this first glimpse at creation of a contiguous zone and claims to a security interest beyond the territorial sea.[25] There also was insufficient support for an extension of coastal State control over fisheries beyond territorial waters, a position that would be transformed by establishment of the EEZ some forty years later.[26] In any event, no State replied that the farthest lawful extent of coastal State authority or jurisdiction should extend be beyond 12 nm, which was the limit claimed by the Soviet Union.[27]

The Hague Codification conference did not result in adoption of a treaty, and the politics of the Interwar years intervened to displace law of the sea in diplomatic consciousness. During the 1930s and 1940s, most States held fast to the three nm territorial sea. Yet, the United States in the 1930s began to pressure Japan to limit salmon fishing in the Bay of Bristol, Alaska. This purported extension of jurisdiction

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[22] *General Iron Screw Collier Co. v. Schurmanns* (1860) 1 Johnson & Hemming Ch. 180, 193 (common law of nations recognizes coastal state jurisdiction within three miles from its shores).

[23] *The Ann* (1812), 1 Federal Cases, p. 926 (coastal states have exclusive jurisdiction to the distance of a cannon shot – or a marine league) and *Manchester v. Massachuse*tts, 139 US 240, 258 (1891) (minimum extent of coastal state jurisdiction is a marine league – or three nautical miles).

[24] Territorial Waters, American Journal of International Law, Vol. 24, No. 1, Supplement: Official Documents (Jan. 1930), pp. 25-46, at 28-29.

[25] League of Nations, C. 74, M. 39, 1929. V.

[26] Territorial Waters, American Journal of International Law, Vol. 24, No. 1, Supplement: Official Documents (Jan. 1930), pp. 25-46, at 29.

[27] Territorial Waters, American Journal of International Law, Vol. 24, No. 1, Supplement: Official Documents (Jan. 1930), pp. 25-46, at 29.

beyond the territorial sea rankled Japan. The American fishing industry lobbied for protection against Japanese fishers. The United States proposed an agreement with Japan and the Soviet Union, but Japan demurred, and the salmon dispute became one more irritant in bilateral relations leading up to World War II. Japan was unwilling to permit US inspectors on their ships fishing in the Bay of Bristol, although in 1938 it agreed to suspend licenses under its three-year fishing survey. This temporary respite, however, was not permanent and was overtaken by the conflict.

In 1945, President Harry S. Truman issued Presidential Proclamation 2668, which claimed jurisdiction to establish beyond the territorial sea "conservation zones" "wherein fishing activities have been or in the future may be developed." The United States understood at the time that this action set a precedent for coastal States to extend fisheries jurisdiction beyond the territorial sea, even though Proclamation 2668 retained other high seas freedoms in the zone. International North Pacific Fisheries Convention—one of the most important fishery treaties in modern history—entered into force. In November and December 1951, Japan, Canada, and the United States negotiated an agreement in Tokyo to establish a tripartite North Pacific Fisheries Commission. The Commission oversaw and evaluated scientific research on the condition of salmon, halibut, and other designated fish stocks in the eastern North Pacific Ocean area. In addition, the Commission was empowered to establish actual allocation levels for the catch in high seas waters. This landmark agreement was the first international engagement undertaken by the Government of Japan beyond the Peace Treaty and defense pact that ended the postwar Occupation (1945-52), restoring Japan to full sovereign status in the global community of nations.

III. First UN Conference on the Law of the Sea 1958

In the post-war era, three global conferences on the law of the sea were held in 1958, 1960, and from 1973-1982. These efforts began with the International Law Commission (ILC), which was established in 1947

to undertake the mandate of the Charter of the United Nations to study and make recommendations for the progressive development of international law.[28] At its third session in 1951, the ILC appointed J. P. A. François as special rapporteur for work on the regime of territorial waters.

In 1954, UN General Assembly (UNGA) Resolution 899 recognized that the "problems" relating to the territorial seas, contiguous zone, continental shelf, and high seas and "superjacent waters" were inseparable, closely linked "juridically as well as physically," and therefore could not be addressed individually.[29] The General Assembly requested the ILC to study the issues and submit a report to the 11th session of the General Assembly in 1956.[30] Concurrently, the UNGA convened an international Technical Conference on the Conservation of the Living Resources of the Sea to address "conservation, protection and regulation" of fisheries, which were related to the broader issues of maritime zones and navigational regimes.[31] In preparation for conference negotiations on the breadth of the territorial sea, the Secretariat of the United Nations produced a memorandum on State practice and law concerning historic bays.[32]

The ILC held its eighth session from 23 April – 4 July 1956, at which it considered how to construct the territorial sea within a general framework treaty on law of the sea. Japan joined the United Nations on December 18, 1956, and therefore did not participate in the ILC sessions concerning the regime of the high seas or the territorial sea. The eighth session considered a report by J. P. A. François, as well as replies and comments from governments and intergovernmental organizations.[33]

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[28] Article 13 (1) (a), Charter of the United Nations.
[29] UNGA Res. 899 (IX), Draft Articles on the Continental Shelf, 14 December 1956 (GAOR 9th Sess. Supp. 21, 50).
[30] UNGA Res. 899 (IX), Draft Articles on the Continental Shelf, 14 December 1956 (GAOR 9th Sess. Supp. 21, 50).
[31] UNGA Res. 900 (IX), International Technical Conference on the Conservation of the Living Resources of the Sea, 14 December 1954 (GAOR 9th Sess. Supp. 21, 51).
[32] UN Doc. A/CONF.13/1, Historic Bays: Memorandum by the Secretariat of the United Nations, Sept. 30, 1957, p. 16, paras. 90-91.
[33] UN Doc., A/CN.4/97, 27 January 1956, UN Doc. A/CN.4/97/Add.1 to 3, 1 May 1956 (Summary of replies from Governments and conclusions of the Special

Members adopted 73 draft articles concerning the law of the sea with commentaries, which included two parts – a proposed legal Part I, the regime for the territorial sea[34] and Part II, the regime of the high seas.[35] Part II covered the general issues of navigation, fishing, the contiguous zone, and the continental shelf. The ILC reported the draft articles to the General Assembly. On the recommendation of the ILC and the strength of the draft articles, the UN General Assembly called on member states to convene a conference "to examine the law of the sea, taking account not only of the legal, but also of the technical, biological, economic and political aspects" of oceans governance, and further, to "embody the results of the work in one or more international conventions...."[36]

The Commission also recognized, however, that there was not uniform practice among States concerning the delimitation of the territorial sea. In any case, the Commission suggested that any territorial sea beyond 12 nm was not in accordance with international law.[37] Extension of the territorial sea beyond 12 nm was regarded as an infringement on the principle of the freedom of the seas. The draft articles incorporated the decisions of the International Court of Justice concerning straight baselines in the Fisheries Case between the United Kingdom and Norway,[38] as well as freedom of navigation through straits in the Corfu Channel Case.[39] States nearly unanimously confirmed that the rights of the coastal state in its territorial waters do not differ in nature from the rights of sovereignty that it exercises over its land territory.[40] For the first time, the term "territorial sea" was

Rapporteur), UN Doc. A/C N A/99 and Add. l to 9, (Comment s by Governments), UN Doc. A/CN.4/100 (Comments by inter-governmental organizations), and UN Doc. A/CN.4/103 (Supplementary report by J. P. A. Francois, Special Rapporteur). These documents reprinted in UN Doc. A/CN.4/SER.A/1956/Add.1, November 1956, UN Sales No. 1956. V. 3.

[34] UN Doc. A/3159 (1956), pp. 265-277.

[35] UN Doc. A/3159, articles 26-73, pp. 277-302.

[36] UNGA Res. (XI) February 21, 1957.

[37] UN Doc. A/3159, art. 1, Commentary, art. 3(2)-(3), Commentary, pp. 265-266.

[38] UN Doc. A/3159, art. 5, Commentary, para. (1), p. 267.

[39] UN Doc. A/3159, art. 16, Commentary, para (1) and (2), p. 273.

[40] UN Doc. A/3159, art. 1, Commentary, p. 265.

preferred over "territorial waters."[41] Coastal State sovereignty extended to the airspace, seabed and subsoil of the territorial sea.[42] The ILC agreed that coastal State sovereignty in the territorial sea "cannot be exercised otherwise than in conformity with the provisions of international law."[43] Consequently, rules derived from "other rules of international law" imposed limitations on the exercise of coastal state sovereignty in the territorial sea.[44]

The First United Nations Conference on the Law of the Sea (UNCLOS I) met at the European Office of the United Nations in Geneva from 24 February – 27 April 1958. Japan had just joined the United Nations and was among the 86 States that participated in the conference. Because it was not a UN member during the period that the provisional ILC drafts were developed and circulated before the conference, it did not comment on them. Tokyo, however, was aligned with the U.S. approach on the issues.[45]

Japan's main interests were fishing and maritime transportation, and the paramount issue was the breadth of the territorial sea. The country had adhered to a three nm territorial sea since it opened to the world in the mid-nineteenth century.[46] Japan sought to preserve the three nm territorial sea, which it regarded as having been a feature of customary international law.[47] Japan feared that unrestrained coastal State claims over territorial seas of varying breadths was a recipe for anarchy.[48] During the conference, Tokyo maintained that coastal states could not unilaterally expand their sovereignty into the high seas because the rules on claiming a territorial sea derived from international law.[49] The United States also regarded any territorial sea claim beyond three nm as "not justified under international law."[50]

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41 UN Doc. A/3159, art. 1, Commentary, p. 265.
42 UN Doc. A/3159, art. 2, p. 265.
43 UN Doc. A/3159, art. 1, Commentary, para. (3), p. 265.
44 UN Doc. A/3159, art. 1, Commentary, para. (4), pp. 265-266.
45 Japan joined the United Nations on December 18, 1956. See http://www.un.org/en/member-states/.
46 UN Doc. A/CONF.13/39, 1958, p. 149, para. 3.
47 UN Doc. A/CONF.13/39, 1958, p. 24,
48 UN Doc. A/CONF.13/39, 1958, p. 24, para. 50.
49 UN Doc. A/CONF.13/39, 1958, p. 24.
50 UN Doc. A/C N A/99 and Add. L, para. 27, p. 24.

Ninety percent of Japan's animal protein came from the sea, and the Japanese catch of 5 million tons per year was 20 percent of the world total.[51] If coastal states encroached on the high seas through expansion of the territorial sea, Japanese fishing fleets would have reduced operating areas. Japan held that the three-mile limit was sanctioned in practice by a majority of states and embodied in treaties, and therefore was an accepted rule of international law.[52] The Japanese delegate to the conference stated, "…extension of the width of the territorial sea would result in an encroachment upon the area of the high seas open to all nations.[53] The vast majority of smaller states and newly independent nations, however, believed that a 12 nm territorial sea was essential for their security.[54]

Japan joined the United States, Great Britain and states of Western Europe to preserve the three-mile territorial sea and to maximize the area of the high seas. The United States was concerned that expansion of the territorial sea would reduce the operating areas, and thus the "efficiency" of its naval and air power.[55] The Soviet bloc, joined by India and the non-aligned states, opposed this position. It was clear from the outset of the conference that the three-mile limit would not obtain the support of the majority.[56] India and Mexico proposed a 12-mile territorial sea, which gave newer independent states greater control offshore, but the maritime powers were against it.

The United States was stunned that many of the developing States joined the bloc for a 12 nm territorial sea, despite friendly relations with the United States or receipt of ample American aid.[57] The conference

[51] UN Doc. A/CONF.13/39, 1958, p. 24, para. 50.
[52] UN Doc. A/CONF.13/39, 1958, p. 25, para. 53. See also UN Doc. A/CONF.13/C.1/L.II/Rev.1.
[53] UN Doc. A/CONF.13/39, 1958, p. 24.
[54] UN Doc. A/CONF.13/39, 1958, p. 118, para. 4.
[55] Arthur H. Dean, The Geneva Conference on the Law of the Sea: What Was Accomplished?, 52 American Journal of International Law 607, 608 (October 1958).
[56] Shigeru Oda, Japan and the United Nations Conference on the Law of the Sea, 2 Japanese Annual of International Law, 65, 68 (1959).
[57] Text of a telegram from Arthur Dean regarding an international conference concerning maritime law issues, including territorial sea regulations. Memo. White House. Confidential, reproduced in Declassified Documents Reference System, Farmington Hills, Michigan: Gale, 2016. The aggressive tactics of the

devolved into disciplined bloc voting, with NATO and the United States opposed by developing states strongly pressured by the Soviet Union and India to stay in line. The leader of the U.S. delegation, Arthur Dean, reported in a confidential memorandum that "Time and again the three-mile breadth was attached and ridiculed not because it was inherently wrong but because the other particular state was not in existence when it was adopted and they must have change labeled as progress."[58] Dean described the events at the conference as a "social revolution" in which "constructive, imaginative proposals, supposedly persuasive speeches and ideas and the sacrifice of [vital] positions" were rejected, and even "ridiculed and lampooned."[59]

Japan rejected the idea that the three-mile territorial sea was merely an expression of self-interest by and for the benefit of the major maritime powers. Mr. Ohye of Japan stated that in the nineteenth century at the time Japan renounced its policy of isolation, it had not owned a single large, ocean-going vessel, but still supported the three-mile rule and recognized the importance of freedom of the high seas.[60] Japan also supported the Greek proposal,[61] but believed that the compromise British proposal of a six-mile territorial sea[62] could bring the conference to a successful conclusion. Tokyo regarded agreement to a six-mile limit as a great sacrifice, and a special burden on Japanese fisheries.[63] Still, the alternative was anarchy in the oceans.[64] Japan was unwilling to accept any coastal state jurisdiction over fisheries beyond the territorial sea.[65] If the six-mile compromise formula was not accepted, Japan would continue to observe the three-mile limit.[66]

U.S.S.R. were also evident at the United Nations. See Bloc Voting at the UN and its Meaning for Future U.S. Policies Discussed, U.S. Dep't of State Confidential Cable, April 23, 1958, Declassified: March 10, 1986.

58 Text of Telegram from Arthur Dean.

59 Text of Telegram from Arthur Dean.

60 UN Doc. A/CONF.13/39, 1958, p. 149, para. 3.

61 UN Doc. A/CONF.13/C.1/L.136.

62 UN Doc. A/CONF.13.C.1/L.134.

63 UN Doc. A/CONF.13/39 (1958), 149.

64 UN Doc. A/CONF.13/39 (1958), 149.

65 UN Doc. A/CONF.13/39 (1958), p. 149.

66 UN Doc. A/CONF.13/39, 1958, p. 149, para. 4. Japan appeared willing to make an exception of the Scandinavian four-mile territorial sea, however.

Although the key question of the breadth of the territorial sea was unresolved at UNCLOS I, there was headway on some key issues. By this time the concept of a contiguous zone had been widely accepted in international law.[67] The ILC draft provided that a contiguous zone may extend 12-miles from the coast for the purposes of preventing infringement of its "customs, fiscal or sanitary regulations within its territory or in the territorial sea.[68] By a vote of 60 to 0 (with 13 abstentions), the draft text was amended to include the word "immigration."[69] Japan supported the proposal.

The territorial sea normally is measured from the low-water mark running along the coast. The 1951 Anglo-Fisheries Case, however, validated the idea that straight baselines could be drawn in certain circumstances.[70] The ILC draft incorporated straight baselines into its text, stating that such baselines could not "depart from the general direction of the coast," and the associated sea areas inside the baseline "must be sufficiently closely linked to the land domain to be subject to the regime of internal waters."[71] At the Conference, Japan sought to bring some objective rigor to the application of straight baselines. Mr. Ohye of Japan expressed concern that states were establishing straight baselines that had no basis in international law. He referenced the Anglo-Norwegian Fisheries Case determination that: "…delimitation of sea areas has always an international aspect; it cannot be dependent upon the will of the coastal State as expressed in its municipal law."[72] Japan proposed a maximum of ten miles for straight baselines, but it was withdrawn.[73] Japan joined an amended proposal by Germany and Greece that contemplated a 15-mile limit on straight baselines, but it

[67] Shigeru Oda, Japan and the United Nations Conference on the Law of the Sea, 2 Japanese Annual of International Law, 65, 70 (1959).
[68] UN Doc. A/3159, p. 39.
[69] UN Doc. A/CONF.13/38, p. 40.
[70] Fisheries (United Kingdom v. Norway), 1951 I.C.J.116, 143 (Dec. 18).
[71] UN Doc. A/3159, p. 13.
[72] UN Doc. A/CONF.13/39, 1958, p. 24, para. 50.
[73] UN Doc. A/CONF.13/39, p. 238 and UN Doc. A/CONF.13/39, p. 241.

was rejected by a vote of 30 to 13, with 12 abstentions.[74] Text very close to the original ILC draft eventually was adopted by the conference.[75]

Similarly, Japan sought to limit the claims of historic bays. Soviet Russia, for example, had issued a proclamation that placed Peter the Great Bay within its internal waters as an "historic bay." Japan rejected the notion of an historic bay in the absence of specific criteria and evidence to support it. The Japanese delegate stated that there were "a number of cases where a state has claimed vast sea areas as territorial, on the pretext of historic bays, without the slightest historic elements whatsoever."[76] In order to resist this trend, Japan sought a more concrete definition of historic bays.

Japan had offered a proposal that all disputes concerning straight baselines and bays should be subject to compulsory dispute resolution. The proposal granted jurisdiction to the International Court of Justice for such disputes, upon request of any of the parties.[77] Japan withdrew its proposal, however, after several states submitted additional proposals. The Plenary Meeting adopted a proposal put forward by Switzerland.[78] The Swiss text also contained compulsory dispute procedures under the International Court of Justice for all disputes, except those regarding settlement by the special commission referred to the Convention on Fishing and Conservation of the Living Resources of the High Seas.

Japan declared that freedom of the high seas was the "cardinal principle" of the international law of the sea.[79] Tokyo also believed, however, that freedom of the seas did not permit states to use the oceans exclusively to the detriment of other users. Nuclear tests for example, should not be permitted in the seas so far as they obstructed the freedom of the high seas for other users.[80] Japanese fishermen had been injured or killed by radiation from nuclear tests, and fish stocks had been

74 UN Doc. A/CONF.13/39, p. 156, 160.
75 UN Doc. A/CONF.13/38, p. 68.
76 UN Doc. A/CONF.13/39, p. 145.
77 UN Doc. A/CONF.13/39, p. 246.
78 UN Doc. A/CONF.13/38, p. 55.
79 UN Doc. A/CONF.13/40, p. 11.
80 UN Doc. A/CONF.13/39, 1958, p. 11, para. 1.

destroyed.[81] Even nuclear tests by the Soviet Union that were conducted on land adversely affected Japan's use of the high seas.[82] Japan abstained from a Soviet bloc four-power proposal that would prohibit nuclear tests at sea, while permitting air- and land-based tests.[83] The United States argued that the issue of nuclear tests at sea, however, was part of the broader debate over nuclear disarmament generally and best left to separate negotiations.[84]

In the end, the Conference produced four treaties and an Optional Protocol on dispute resolution. The issues concerning baselines, the territorial sea, and the contiguous zone are contained in the 1958 Convention on the Territorial Sea and Contiguous Zone. The treaty was some advancement in the state of the law, bur it failed in the crucial issue of determining the appropriate breadth of the territorial sea. Still, Japan voted with 60 other states (and two abstentions) in favor of the Convention.[85] Like the United States, Japan also supported the Optional Protocol of Signature Concerning the Compulsory Settlement of Disputes, which was adopted by the conference by a vote of 52 to 0, with 13 abstentions.[86]

IV. Second UN Conference on the Law of the Sea 1960

Japan is a country governed by the rule of law. The rule of law at sea means that the unilateral exercise of national power is restrained by neutral, internationally accepted and universally applied rules. Like the United States, Japan is concerned more with the actual implementation of international law, rather than production of instruments. At the outset of the Second UN Conference on the Law of

[81] McDougal and Shlei, The Hydrogen Bomb Tests in Perspective: Lawful Measures for Security, 64 Yale L. J. 648 (1955)
[82] UN Doc. A/CONF.13/39, 1958, p. 44, para. 12.
[83] UN Doc. A/CONF.13/39, 1958, p. 44, para. 13-14 and UN Doc. /CONF.13 /C.2.L.30, 21 March 1958 (Czechoslovakia, Poland, U.S.S.R. and Yugoslavia).
[84] UN Doc. A/CONF.13/39, 1958, p. 15, para. 13.
[85] Convention on the Territorial Sea and Contiguous Zone, 516 U.N.T.S. 205 (1958).
[86] UN Doc. A/CONF.13/38, p. 55. See Optional Protocol of Signature Concerning the Compulsory Settlement of Disputes, 450 U.N.T.S. 169 (1958).

the Sea, the United States joined Japan as a strong proponent of the three-mile territorial sea, as it sought to ensure freedom of navigation through international straits. The Japanese delegation emphasized that a law of the sea must not merely be a "paper agreement," but rather a regime that is faithfully observed in toto.[87]

The Conference mostly debated various schemes for breadth of the territorial sea and fishing zones. Four major proposals gained traction, but in the end, none were adopted. Each of the proposals pushed coastal state sovereignty or jurisdiction farther into the high seas, restricting freedom of the seas, and in particular, freedom to fish on the high seas. These formulations recognized a 12-mile fishing zone or territorial sea, or in the case of the U.S.-Canada "6+6" model, a combination of territorial sea and adjacent fishing zone.[88] As the leading fishing nation in the world at that time, Japan felt particularly vulnerable to the enclosure movement, since 70 percent of their animal protein diet was derived from fish, and most of it from distant waters.[89]

As in UNCLOS I, Japan believed that the breadth of the territorial sea was the "cardinal issue" of the entire body of the law of the sea.[90] At the time Japan held to the three-mile limit as the prevailing standard, but it was also willing to compromise and accept the U.K. proposal for a six-mile territorial sea.[91] As the U.K. proposal was not accepted, however, at the close of UNCLOS I Japan emphasized that the three-mile rule was the recognized rule of law.[92] Some States that disagreed with the three-mile rule thought that once Japan and other states expressed a willingness to compromise on a wider breadth, the old rule had ceased be good law. During UNCLOS II, Japan reminded the

[87] U.N. Doc. A/CONF.19/C.1/SR.9 p. 73, para. 13.
[88] UN Doc. A/CONF.19/C.1/SR.27, UN Doc. A/CONF.19/C.1/L.2/Rev.1/, UN Doc. A/CONF.19/L.9, UN Doc. A/CONF.19/C.1/SR.13, pp. 10-11, and UN Doc. A /CONF.19/C.1/SR.38.
[89] U.N. Doc. A/CONF.19/C.1/SR.9 p. 73, para. 12.
[90] II Official Records of the Second United Nations Conference on the Law of the Sea, Geneva, 17 March-26 April 1960, UN Doc. A/CONF.19/9 (1962), p. 167.
[91] United Nations Conference on the Law of the Sea, III Official Records, UN Doc. A/CONF.13/C.L.134, para. 4-5.
[92] Mr. Okumura, Second United Nations Conference on the Law of the Sea, Geneva, Switzerland, 17 March – 26 April 1960, U.N. Doc. A/CONF.19/C.1/SR.9 p. 72, para. 10.

conference that it continued to recognize a three-mile limit pending no further agreement on the issue.[93] As it had during UNCLOS I, Japan insisted that a rule of international law could be changed "only by means of an international agreement based on consensus of opinion among nations."[94] A broader territorial sea or creation of a fisheries zone was viewed as an "encroachment on the freedom of the seas," which was in the interest of all mankind.[95] Upholding the three-mile limit was tantamount to safeguarding freedom of navigation, the "previous common asset of all mankind."[96]

Japan believed that coastal state fishery conservation could be achieved not through an exclusive fishing zone, but by the Convention on Fishing and Conservation of the Living Resources adopted in 1958.[97] Joined by Sweden and other countries, Japan suggested that the implementation and enforcement of the Convention on Fishing and Conservation of Living Resources would protect against abuses and safeguard the interests of coastal states.[98] Japan was focused on bridging differences concerning the territorial sea and fishing rights based on "justice and equity," and it regarded attempts to enclose international waters beyond the three-mile limit as incompatible with the principles if they excluded states that historically fished in those areas.[99]

Japan also believed that if the straight baseline method were accepted for measuring the maritime zones, it had to be subject to reasonable limits.[100] The Japanese proposal offered that as a general rule, ten miles should be the maximum permissible length for a straight

[93] II Official Records of the Second United Nations Conference on the Law of the Sea, Geneva, 17 March-26 April 1960, UN Doc. A/CONF.19/9 (1962), p. 168.
[94] U.N. Doc. A/CONF.19/C.1/SR.9 p. 72, para. 10 and A/CONF.13/C.L.134, para. 5.
[95] U.N. Doc. A/CONF.19/C.1/SR.9 p. 72, para. 10.
[96] II Official Records of the Second United Nations Conference on the Law of the Sea, Geneva, 17 March-26 April 1960, UN Doc. A/CONF.19/9 (1962), p. 168.
[97] Convention on Fishing and Conservation of the Living Resources, done at Geneva 29 April 1958, entered into force on 20 March 1966, 558 U.N.T. S. 285.
[98] II Official Records of the Second United Nations Conference on the Law of the Sea, Geneva, 17 March-26 April 1960, UN Doc. A/CONF.19/9 (1962), p. 169.
[99] U.N. Doc. A/CONF.19/C.1/SR.9 p. 73, para. 12.
[100] United Nations Conference on the Law of the Sea, III Official Records, UN Doc. A/CONF.13/39, 1958, p. 156, para. 9.

baseline.[101] Any territorial sea of 12-miles or larger "would not be consistent with the principle of justice and equity," as it excluded nations that had long fished in those parts of the high seas.[102] Emphasizing that the Japanese people obtain more than 70 of their animal protein from fish, and that the nation of Japan has a large population with scant resources, the extension of the territorial waters "will immediately and seriously hit the Japanese economy and its people's living"[103] Furthermore, straight baselines should be drawn only between headlands of the coastline or between the coastline or between the headland and an island less than five miles from the coast, or between such islands.[104] No point of such a straight baseline could be farther than five miles from the coast. Only long-standing straight baselines with explicit regional recognition in state practice would be exempt from the Japanese proposal.[105]

V. Third UN Conference on the Law of the Sea: 1973-1982

During the negotiations for UNCLOS, Japan continued to seek a reasonable balance of interests between coastal states and maritime states, and to push for a prohibition of reservations to the treaty in order to maintain a coherent maritime regime. Japan was a member of the major maritime powers, which included the United States, the United Kingdom, and the Soviet Union. This group of five maritime states shared a common interest in freedom of navigation worldwide, ensuring that the Convention recognized innocent passage through the territorial sea, transit passage through straits used for international navigation, and high seas freedoms in the exclusive economic zone (EEZ). Japan played an active role in the discussions. During negotiation of revision

[101] UN Doc. A/CONF.13/C.1/L.95, 1 April 1958 and A/CONF.13/C.1/L.157 15 April 1958.
[102] Official Records of the Second United Nations Conference on the Law of the Sea, Geneva, 17 March-26 April 1960, UN Doc. A/CONF.19/9 (1962), p. 169.
[103] II Official Records of the Second United Nations Conference on the Law of the Sea, Geneva, 17 March-26 April 1960, UN Doc. A/CONF.19/9 (1962), pp. 169-170.
[104] UN Doc. A/CONF.13/C.1/L.95, 1 April 1958.
[105] UN Doc. A/CONF.13/C.1/L.95, 1 April 1958.

of the Informal Composite Negotiating Text, for example, Japan participated in development of article 40 concerning prohibition of marine scientific research activities during transit passage.[106] Japan also helped modify article 234 to recognize limits on coastal state power of enforcement when ships infringed its provisions concerning security of navigation or the prevention of pollution. Japan signed UNCLOS in February 1983 and Part XI in July 1994. The Convention and the Part XI implementing agreement were ratified in June 1996.

Like the United States, Japan acquiesced in an expansion of the territorial sea. Japan was prepared to support the 12-mile limit for the breadth of the territorial sea if the Conference could generally agree upon a comprehensive arrangement on a regime of the sea that it considered "fair and reasonable" to all States.[107] Adoption of a 12-nm territorial sea represented a departure from the goals and interests of the maritime powers. By early-1970, the United States had accepted the concept of an expanded territorial sea contingent upon the right of transit passage through straits used for international navigation. On February 18, 1970, President Richard Nixon presented to Congress a report on U.S. Foreign Policy based upon three pillars: strength, partnerships, and a willingness to negotiate.[108] In the interest of developing a stable regime for the oceans and averting conflict at sea, the United States relented on the 12-nm territorial sea on condition that freedom of transit through straits was also protected.[109] The explicit bargain accepted the 12-nm territorial sea, but only if the law of the sea was widely accepted and also provided for freedom navigation through

[106] See, Doc. A/CONF.62/WP.10/Add.1, 1977. See also, Ana G. López, International Straits: Concept, Classification, and Rules of Passage 36 (2010).
[107] Stmt of Mr. Osigo (Japan), UN Doc. A/CONF.62/ SR.41, Summary Records of Plenary Meetings 41st plenary meeting, Official Records of the Third United Nations Conference on the Law of the Sea, Volume I (2009) (First and Second Sessions, and of Meetings of the General Committee, Second Session), 15 July 1974, para. 45, p. 181.
[108] Richard Nixon, U.S. Foreign Policy for the 1970s: A New Strategy for Peace; A Report to Congress, February 18, 1970, Department of State Bulletin vol. 62 (January 5, 1970), pp. 273-275.
[109] John R. Stevenson, International Law and the Oceans, February 18, 1970, Department of State Bulletin vol. 62 (January 5, 1970), pp. 339, 341.

and over international straits.[110] Later that spring, President Nixon endorsed the terms of a new law of the sea treaty that provided for a 12-nm territorial sea in exchange for freedom of navigation and overflight of straits.[111]

The issue of free transit through straits was the core American interest, and it was so important to the United States and some other maritime powers that they would not accept a regime that failed to include it.[112] The United States was willing to concede a 12-nm territorial sea, although developing countries already viewed it as customary international law and not part of the overall bargain. For developing nations, the inducement for agreeing to freedom of navigation through straits required additional compensation – creation of a zone of exclusive fishing rights (EEZ) beyond the territorial sea.[113] The U.S. sacrificed its interest in access to fisheries beyond 12-nm from coastal states in exchange for safeguarding its most essential security interest – passage of warships and military aircraft through strategic straits.[114] In the United States, straits were first and fisheries second; Japan took the opposite approach.

Like the United States, Japan also pushed for acceptance of free transit through straits as an important maritime interest, but it prioritized the issue of access to fishing areas beyond the territorial sea. Securing the freedom of navigation for the purpose of military operation was also vital to Japan's national interest. First, it was because Japan's ally, the United States, actively promoted the freedom of navigation and Japan shared the adherence to its policy.[115] Japan regarded the freedom of the high seas as the "cardinal principle of the international law of the

[110] United States Outlines Position on Limit of Territorial Sea, February 25, 1970, Department of State Bulletin vol. 62 (January 5, 1970), p. 343.
[111] Statement by President Nixon, United States Policy for the Seabed, Department of State Bulletin 62 (1970), pp. 737, 738.
[112] Shigeru Oda, Proposals Regarding a 12-Mile Limit for the Territorial Sea by the United States in 1970 and Japan in 1971: Implications and Consequences, Ocean Development and International Law vol. 22 (1991), pp. 189, 191.
[113] Oda, at 191.
[114] Oda, at 191.
[115] Kasuomi Ouichi, A Perspective on Japan's Struggle for Its Territorial Rights on the Oceans, Ocean Development and International Law 5 (1978): 111, 114.

sea."[116] While some Japanese scholars suggested that a regime to protect freedom of passage of warships, submarines, and military aircraft was not absolutely necessary for Japan, the strategic reality meant that U.S. and Japanese security interests were aligned.[117] Japanese security was guaranteed by the U.S. nuclear umbrella, and free transit of U.S. ballistic missile submarines through international straits was essential to the survivability of extended deterrence.

Furthermore, while the U.S. motivation was strategic in a military sense, Japan's was strategic in an economic sense. Japan sought to ensure continued access to offshore areas by limiting coastal state jurisdiction to merely a preference over distant water states, rather than exclusive access by the coastal state.[118] Thus, Japan opposed creation of the EEZ in the waters beyond the territorial sea, but was willing to afford coastal state preferential fishing rights in that area.

The Japanese delegation participated in talks at the January 1971 meeting of the Asian-African Legal Consultative Committee (AALCC) in Colombo, Sri Lanka). For the first time, Japan announced that it could accept a 12-mile territorial sea.[119] Acceptance of a 12-mile territorial sea, however, was conditioned upon freedom of navigation through international straits and the award of preferential rights to coastal states for fisheries beyond the territorial sea in lieu of creation of a new fisheries zone. This position was similar to the U.S. approach, except that while freedom of navigation through straits was the principal U.S. interest, Japan was more concerned about restriction of coastal state fishery jurisdiction to 12 nm in return for preferences for developing states.[120] Developing states, however, rejected the proposal for preferential fishing rights beyond 12 nm and instead favored a plain 200-nm coastal state fisheries jurisdiction. The AALC meeting in

[116] UN Doc. A/CONF.13/39, 1958, p. 21, para. 1.
[117] Kasuomi Ouichi, A Perspective on Japan's Struggle for Its Territorial Rights on the Oceans, Ocean Development and International Law 5 (1978): 111, 114.
[118] Oda, at 192.
[119] Asian-African Legal Consultative Committee, Report of the 12th Session (1971), 283; Japanese Annual of International Law, no. 23 (1979): 93.
[120] Shigeru Oda, Proposals Regarding a 12-Mile Limit for the Territorial Sea by the United States in 1970 and Japan in 1971: Implications and Consequences, Ocean Development and International Law Vol. 22 (1991): 189, 192.

Colombo established a six-member Working Group on Law of the Sea, which met in June 1971 in New Delhi. Shigeru Oda took the floor in New Delhi for a total of five hours to sell the Japanese plan, but he was unsuccessful.[121] The states from Asia and Africa were attracted to a simple 200-mile fisheries zone, as advocated by Frank Njenga of Kenya.

Japan and the Soviet Union possessed the largest distant sea fishing fleets and sought to preserve the status quo, advancing proposals that would have provided only for "preferential rights" for coastal States, while protecting the position of traditional fishing States. As summarized by Japan:

> While according a preferential right of catch to developing coastal States corresponding to their harvesting capacities and a differentiated preferential right to developed coastal States, the proposals also take into consideration the legitimate interests of other States. Thus, they seek to ensure that a gradual accommodation of interests can be brought about in the expanding exploitation and use of fishery resources of the high seas, without causing any abrupt change in the present order in fishing, which might result in disturbing the economic and social structures of States.[122]

During the summer of 1971, the Japanese proposal failed to attract support at the AALC Working Group in Geneva and the UN Seabed Committee.[123] Japan repackaged its proposal and submitted it for consideration at the AALC meeting in January 1972. The working paper, "Proposed Regime concerning Fisheries on the High Seas,"[124] competed with a contending paper submitted by Kenya's Njenga titled "The

[121] Shigeru Oda, Proposals Regarding a 12-Mile Limit for the Territorial Sea by the United States in 1970 and Japan in 1971: Implications and Consequences, Ocean Development and International Law Vol. 22 (1991): 189, 193.
[122] Japan, "Proposals for a Régime of Fisheries on the High Seas," UN Doc. A/AC.138/SC.II/L.12 (1972).
[123] Shigeru Oda, Proposals Regarding a 12-Mile Limit for the Territorial Sea by the United States in 1970 and Japan in 1971: Implications and Consequences, Ocean Development and International Law Vol. 22 (1991): 189, 193.
[124] Asian-African Legal Consultative Committee, Report of the 13th Session (1972), 131; Japanese Annual of International Law, no. 24 (1980): 52.

Exclusive Zone Concept."[125] The summer session of the 1972 UN Seabed Committee considered revised drafts of the two proposals. Japan's "Proposals for a Regime of Fisheries on the High Seas" did not receive much support, while Kenya's "Draft Articles on Exclusive Economic Zone Concept" attracted greater attention.[126] As the Kenyan proposal gained traction, the concept for granting coastal states preferential fishing rights beyond the 12-nm territorial sea, which was promoted by Japan with the support of the United States, was overtaken. Japan favored a zone of the high seas in which the coastal state had preferential rights, but the area basically would retain the character of high seas.[127]

Fishing was an issue of food security for the Japanese people because the islands of Japan lack ample agricultural land and the geography limits potential for raising livestock.[128] With limited potential for raising livestock, Japan depended on fish and fish products for about half of the total animal protein in its diet. About 45 per cent of its total catch of fish came from seas which would fall within the proposed 200-mile economic zone, while 90 percent of the catch taken within the 200-mile zone came from the waters of the North Pacific off the coast of developed countries. It was with reason therefore that Japan was greatly concerned to obtain the food it required.[129]The defeat of the Japanese proposal had an enormous impact on Japan's strategic position and search for food security.

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[125] Asian-African Legal Consultative Committee, Report of the 13th Session (1972): 155.

[126] See, U.N. Doc. A/AC. 138/SC.I/L.12 (1972) and U.N. Doc. A/AC.138/SC.II/L.10 (1972).

[127] Stmt. of Mr. Osigo, UN Doc. A/CONF.62/C.2/SR.28, Summary records of meetings of the Second Committee 28th meeting, Official Records of the Third United Nations Conference on the Law of the Sea, Volume II (2009) 6 August 1974, para. 1, p. 217.

[128] Stmt. of Mr. Osigo, UN Doc. A/CONF.62/C.2/SR.28, Summary records of meetings of the Second Committee 28th meeting, Official Records of the Third United Nations Conference on the Law of the Sea, Volume II (2009) 6 August 1974, para. 10, p. 217.

[129] Stmt of Mr. Osigo (Japan), UN Doc. A/CONF.62/ SR.41, Summary Records of Plenary Meetings 41st plenary meeting, Official Records of the Third United Nations Conference on the Law of the Sea, Volume I (2009) (First and Second Sessions, and of Meetings of the General Committee, Second Session), 15 July 1974, para. 42, p. 181.

The United States was disappointed that it would lose fishing access in distant waters, such as off the coast of South America in the Eastern Pacific Ocean, but the principal U.S. interest in straits was preserved and the United States also acquired the world's largest EEZ. For Japan, the loss on the issue of the EEZ was more consequential. At the time, Japan was the most dependent of any nation on fishing.

Kenya and other Africa states revised their 1972 proposal to include considerations for landlocked and geographically disadvantaged states.[130] These considerations survived the process and made their way into the final treaty.[131] Japan had hoped that the EEZ would provide the coastal State with preferential treatment rather than exclusive jurisdiction to fishing resources. Just a glimmer of the Japanese concept of preferential treatment lived on in a handful of proposals from the Soviet bloc, the European Community and the United States through the idea of "optimum utilization."[132] Optimum utilization of living resources, which entered into the final text, was intended to ensure that coastal states did not monopolize their 200-nm zone.[133] Coastal states that do not have the capacity to harvest the entire allowable catch in their EEZ shall give other states, and especially developing states, access to the resource.[134] Furthermore, coastal states shall take into account the need to "minimize economic dislocation" among foreign-flagged fishermen who have "habitually fished in the zone" and who have made "substantial efforts" in the past to manage the stocks.[135]

Japan's disappointment over the 200-nm EEZ was both palpable and prescient. Japan had accepted an expansion of the territorial sea, as well as lost access to the richest fishing grounds in the world – that 38 percent of the oceans that comprised the territorial sea and EEZ. The

130 U.N. Doc. A/CONF.62/C.2/L.82 (1974).
131 Article 69 and 70, UNCLOS.
132 Draft Articles on the Economic Zone, U.N. Doc. A/CONF.62/C.2/L.38 (1974), Draft Articles on Fisheries, U.N. Doc. A/CONF.62/C.2/L.40 (1974), and Draft Articles for a Chapter on the Economic Zone and Continental Shelf, U.N. Doc. A/CONF.62/C.2/L.47 (1974).
133 Article 62, UNCLOS.
134 Article 62(2), UNCLOS.
135 Article 62(3), UNCLOS.

fear that the EEZ would slowly evolve into a zone of national jurisdiction that would be devoid of any consideration, as required in UNCLOS, for conservation or optimum utilization in the common interest, was borne out.[136] As the Third UN Conference drew to a close, Chile, Ecuador, Peru,[137] and Colombia[138] made statements claiming broad sovereignty rights in the EEZ. In a letter to the President of the Conference, Japan protested these claims as inconsistent with UNCLOS and an infringement of high seas freedoms that apply in the zone.[139] By 1977, Japan had accepted the inevitability of a 12-nm territorial sea and a 200-nm EEZ, and it enacted national legislation for both claims.[140] The United States, which also made a total reversal in policy, declared a 12-nm territorial sea in 1988.[141]

Japan was one of the five major maritime powers, together with the United States, United Kingdom, France and the USSR, which advanced the principle of free seas during the negotiations for UNCLOS. On the other hand, the country's heavy reliance on pelagic fisheries and the drive for food security shaped Japan's position during the Third UN Conference on the Law of the Sea from 1973-1982. Japan was the last state to accept establishment of the EEZ. Fishery politics were a major problem in post-war relationships between Japan and South Korea, China and the U.S.S.R., and the disputes were mixed with disagreements over maritime boundary delimitation.[142]

Japan said that the survival of an insular country like it was inextricably linked with the seas. Because of its geographical position,

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136 Oda, at 196.

137 UN Doc. A/CONF.62/L.143.

138 UN Doc. A/CONF.62/WS/32.

139 UN Doc. A/CONF.62/L.157, Letter dated 24 September 1982 from the representative of Japan to the President of the Conference, Official Records of the Third United Nations Conference on the Law of the Sea, Volume XVII (2009), p. 224.

140 Japanese Annual of International Law, no. 21 (1977): 92, 100.

141 International Legal Materials 28 (1989): 284.

142 Shigeru Oda, International Control of Sea Resources (2d ed., 1989); Tsuneo Akaha, Japan in Global Ocean Politics (1985), and Nobukatsu Kanehara and Yutaka Arima, Japan's New Agreement on Fisheries with the Republic of Korea and with the People's Republic of China, 42 Japanese Annual of International Law 8 fn. 21 (1999).

many of Japan's national activities were sea-oriented. Not only was his country heavily dependent on shipping and commerce for the supply of basic materials for its national economy[143] It was with reason therefore that Japan was greatly concerned with the question of the 200-mile economic zone. Japan's primary interests with regard to the seas were to ensure a normal and efficient flow of goods across the oceans.[144]Japan was able to shape the EEZ slightly to the advantage of distant water fishing nations, however. After the words "release shall be made in article 227(1)," Japan proposed adding the adverb, "promptly" to release of fishing vessels[145] Japan also sought to avoid underutilization of fish stocks in EEZs and protect access for distant water fishing nations, such as Japan[146]

Thus, Japan reluctantly accepted the balance the new rights of the coastal State with accompanying obligations to open access to nationals of other states to fish not utilized by the coastal State. The Japanese delegation "carefully listened" to the debate, and "considered it of utmost importance" that the interests of traditional fishing countries like Japan were respected.[147] Like the United States, Japan attached

[143] Stmt of Mr. Osigo, UN Doc. A/CONF.62/ SR.41, Summary Records of Plenary Meetings 41st plenary meeting, Official Records of the Third United Nations Conference on the Law of the Sea, Volume I (2009) (First and Second Sessions, and of Meetings of the General Committee, Second Session), 15 July 1974, para. 42, p. 181.

[144] Stmt of Mr. Osigo, UN Doc. A/CONF.62/ SR.41, Summary Records of Plenary Meetings 41st plenary meeting, Official Records of the Third United Nations Conference on the Law of the Sea, Volume I (2009) (First and Second Sessions, and of Meetings of the General Committee, Second Session), 15 July 1974, para. 42, p. 181.

[145] UN Doc. A/CONF.62/RCNG/1, Reports of the Committees and Negotiating Groups on negotiations at the seventh session contained in a single document both for the purposes of record and for the convenience of delegations, 19 May 1978, Official Records of the Third United Nations Conference on the Law of the Sea, Volume X, (2009) p. 110.

[146] Stmt of Mr. Osigo (Japan), UN Doc. A/CONF.62/ SR.41, Summary Records of Plenary Meetings 41st plenary meeting, Official Records of the Third United Nations Conference on the Law of the Sea, Volume I (First and Second Sessions, and of Meetings of the General Committee, Second Session), 15 July 1974, para. 50, p. 182.

[147] Stmt of Mr. Osigo (Japan), UN Doc. A/CONF.62/ SR.41, Summary Records of Plenary Meetings 41st plenary meeting, Official Records of the Third United Nations Conference on the Law of the Sea, Volume I (First and Second Sessions,

great importance to the establishment of a satisfactory procedure for compulsory settlement of any disputes.[148]

At the conclusion of the Conference, Japan proclaimed that the adoption of UNCLOS had "established a new international legal order for the use of the world's oceans."[149] While Tokyo was disappointed in some of the provisions of the Convention, it affirmed that it was, "as a whole … the best possible compromise the Conference could have achieved."[150] Consequently, Japan voted in favor of adoption of the Convention during the Final Session.[151] Because the government recently had ben formed, however, Japan did not sign the treaty since there was not enough time to have it reviewed by the incoming government.[152] Japan signed the Convention in February 1983 and the Part XI Implementing Agreement in July 1994.[153] Tokyo ratified the instruments in June 1996.

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and of Meetings of the General Committee, Second Session), 15 July 1974, para. 50, p. 182.

[148] Stmt of Mr. Osigo (Japan), UN Doc. A/CONF.62/ SR.41, Summary Records of Plenary Meetings 41st plenary meeting, Official Records of the Third United Nations Conference on the Law of the Sea, Volume I First and Second Sessions, and of Meetings of the General Committee, Second Session), 15 July 1974, para. 54, p. 182.

[149] Stmt. of Mr. Nakagawa, UN Doc. A/CONF.62/SR.187, 187th Plenary meeting, Official Records of the Third United Nations Conference on the Law of the Sea, Volume XVII (Resumed Eleventh Session and Final Part Eleventh Session and Conclusion), 7 December 1982, para. 120, p. 46.

[150] Stmt. of Mr. Nakagawa, UN Doc. A/CONF.62/SR.187, 187th Plenary meeting, Official Records of the Third United Nations Conference on the Law of the Sea, Volume XVII (Resumed Eleventh Session and Final Part Eleventh Session and Conclusion), 7 December 1982, para. 120, p. 46.

[151] Stmt. of Mr. Nakagawa, UN Doc. A/CONF.62/SR.187, 187th Plenary meeting, Official Records of the Third United Nations Conference on the Law of the Sea, Volume XVII (Resumed Eleventh Session and Final Part Eleventh Session and Conclusion), 7 December 1982, para. 123, p. 47.

[152] Stmt. of Mr. Nakagawa, UN Doc. A/CONF.62/SR.187, 187th Plenary meeting, Official Records of the Third United Nations Conference on the Law of the Sea, Volume XVII (Resumed Eleventh Session and Final Part Eleventh Session and Conclusion), 7 December 1982, para. 124, p. 47.

[153] UN Doc. A/CONF.62/WS/38 (1983).

VI. Conclusion

Japan was an influential voice in the four multilateral conferences to develop the contemporary international law of the sea. The country's principle goals revolved around food security and the recognition of high seas freedoms, including freedom of fishing and freedom of navigation. Like the United States, Japan recognized that freedom of navigation through straits used for international navigation was an essential requirement in the law of the sea to ensure global mobility and maneuverability of commercial and military vessels. While Japan had opposed creation of the EEZ and the expansion of coastal State jurisdiction over waters adjacent to the territorial sea, it ultimately accepted the majority of States at the Third UN Conference. Japan shaped the EEZ by inserting the "prompt release" provision to protect fishers from arbitrary detention.

The strategic implications of UNCLOS surpass the critical economic interests of Japan and preserved freedom of navigation through straits and archipelagic states. The Japan Maritime Self Defense Force and Japan Air Self Defense Force rely on freedom of navigation and overflight in the oceans. The U.S. Alliance is effected through these close maritime connections, and underwritten by American nuclear deterrence and ballistic missile submarines. Consequently, Japan's century old history of diplomacy largely achieved its objectives to preserve a liberal order of the oceans, which supports its strategic economic and military interests.