

# Washington International Law Journal

---

Volume 1 | Number 2

---

5-1-1993

## From Conflict to Cooperation: Fishery Relations in the Sea of Japan

Tsuneo Akaha

Follow this and additional works at: <https://digitalcommons.law.uw.edu/wilj>



Part of the [Natural Resources Law Commons](#)

---

### Recommended Citation

Tsuneo Akaha, *From Conflict to Cooperation: Fishery Relations in the Sea of Japan*, 1 Pac. Rim L & Pol'y J. 225 (1993).

Available at: <https://digitalcommons.law.uw.edu/wilj/vol1/iss2/2>

This Article is brought to you for free and open access by the Law Reviews and Journals at UW Law Digital Commons. It has been accepted for inclusion in Washington International Law Journal by an authorized editor of UW Law Digital Commons. For more information, please contact [cnyberg@uw.edu](mailto:cnyberg@uw.edu).

## FROM CONFLICT TO COOPERATION: FISHERY RELATIONS IN THE SEA OF JAPAN

Tsuneo Akaha†

*Abstract:* This article traces the postwar experiences of Japan, the most important fishing nation of the Japan Sea region, in establishing and expanding fishery relations with the Soviet Union/Russia, South Korea, and North Korea. The gradual shift from conflict to cooperation in the exploitation and management of fishery resources shows that pragmatic cooperation among the countries involved has been made possible by their willingness to accommodate mutual economic interests on an increasingly reciprocal basis. International law, particularly the U.N. Convention on the Law of the Sea, and the legal norms and principles it embodies have aided the parties in arriving at mutually acceptable arrangements. These cooperative regimes, however, have often undercut the requirements of resource conservation and management, driven as they are by the short-term economic interests of the fishing and coastal states. This tendency is particularly alarming in light of the mounting economic crisis in the post-communist Russia: Russia is increasingly seeking immediate financial gain by zealously selling access to its coastal resources to equally eager foreign fishing interests. The article recommends multilateral cooperation in the conservation-oriented management of the fishery resources of the Sea of Japan.

---

† Associate Professor of International Policy Studies, and Director, Center for East Asian Studies, Monterey Institute of International Studies; Ph.D. 1981, M.A. 1977, University of Southern California; B.A. 1975, Waseda University, Tokyo; B.A. 1974, Oregon State University.

This article is based on the author's papers presented at the following international conferences: The International Conference on the Sea Between Japan, Korea, and the Soviet Union: Transnational Resource Management Issues and Possible Cooperative Responses, Niigata, Japan, Oct 11-14, 1988; The International Conference on the Seas of Japan and Okhotsk, Nakhoda, USSR, Sept 16-21, 1989; the International Conference on the East China Sea, Dalian, China, June 27-29, 1991; and the International Conference on Economic and Technological Development in Northeast Asia, Changchun, China, Aug 27-31, 1991.

The author wishes to thank the following individuals and organizations for providing information which has contributed to the development of the earlier papers: Yutaka Fujii, Director, Nihonkai Regional Fisheries Institute, Japan; Sumio Iwasaki, Marine Fisheries Resource Development Center, Japan; Akira Okamoto, Research Section, Japanese Fisheries Agency; Kaoru Yoshimura, International Section, Japanese Fisheries Agency; Shiro Chikuni, FAO, Italy; David Fluharty, University of Washington; Moritaka Hayashi, Office for Ocean Affairs and the Law of the Sea, United Nations, New York; the Bureau of Oceans and International Environmental and Scientific Affairs, U.S. Department of State, Washington, D.C.; and the Japanese Fisheries Association, Tokyo. For more recent information, the author thanks Shinichi Mio, Director, and Hideo Kudo, Nihonkai Regional Fisheries Institute, Japan. The author alone is responsible for the contents of this paper.

## INTRODUCTION

Historically, fishery relations among the nations bordering the Sea of Japan, the Republic of Korea (ROK, or South Korea), the Democratic People's Republic of Korea (DPRK, or North Korea), Japan and Russia, have been characterized by conflict rather than cooperation.<sup>1</sup> In recent years, however, global pressures are forcing these countries to seek cooperative solutions to their fishery conflicts. These countries' existing domestic laws and regulations governing fishing in the Japan Sea, bilateral regimes established between them, and the provisions of the United Nations Convention on the Law of the Sea (the U.N. Convention) provide a foundation for achieving the equitable management of fishery resources in the Sea of Japan. Realization of that goal, however, requires the mutual cooperation<sup>2</sup> of these nations in coordinating their fishery management policies with each other and with the U.N. Convention. This Article examines the existing political and regulatory framework and suggests ways to accomplish the necessary legal and policy coordination in a spirit of international cooperation.<sup>3</sup>

The discussion proceeds first by briefly reviewing Japan's historical bilateral fishery relations with Russia (as the Soviet Union), the ROK, and the DPRK.<sup>4</sup> Part II discusses the requirements for effective and realistic management of the fishery resources in the area, emphasizing the importance

---

<sup>1</sup> The ocean is known in Korea as the Eastern Sea.

<sup>2</sup> Cooperation, as used in the present analysis, does not necessarily mean harmony of interest between parties. On the contrary, cooperation presupposes a conflict of interest between parties and their recognition of the need to coordinate their policies for the attainment of a mutually acceptable solution to the conflict. See Robert Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* 12 (Princeton University Press, 1984). That is, if there is no conflict of interest, there is no need to cooperate. Cooperation, in other words, is a cost that the parties are willing to bear in order to achieve a mutually acceptable outcome.

<sup>3</sup> Although the geographical focus of this analysis is limited to the Sea of Japan, fishery relations outside this sea area involving any of these countries or China have relevance to the current study. For example, Japan and China have developed relations with respect to the exploitation and management of fishery resources in the Yellow Sea, the East China Sea, and the South China Sea. Those relations will continue to affect Japanese fishing activities in the Sea of Japan. Moreover, Japanese-ROK fishery relations extend into the Yellow and East China Seas, and Japan-Russian fishery relations extend into the Sea of Okhotsk and the north Pacific Ocean. I will touch upon these relations to the extent they are relevant to international cooperation in the Sea of Japan.

<sup>4</sup> An in-depth analysis of the historical fishery relations among the former Soviet Union, the ROK, and the DPRK is beyond the scope of this study. This study focuses on Japan's relations with each of these countries because, as explained *infra*, Japan holds the key to international cooperation in this area: it has experience dealing with each of the countries concerned, it has amassed the greatest amount of relevant scientific data, and it is the most extensive user and beneficiary of the Japan Sea's resources.

of Japan's willingness to share its expertise in resource conservation and management with the other countries in the region. The third section then examines the obligations of the Japan Sea-rim countries under the U.N. Convention and discusses obstacles the countries must overcome in order to meet those obligations. The article concludes with recommendations for enhancing future international cooperation in the area.

## I. DEVELOPMENT OF SEA OF JAPAN FISHERIES REGIMES<sup>5</sup>

Since World War II, fishery regimes among the Japan Sea-rim countries have been characterized by varying levels of stability. The stability of a regime depends on the parties' perception of the fairness of the existing and future arrangements for collective problem solving. The postwar record of Japanese behavior often did not generate foreign confidence in Japan's willingness to play a fair and equitable game in its management and utilization of Sea of Japan fishery resources. This was initially unavoidable given the overwhelming Japanese presence in its neighbors' coastal waters relative to the negligible Soviet, ROK and DPRK presence in Japanese coastal waters. The following section provides an historical overview of Japanese-Soviet/Russian, Japanese-ROK, and Japanese-DPRK fishery regimes. The Japanese-Soviet/Russian and Japanese-ROK regimes have facilitated mutual policy adjustment and consequently are more equitable today than in the past. Incipient elements of cooperation can also be identified within the Japanese-DPRK fisheries regime which appear likely to develop.

---

<sup>5</sup> This analysis employs the concept of regime as defined by Stephen Krasner: a regime is a set of implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given area of international relations. Stephen Krasner, *Structural Causes and Regime Consequences: Regimes as Intervening Variables*, 36 Int'l Org 185, 186 (1982), reprinted in Krasner, *International Regimes 2* (Cornell University Press, 1983). According to Krasner's schema, principles are beliefs of fact, causation, and rectitude; norms are standards of behavior defined in terms of rights and obligations; rules are specific prescriptions or proscriptions for action; and decision-making procedures refers to prevailing practices for making and implementing collective choice. *Id.* Precise application of each of Krasner's elements of a regime is unnecessary for this analysis. The point to be made is that the absence of an acceptable fisheries regime between the parties indicates a failure to cooperate.

## A. *Japanese–Soviet/Russian Fisheries Regime*<sup>6</sup>

### 1. *Early Conflicts*

#### a. *Postwar Northern Territories Dispute*

The formation of provisional short-term fishery agreements between Tokyo and Moscow for Japanese salmon and crab fishing off the Kamchatka Peninsula during the Second World War came to an abrupt end in August 1945 when the Soviet Union entered the war against Japan. In the waning days of the war the Soviets occupied all of the Kurile Islands and Sakhalin Island, taking over the Japanese salmon, crab, and herring fishery facilities on these islands as well as those on the Kamchatka Peninsula.<sup>7</sup> The Japanese–Soviet/Russian dispute over the Habomai group, Shikotan, Kunashiri (Kunashir in Russian), and Etorofu (Iturup) islands (referred to as the Northern Territories in Japan) has prevented the two sides from concluding a peace treaty. Moscow implicitly acknowledged that the two countries were engaged in a dispute when, in a 1956 joint declaration with Tokyo, Moscow expressed its willingness to return the Habomais and Shikotan to the Japanese in return for the conclusion of a peace treaty and a promise to discuss the status of the other two islands. In signing the San Francisco Peace Treaty, Japan surrendered sovereignty over the Kurile Islands but insisted the Kuriles which were conceded did not include the Northern Territories, which they had historically considered inherent territories of Japan. Tokyo maintained that the Soviets were not a party to the San Francisco Peace Treaty and therefore had no legitimate claim to the islands. The Soviets asserted the legitimacy of their claim and, moreover, that the Cairo and Yalta agreements conferred upon them sovereignty over the entire Kuriles.<sup>8</sup>

In 1960, when Japan and the United States concluded a new bilateral security treaty amidst heightened East–West tensions, Moscow unilaterally declared that there was no territorial dispute between the Soviet Union and

---

<sup>6</sup> This section is based in part on Tsuneo Akaha, *The Postwar Soviet–Japanese Fisheries Regime and Future Prospects*, 9 *Ocean Yearbook* 28 (University of Chicago Press, 1991).

<sup>7</sup> Roy I. Jackson and William F. Royce, *Ocean Forum: An Interpretive History of the International North Pacific Fisheries Commission* 25 (Fishing News Books, 1986).

<sup>8</sup> For a comprehensive treatment of the historical, legal, geographical, and political background of the dispute over the Northern Territories, see Alexei Zagorsky, *The Japanese–Soviet/Russian Territorial Dispute and Its Impact on Japan's International Role*, in Tsuneo Akaha and Frank Langdon, eds, *Japan in the Post–Hegemonic World: Pacific–Rim Views* (Lynne Rienner Publishers, 1993).

Japan and re-asserted its claim that the Habomais, Shikotan, Kunashiri, and Etorofu islands all belonged to the Soviet Union. Tokyo continued to insist that the Soviet occupation of the Northern Territories was illegal and illegitimate because the islands belonged to Japan. Tokyo demanded the return of the territories as a condition for any improvement in Japanese-Soviet relations. Against the background of the cold war, however, Moscow and Tokyo maintained their respective irreconcilable positions, and their relations remained highly strained.

Although economic relations between the two countries improved somewhat during the period of détente from the late 1960s to the early 1970s, the territorial dispute continued to strain overall relations. Not until shortly before Soviet President Mikhail Gorbachev's visit to Tokyo to meet with Japanese Prime Minister Shigeki Kaifu in April of 1991 did Moscow officials openly acknowledge (and subsequently in a joint communiqué with Tokyo) that indeed there was a territorial dispute between the two countries. The Kaifu-Gorbachev communiqué named the disputed islands and expressed the governments' desire to resolve the issue and normalize bilateral relations.<sup>9</sup> Tokyo and Moscow are now negotiating a peace treaty, but its success depends largely on whether the two sides can reach an acceptable compromise.

#### *b. Moscow's Unilateral Response to Increased Japanese Fishing*

Shortly after the San Francisco Peace Treaty took effect on April 28, 1952, the Japanese resumed and quickly expanded their North Pacific fishing operations.<sup>10</sup> The Soviet Union resorted to unilateral measures to control the rapidly expanding Japanese fishing operations in the Northwest Pacific. While the first Tokyo-Moscow fishery talks in 1956 were deadlocked over the two countries' conflicting territorial claims, Moscow decided to require its permission for all foreign salmon fishing in areas adjacent to the Soviet-claimed territorial waters in the Sea of Okhotsk and the Bering Sea,

---

<sup>9</sup> The full Japanese text of the communiqué was printed in all major Japanese newspapers (Asahi Shinbun, Yomiuri Shinbun, and Mainichi Shinbun) on April 20, 1991. The Russian text was printed in full in *Izvestia*, April 20, 1991. An English translation of the Russian text can be found in 91/077 FBIS SOV 6-9 (Apr 22, 1991).

<sup>10</sup> For a detailed account of Japanese-Soviet fishery negotiations in the postwar years, see Kenzo Kawakami, *Sengo no kokusai gyōgyō seido* (The Postwar International Fisheries Regime) (Dainihon Suisankai, 1972) ("Kawakami"); and Nōrinsuisanshō Hyakunenshi Hensan Iinkai, ed, *Nōrinsuisanshō hyakunenshi* (100-Year History of the Ministry of Agriculture, Forestry, and Fisheries) *Gekan* (vol 2) (Nōrinsuisanshō Hyakunenshi Kankōkai, 1981).

and in 1957 closed Peter the Great Bay to all foreign vessels and aircraft.<sup>11</sup> The Soviets claimed that the salmon stocks in the area were deteriorating under increasing Japanese fishing operations. The Japanese rejected the allegation, noting instead that many Soviet studies attributed what decline was being detected in the fisheries in the area to other factors, including a lack of resource conservation and environmental pollution control in the Soviet Far East.

The Japanese also pointed out that their fish catches in 1956 barely reached one half of pre-war levels. A war-devastated Japan desperately needed additional food supplies and employment opportunities and found the rich fishery resources of the area particularly appealing. Nonetheless, Tokyo was concerned that outright confrontation with Moscow over the latter's unilateral measures would jeopardize any chances of developing high seas fisheries in the Northwest Pacific.<sup>12</sup>

## 2. *The 1956 Bilateral Fisheries Convention*

Tokyo responded to the challenge by separating fishery talks from its negotiations with Moscow for the resumption of diplomatic relations between the two countries. On May 15, 1956 the two concluded an agreement, the Convention Concerning the High Seas Fisheries of the Northwest Pacific Ocean (1956 Fisheries Convention). Notwithstanding their failure to conclude a peace treaty, Tokyo and Moscow re-established diplomatic ties on December 12, 1956. The 1956 Fisheries Convention took effect the same day.

The 1956 Fisheries Convention, initially effective for ten years, covered salmon, trout, herring, and crab fisheries in waters outside the Soviet twelve-mile territorial limits in the Sea of Japan, the Sea of Okhotsk, the North Pacific Ocean, and the Bering Sea.<sup>13</sup> It also set up a commission responsible for assessing the status of fishery resources subject to the 1956 Fisheries Convention and for determining catch quotas for each party in the high sea areas of the Northwest Pacific.

An important feature of the commission was that its recommended quotas were directly binding on both parties. Articles 3 and 4 of the 1956

---

<sup>11</sup> Jackson and Royce, *Ocean Forum* at 65 (cited in note 7).

<sup>12</sup> Kawakami at 411-414 (cited in note 10).

<sup>13</sup> Douglas M. Johnston, *The International Law of Fisheries: A Framework for Policy-Oriented Inquiries* 391-396 (Yale University Press, 1965), cited in Jackson and Royce at 65 and Kawakami at 417. An annex to the treaty specified delimitation of fishing areas that the two sides agreed was necessary.

Fisheries Convention prescribed the establishment, functions, and the structure of the commission. The bilateral commission was to meet on an annual basis; it was authorized to examine the existing cooperative measures and amend, if necessary, the protocol accompanying the treaty on the basis of scientific information. The commission also determined the two countries' annual quotas for those species of fish specified in the protocol and informed the parties of those quotas. The protocol was considered legally an integral part of the treaty; any changes to the former were regarded as changes to the latter. Moreover, the parties to the treaty had no right to object to the commission's amendments to the protocol.

This rather unique feature, not found in most fisheries accords, was incorporated into the 1956 Fisheries Convention because Tokyo and Moscow agreed that salmon fishing in the Northwest Pacific was limited to a short season. A timely determination of catch quotas was critically important. The two sides agreed that this requirement could not be ensured by the more usual procedure which required commission recommendations and the parties' responses before renegotiating quotas.<sup>14</sup> Under the 1956 Fisheries Convention, when the two governments' representatives on the commission signed the record of the proceedings (which included changes in the commission's recommended catch quotas), they were in effect accepting amendments to the treaty itself.

In addition to setting annual quotas, the commission determined the type and scope of statistics and other information to be submitted by each party. The commission also advised the parties on plans for fishery resource surveys. Each party to the treaty was to appoint one representative to the commission and several deputies. It was to convene when either side requested.<sup>15</sup> On the question of treaty enforcement, the two sides readily agreed to (1) a shared right to seize and arrest suspected treaty violators, and (2) court jurisdiction based on a flag-state principle.<sup>16</sup>

---

<sup>14</sup> Kawakami at 422.

<sup>15</sup> *Id* at 421-423 and 437-439.

<sup>16</sup> *Id* at 424 and 440.



### 3. *Threats to the Stability of the Early Regime*

#### a. *Conflict Over Continental Shelf Resources*

In 1960, the Soviet Union ratified the 1958 Geneva Convention on the Continental Shelf; since 1961, it claimed at the bilateral commission meetings that the crab on the Soviet continental shelf were continental shelf resources, not high seas resources, and therefore should be subject to Soviet jurisdiction. Thus the Japanese were surprised when in February of 1968 the Presidium of the Supreme Soviet decreed that the Soviet Union had sovereign claims to all resources, living and inanimate, on the continental shelf of the Soviet Union.<sup>17</sup>

On the other hand, Soviet assertion was further supported by the Convention on the Continental Shelf (which took effect in 1969) and by prior bilateral agreements between the United States and Japan in 1964 and between the United States and the Soviet Union in 1965 relating to crab fisheries off Alaska, which asserted the primary interest of the continental shelf state. The Soviet Union increased its crab fishing in response to a growing domestic food demand and at the same time instituted domestic measures to conserve continental shelf resources.<sup>18</sup> Moscow maintained that inasmuch as the crab resources were continental shelf resources under Soviet jurisdiction it was both legally justifiable and appropriate to place Japanese crab fishing under Soviet control. Soviet representatives at bilateral talks also indicated that they were not in a position to negotiate crab fisheries in the area surrounding the Habomais, Shikotan, Kunashiri, and Etorofu islands. They were willing to allow some Japanese crab operations off the western coast of Kamchatka because those fisheries were within the scope of the existing bilateral fisheries agreement between Moscow and Tokyo. They also pressed for a new agreement for crab fisheries in other continental shelf areas.

The Japanese asserted they had engaged in crab fishing in the Sea of Okhotsk since before the Second World War and that Soviet crab fishing was limited to the area off the western coast of Kamchatka only. They also maintained that there was no scientific justification for the kind of restriction the Soviets were demanding on crab fisheries in the area. In short, the Japanese side emphasized the historical record of Japanese crab fisheries in

---

<sup>17</sup> *Id* at 553.

<sup>18</sup> *Id* at 552-554.

the area in order to counter the Soviet effort to limit them.<sup>19</sup> Japan maintained that such resources were high seas resources and fell under no exclusive national jurisdiction. Unable to reconcile their differences, Moscow and Tokyo concluded an agreement in 1969 which acknowledged both positions. The one-year accord was renegotiated each year until 1976, with the limits on Japanese crab fishing in the area becoming more stringent from year to year.<sup>20</sup>

The Japanese sea snail (*tsubu*) fishery in the Northwest Pacific met a similar fate. The two sides' arguments paralleled those they had presented over the crab fisheries.<sup>21</sup> Subject to bilateral agreement beginning in 1972, this small but important Japanese fishery experienced a gradual, continuing decline due to increasing constraints arranged through negotiations between Moscow and Tokyo.

*b. Extended National Ocean Enclosures*

Another disturbance in Japanese–Soviet bilateral fishery relations came in 1977. Throughout the First and Second U.N. Conferences on the Law of the Sea (concluded in 1958 and 1968, respectively), Japan's primary concern had been to limit coastal state jurisdiction and preserve as much freedom of the sea as possible. Of particular concern to Japan had been the freedoms of navigation and of high seas fishing. It is for this reason, for example, that Japanese delegates to the conferences had opposed the extension of the territorial sea limit from three to twelve miles. The Soviet Union had, like Japan, been concerned about preserving its freedom of navigation (for strategic reasons), but, on the other hand, it also wanted to extend its jurisdiction over the marine resources within its coastal areas.<sup>22</sup> Thus, against the backdrop of the Third United Nations Conference on the Law of the Sea (UNCLOS III), and inspired by the growing tide of national ocean

---

<sup>19</sup> *Id* at 554–556.

<sup>20</sup> *Id* at 563–565.

<sup>21</sup> See Iwao Matsumoto, *Nihon kindai gyōgyō nenpyō (Sengo-hen)* (Chronology of Modern Japanese Fisheries (Postwar Edition)) 99 (Suisansha, 1980).

<sup>22</sup> The Soviet Union based its claim to continental shelf resources on the Geneva Convention on the Continental Shelf. Japan did not become a party to this Geneva Convention because of its objection to a provision recognizing the coastal state's jurisdiction over the living resources on the continental shelf; nor did Japan join the Geneva Convention on the Living Resources of the High Seas, which took effect on March 20, 1966. Japan did become a party to the other two Geneva conventions: the Convention on the High Seas, and the Convention on the Territorial Sea and Contiguous Zone (both on July 10, 1968). See Tsuneo Akaha, *Japan in Global Ocean Politics* 24–38 (University of Hawaii Press and the Law of the Sea Institute, 1985) ("Akaha, *Ocean Politics*").

enclosures,<sup>23</sup> Moscow established a 200-mile fishery zone, effective March 1, 1977.<sup>24</sup>

Announced on December 10, 1976, this action was in part prompted by the United States enactment earlier in 1976 of its Fishery Conservation and Management Act (FCMA),<sup>25</sup> extending U.S. fishery jurisdiction to 200 miles. The U.S. enactment required a new U.S.–Soviet fisheries agreement; an agreement was signed on November 26, 1976 under which Moscow recognized U.S. jurisdiction over all fishing within its 200-mile limit. The U.S. legislation took effect on March 1, 1977, the same date Moscow chose for its new 200-mile law to take effect.<sup>26</sup>

Over Japanese protests, the Soviet Union included in its expanded fishery jurisdiction the areas of the sea surrounding the disputed Northern Territories islands. The ensuing deadlock between Tokyo and Moscow resulted in the suspension of Japanese salmon fisheries in the Northwest Pacific in 1977. To make the situation worse, Moscow served notice that effective May 1, 1978 it would terminate its 1956 fisheries agreement with Tokyo. The Soviet Union apparently intended to force Tokyo's acceptance of the extended Soviet jurisdiction rather than press Tokyo on the island territorial issue. Moscow was obviously aware that Tokyo would object to the inclusion of the area surrounding the disputed islands within the Soviet Union's 200-mile fishery zone, but as far as Moscow was concerned, there was outstanding territorial dispute between the two countries.

The consequences of the Soviet action for Japan were enormous. Fearful that Japan could lose all of its Northwest Pacific salmon and herring fisheries, Tokyo decided to counter Moscow's move by adopting two measures, effective July 1, 1977, extending Japan's territorial sea limit from the current three nautical miles to twelve miles, the maximum then allowed

---

<sup>23</sup> By 1977, as many as fifty-eight countries had claimed a twelve-mile territorial sea. Thirty-four states had asserted territorial claims of fifteen miles or more, with ten of them laying 200-mile territorial sea claims. One country had maintained a ten-mile limit; ten countries, a six-mile limit; and four countries, a four-mile limit. Japan and twenty-one other coastal states maintained a three-mile territorial sea. Twenty-four states had claimed a 200-mile exclusive fishing or economic zone, as against fifteen countries, including Japan, that had maintained a twelve-mile limit. Seven other countries had established fishery or economic zones extending beyond twelve miles but less than 200 miles. *Dai-sanji kaiyōhō kaigi: nyūyōku natsu kaiki* (The Third Conference on the Law of the Sea: New York Summer Session) 93 (Gaimusho Jōhō Bunkakyoku, 1977).

<sup>24</sup> For a detailed study of Japan's response to the Soviet 200-mile decision, see Akaha, *Ocean Politics* at 122–149 (cited in note 22).

<sup>25</sup> Fishery Conservation and Management Act of 1976, Pub L. No. 94–265, 90 Stat. 331 (1976), codified at 16 USC §§ 1811–1882 (1992).

<sup>26</sup> Akaha, *Ocean Politics* at 110–111, 116, and 130–133 (cited in note 22).

under international law, and establishing its own 200-mile fishery zone.<sup>27</sup> Both items of legislation claimed the sea areas around the disputed islands as Japanese waters.

Although Tokyo and Moscow failed to agree on the question of territorial boundaries, the two sides did conclude a provisional agreement, effective June 10, 1977, which embodied both sides' claims.<sup>28</sup> The agreement was renewed each year until 1984, when it was consolidated into a new agreement<sup>29</sup> along with another 1977 provisional agreement regulating Soviet fishing within Japan's newly established 200-mile fishery zone.<sup>30</sup>

Japan's establishment of a 200-mile fishery zone had little practical impact on the level of Soviet fishing in Japanese coastal waters, for Soviet catch quotas after 1978 were still based on the actual catch in 1976. The Soviets were given a total annual quota of 650,000 tons from 1978 to 1984.<sup>31</sup>

#### 4. 1984 Japanese-Soviet Fisheries Agreement

Following the conclusion of UNCLOS III in December of 1982 and the establishment of the Soviet 200-mile Exclusive Economic Zone (EEZ) on

---

<sup>27</sup> The two pieces of legislation are the Law on the Territorial Sea and the Law on Provisional Measures Relating to the Fishing Zone. For a description of the legislation, see Shunji Yanai and Kuniaki Asomura, *Japan and the Emerging Order of the Sea: Two Maritime Laws of Japan*, 21 Japanese Annual Intl L 48 (1977).

<sup>28</sup> Articles 1 and 2 of the agreement acknowledged the Soviet fishery zone based on the decision of the Soviet Council of Ministers and Japan's fishery zone delimitation, respectively. Moreover, article 8 provided that nothing contained in the agreement shall be deemed to affect or prejudice in any manner the positions of either government on questions relating to the mutual relations between the two countries. Questions relating to the mutual relations, Tokyo has argued, includes the dispute over the Northern Territories. Until the Gorbachev-Kaifu summit in Tokyo in April of 1991, however, Moscow had long denied the existence of any territorial dispute between the two countries.

<sup>29</sup> The Agreement between the Government of Japan and the Government of the Union of Soviet Socialist Republics Concerning the Fisheries off the Coasts of Japan and off the Coasts of the Union of Soviet Socialist Republics (1984 agreement). An unofficial English translation of the agreement can be found in 28 Japanese Annual Intl L 297-299 (1985).

<sup>30</sup> The Agreement between the Government of Japan and the Government of the Union of Soviet Socialist Republics Concerning Fisheries off the Coasts of Japan ("1977 agreement"). The full Japanese text of the agreement is found in Takao Morizane, *Shin kaiyōhō chitsujō to nihon gyōgyō* (The New Order of the Law of the Sea and Japanese Fisheries) 252-275 (Sozo Shobō, 1977). This agreement included regulatory measures governing all fishery resources except highly migratory species, which Tokyo maintained should be managed not by unilateral coastal state action but through regional and international fisheries organizations.

<sup>31</sup> 1988-nen nisso gyōgyō kankei shiryō (Information Concerning Japanese-Soviet Fishery Relations in 1988) 10 (Suisanchō (Japanese Fisheries Agency)).

March 1, 1984,<sup>32</sup> Tokyo and Moscow concluded the 1984 agreement in December, replacing the two 1977 provisional agreements.

The 1984 Japanese–Soviet fisheries agreement follows the 1982 U.N. Convention on the Law of the Sea<sup>33</sup> in recognizing the primary interest and responsibility of the coastal state with respect to the management and conservation of fishery resources within its EEZ. The 1984 bilateral accord required each side to permit the other to fish in its 200–mile zone,<sup>34</sup> with each side's catch quota to be determined through consultation at an annual Japanese–Soviet Fisheries Commission meeting.<sup>35</sup> In accordance with the UNCLOS III treaty, the quota determination is to take into consideration the condition of resources, the coastal state's own harvesting capacity, the traditional catch and methods of fishing by the other country, and other relevant factors.<sup>36</sup>

The 1984 bilateral agreement also requires each party to comply with resource conservation measures the other side may implement within its 200–mile zone<sup>37</sup> (as does the 1982 Convention) and to cooperate in the conservation and optimal utilization of the living resources within their 200–mile zones.<sup>38</sup> As of this writing, the 1984 agreement continues in force.

Through negotiations at the annual bilateral fishery commission meetings, Japanese fishing within the Soviet 200–mile zone has been placed under increasingly restrictive control. In the past, the Soviets persistently sought to equalize the actual size of the harvest rather than the total quota for each side; more recently, they have sought to extract as much in fishing fees as possible from the Japanese side. The Soviets succeeded in attaining both goals. For example, the agreement for the 1991 fishing season provided for Japanese fishing fees of 1.1 billion yen for a quota of 35,000 tons in the Soviet 200–mile EEZ, and for a fee–free Japanese quota of 182,000 tons. In return, Russia was given a quota of 182,000 tons in Japanese waters.<sup>39</sup> In addition, in 1988 a Soviet–proposed check–point system was introduced

---

<sup>32</sup> The Soviet 200–mile economic zone was established by a decree of the Presidium of the Supreme Soviet on February 28, 1984. For a full English text, see *The Law of the Sea: Current Developments in State Practice*, Office of the Special Representative of the Secretary General for the Law of the Sea, ed, 103–110 (United Nations, 1987).

<sup>33</sup> The 1982 Convention is discussed in Part III *infra*.

<sup>34</sup> 1984 agreement article 1.

<sup>35</sup> Established in accordance with article 6 of the 1984 agreement.

<sup>36</sup> 1984 agreement article 2.

<sup>37</sup> 1984 agreement article 4.

<sup>38</sup> 1984 agreement article 5.

<sup>39</sup> *Nisso chisen okiai kōshō* (Japanese–Soviet Offshore [Fisheries] Negotiations), 1272 Suisankai 60 (Jan 1991).

which requires Japanese fishing boats to pass through designated coordinates for inspection.

These arrangements seem equitable insofar as the Japanese continue to have access to their highly desired marine resources that lie within areas of Russian jurisdiction and the Russians receive badly needed hard currency in exchange. The increasing regulation of Japanese fishing within the 200-mile zone of the former Soviet Union also seems warranted because Moscow continues to be concerned about the deteriorating state of fish stocks in the Sea of Japan and the Sea of Okhotsk.

### 5. *Development of Japanese–Soviet Fisheries Cooperation*

In April of 1978, Tokyo and Moscow concluded a new agreement on Japanese salmon fisheries in the Northwest Pacific (1978 salmon agreement). Along with quota cuts, for the first time Japan became obligated to pay cooperation fees (1.76 billion yen in 1978) to defray part of the cost of Soviet salmon resource preservation efforts. Moreover, Japan for the first time accepted the State of Origin Principle which gives sovereign claims over anadromous species of fish to the state in whose waters such stocks originate.

#### a. *Cooperation Fees*

This feature has since become a permanent element of Japanese–Soviet/Russian salmon fishery relations.<sup>40</sup> As Soviet fishing off the coasts of other countries came under increasingly strict foreign control, the Soviets paid closer attention to both the exploitation and conservation of fishery resources within their own coastal waters. Moreover, following Mikhail Gorbachev's rise to power in Moscow in 1985, the Soviet government began a major drive to make all domestic industries, including the fishing industry, more cost-effective. These trends resulted in an increase in the financial needs of the Soviet/Russian fishing industry.<sup>41</sup>

---

<sup>40</sup> 1988 *Suisan nenkan* (Fisheries Yearbook) 26 (Suisansha); Hiroshi Murabayashi, *Nisso gyōgyō kyōryoku kyōtei no shisasuru mono* (What the Japanese–Soviet Fisheries Cooperation Agreement Suggests), 843 *Jurisuto* 63 (Sept 1985) ("Murabayashi").

<sup>41</sup> 1990 *Suisan nenkan* (Fisheries Yearbook) 92 (Suisansha). The cooperation fees that the Japanese salmon industry pays to the Russians, therefore, are an increasingly important feature of the bilateral fisheries regime.

Additionally, as discussed in greater detail later in this section, the deteriorating financial condition of the Soviet/Russian fishing industry has forced the industry to seek fishing and fish processing equipment from Japan. In fact, most of the cooperation fee is paid in the form of such equipment and equipment the Japanese secure from other countries.

From Japan's perspective, Moscow's continuing concern with deteriorating stock conditions put the Japanese in a vulnerable position, having to accept Moscow's demands for cooperation fees. The Soviets also demanded that all salmon of Soviet origin should be protected outside the Soviet 200-mile limit, inasmuch as continuing Japanese operations in the area jeopardized Soviet efforts at resource conservation within their fishery zone. Soviet negotiators also demanded that Japan contribute to the (unspecified) cost of resource conservation efforts in the Soviet Union.<sup>42</sup>

Japan's payment of cooperation fees beginning in 1978 revealed its vulnerable position and its desire to continue its salmon fisheries in the Northwest Pacific. Following a 1985 ban on the catching of salmon of Soviet origin outside the Soviet fishery zone, the cooperation payments in effect ensured Japanese access to salmon within the Soviet zone. In annual salmon quota negotiations, Japan offered to pay certain amounts in cooperation fees in return for Soviet acceptance of Japan's proposed quotas and fishing areas.<sup>43</sup> Japanese salmon quotas thereafter remained fairly stable (42,500 tons annually from 1978-1983, 40,000 tons in 1984, and 37,600 tons in 1985) in exchange for increased cooperation fees (from 1,76 billion yen in 1978 to 4,25 billion yen in 1985).

#### *b. State of Origin Principle*

When the 1978 salmon agreement was supplanted by a new agreement in 1985, the Japanese-Soviet Fisheries Cooperation Agreement of 1985, the most divisive issue was whether the state of origin should enjoy sovereign rights to anadromous species throughout their migratory area including the high seas beyond the coastal state's 200-mile EEZ. In the end Japan recognized the Soviet Union's primary interest and responsibility concerning anadromous species originating in its rivers<sup>44</sup> and its right to institute

---

<sup>42</sup> Murabayashi at 63 (cited in note 40).

<sup>43</sup> See, for example, Nobuhiko Nagasugi, *Nisso sakemasu gyōgyō kōshō ni tsuite: Shin kyōtei no teiketsu to jittai kōshō* (On the Japanese-Soviet Salmon Fisheries Negotiation: The Conclusion of a New Agreement and Substantive Negotiation) 26-29 (Aff, July 1985).

<sup>44</sup> 1985 agreement article 2(1).

regulatory measures governing salmon fishing within and without its economic zone.<sup>45</sup> This was in line with a similar provision in the 1982 U.N. Convention on the Law of the Sea.<sup>46</sup>

Under the 1985 agreement, salmon of Soviet origin could only be fished *within* the Soviet 200-mile zone.<sup>47</sup> The agreement did recognize Japan's financial contribution to the reproduction of salmon stocks in the Soviet Union, and stated that Moscow would give special consideration to Japan and would determine the latter's fishing conditions through bilateral consultation.<sup>48</sup> Moreover, control of salmon fishing *beyond* the Soviet 200-mile zone was to be executed on the basis of agreement between the two countries.<sup>49</sup> Thus, the determination of fishing areas, methods, and periods was placed in Soviet hands for the first time.<sup>50</sup>

The 1985 accord also provided for bilateral cooperation in the area of scientific fisheries research<sup>51</sup> and for cooperation in improving technology for catching, propagating, and culturing fishery resources.<sup>52</sup> The agreement further called upon the two governments to cooperate in the conservation and management of living resources of the Northwest Pacific outside their 200-mile zones,<sup>53</sup> and charged the bilateral commission with the responsibility of assessing the status of fishery resources and fish stocks included within the scope of the new agreement.<sup>54</sup>

The ban since 1985 on salmon fishing outside the Soviet 200-mile limit imposed drastic cuts on the total Japanese salmon quotas (from 24,500 tons in 1986 to 15,000 tons in 1989). This was mitigated somewhat by a concomitant reduction in Japanese cooperation fees (from 3,500 million yen in 1986 to 3,350 million yen in 1989).<sup>55</sup> Japan also developed joint ventures in salmon hatcheries with the Soviet Union in exchange for increased access to salmon within the 200-mile zone of the former Soviet Union.

---

<sup>45</sup> 1985 agreement article 2(2).

<sup>46</sup> See 1982 Convention article 66(1).

<sup>47</sup> This also corresponds to the U.N. Convention. See 1982 Convention article 66(2).

<sup>48</sup> 1985 agreement article 2(3).

<sup>49</sup> 1985 agreement article 2(4).

<sup>50</sup> 1985 agreement article 3.

<sup>51</sup> 1985 agreement article 3(1).

<sup>52</sup> 1985 agreement article 3(2).

<sup>53</sup> 1985 agreement article 4.

<sup>54</sup> 1985 agreement article 7.

<sup>55</sup> 1988 *Suisan nenkan* at 29 (cited in note 40); 1988-*nen nisso* at 15-18 (cited in note 31).



c. *High Seas Fishing Ban*

Under the 1985 restrictions, Japanese salmon catches outside the Soviet EEZ dropped substantially, from 24,500 tons in 1987 to 11,000 tons in 1990. The agreement for 1991 required the Japanese to pay almost 2.84 billion yen for a quota of 9,000 tons.<sup>56</sup> In 1991, in response to an initiative by the United States, Canada, and the Soviet Union to negotiate a new multilateral treaty on North Pacific fisheries which would prohibit all salmon catching beyond their respective 200-mile zones, Tokyo announced it would accept the ban. Japan did not want to be excluded from the proposed multilateral treaty. Japan also acknowledged that high seas salmon fisheries outside the 200-mile limits of the Northwest Pacific countries had contributed to the worsening of the resource condition within the national zones.<sup>57</sup> But despite such restrictions, since 1988 the Japanese have successfully increased their annual salmon quota within Soviet waters (2,000 tons in 1988, and 5,000 tons, 6,000 tons, and 8,000 tons in the following years) in return for increasing Japanese financial and technological participation in bilateral salmon joint ventures with the Soviets.<sup>58</sup>

On June 12, 1991, the Japanese Minister of Agriculture, Forestry, and Fisheries and the Soviet Fisheries Minister reached agreement on bilateral fisheries cooperation including (1) cooperation in the conservation, management, and optimal use of the biological resources of the world's oceans, (2) the promotion of Japanese fishing of salmon of Soviet origin within the Soviet and Japanese 200-mile zones, and (3) improved operation of bilateral fishery joint ventures on the principle of market economy.<sup>59</sup> Japan's acceptance of the ban on salmon fishing outside the 200-mile limits of the North Pacific nations was apparently based in part on assurances it received from the Soviet Union that Japan would have continued access to salmon within the Soviet zone. Japanese access to Soviet waters was of particular importance because Japanese salmon fishing was totally banned

---

<sup>56</sup> *Nisso sakemasu kōshō chōin* (Japanese-Soviet Salmon Negotiations Concluded), 1275 Suisankai 8 (Apr 1991). From 1988 to 1990, Japanese cooperation fees were calculated on the basis of a unit price for species-by-species quotas for the Japanese fishermen. According to this assessment scheme, the Japanese fishermen could not make up any loss if the actual catch of highly valued species, such as Sockeye, fell below the allotted quotas, as was often the case. In 1991, the Japanese successfully negotiated a new valuation mechanism whereby they would pay for the total quota, inclusive of all species of salmon they were allowed to catch. *Nihon Keizai Shinbun* 2 (May 20, 1991).

<sup>57</sup> *Nihon Keizai Shinbun* 1 (June 14, 1991).

<sup>58</sup> *Id.* See also Kazuhiro Baba, *Nisso Gyōgyō Gōdōiinkai, dai 6-kai kaigi no kekka* (Results of the Sixth Meeting of the Japanese-Soviet Joint Fisheries Commission) 30 (Aff, July 1990).

<sup>59</sup> *Hokkaido Shinbun* 1 (Evening Edition, June 13, 1991).

within the U.S. and Canadian 200-mile zones.<sup>60</sup> Japan also obtained Soviet cooperation in opposing the U.S.–Canadian proposal to draw salmon fishing prohibition lines some distance inside the 200-mile zones of the North Pacific countries. Drawing prohibition lines inside the 200-mile limits would adversely affect the access Japan had obtained to salmon fisheries inside the Soviet 200-mile zone in exchange for Japanese participation in salmon fisheries joint ventures in the Soviet Union.<sup>61</sup>

*d. Japanese–Soviet/Russian Fisheries Joint Ventures*

The impetus for a fishery joint venture came from a Soviet proposal in 1987 for Japanese capital and technological contribution to the development of salmon hatcheries on Sakhalin Island. The first fishery joint venture company, Pilenga–Godo, came into being in July of 1988.<sup>62</sup> Japan participated in the Pilenga–Godo joint venture company for two purposes: to gain access to salmon, and to contribute to the replenishing of salmon stocks within the Soviet 200-mile zone. In its third year at the time of this writing, the venture still operates at a loss. Despite its poor financial situation, the Japanese government and fishery concerns both wish to maintain access to North Pacific salmon through such bilateral arrangements including joint ventures with the former Soviet Union. By July of 1991 there were seven other Japanese–Russian joint ventures in the Russian Far East for the production, processing, distribution and sales of fishery resources.<sup>63</sup>

Japanese–Soviet/Russian joint ventures in fisheries are all private arrangements, but industry and the Japanese government consult closely on the establishment of joint ventures between Japan and the former Soviet Union. In February 1982, the Japanese Fisheries Agency announced four basic principles regarding joint ventures in the fisheries field: (1) private-level arrangements should have no adverse effect on the existing bilateral treaty governing Japanese fishing in the Soviet 200-mile zone, (2) joint venture arrangements should assist Japanese fishing operators who have been adversely affected by the establishment of foreign 200-mile fishery or economic zones, (3) bilateral private arrangements should be fair and should

---

<sup>60</sup> Hokkaido Shinbun 1 (June 28, 1991).

<sup>61</sup> Hokkaido Shinbun 9 (June 14, 1991).

<sup>62</sup> For a summary description of the joint venture, see *Soren 200-kairinai de 11-nenburi ni sakemasu sāgyō* (Salmon Fishing Operations Within the Soviet 200 Mile [Zone] for the First Time in Eleven Years), 1243 Suisankai 59–62 (Aug 1988); and *Saharin no sakemasu fukajo* (The Salmon Hatchery in Sakhalin), 1251 Suisankai 55 (Apr 1989).

<sup>63</sup> For the list, see Hokkaido Shinbun 15 (July 11, 1991).

not impose an undue burden on the Japanese side, and (4) all affected fishing concerns in Japan should be fully consulted.<sup>64</sup>

Japan–Russian fishery joint ventures today can be divided into three categories depending on the size of the Japanese participants and their main objectives in the arrangements. First, there are ventures in which medium– and small–sized Japanese fishing companies participate; Pilenga–Godo is a good example. The incentive for the Japanese partners is to gain access to fishery resources within the EEZ of the former Soviet Union. Despite the lack of profitability, the Japanese partner in Pilenga–Godo receives catch quotas that it would not otherwise obtain. It can also provide employment opportunities for its member operators. Part of the proceeds from the sale of the salmon caught under the quota is used as a Japanese contribution to the joint venture’s capital investment. Moreover, Pilenga–Godo buys in hard currency a part of the quota of the Sakhalin Fishery, Kolkhoz, the Russian partner in the venture, then sells the purchased salmon to the Japanese side. This is almost purely a commercial transaction. This kind of joint venture offers the Russian side, in addition to hard currency, resource reproduction technology, marine product processing technology, fishing technology, and salmon culturing technology.<sup>65</sup>

The second type of Japan–Russian fishery joint venture calls for the participation of large Japanese fishery companies. Their main purpose is to organize marine product processing in Russia using marine resources in the country. Products are differentiated between the two markets in Japan and in Russia because market demands are different. For example, herring roe and cod roe are highly valued in Japan but have no market in Russia; conversely, Alaskan pollack and herring are popular table fish in the former Soviet Union but have only limited appeal to Japanese consumers except in processed form. The benefits of this kind of joint venture for the Russian side include the transfer of advanced processing and marketing technology, employment opportunities, and the development of infrastructure associated with the processing of marine products.

In a third type, Japanese trading companies participate in joint ventures with Russian partners and market different products in the two countries.

---

<sup>64</sup> Suisanchō, *1982–nen nisso gyōgyō kankei shiryō* (Information Concerning Japanese–Soviet Fishery Relations in 1982) 38 (Suisanchō).

<sup>65</sup> Nobuo Arai, *Soren kyōkutō chiiki no suisan bumon no nisso gōben kigyō* (Japanese–Soviet Joint Ventures in the Fisheries Field in the Soviet Far Eastern Region), in *Nihonkai shuhen shokoku no nikokukan narabini takokukan no keizai kyōryoku kōsō* (A Conception for Bilateral and Multilateral Economic Cooperation Among the Countries Surrounding the Sea of Japan) 87–88 (Soren To’o Bōeikikai Soren To’o Keizai Kenkyūjo, Mar 1991).

Japanese companies finance the remodeling and repair of Russian fishing boats, provide fishing equipment, fishing technology, and the training of Russian crews. In return the trading companies market the harvested fish directly in Japan. There are other Japan–Russian joint ventures that handle marine products but do not directly engage in fishing or fish processing activities (for example, restaurants and other related services).<sup>66</sup>

## 6. Current Japanese–Russian Fisheries Regime

The present Japanese–Russian fisheries regime also includes annual consultations between Japanese and Russian scientists and fishery experts<sup>67</sup> and private-level arrangements for (1) Japanese crab fishing off Sakhalin in the Seas of Japan and Okhotsk in exchange for cooperation fees,<sup>68</sup> (2) Japanese sea kelp and sea urchin catches around the Russian-controlled Kaigara Island, east of Hokkaido,<sup>69</sup> (3) Japanese purchase at sea of Alaskan pollack and herring,<sup>70</sup> and (4) Japanese *madara* (*gadus macrocephalus*) fishing in the EEZ of the former Soviet Union.<sup>71</sup>

Arrangements for crab fishing and sea kelp and sea urchin gathering started in 1979, and arrangements for *madara* fishing, in 1987. Although these are not based on government-level treaties and, therefore, are technically private arrangements, the Japanese Fisheries Agency issues a notification to the Japanese fishermen concerned to ensure safe and orderly operations.<sup>72</sup> Japanese participants include both fishing companies and individual operators and are represented in bilateral talks with the Russians by the Hokkaido Fisheries Association. The Russian parties to the private arrangements are the Pacific Oceanological Institute (TINRO) and the Far Eastern Branch of the Russian Academy of Sciences, as well as fishery

<sup>66</sup> *Id* at 89–90.

<sup>67</sup> See the Suisanchō's annual, *Nisso gyōgyō kankei shiryō* (Japanese–Soviet Fishery Relations Information).

<sup>68</sup> *Id*. In 1988, Japan was allotted a total quota of 9,900 tons and 20–21 fishing boats in these areas.

<sup>69</sup> 1988 *Suisan nenkan* at 32 (cited in note 40). In 1987, Japan collected 1,031 tons of sea kelp in exchange for 110,500,000 yen. Japan harvested 260 tons of sea urchin in 1987, in exchange for 57 million yen. Suisanchō, 1988–*nen nisso* at 36–37 (cited in note 31).

<sup>70</sup> Japan bought a total of 38,950 tons of Alaskan pollack in 1987 through this arrangement; Japan started buying herring from the Soviets at sea in 1988, purchasing 361 tons that year. Suisanchō, 1988–*nen nisso* at 38.

<sup>71</sup> Japan's 1988 quota was 25,500 tons and the number of Japanese boats permitted to operate in Soviet waters was 17–18. *Id* at 35. In 1989, a maximum of eight Japanese boats were allowed at any given time. The total allowable catch of *madara* was set at 25,000 tons. *Kotoshi no nisso haenawa kyōdō jigyō* (This year's Japanese–Soviet dragnet joint enterprise), 1244 *Suisankai* 60 (Sept 1988).

<sup>72</sup> 1990 *Suisan nenkan* at 97–98 (cited in note 41).

cooperatives. Through these arrangements, the Japanese annually caught between 6,668 tons and 9,900 tons of crab, *tsubu* (sea snail), and shrimp in 1985–89. In addition, between 1987 and 1989 the Japanese obtained a total of 27,841 tons of *madara* in the Sea of Okhotsk off Kamchatka and off the western coast of Sakhalin; harvested a total of 7,235 tons of kelp between 1981 and 1989 and 6,315 tons of sea urchin between 1987 and 1989; and Japan purchased a total of 129,656 tons of Alaskan pollack in 1987–90.<sup>73</sup>

The Japanese thus gain access to fishery resources within the 200-mile zone of the former Soviet Union which are underutilized by Russia. In return, the Russians gain badly needed hard currency. In 1989 alone the Japanese paid 115 million yen in fishing fees for sea kelp, over 278 million yen for crab, and 36 million yen for sea urchin.<sup>74</sup>

The current Japanese–Russian fisheries regime consists of two government–level agreements: (1) the Agreement between the Government of Japan and the Government of the Union of Soviet Socialist Republics Concerning the Fisheries off the Coasts of Japan and off the Coasts of the Union of Soviet Socialist Republics (1984), and (2) the Agreement between Japan and the Soviet Union Concerning Fisheries Cooperation (1985). The first treaty regulates the two countries' fishing activities within each other's 200-mile zone. Japanese quotas and actual catches within the waters of the former Soviet Union have been substantially reduced over the years, due largely to the Russian concern over resource deterioration. Russia's quotas within Japanese waters have increased, but they have consistently fallen short of their permitted levels by a significant margin while the Japanese have failed to match their quotas by only a small margin. Today the two countries' quotas are roughly equal; Japan buys additional quotas with fishing fees, however. While this affords Russia the opportunity to obtain badly needed hard currency, it subverts the goal of relieving pressure on the resources.

The second accord bans Japanese fishing of salmon of Russian origin outside the 200-mile zone of the former Soviet Union and promotes bilateral cooperation on the conservation and propagation of marine biological resources in the Northwest Pacific. In exchange for Japanese cooperation fees and Japanese financial and technical participation in salmon joint ventures with the Russians, the Japanese are allowed limited access to salmon within

---

<sup>73</sup> For details of these private arrangements, see Suisanchō, *1990-nen nisso gyōgyō kankei shiryō* (Information concerning Japanese–Soviet fishery relations in 1990) 32–40 (Suisanchō).

<sup>74</sup> *Id* at 38–39; and *1990 Suisan nenkan* at 97–98 (cited in note 41).

the 200-mile zone of the former Soviet Union (952 tons and 5,047 tons of salmon in 1988 and 1989, respectively).<sup>75</sup>

## 7. *Prospects for Future Japanese–Russian Cooperation*

### a. *Political Factors*

The *glasnost* and *perestroika* policies initiated by Mikhail Gorbachev in the mid-1980s had several important consequences for fishery relations in the Sea of Japan. At the conclusion of the historic summit in Tokyo in April of 1991, between Gorbachev and Japanese Prime Minister Shigeki Kaifu, the two leaders issued a joint communiqué in which they evaluated highly the cooperation between the two countries under the existing governmental agreements in the fisheries field and were agreed on the desirability of continuing constructive exchanges of views so as to further develop such cooperation on a long-term and mutually beneficial basis. In this regard, the two sides expressed the desire to see extensive development of relations between enterprises and organizations in Japan and the far eastern region of the former USSR based on market economy principles. The two sides recognized the necessity of maintaining and developing close cooperation in international deliberations for the conservation, management, reproduction, and optimal utilization of the world's biomarine resources.<sup>76</sup>

The Soviet–Japanese summit produced 15 memoranda, agreements, exchanges of notes, and joint communiqués. The two sides expressed satisfaction with the progress the two countries had made in fisheries cooperation on the basis of the current agreements between Moscow and Tokyo and further affirmed the importance of maintaining, on a stable and long term basis and on the principle of friendship and mutual benefits, each side's fishing in the other's 200-mile zone.

The summit also yielded mutual agreement to explore new avenues of cooperation in the economic and scientific–technological areas related to fisheries, including cooperation for the establishment of rational management of salmon fisheries in the far eastern region of the former Soviet Union. Japan and the Soviet Union/Russia affirmed mutual interest in promoting cooperative efforts in the former Soviet far eastern region between enterprises and organizations of the two countries in the processing, storing, and

---

<sup>75</sup> Suisanchō, *1990-nen nisso* at 24 (cited in note 73).

<sup>76</sup> 91/77 FBIS SOV 8 (Apr 22, 1991).

marketing of marine products, joint enterprises, the exchange of fish and fish products, and in the effective use of resources including underutilized resources, in which Japanese fishing boats also participate. Tokyo and Moscow agreed it would be beneficial to explore the feasibility of founding experimental bilateral joint fishery ventures that would operate on the basis of market principles. They both agreed it would be beneficial for Japan to invite Soviet specialists to educational and training programs, and for the former Soviet Far East to accept Japanese experts to conduct field surveys in the region in the field of fisheries, including the learning of new technology in the processing, storing, and marketing of marine products, and the development of fisheries under a market economy.<sup>77</sup>

On the basis of the April 1991 communiqué, TINRO Sakhalin and Hokkaido Fisheries Association agreed in May of 1991 to conduct a joint crab survey in an area known in Japan as the Triangle Area, which lies between Kunashiri and Shikotan islands. Japanese crab fishing in the area had been banned since 1978, and Alaskan cod and Alaskan pollack fishing had been banned since 1986. According to the new agreement, a Japanese boat was scheduled to catch 50 tons of crab, to be sold in Japan, with 20 percent of the proceeds would go to the Soviet side as a survey cooperation fee. The Japanese hoped the survey, conducted in June and July of 1991, would help them gain access to crab fisheries in the waters around the disputed islands in the climate of gradually improving bilateral relations in the wake of the Gorbachev-Kaifu summit in Tokyo.<sup>78</sup>

#### *b. Economic Factors*

An important consequence of the recent political and economic changes in the former Soviet Union has been the rapid deterioration of domestic investment in fisheries, with the result that the former Soviet fishing industry must increasingly seek foreign investment.<sup>79</sup> This fact renders the

---

<sup>77</sup> The Japanese language text was supplied to the author by the Japanese Ministry of Foreign Affairs.

<sup>78</sup> Hokkaido Shinbun 1 (May 2, 1991); Hokkaido Shinbun 1 (June 28, 1991).

<sup>79</sup> The political changes in the former Soviet Union have also encouraged the far eastern fisheries organizations to seek international cooperation independently of the government. Although strong bureaucratic tendencies among administrative organs remain, the demise of the Communist Party has promoted gradual decentralization of authority in the formulation and administration of fishery policy. Following the failed coup in Moscow in August 1991, the Soviet Ministry of Fishing Industry has become the Russian Ministry of Fishing Industry, and staffing has been cut to 300. The Ministry, previously in charge of planning for the Soviet fleet's worldwide operations, now permits the fleets, combines, cooperatives, and joint ventures to take over day-to-day responsibility. In addition, there is increasing

prospect of cooperative fishery efforts with the other countries in the region an attractive option. Although the former Soviet Far East has successfully increased marine production in recent years, the increases were achieved by using existing ships longer. This and the lack of domestic-source investment have resulted in a crisis in fishery production and processing in the region. In 1990, the government responded to the deteriorating condition of trawlers by encouraging ship owners to obtain their own boats, but most of them were financially unable to do so. Specialists at the Ministry of Fishing Industry estimate that by 1995 the catch and production of marine products may decline by one half. In 1991 over 70 percent of the fishing boats in the Far East, about 60 percent of the processing ships, and about 50 percent of the transports were in need of repair. To maintain the rate of growth in the volume of production in the Far East, it is estimated that 8.561 billion rubles of capital investment would be needed over the next five years, with 5.781 billion rubles going for new ships. The fishing industry in the region simply cannot afford it.<sup>80</sup>

Another estimate by a far eastern economist put the shipbuilding needs of the region at 71,000 tons greater than the existing capacity as of the end of 1990. Ship repair needs exceeded capacity by 75 million rubles. There was an estimated 39,000 ton shortfall in marine product processing capacity; the canning capacity fell short of the requirement by 27 million cans a year; and refrigeration facilities were about 50,000 tons short of demand. These facts presage further reduction in fish catches, abandonment of worn-out ships, increased production costs, repair cost increases, and an overall reduction in the reliability of the fishing industry.<sup>81</sup> Moreover, a lack of new investment in oil production and the breakdown in the inter-regional and inter-republican trade system in the former Soviet Union are also hurting the fishing industry. The availability of fuels for fishing operations in the Far East has been drastically cut. In December of 1991, for example, the fishing fleet in the

---

pressure on fishery administrators and managers themselves to make more commercially feasible decisions. The fishing industry has responded to these changes by exploring new forms of operation. For example, one option reportedly under consideration would see the fishing fleets provide 90 percent of their catches to meet state orders at fixed prices and sell the remaining 10 percent on the free market. In return, the government would continue hard currency support for the fleets.

Another option would use 60 percent of the fleets' quota to meet state orders, and sell 40 percent on the free market. Under this option, the fleets would have to fund their own hard currency needs. Fishing News International 1, 4 (Oct 1991), cited in 12 SUPAR Report 95.

<sup>80</sup> 18-19 Vostochnyi Ekspres 4 (1991), cited in 12 SUPAR Report 95 (Jan 1992).

<sup>81</sup> Pavel A. Minakir, *Soren kyokutō no taigai keizai seisaku no doko* (Changes in the Soviet Far East External Economic Policy), in *Dai 2-kai soren kyokutō keizai semina* (Second Soviet Far East Economic Seminar) 5 (Northern Regions Center, 1991).



region had to remain in port for lack of fuel.<sup>82</sup> Under these circumstances, it is quite understandable that the Soviet Far East would seek to expand its fishery relations with neighboring countries, allowing greater foreign access to the resources in the Soviet 200-mile zone in exchange for fishing and cooperation fees and establishing joint ventures with foreign partners in search of investment in the forms of new capital, technology, and equipment.

### B. *Japanese-ROK Fisheries Regime*

Fishery relations between Japan and the ROK in the postwar years were tense, acrimonious, and occasionally even violent. The establishment of a stable bilateral fisheries regime had to wait until the normalization of diplomatic relations between the two countries in 1965.<sup>83</sup> In that year, following thirteen long years of on-again, off-again negotiations, Tokyo and Seoul concluded a government-level fisheries agreement.<sup>84</sup>

#### 1. *1965 Japanese-ROK Fisheries Agreement*

The 1965 agreement recognized each party's right to establish an exclusive fishery zone up to twelve miles from the baseline from which its territorial limits were measured.<sup>85</sup> Joint regulation zones were established outside the ROK fishery zone, where the two governments would adopt provisional measures limiting the number and size of fishing boats.<sup>86</sup> Japanese fishing boats in the joint regulation zones were limited to 1,700 in number at one time and sixty tons in size. The agreement adopted the flag-state

---

<sup>82</sup> Moscow TV, Dec 17, 1991; 91/243 FBIS SOV 28-29 (Dec 18, 1991), cited in 12 SUPAR Report 96.

<sup>83</sup> For a detailed account of the postwar Japanese-ROK fishery relations, see Kawakami at 412-413 (cited in note 10); Akaha, *Ocean Politics* at 42-48 (cited in note 22); and Choon-ho Park, *East Asia and the Law of the Sea* 145-159 (Seoul National University Press, 1983) ("Park").

<sup>84</sup> The Japanese-South Korean Fisheries Agreement of 1965 ("1965 agreement").

<sup>85</sup> 1965 agreement article 1. Accordingly, on December 12, 1965, Japan established a twelve-mile fishery zone applicable only to ROK nationals. The baseline was to be the low tide line except for four straight baselines drawn around small islands to the south of the Korean peninsula. Kawakami at 255-257 (cited in note 10); Park at 71-72 (cited in note 83); Akaha, *Ocean Politics* at 47 (cited in note 22). The two sides agreed on a provisional measure to include in ROK's fishery zone an area of the sea around Cheju Island, about fifty nautical miles south of the mainland. The agreement became necessary when Japan insisted that Korea measure the outer limit of its fishery jurisdiction from the low tide line around the island, and the ROK claimed it had the right to draw a straight baseline for measuring its twelve-mile fishery zone. Kawakami at 257, 272-273 (cited in note 10).

<sup>86</sup> 1965 agreement arts 2 and 3. Accordingly, restrictions apply to Japanese offshore trawl, bull trawl, purse seine, and mackerel angling fisheries in the area.

principle for enforcement and court jurisdiction outside the twelve-mile fishery zone.<sup>87</sup> Resource survey zones were established outside the joint regulation zones, where the two governments would conduct scientific surveys to assess the condition of fishery resources in the area.<sup>88</sup> The accord also established a binational fishery commission charged with the responsibility to discuss and provide advice on (1) scientific studies and regulatory measures, (2) the delimitation of the joint resource survey zones, (3) regulatory measures, and (4) matters concerning safe and orderly fishing and general procedures for handling accidents involving fishing boats. The government accord was to remain in force for an initial period of five years; it has been extended since 1970.

Moreover, a private-level agreement was concluded in December of 1965, providing detailed rules for safe fishing and establishing a private-level binational committee to handle cases involving Japanese-ROK fishing accidents in the joint regulation zones and surrounding waters. The parties to the agreement were the Japan Fisheries Association and the Central Association of Fishery Cooperatives of Korea. This non-governmental agreement was deemed necessary by the Japanese and Korean governments to ensure safe and orderly fishing by the nationals of the two countries.<sup>89</sup>

## 2. *Threats to the Stability of the Regime*

A number of important developments occurred in the years since 1965 which occasionally threatened the stability of the bilateral fisheries regime. The first such development was Japan's adoption in 1977 of the two maritime measures noted above.<sup>90</sup> It was feared in Japan that establishment of a uniform 200-mile fishery zone throughout the Japanese coastal waters would prompt South Korea to counter the Japanese move by extending the ROK's fishery jurisdiction to 200 miles from its coast, and that would adversely affect Japanese fishing just outside the twelve-mile limit which was then in force in the ROK. *Isei sokobikiami* (bull trawl), the most important Japanese fisheries in the coastal waters west of Japan, yielded 206,000 tons of fish,

---

<sup>87</sup> 1965 agreement article 4. According to the Japanese interpretation, the acceptance of the flag-state principle implied the status of the area beyond the twelve-mile ROK fishery zone as high seas, thus effectively abolishing the Rhee Line. Kawakami at 257-258 and 274 (cited in note 10).

<sup>88</sup> 1965 agreement article 5. The survey zones were defined by the bilateral fisheries commission, established by the 1965 agreement, as lying north of latitude 30 degrees north and west of longitude 132 degrees east.

<sup>89</sup> Kawakami at 252 (cited in note 10).

<sup>90</sup> See note 28.

valued at 71.9 billion yen, in 1977. Of this, more than 90 percent came from within 200 miles of the ROK and Chinese coasts. Another major Japanese fishery in the area, *enyo makiami* (pelagic purse seine), produced a total of 280,000 tons of fish in 1978, representing 34.8 billion yen. About 60 percent of this production came from within 200 miles of the neighboring countries. Additionally, otter trawl and squid angling collectively produced 5.4 billion yen in the southern part of the Sea of Japan off the ROK coasts and 72.8 billion yen in the East China and the Yellow seas.<sup>91</sup> In order to protect these fisheries, Japan decided to exempt Chinese and ROK nationals from its 200-mile fishery zone restriction. The East China Sea, a part of the Pacific Ocean adjacent to the East China Sea, the Yellow Sea, and the Sea of Japan west of longitude 135 degrees east were excluded from the legislation.

The ROK also established a twelve-mile territorial sea in 1978. As a result, the 1965 fisheries agreement upon which the two countries' twelve-mile fishery zones had been based had practical effect only in limited areas of the sea surrounding the Tsushima Islands where Japan retained the three-mile territorial limit.<sup>92</sup>

#### *b. ROK Expansion of Fishing Operations*

Another development which continues to affect the stability of the post-1965 bilateral fisheries regime has been the modernization and expansion of ROK offshore and distant-water fisheries, particularly since the mid-1970s. This has increased the number of incidents involving Japanese and Korean fishing boats in the Sea of Japan. In earlier years Japanese fishing operations caused most of the problems between the two countries. Between 1965 and 1984, Japan and the ROK paid 306,485,088 yen and 14,034,996 yen, respectively, for damage their fishermen caused.

Although the dispute settlement procedures of the government and private agreements of 1965 did not preclude court adjudication, the fishermen of both countries opted for dispute settlement through the private-level binational committee.<sup>93</sup> Neither government publicly stated the reasons

---

<sup>91</sup> Akaha, *Ocean Politics* at 135 (cited in note 22) citing from Ko Nakate, *Keizai suiiki 200-kairi to nishi nihon suisangyo* (200-mile Fishery Zones and the Fishery Industry of Western Japan), *Kyūshū keizai tōkei geppō* 3-14 (March 1977); *1979 Suisan nenkan* (1979 Fisheries Yearbook) 151-154 and 157 (Suisansha).

<sup>92</sup> Gaimushō Jōhōbunkakyoku, ed, *200-kairijidai no gyōgyō: saikin no taigai gyōgyō mondai to kokusai kyōryoku* (Fisheries in the 200-Mile Age: Recent external fisheries problems and international cooperation) 80 (Sekai no Ugokisha, 1980).

<sup>93</sup> *Id* at 29-31.

behind the decision not to seek formal settlement of disputes arising out of incidents involving Japanese fishing within the twelve-mile fishery zone of South Korea. One can reasonably speculate, however, that formal government intervention in, or court adjudication of, fisheries disputes would have exacerbated the already acrimonious relationship between Tokyo and Seoul.<sup>94</sup>

In 1952 South Korean President Syngman Rhee issued a Presidential Proclamation of Sovereignty over the Adjacent Sea establishing what came to be known as the Rhee Line extending from twenty to almost two hundred miles from the coast. Within this line Seoul claimed exclusive jurisdiction over and control of the preservation, protection, conservation, and utilization of all natural resources. The presidential proclamation was followed in 1953 by the promulgation of the Fishery Resources Protection Act to implement the new policy. The implementation entailed seizure of foreign fishing vessels and detention of fishermen who violated the law. As a result, by 1965, when diplomatic relations between Japan and South Korea were normalized and a fisheries agreement concluded, 326 Japanese fishing vessels had been seized and 3,904 Japanese fishermen detained by Korean authorities.

These incidents complicated the already tense bilateral relations. Japan protested what it considered were unlawful acts on the following grounds: (1) the presidential proclamation and the accompanying South Korean legislation ran counter to the principle of the freedom to fish on the high seas that had long been established in the international community, and (2) actions were inconsistent with the basic principle of international cooperation in the development and protection of high seas resources.<sup>95</sup> Further complicating the situation was the establishment in September 1952 of a defense zone inside the Rhee Line by the international forces under the united command of the United States as a part of their Korean War efforts. The Korean government took this opportunity to step up its coastal patrol and seized more Japanese boats within the Rhee Line.<sup>96</sup>

Any legal dispute between the two governments over Japanese fishing operations in the South Korean coastal waters would probably have forced a conflict over the legality of the Rhee Line, with an impasse the most likely result. Following the conclusion of the fisheries agreement in 1965, Japanese fishermen were allowed to operate outside the ROK's twelve-mile fishery

---

<sup>94</sup> This deep animosity between the two peoples stemmed in part from Japan's colonial control of Korea from 1910 to 1945 and the discrimination of Korean residents of Japan, many of whom had been forced to move to Japan during the colonial era. Kawakami at 253 (cited in note 10).

<sup>95</sup> *Id.* at 238.

<sup>96</sup> Akaha, *Ocean Politics* at 44 (cited in note 22).

zone; but the Rhee Line was never formally abrogated. As one South Korean scholar of international law noted, the coexistence of the Rhee Line and the fishery treaty recognizing the ROK's twelve-mile fishery zone came about through attempts made by both parties to avoid a situation in which ex post facto recognition by Japan or nonrecognition by South Korea of the Rhee Line could be implied.<sup>97</sup>

c. *Sovereignty Over Takeshima Island*

The Japanese-ROK dispute over the sovereignty over Takeshima (Tokto) Island presents a political threat to the stability of the Japanese-ROK fisheries regime. It is hoped that this conflict will be moderated or controlled by the two countries' pragmatism. When the ROK extended its territorial limit to twelve nautical miles in April of 1978, the territorial dispute surfaced, but apparently the two governments have since preferred to avoid the issue. The Tokyo-Seoul agreement in January of 1974 on the joint development of the mineral resources of the continental shelf to the west of Japan demonstrated that the two governments could develop mutually beneficial arrangements by shelving the potentially explosive territorial issue.<sup>98</sup>

3. *Prospects for Future Japanese-ROK Cooperation*

The 1965 agreement has proved woefully inadequate in addressing the issue of safe and orderly fishing by the nationals of the two countries.<sup>99</sup> From the Japanese perspective, the accord has been ineffective in controlling the scale of ROK fishing operations off Hokkaido. Particularly problematic to the Japanese have been the large ROK trawlers operating in those areas in which Japanese trawl fisheries are banned by domestic legislation.<sup>100</sup> The agreement has also failed to regulate ROK drag net, purse seine, squid angling, and conger eel (*anago*) pot fisheries in areas where Japanese fishing is domestically prohibited.<sup>101</sup> Moreover, the flag-state principle for treaty

---

<sup>97</sup> Park at 147 (cited in note 83). Incidentally, the formal and informal fisheries arrangements concluded between Japan and China ignored the Rhee Line. *Id.*

<sup>98</sup> For a critical analysis of the agreement, see Masayuki Takeyama, *Japan's Foreign Negotiations over Offshore Petroleum Development: An Analysis of Decision-Making in the Japan-Korea Joint Continental Shelf Development Program*, in Robert L. Friedheim, et al, *Japan and the New Ocean Regime* 276-313 (Westview Press, 1984).

<sup>99</sup> See 1988 *Suisan nenkan* at 33-35 (cited in note 40).

<sup>100</sup> Law on the Protection of Marine Resources (Law 313 of 1951).

<sup>101</sup> *Id.*

enforcement no longer suits Japanese interests. According to Japanese accounts, for example, about 85 percent of the fishing boats suspected of violating the bilateral agreement concealed their national identities, making it very difficult for Japanese authorities to report suspected cases to the ROK. Northern coastal fishermen of Japan have begun to press their demand for uniform application of the nation's 200-mile fishery jurisdiction against all foreign fishermen, including ROK nationals.<sup>102</sup> Fishermen in western Japan have also begun to make similar demands.<sup>103</sup>

Faced with these problems, Tokyo has proposed a revision of the existing agreement. Tokyo has called for the establishment of a fishery resource management zone in which the number of fishing boats of each country would be limited. Additionally, Tokyo now wants the coastal state and not the flag state to have the power to enforce the agreement.

The ROK has been reluctant to revise the existing bilateral fishery framework. More specifically, Seoul has argued that the 1965 agreement was negotiated as a part of overall bilateral relations and that, considering the national sentiments on both sides, the time is not ripe for a revision of the agreement. Seoul has also pointed out, correctly, that the flag-state principle was incorporated into the 1965 agreement upon Japan's insistence.<sup>104</sup>

Tokyo and Seoul did agree in October of 1987 that ROK trawl fisheries would be gradually phased out and by April of 1991 would be totally eliminated inside the Otter Trawl Prohibition Line. In return, Japanese bull trawlers operating around the Cheju Island would be reduced by 50 percent and the fishing period for the remaining boats would be cut 50 percent by April of 1991. The agreement has been implemented. The two sides also agreed that ROK drag net, squid angling, and conger eel pot fisheries in Japan's western waters would observe strict prohibition by area and period, and Japanese drag net, squid angling, and coastal fishing would also be subject to similar prohibitions. Japan and the ROK also agreed they would strengthen and expand their control of fishing operations by expanding the area subject to joint control measures.<sup>105</sup> These changes in the bilateral fisheries regime have yielded some positive results. For example, the number of ROK fishing boats operating off Kyushu has dropped and ROK violations of Japanese territorial waters have also declined.<sup>106</sup>

---

<sup>102</sup> *1988 Suisan nenkan* at 33 (cited in note 40).

<sup>103</sup> *Asahi Shinbun* 3 (Aug 1, 1988).

<sup>104</sup> *1988 Suisan nenkan* at 33-34.

<sup>105</sup> *Id* at 35.

<sup>106</sup> *Asahi Shinbun* 3 (Aug 1, 1988).

Should Japan apply its 200-mile fishing zone legislation uniformly throughout its coastal waters? A simple cost-benefit analysis still indicates that the status quo favors Japan with its extensive and lucrative bull trawl and globefish long-lining fisheries off the Chinese and ROK coasts.<sup>107</sup> Japanese fishery officials believe that neither Japan nor the ROK can set up a 200-mile fishery zone without terminating the 1965 fisheries agreement and that the existing agreement should not be terminated until after a substitute arrangement has been found. Tokyo fears that termination of the current agreement might lead to the resurrection of the Rhee line which in the immediate postwar years extended the ROK jurisdictional claims far beyond its current limits.<sup>108</sup>

Although the post-1965 fishery arrangements between Japan and the ROK have been far from satisfactory for either side, both sides would have suffered considerably greater losses without the bilateral treaty. The number of incidents would have continued, the two governments might have had to resort to legal or political measures to resolve fisheries disputes, and the joint regulation zone would have been virtually meaningless if the two sides could not put pressure on each other to reduce violations and to expand various constraints on their fishing activities. Finally, if Japanese coastal fishermen had pressed harder for a uniform 200-mile limit, Tokyo would have had to face another very difficult problem, the Japanese-ROK dispute over Takeshima Island (Tokto in Korean) in the middle of the Sea of Japan. Currently controlled by South Korea, the island is claimed by Japan, South Korea, and North Korea.

Both Tokyo and Seoul would have suffered serious resource depletion if they had not been able to maintain the 1965 treaty and agree to the various regulatory measures they established to control Korean fishing off Hokkaido and western Japanese waters, as well as Japanese fishing off South Korea. Moreover, the bilateral fisheries regime helped the South Korean fishing industry to receive assistance in fisheries science and technology that Japan was obligated to provide to South Korea.<sup>109</sup> The regime based on the 1965 fishery treaty has allowed the two sides to convey their concerns to each other and to introduce new elements into the bilateral framework. It has facilitated mutual policy adjustment, or cooperation as defined in the present

---

<sup>107</sup> *Id.*

<sup>108</sup> Isoroku Satake, *Shinjidai ni taiō shita seisaku o tenkai* (To Develop Policy Measures that Adapt to the New Era) 19 (Suisansekai, Jan 1987).

<sup>109</sup> Park at 148 (cited in note 83).

study. One can only speculate what would have happened if the two countries had not developed cooperative arrangements.

### C. *Japanese–DPRK Fisheries Regime*

In September 1975, an incident took place that dramatically exemplified the precarious nature of postwar fishery relations between Japan and the DPRK. A DPRK military vessel fired at a Japanese fishing boat, the *Sho'omaru*, operating off the DPRK coast in the Korea Bay close to the DPRK–PRC border, killing two Japanese fishermen and wounding two. Tokyo failed to deliver a protest to Pyongyang because the two countries had no diplomatic ties. Without accepting Japanese claims for DPRK responsibility and liability under international law, however, Pyongyang released the Japanese boat and crew, stated the incident was unfortunate and regrettable, and paid \$20,000 to each of the families of the deceased.<sup>110</sup> However, the legal status of the incident remains unresolved to this day.<sup>111</sup>

#### 1. *Conflict Over Economic and Military Boundary Zones*

On August 1, 1977, Pyongyang established a 200-mile economic zone and a fifty-mile military boundary zone. The latter was supposedly designed to reliably safeguard the economic sea zone and firmly defend the national interests and sovereignty of the country.<sup>112</sup> It is not known whether Pyongyang's establishment of the DPRK 200-mile EEZ was in any way related to the Japanese 200-mile zone decision. A plausible explanation may be that the Japanese decision required the North Korean action if Pyongyang was to maintain its claim to represent all of Korea and its refusal to recognize Seoul as a legitimate government of the Korean people. The Japanese 200-mile zone law exempted Korean (and Chinese) nationals from its

---

<sup>110</sup> Soji Yamamoto, *Kokusai gyōgyō funsō to hō* (International fisheries disputes and law) 110–114 (Tamagawa Daigaku Shuppanbu, 1977).

<sup>111</sup> On November 19, 1975, the Japanese government, believing the Japanese fishing boat was operating on the high seas, protested that firing at the vessel was a violation of international law. Tokyo said that two North Korean boats shot without warning at the *Sho'omaru*, killing two crewmen and injuring another two. DPRK officials came onboard the vessel and the boat was escorted to a small bay southeast of Sin-dō Island in Korea Bay (northwest of Pyongyang). The Japanese government demanded a North Korean pledge never again to take such actions and reserved the right to seek financial relief and reparations for the damage. According to the government's statement, the incident took place more than 18 miles from the closest DPRK island in the Korea Bay. *Id* at 110–114.

<sup>112</sup> Park at 161 (cited in note 83). See Asia and Pacific D6 (Aug 1, 1977); and The People's Korea 1 (Aug 10, 1977).



application, referring to nationals of the Republic of Korea (South Korea), but making no mention of the DPRK, with which Japan had (and continues to have) no diplomatic ties. It was therefore immaterial to the DPRK that Tokyo explicitly excluded the area of the Sea of Japan westward of longitude 135 degrees east from the application of the 200-mile zone and exempted Korean nationals. If Japan and North Korea had diplomatically recognized each other, Tokyo would likely have wanted to exclude DPRK nationals from the 1977 legislation so as to treat North and South Korea on an equal legal basis.

Tokyo refused to recognize the DPRK action and Pyongyang threatened to ban all Japanese fisheries within its coastal waters, which amounted to more than 80,000 tons. The precise outer limits of the military boundary zone remain unknown; Pyongyang has failed to make public where and how it will draw the straight baselines that are presumed necessary due to the indented DPRK coastline and many offshore islands. Nor has Pyongyang clarified the question of jurisdiction within the zone.<sup>113</sup>

## 2. *Private-Level Agreements*

A private delegation including some members of the Japanese parliament visited the DPRK in 1977 and successfully negotiated a provisional agreement<sup>114</sup> whereby Japanese fishing would be allowed to continue within the DPRK economic zone, but outside the military zone. The agreement also established a non-governmental binational fisheries committee to review Japanese fishing in the DPRK EEZ. One South Korean authority speculates that Pyongyang was politically motivated in developing DPRK-Japanese contacts and concluding the fisheries agreement. The fact that Japan was not required to pay fishing fees to North Korea until 1988 supports this theory.<sup>115</sup>

The net result of the agreement was a loss of an estimated 20,000 tons of Japanese fish catch (about 25 percent of the estimated catch in 1976), worth about eight billion yen (or 20 percent of the estimated value in 1976). The loss was largely due to the ban on all fishing inside the DPRK defense zone.<sup>116</sup> Particularly hard hit were the Japanese bull trawl and globefish

---

<sup>113</sup> Park at 163-164 (cited in note 83).

<sup>114</sup> The agreement was signed by the Japanese-North Korean Fisheries Council (of Japan) and the Federation of Eastern Sea Fisheries Cooperatives.

<sup>115</sup> Park at 162, 165 (cited in note 83).

<sup>116</sup> 1978 *Suisan nenkan* (Fisheries Yearbook) at 52.

long-lining fisheries within the 200-mile zone, both of which were totally eliminated.<sup>117</sup>

When the 1977 agreement expired on June 30, 1982, Japan was prohibited from fishing within the DPRK's 200-mile zone until November 1, 1984, when a new provisional, private-level agreement went into effect. This agreement was identical in content with the earlier accord. The 1984 agreement expired at the end of 1986, again forcing the Japanese to cease their fishing operations within DPRK waters. In September 1987, the head of the Japan Socialist Party (JSP) visited DPRK leader Kim Il-Sung and successfully requested negotiation for the resumption of a fisheries accord.

Fishery relations between the two countries continue to be precarious despite the conclusion of a new provisional agreement in December of 1987. The new agreement guaranteed small-scale Japanese fishing activities within the DPRK-designated provisional operation zone established within the 200-mile EEZ but outside the fifty-mile military boundary zone. The 1987 arrangement reaffirmed an earlier agreement on the Japanese purchase at sea of 50,000 tons of Alaskan pollack from the DPRK. Earlier, when Japan rejected the DPRK demand for a 300,000-ton Japanese purchase, Pyongyang banned all Japanese fishing activities in the DPRK coastal areas of the Sea of Japan.<sup>118</sup> Since 1988, much as in the Japanese-Soviet/Russian fisheries regime, Japan has been required to pay fishing fees in return for permission to fish in the DPRK EEZ; the amount of the fees is determined annually by negotiations within the working-level Japanese-DPRK Joint Fisheries Committee.<sup>119</sup> In addition, Japan was required to provide fishery cooperation fees in the form of fishing equipment equivalent to \$230 per ton of driftnet and long-line catches.<sup>120</sup> Another provisional agreement was concluded in 1989, providing for continued Japanese fishing in the provisional operation zone off the DPRK in exchange for Japanese fishing fees for squid angling and cooperation fees for driftnet and long-line fisheries. The arrangement also provided for the transfer of Japanese sea kelp processing machinery and equipment to Pyongyang in 1989.<sup>121</sup>

---

<sup>117</sup> *Id.*

<sup>118</sup> *Nitchō gyōgyō zantei gōisho ni chōin* (Japanese-DPRK provisional fisheries agreement signed), 1236 *Suisankai* 46-47 (Jan 1988).

<sup>119</sup> *Id.* at 46. In 1988, for example, Japan paid \$155 per ton of squid. 1990 *Suisan nenkan* at 101 (cited in note 41).

<sup>120</sup> 1990 *Suisan nenkan* at 101 (cited in note 41).

<sup>121</sup> *Ikatsuri, nagashiami, nobinawa tomo sakunen dōri* (Squid Angling, Driftnet, Long-line Fishing at Last Year's Levels), 1252 *Suisankai* 47 (May 1989). Cooperation fees were paid in the form of fishing equipment.

### 3. *Prospects for Future Japanese–DPRK Cooperation*

The elements of cooperation in fishery relations between the two countries may be limited at this point, but they are likely to grow. Cooperation with Japan is certain to benefit Pyongyang in its ambitious efforts to expand its fishery production. The DPRK planned to expand its fish production to five million tons by 1989,<sup>122</sup> but it is unclear whether this goal was attained. The current seven-year plan calls for an annual fish catch of 3 million tons, shallow-water aquaculture production of 8 million tons, for a total of 11 million tons of marine production.<sup>123</sup> It was reported in the mid-1980's that the DPRK fishery production stood at 3.5 million tons, with Alaskan pollack representing the largest share (at 1,996,000 tons); sardines, anchovies, silverfish, invertebrates, crustacea, and seaweeds are the other main marine products. The DPRK's per capita production of marine products at the time equaled world levels. The fishing fleet is currently relatively underdeveloped, with only 2,000 of the 11,150 boats operating in the country being motorized. The most important fishing gear are trawl nets handling seventy to 80 percent of the country's total catch.<sup>124</sup> The fleet operates within the DPRK EEZ and in the EEZ of the former Soviet Union based on a reciprocal fisheries agreement between Pyongyang and Moscow. Until 1991 the Soviet Union granted North Korea a quota of 100,000 tons and the DPRK granted a quota of 60,000 tons, but starting in 1992 the two countries have adopted a principle of quantitative equality, each side giving the other a total quota of 30,000 tons (Alaskan pollack for the DPRK fishermen, sardines for the Russian).<sup>125</sup>

Tokyo and Pyongyang are currently negotiating to establish diplomatic relations. Currently available information about the talks being held in Beijing indicates that the question of fishery jurisdiction has not yet come up, but the subject would have to be addressed if Tokyo and Pyongyang were to move closer to mutual diplomatic recognition. It would be politically awkward and legally inconsistent for Japan to recognize North Korea's 200-mile exclusive jurisdiction while maintaining the existing Japanese–South Korean agreement to respect the twelve-mile limits. If and when diplomatic relations are

---

<sup>122</sup> *Fisheries of Korea* (Foreign Languages Publishing House, 1984).

<sup>123</sup> *Shiryō: Chōsen minshushugi jinmin kyōwakoku* (Information: The Democratic People's Republic of Korea) 297 (1991).

<sup>124</sup> *Country Profile: DPR Korea's Fisheries Industry* 39–42 (INFOFISH International, Apr 1988).

<sup>125</sup> Dainihon Suisankai, *Heisei san-nendo Roshia kyokutō gyōgyō chōsadan hōkokusho (Dai-ichiji chōsa)* (Report of the 1991 Russian Far East Fisheries Survey Team (1st survey)) 10 (Dainihon Suisankai, Mar 1992).

established between Tokyo and Pyongyang, the difficult situation just noted could be avoided if (1) Japan and South Korea extended their respective jurisdiction to 200 miles, (2) North Korea rescinded its 200-mile claims and established a twelve-mile fishery zone instead, or (3) North Korea followed Japan's practice and exempted Japanese (and South Korean) nationals from the 200-mile EEZ restriction. Until diplomatic relations are established, Japan and North Korea can continue their private-level fisheries agreement in order to avoid the political and legal problems that would result if Japan were to recognize North Korea's 200-mile zone.

The future role of the DPRK in international cooperation in the management of fishery resources of the area is thus uncertain. Here, more than anywhere else in the Northwest Pacific quadrille, sufficient political will must be generated on each side to overcome the long years of hostility and suspicion.

#### *D. Events Contributing to Regional Cooperation*

Events that bode well for future fishery cooperation in the Japan Sea region occurred in September of 1990 when the Soviet Union established diplomatic ties with South Korea, and again in September of 1991, when a fisheries agreement was concluded. The fifteen-article treaty allows ROK vessels to fish in Russian waters in the Northwest Pacific. It calls for joint ventures in fish processing, bilateral cooperation in building and repairing ships and in marine pollution prevention, and exchanges of technology and information. The accord also establishes a binational Joint Fisheries Committee.<sup>126</sup> The agreement is valid for five years, with automatic extension thereafter unless either side notifies the other six months in advance. The bilateral committee discusses catch quotas and joint cooperative projects. Korean ships had not fished off Kamchatka since the proclamation of the 200-mile EEZ by the Soviet Union in March 1977.<sup>127</sup> Accordingly, in December of 1991, South Korean fishing boats began operations in the Soviet EEZ in the Sea of Okhotsk. Dongwon Fisheries Co. of South Korea obtained a fishing quota of 15,000 tons from two Soviet fishery concerns in exchange for the payment of fishing fees assessed at \$275 per ton.<sup>128</sup>

The Soviet Union also established a private-level fishery relationship with the Republic of China (ROC) in August of 1991. A memorandum of

---

<sup>126</sup> 91/182 FBIS EAS 30 (Sept 19, 1991), cited in 12 SUPAR Report 9 (Jan 1992).

<sup>127</sup> 91/16 FBIS EAS 20-21 (Jan 14, 1991), cited in 11 SUPAR Report 99 (July 1991).

<sup>128</sup> 91/234 FBIS EAS 24 (Dec 5, 1991), cited in 12 SUPAR Report 97 (Jan 1992).

understanding signed between the ROC Overseas Fishing Development Council (OFDC) and the Soviet government (represented by Sovrybflot) provides for ROC payments for fishing permits and fish quotas in return for permission to fish in the Soviet EEZ in the Far East. Both sides agreed to cooperate in saury, squid, and other fisheries, and to establish a mechanism for conducting seafood trade. If the ROC fishing boats are detained for marine violations, Sovrybflot will help the OFDC build channels for negotiations.<sup>129</sup>

## II. COOPERATIVE FISHERIES MANAGEMENT IN THE SEA OF JAPAN

Successful cooperation in the management of fishery resources requires the fulfillment of several conditions: the need to cooperate must be clearly recognized by the parties concerned; the parties must individually or collectively possess sufficient technical expertise and institutional support to meet the substantive requirements of resource management; the political resolve to overcome obstacles to international cooperation must exist; the parties must be convinced that the cooperative ventures will produce tangible benefits an adequate return on their investment; the parties must see to it that the cooperative arrangements are fair; and each party must have sufficient trust in the willingness and capability of the others to carry out their respective obligations arising out of the cooperative arrangements. Each of these elements is discussed in turn below.

### *A. Acknowledgment of the Need to Cooperate*

The analysis of the postwar Japanese fishery relations with the Soviet Union/Russia, the ROK, and the DPRK has amply demonstrated the need to develop effective international means to manage fishery resources. This need has been translated into the unilateral and bilateral imposition of increasingly restrictive measures governing fishing within coastal waters. However, the coastal state's need to conserve its fishery resources has often given way to its need to gain immediate benefits, such as fishing fees, by allowing foreign fishing within and beyond its 200-mile zone. In the case of Japanese-Soviet/Russian and Japanese-ROK relations, moreover, reciprocal resource demands have sacrificed some resource conservation needs. In

---

<sup>129</sup> CNA Aug 20, 1991; 91/161 FBIS China 67 (Aug 20, 1991); 91/165 FBIS 86 (Aug 26, 1991), cited in 12 SUPAR Report 97-98 (Jan 1992).

return for access to highly valued fishery resources in foreign coastal waters, each coastal state has at times permitted foreign fishing within its fishery zone. Deterioration of fish stocks has often been the unfortunate result. This can only be prevented through mutually reinforcing management and conservation efforts.

### 1. *Need for Reliable Information*

The essence of fisheries management is the rational use of fishery resources and effective conservation of those resources for the attainment of a stable fishery supply on a long-term basis. Successful management requires reliable information on the status of the resources in demand. Analysis of the postwar fishery relations in the Sea of Japan reveals that the parties concerned often came up with different and competing resource assessments.<sup>130</sup> This fact alone argues strongly for coordinated efforts at resource studies and improved information exchange.

Marine living resources often travel across maritime boundaries of neighboring states, rendering national means of resource assessment less than complete, and sometimes even misleading. This observation applies particularly to those anadromous species that spend part of their migratory life in the semi-enclosed Japan Sea.<sup>131</sup>

### 2. *Japan: the Key to Cooperation*

Japan holds the key to international cooperation in the management of fishery resources in the Sea of Japan. Japan has been the most extensive user and beneficiary of the living resources in the area. Furthermore, Japan has the most advanced scientific and technological know-how in the exploitation,

---

<sup>130</sup> For example, the Soviet and Japanese representatives to the bilateral fisheries commission meeting in March 1979 disagreed over the state of sockeye and other salmon stocks in the Sea of Okhotsk. The Japanese argued that the condition had shown considerable improvement; the Soviets, that the resource level was quite bad. *1979 Suisan nenkan* at 35 (cited in note 91).

<sup>131</sup> Such stocks of fish include *karajutomasu* (pink salmon or *oncorhynchus gorbuscha*), *sakuramasu* (cherry salmon or *oncorhynchus masou*), *masaba* (mackerel or *scomber japonicus*), *gomasaba* (spotted mackerel or *scomber tapeinocephalus*), and *sanna* (saury or *cololabis saira*). The list goes on to include *maiwashi* (sardine or *sardinops melanosticta*), *katakuchi-iwashi* (anchovy or *engraulis japonica*), *urume-iwashi* (round herring or *etrumeus micropus*), *maaji* (common horse mackerel or *trachurus japonicus*), and *buri* (yellowtail). Also important are *surumeika* (Japanese common squid or *ommatostrephes sloani pacificus*), *kuromaguro* (bluefin tuna), *suketoodara* (Alaskan pollack or *theragra chalcogramma*), and *nishin* (herring or *clupea pallasii*). Suisanchō Kenkyūbu, *Nihon kinkai ni okeru shuyō gyōrui no bunpu oyobi gyōjozu* (Maps Showing the Distribution and Fishing Grounds of Major Types of Fish in the Areas of the Sea Around Japan) (Suisanchō Kenkyūbu, 1982).

conservation, and management of marine living resources. It also has had the most extensive experience in dealing with the other countries concerned.

Japan's visible commitment to effective management of fishery resources is a relatively recent phenomenon, however. With some notable exceptions (such as Japanese efforts to control coastal fishing in the postwar years),<sup>132</sup> virtually all reductions of Japanese fishing efforts in the postwar period have come as a result of foreign pressure and policy changes.<sup>133</sup> Yet, Japanese fishery policymakers today clearly understand and publicly call for resource conservation and management efforts. For example, the 1989 Fisheries White Paper prepared by the Fisheries Agency stated that in view of the growing pressure on fishery resources around Japan and the resulting deterioration of coastal and offshore stocks, Japan should pursue appropriate fisheries management by artificially expanding fishery resources and utilizing them rationally.<sup>134</sup> The official annual report also described various efforts to promote fisheries through nurturing and raising, including fish farming, salmon and trout propagation, fish culturing, improvement of fishing grounds, and technology development.<sup>135</sup> In 1991, the Fisheries Agency announced an Outline for Implementing Comprehensive Enterprises for the Promotion of Resource Management-Type Fisheries. The Outline requires the development over the next several years of a comprehensive, nationwide fisheries management system, including regional and prefectural fisheries councils. The purpose of the Outline is to establish an administrative structure throughout the country to formulate resource management plans based on improved resource assessments and more rational resource management techniques.<sup>136</sup>

Japan's efforts in the area of fishery resource management have thus far focused primarily on its immediate coastal areas, but the effort can and should be extended further offshore.<sup>137</sup> Moreover, its increasing experience and expertise in resource conservation and management can be transferred to the other countries in the region. Particularly important in this regard is the

---

<sup>132</sup> See, for example, Yutaka Hirasawa, *Nihyaku-kairi jidai to nihon gyōgyō sono henkaku to saisei no michi* (The 200-Mile Age and Japanese Fisheries The Road to Reform and Renovation) 188 (Hokutō Shobō, 1978).

<sup>133</sup> For critical views of Japanese lack of a conservationist fisheries tradition, see Hirasawa at 193; and Yoshihide Uchimura, *21-seiki no wagakuni suisangyō no tenbō* (Prospects for the Japanese Fishery Industry in the 21st Century) 24 (Aff, Apr 1986).

<sup>134</sup> 1989 *Gyōgyō hakusho* (Fisheries White Paper) 104 (Nōrin Tōkei Kyōkai, 1989).

<sup>135</sup> *Id* at 107-111.

<sup>136</sup> *Nikkan Suisan Keizai Shinbun* 6 (July 25, 1991).

<sup>137</sup> A good example of Japanese efforts in this area is the seven-year national plan, beginning in 1976, to develop and improve coastal fishing grounds at a cost of 200 billion yen.

development of fishery propagation technology in Japan.<sup>138</sup> Japan has also conducted interesting scientific studies of the interaction between marine plants and animals.<sup>139</sup>

### *B. Technical Expertise, Institutional Support, and Political Resolve*

A number of problem areas must be resolved in order to develop methods of fisheries management that are consistent with the 1982 U.N. Convention on the Law of the Sea. Suffice it to point out here that the wide-ranging responsibilities the new Convention imposes on each coastal state demand enhanced scientific and technical expertise, improved institutional support, and new resource commitments.

#### *1. Japan–Russia*

The foregoing review of the postwar fisheries regime between Japan and the Soviet Union/Russia reveals that the countries preferred negotiated agreements to no agreements at all, and that over time the two sides learned to adjust to each other's needs and extract benefits from mutual cooperation. As the two countries' distant-water fishing activities were gradually forced out of the 200-mile zones of other coastal states, Japanese and Soviet fishing industries put increasing pressure on the resources within their own 200-mile zones. Japan reluctantly acknowledged that to maintain access to the highly valued stocks of fish within Soviet waters it would have to cooperate with the Soviets by agreeing to reduced catch quotas, downsized fishing fleets, constraints on fishing operations, payment of fishing fees and cooperation fees, and transfer of fishery technology and equipment to the Soviet Union/Russia. The Japanese government and fishing industry have demonstrated that they have the technical and institutional means to make the necessary, albeit painful, adjustments. Through the postwar years, the Soviets

---

<sup>138</sup> For accounts of Japanese efforts in this area, see, for example, Toru Amano, *Toru gyōgyō kara shigen baiyōgata gyōgyō e kaiyō bokujō gijutsu no kaihatsu* (From exploitative fisheries to resource incubation-type fisheries The Development of Marine Ranching Technology) 38–42 (Aff, Mar 1978); Hisashi Kanno, *Shigen baiyō: Kaiyō bokujō kijutsu kaihatsu kenkyū no keika* (Resource Propagation: The Status of Research for the Development of Marine Ranching Technology) 6–7 (Aff, Apr 1986); and Tetsuo Kobayashi, *Jiniteki kontororu ni yoru sakuramasu shigen no zōdai* (The Propagation of Dogsalmon Resources by Artificial Control) 11–18 (Aff, Apr 1986).

<sup>139</sup> Kobayashi at 7–9.



also demonstrated the technical expertise and institutional support necessary for sustained cooperation in the fisheries field.<sup>140</sup>

However, a Japanese survey team visited the Russian far east in September of 1991 and found that although fisheries organizations and enterprises there, against the backdrop of the uncertain political and economic future of the country as a whole, view cooperation with Japan as very important, they feel that their own financial, technical, and institutional investments are increasingly inadequate to support Russia's professed commitment to the conservation of coastal fishery resources.<sup>141</sup> Nevertheless, fisheries analysts in the far eastern region view international cooperation, particularly cooperation with Japan, as essential to the development of coastal fisheries and resource conservation and management measures.<sup>142</sup>

## 2. *Japan-ROK*

Japan and South Korea have also found cooperation both desirable and possible, if not necessarily easy. The 1965 fisheries agreement has forced the two sides to make necessary adjustments. South Korea has a highly developed fishing industry providing jobs for over 700,000 people.<sup>143</sup> With its annual marine production ranking seventh in the world (3.3 million tons in 1987 as compared with Japan's 12.5 million tons) and its annual marine product export volume the sixth largest in the world (377,000 tons in 1984 as

---

<sup>140</sup> For example, Darlyba (a large state-owned fisheries concern in the far east with about two million tons in total annual marine production and controlling regional fisheries concerns in Primoria, Khabarovsk, Magadan, Kamchatka, and Sakhalin) is determined to continue its cooperation with 26 countries in various fisheries-related areas. Darlyba's cooperation with Japan is the most developed and the most comprehensive of all foreign contacts it has developed over the years and covers fishing in Japanese waters, joint ventures, marine product exports to Japan, ship repair in Japan, and equipment and technology transfers from Japan. Dainihon Suisankai, *Heisei san-nendo* at 5-10, 39-40, and 65 (cited in note 125).

<sup>141</sup> *Id* at 44.

<sup>142</sup> For example, the Institute for Economic and International Ocean Studies in Vladivostok, prepared a far eastern fisheries development plan which describes international cooperation and support as essential for the development of the region's coastal fisheries and resource conservation and management. The plan is part of the so-called Minakir Conception, developed as an alternative to the Soviet government's long-term plan for economic development in the far eastern region that was made public in 1987, but which has since been abandoned as unrealistic. Pavel Minakir is an economist, and is Director of the Institute for Economic Research in Khabarovsk and deputy chair of the Khabarovsk regional administration. *Id* at 33-34.

<sup>143</sup> *Kankoku suisangyō no genjō* (The Present Condition of the South Korean Fishing Industry) 1226 Suisankai 15 (Sept 1986).

against Japan's 882,000 tons), South Korea is a major fishing country.<sup>144</sup> ROK fishery policy has generally followed the same pattern of evolution as the Japanese policy, by (1) building domestic fishing production capability to meet the resource and employment needs of the country, (2) expanding distant-water fishing when its own coastal resources proved inadequate to meet the domestic needs, and (3) reevaluating the importance of coastal fisheries and promoting fishery conservation efforts after fishing in foreign waters was drastically cut due to the establishment of 200-mile zones around the world.

Given the proximity of the two countries, the changes in South Korean fishing have had a direct impact on Japanese fishing and vice versa. The two countries have maintained a state of uneasy but manageable cooperation since 1965. Annual negotiations, including exchanges of information on fishing operations and their impact on fishery resources and catch quota determination, indicate that Japan and South Korea see cooperation as essential, if for no other reason than to limit and settle disputes arising out of their fishing operations in and around the joint regulation zones.<sup>145</sup> More recently, fishery experts in the two countries have recognized the need to cooperate in the areas of fishery resource assessment, conservation, and management.<sup>146</sup>

### 3. *Japan-DPRK*

The on-again, off-again fishery relations between Japan and North Korea are on for now. Little is known about the level of technical expertise and institutional arrangements in the DPRK's fishery sector. With its annual production in 1985 estimated at 2,361,000 tons (almost matching Japan's 2,486,000 tons),<sup>147</sup> the DPRK has a fairly developed fishing industry, but there is little or no reliable information on resource management and conservation measures in the country.

---

<sup>144</sup> Yano Tsuneta Kinenkai, ed, *Sekai kokusei zue 1988-89* (World Almanac Charts and Figures) 312, 314 (Kokuseisha, 1989).

<sup>145</sup> The background and substantive contents of the annual negotiations are summarized in *Suisan nenkan* (published yearly).

<sup>146</sup> This observation is based on the author's conversations with numerous fisheries experts from Japan and South Korea attending international conferences in Niigata, Japan in 1988, in Nakhodka, Soviet Union in 1989, and in Dalian, China in 1991. See introductory note *supra*.

<sup>147</sup> Mark J. Valencia, *Sea of Japan: Transnational Marine Resource Issues and Possible Cooperative Responses* 510 (Marine Policy, Nov 1991).

### C. *Tangible Benefits of Cooperation*

The best measure of the tangible benefits that can be expected from cooperation in managing the fisheries of the Japan Sea may be to examine what the countries stand to lose in the absence of a cooperative management effort. Some estimates in Japan indicate enormous losses to Japan if the entire Sea of Japan should come under the Exclusive Economic Zones of the regional countries. One study in the mid-1970s estimated Japan would lose about 35 percent of its squid angling fisheries (or 80,000 tons), about 60 percent of its offshore dragnet fisheries (200,000 tons), and about 40 percent of its crab pot fisheries (9,000 tons).<sup>148</sup> Another study, published in 1977, estimated that if the median line principle were used to divide up the Sea of Japan, Japan would lose four major fishing grounds entirely, 90 percent of another fishing area, 40 percent of two others, 25 percent of another area, 10 percent of two more areas, and 1 percent of one other.<sup>149</sup> The study recommended that the countries in the area conduct joint scientific studies of fishery resources, collectively determine the total fish quota for each of the countries, establish joint resource conservation zones and joint fishing zones, and carry out joint fishery propagation projects. It further proposed that foreign fishermen be given a share of the Japanese trawl fisheries in the Sea of Japan in return for Japanese access to their neighbors' coastal waters.<sup>150</sup> These are ideas that deserve careful attention.

### D. *Fairness and Trust*

Equity and fairness are beginning to characterize some of the bilateral fishery regimes in the region. The foregoing review of the postwar Japanese fishery relations with its three neighboring countries on the Japan Sea illustrates the evolution of specific arrangements for regulating fishing activities there. In all cases the initial impetus for fishery regulation came from Japan's neighbors' efforts to control and reduce Japanese fishing in their coastal waters. The Soviet Union/Russia and the Republic of Korea have long expressed dissatisfaction with the inadequacy of the bilateral arrangements in controlling the impact of Japanese fishing on their coastal resources. They have also complained about many Japanese violations of specific provisions

---

<sup>148</sup> Cited in Kaiyō Sangyō Kenkyūkai, ed, *200-kairi jidai no sekai to nihon* (The World and Japan in the 200-Mile Age) 101 (Kajima Shuppankai, 1977).

<sup>149</sup> *Id* at 102.

<sup>150</sup> *Id* at 102 and 104.

of the bilateral agreements. Moreover, until recently, the bilateral arrangements permitted substantially higher levels of fish catches for Japan than for the Soviet Union or South Korea. The bilateral fishery regimes were far from equitable.

As noted in the preceding analysis, however, the Japanese–Russian and Japanese–ROK fisheries regimes are more equitable today than they have been in the past. Nevertheless, Japan must fully commit itself to the idea of fishery resource management and conservation and thus cultivate sufficient confidence on the part of its neighbors across the Sea of Japan. Fairness will be a key characteristic of any successful cooperative arrangements among these countries.

### III. INTERNATIONAL COOPERATION UNDER THE U.N. CONVENTION

The fishing activities of the countries in the region are currently governed by their national laws and regulations and by the existing bilateral regimes discussed *supra*. To the extent the fisheries–related provisions of the 1982 U.N. Convention on the Law of the Sea have already become part of the customary international law, such provisions also apply in the Sea of Japan. This section examines the rights and obligations of the Japan Sea–rim countries under the 1982 Convention.

The Japan Sea–rim countries have all signed both the Final Act of the U.N. Conference on the Law of the Sea (UNCLOS III) and the 1982 Convention.<sup>151</sup> The Convention will take effect twelve months after the date of deposit of the sixtieth instrument of ratification or accession.<sup>152</sup> This is simply a matter of time. Many of the provisions of the Convention have already become customary international law. However, a number of questions remain as to the adequacy of the current Law of the Sea and the ability of the countries concerned to implement the relevant provisions of the law.

The relevant provisions of the 1982 U.N. Convention address three general areas: (1) fisheries within the EEZ, (2) fisheries on the high seas, and (3) dispute settlement. A comprehensive examination of the full range of the coastal states' rights and responsibilities under the current Law of the Sea is beyond the scope of the present analysis. I will discuss the most important

---

<sup>151</sup> The Soviet Union and North Korea signed the 1982 Convention in 1982; Japan and South Korea in 1983. The Law of the Sea: United Nations Convention on the Law of the Sea, with Index and Final Act of the Third United Nations Conference on the Law of the Sea at 190 (United Nations, 1983) ("Law of the Sea").

<sup>152</sup> *Id.* article 308.

rights and obligations to illustrate both the challenges and opportunities facing the Japan Sea-rim countries.

#### *A. Provisions Covering Fisheries Within the EEZ*

The 1982 Convention provides that within the EEZ (whose breadth under the 1982 Convention shall not exceed 200 nautical miles from the baselines from which the breadth of the territorial sea is measured), the coastal state has sovereign rights for the purpose of exploring and exploiting, conserving and managing the living resources of the waters superjacent to the seabed and of the seabed and its subsoil.<sup>153</sup> In exercising rights and performing duties within the EEZ, however, the coastal state must have due regard to the rights and duties of other States and must act in a manner compatible with the provisions of the Convention.<sup>154</sup>

##### *1. Conservation and Management*

The coastal state is required to determine the allowable catch of the living resources within its EEZ and ensure that the maintenance of the living resources within the EEZ is not jeopardized by over-exploitation. The coastal state must also develop conservation and management measures to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield and take into consideration the effects on species associated or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become seriously threatened. Moreover, the coastal state is obligated to contribute and exchange on a regular basis available scientific information, catch and fishing effort statistics, and other data relevant to the conservation of fish stocks through competent international organizations with participation by all States concerned, including States whose nationals are allowed to fish within the EEZ.<sup>155</sup>

These obligations presume adequate technical expertise on the part of the coastal state, and its willingness to cooperate with other states. However, such expertise is technically and financially difficult to develop and sustain. Even in Japan, with its scientific and technical expertise, financial resources, and bureaucratic competence, a systematic effort to gather data on the living

---

<sup>153</sup> *Id* article 56(1)(a).

<sup>154</sup> *Id* article 56(2).

<sup>155</sup> *Id* article 61.

resources within its 200-mile fishery zone did not begin until after the fishery zone had become law in 1977. Since then, many new species have been discovered in the area. Most stocks of fish in the Sea of Japan have so far defied Japanese attempts at scientific assessment. Inter-species interaction is a particularly puzzling scientific question that awaits further scientific research. The shortage of scientific staff has also hampered Japanese efforts to cooperate with its Soviet/Russian counterparts in joint stock assessments.

Moreover, the sensitive issue of quota allocation has prevented the full sharing of scientific data between Japan and the Soviet Union/Russia.<sup>156</sup> Under the current arrangement between Tokyo and Moscow, officials of each country are allowed to go onboard the resource survey vessels of the other side in order to examine the condition of trout and squid in the Sea of Japan. However, largely because of a lack of manpower and budget constraints Japan has not fully availed itself of its right to reciprocal visits. Recently it has not even sent observers onboard Russian survey ships.<sup>157</sup> In addition, although scientists from both sides do meet to discuss the condition of marine stocks, Soviet/Russian scientists have been less than fully cooperative in the sharing of scientific data. There is a suspicion in Japan that Soviet/Russian scientists, who also are in charge of quota allocations for both Soviet/Russian and Japanese fishing concerns, do not wish to reveal their hands to the Japanese side.<sup>158</sup>

## 2. *Determination of Capacity to Harvest*

To promote the optimal utilization of fishery resources, the coastal state is obligated under the 1982 Convention to determine its capacity to harvest the living resources of the EEZ and give other states access to the surplus of the allowable catch when it does not have the capacity to harvest the entire allowable catch.<sup>159</sup> However, the precise meaning of the capacity to harvest is unclear.<sup>160</sup> Does capacity mean actual or potential ability, or even intended or planned level of harvest? For a country such as Japan with a highly developed fishing industry long used to operating in foreign waters, the

---

<sup>156</sup> Author interview with Hideo Kudo of Nihonkai Regional Fisheries Institute, Niigata, Japan, Aug 7, 1991.

<sup>157</sup> This is not seen as compromising Japan's interests, however. *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> 1982 Convention article 62(2).

<sup>160</sup> This point is raised by Shigeru Oda, a member of the International Court of Justice, in his *Fisheries Under the United Nations Convention on the Law of the Sea*, 77 Am J Intl L 739, 743-744 (Oct 1983).

actual harvesting capacity of a foreign coastal state would leave more resources accessible to the fishing country. On the other hand, a coastal state with an underdeveloped fishing industry would want to use potential or planned harvesting capacity in determining foreign allocations. Although the four neighboring countries around the Sea of Japan are capable of large harvests generally, species-by-species production levels vary widely because of their different domestic demands. As the demand structure for various species of marine products changes, there is potential for disagreement as to each country's ability to harvest.

### 3. *Access to Surplus*

The 1982 Convention also obligates the coastal state to take several factors into account in determining foreign access to the surplus of the allowable catch. Factors include the significance of the living resources of the area to the economy of the coastal State concerned and its other national interests; the requirements of developing States in the subregion or region in harvesting part of the surplus; and the need to minimize economic dislocation in States whose nationals have habitually fished in the zone or which have made substantial efforts in research and identification of stocks.<sup>161</sup> However, the question how each of these factors will be weighed and made relevant to the allocation of the surplus is left unanswered and is likely to be subject to the arbitrary discretion of the coastal state.<sup>162</sup>

### 4. *Conservation and Development of Fish Stocks*

For fish stocks within the EEZ of two or more coastal states, the 1982 Convention stipulates that the states concerned shall seek, either directly or through appropriate subregional or regional organizations, to agree upon the measures necessary to coordinate and ensure the conservation and development of such stocks.<sup>163</sup> For stocks occurring both within the EEZ and in an area beyond and adjacent to it, the coastal state and the states fishing for such stocks in the adjacent area shall similarly seek to agree upon the measures necessary for the conservation of these stocks in the adjacent area.<sup>164</sup> The bilateral fishery regimes examined in this analysis generally

---

<sup>161</sup> 1982 Convention article 62(3).

<sup>162</sup> Oda at 744-745 (cited in note 160).

<sup>163</sup> 1982 Convention article 63(1).

<sup>164</sup> 1982 Convention article 63(2).

accept these provisions. However, data on resource conditions are incomplete and, as noted above, even available data are not fully shared. Even in Japan, the country with the most developed fishery science and technology in the region, there are only a limited number of species whose full life cycle is adequately understood. Particularly difficult are inter-species, inter-stock interactions. For example, some scientists in Japan suspect but have been unable to establish scientifically inter-species impact between *surumeika* squid and Japanese anchovy stocks in the Sea of Japan.<sup>165</sup>

### 5. *Other Rights and Duties*

The 1982 Convention also provides for the rights and duties of the coastal and other states with respect to highly migratory species, anadromous species, and catadromous species of fish.<sup>166</sup> In exercising its preferential rights to these categories of fish, the state of origin must establish appropriate regulatory measures for purposes of resource conservation. It must also consult fishing states in establishing total allowable catches for stocks originating in its rivers and in enforcing regulations. Clearly, all countries in the region must cooperate in the conservation and management of these species of fish if they are to comply with these provisions of the 1982 Convention.

Moreover, the delimitation of the EEZ between states with opposite or adjacent coasts must be effected by agreement on the basis of international law.<sup>167</sup> Failing agreement within a reasonable period of time, the states concerned are required to resort to the dispute settlement procedures provided for in Part XV of the 1982 Convention.<sup>168</sup> Pending agreement, the states concerned shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, not to jeopardize or hamper the reaching of the final agreement. The provisional arrangements shall not prejudice the final delimitation.<sup>169</sup> Of course, if there is an agreement in force between the states concerned, questions relating to the delimitation of the EEZ shall be determined in accordance with the provisions of that agreement.<sup>170</sup>

---

<sup>165</sup> The author's interview with Hideo Kudo, Aug 7, 1991.

<sup>166</sup> See 1982 Convention arts 64-67.

<sup>167</sup> 1982 Convention article 74(1).

<sup>168</sup> 1982 Convention article 74(2). Dispute resolution procedures are discussed in subsection 3 *infra*.

<sup>169</sup> 1982 Convention article 74(3).

<sup>170</sup> 1982 Convention article 74(4).



### B. Provisions Covering Fisheries on the High Seas

The 1982 Convention recognizes the freedom of fishing on the high seas, subject to various restrictions stipulated therein. All states are obligated to adopt conservation and management measures necessary for the conservation of these resources.<sup>171</sup> For the purposes of the conservation and management of the high seas living resources, international cooperation and negotiation are required of states whose nationals exploit such resources.<sup>172</sup> In determining the allowable catch and establishing other conservation measures for these, states are required to use the best scientific evidence available with a view to maintaining or restoring populations of harvested species at levels which can produce the maximum sustainable yield, subject to environmental and economic factors and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards.<sup>173</sup> Signatory states are all obligated to take into consideration the effects on species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become seriously threatened.<sup>174</sup> Signatory states are also required to contribute and exchange available scientific information, catch and fishing effort statistics, and other data relevant to the conservation of fish stocks through international organizations.<sup>175</sup> The 1982 Convention leaves it to each nation and international organization to set up a mechanism, including funding, for obtaining scientific information.<sup>176</sup>

---

<sup>171</sup> 1982 Convention article 117.

<sup>172</sup> 1982 Convention article 118.

<sup>173</sup> 1982 Convention article 119(1)(a).

<sup>174</sup> 1982 Convention article 119(1)(b).

<sup>175</sup> 1982 Convention article 119(2).

<sup>176</sup> The most developed data exchange scheme on a bilateral level, albeit far from perfect, is the small exchange of data and technical cooperation under the Japanese-Soviet Fisheries Cooperation Agreement of 1985. For example, the two sides conducted two sets of resource surveys in 1990, one on salmon and another on invertebrates, in the Northwest Pacific. On the former, Soviet scientists went onboard Japanese research vessels, Japanese researchers visited a Soviet research center, and there were mutual visits to salmon hatcheries in the two countries. On the latter, reciprocal visits were made to research vessels and research centers concerning saury, Japanese mackerel, Japanese sardine, *surumeika* squid, and Alaskan cod. The costs of these visits were borne by the hosting party. Suisanchō, 1990-*nen nisso* at 26-28 (cited in note 73).

### C. *Dispute Settlement*

In implementing the provisions of the 1982 Convention, differences and disagreements may arise among the Japan Sea-rim countries. Unfortunately, serious questions exist concerning the settlement of disputes arising out of the interpretation and implementation of the Convention.

#### 1. *Principles and Procedures*

Part XV of the 1982 Convention provides principles and procedures for settling disputes concerning the interpretation or application of the Convention. Section 1 of this part of the Convention obligates parties to settle disputes by peaceful means, permits the settlement of disputes by any peaceful means chosen by the parties concerned, provides procedures where no settlement has been reached by the parties, recognizes obligations under general, regional, and bilateral agreements, obligates parties to exchange views and provides for conciliation.

Section 2 provides compulsory procedures entailing binding decisions.<sup>177</sup> At the time of signing, ratification, or accession to the Convention, a state is free to choose one or more of the following avenues for the settlement of disputes: the International Tribunal for the Law of the Sea established in accordance with the 1982 U.N. Convention, the International Court of Justice, or an arbitral tribunal constituted in accordance with Annex VIII of the Convention.<sup>178</sup>

Section 2 of the Convention further provides for the jurisdiction of the court or tribunal thus chosen, as well as the jurisdiction of the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea established under annex VI or any other chamber or arbitral tribunal referred to in Part XI, section 5 (Settlement of Disputes and Advisory Opinions) regarding the Seabed Disputes Chamber,<sup>179</sup> the selection of nonvoting scientific or technical experts to sit with the court or tribunal,<sup>180</sup> and provisional measures to be prescribed by the court or tribunal to preserve the

---

<sup>177</sup> Article 286 of the 1982 U.N. Convention states, [s]ubject to section 3 (Limitations and Exceptions to applicability of Section 2), any dispute concerning the interpretation or applicability of this Convention shall, where no settlement has been reached by recourse to section 1 (General Provisions), be submitted at the request of any party to the dispute to the court or tribunal having jurisdiction under this section.

<sup>178</sup> 1982 Convention article 287.

<sup>179</sup> 1982 Convention article 288.

<sup>180</sup> 1982 Convention article 289.

parties' rights or to prevent serious harm to the marine environment, pending the final decision.<sup>181</sup>

## 2. *Access to the Dispute Settlement Process*

Section 2 provides for access to the dispute settlement procedures;<sup>182</sup> application for release of detained vessels and crews, court or tribunal action on the application; and the detaining state's obligation to comply promptly with the decision<sup>183</sup> and applicable law.<sup>184</sup> Section 2 also provides for preliminary proceedings to determine whether the claim constitutes an abuse of legal process or whether it is *prima facie* well-founded,<sup>185</sup> the parties' obligation to exhaust local remedies prior to the submission of any dispute,<sup>186</sup> and the finality and binding force of the decision by the court or tribunal.<sup>187</sup>

## 3. *Discretionary Dispute Settlement and Conciliation*

However, many types of disputes are left out of the dispute settlement provisions of the 1982 Convention and are left to the discretion of the coastal state.<sup>188</sup> Perhaps the most important in this regard is the 1982 Convention's provision that the coastal state is not obligated to submit to its stipulated compulsory dispute settlement procedures any dispute relating to its sovereign rights with respect to the living resources in the Exclusive Economic Zone or their exercise. The sovereign rights of the coastal state include discretionary powers for determining the allowable catch, its harvest capacity, the allocation of surpluses to other States and the terms and conditions established in its conservation and management laws and regulations.<sup>189</sup> This provision is understood to mean that the compulsory

---

<sup>181</sup> 1982 Convention article 290.

<sup>182</sup> 1982 Convention article 291.

<sup>183</sup> 1982 Convention article 292.

<sup>184</sup> 1982 Convention article 293.

<sup>185</sup> 1982 Convention article 294.

<sup>186</sup> 1982 Convention article 295.

<sup>187</sup> 1982 Convention article 296.

<sup>188</sup> See Hideo Takabayashi, *Haitateki keizai suiiki ni okeru gyōgyō funsō no shori* (The Settlement of Fisheries Disputes in the Exclusive Economic Zone), in three installments: 51 *Hōsei kenkyū* 255–264 (Feb 1985); 51 *Hōsei kenkyū* 571–614 (Mar 1985); and 52 *Hōsei kenkyū* 89–110 (Sept 1985).

<sup>189</sup> 1982 Convention article 297(3)(a).

procedures apply only to disputes over fisheries on the high seas beyond the EEZ.<sup>190</sup>

Subject to the proviso just mentioned, a dispute is to be submitted to conciliation at the request of any party to the dispute when it is alleged that (1) a coastal State has manifestly failed to comply with its obligations to ensure through proper conservation and management measures that the maintenance of the living resources in the Exclusive Economic Zone is not seriously endangered, (2) a coastal State has arbitrarily refused to determine, at the request of another State, the allowable catch and its capacity to harvest living resources with respect to stocks which that other State is interested in fishing, or (3) a coastal State has arbitrarily refused to allocate to any State, contrary to its obligation under the 1982 Convention, the whole or part of the surplus it has declared to exist.<sup>191</sup> However, in no case shall the conciliation committee substitute its discretion for that of the coastal state.<sup>192</sup>

Finally, when signing, ratifying, or acceding to the Convention or at any time thereafter, a state may declare it does not accept one or more of the compulsory dispute settlement procedures with respect to three categories of disputes: (1) disputes concerning sea boundary delimitation or those involving historic bays or titles, (2) disputes concerning military activities, and (3) disputes in respect of which the U.N. Security Council is exercising its functions.<sup>193</sup>

At present there is only limited communication among the Japan Sea-rim countries regarding their respective interpretations of the relevant provisions of the 1982 Convention or concerning their current practice. To prevent potentially adverse and complicating consequences resulting from conflicting interpretations and state practices, frequent and frank negotiations will be necessary.

Japan is well positioned to facilitate the success of such negotiations because it has the necessary governmental and non-governmental ties with the other countries. Japan's extensive cooperative experience with the Soviet Union/Russia, the ROK, and China as well, should encourage Japan to initiate the necessary dialogue. Once experience is gained, the Japan Sea-rim

---

<sup>190</sup> See, for example, J. Peter Bernhard, *Compulsory Dispute Settlement in the Law of the Sea Negotiations: A Reassessment*, 73 VA J Intl L 98 (1979), cited in Takabayashi, 51 Hōsei kenkyū at 262 (cited in note 188).

<sup>191</sup> 1982 Convention article 297(3)(b).

<sup>192</sup> 1982 Convention article 297(3)(c).

<sup>193</sup> 1982 Convention article 298(1).

countries collectively will have the institutional wherewithal to further develop and maintain cooperative arrangements.

#### IV. CONCLUSION

The foregoing analysis has demonstrated that since the end of the Second World War, each country on the rim of the Sea of Japan, with the exception of the DPRK, has learned to cooperate in the development and maintenance of bilateral fishery relations with the other countries of the region. In the process, the countries have faced both obstacles to and opportunities for expanded cooperation in the development and management of fishery resources in this richly endowed semi-enclosed sea. They have been able to remove some of the obstacles, such as the absence of diplomatic relations between Japan and the Republic of Korea and, more recently, between the former Soviet Union and the ROK. Even in the absence of diplomatic ties, Japan has managed to maintain private-level arrangements, albeit highly fragile and vulnerable, to ensure its access to the coastal fishery resources of the ROK and the DPRK, and to encourage orderly competition for fishery resources in South Korean and Japanese coastal waters. Moreover, Japan, the former Soviet Union, and the ROK have been able to limit the economic impact of their respective territorial disputes: Japan and the Soviet Union/Russia have agreed to limit Japanese access to resources in the disputed area, and Japan and the ROK have, in effect, shelved the issue of sovereignty over Takeshima (Tokto) Island. Both political will and economic pragmatism underlie the varying degrees of cooperation.

Political will and pragmatism have been most dramatically demonstrated by the Japanese-Soviet/Russian fisheries regime, which has been characterized by frequent negotiations to revise specific provisions of bilateral fishery accords and to develop new or restructured agreements. Political will and pragmatism have allowed the parties to keep politics and economics separate. Despite their inability to conclude a peace treaty and resolve the thorny territorial dispute, Tokyo and Moscow have managed to maintain a highly developed and complex bilateral fisheries regime and allowed their fishing industries to pursue their interests. What began in the 1950s as a rather lopsided regime in favor of Japan has today become a more equitable one which goes far toward accommodating the two countries' economic interests in a more fair manner. Other countries around the world have much to learn from the evolution of Japanese-Soviet/Russian fishery relations. In fact, the recently concluded Soviet-ROK fisheries agreement,

both in its basic structure and specific provisions, shows a striking resemblance to the Soviet–Japanese fisheries regime.

In contrast, no amount of pragmatism in Tokyo and Seoul could have overcome the absence of diplomatic relations between them during the first two postwar decades. The high level of hostility between the Korean and Japanese peoples during those years, a legacy of Japanese colonialism from 1910 to 1945, prevented any effective divorce of political forces from economic interests. Once their diplomatic relations were restored in 1965, however, Japan and the ROK were able gradually to develop a pragmatic approach to the management of their fishery relations. The bilateral fisheries regime, which had begun with a marked imbalance of benefits in favor of Japan, has over time developed into a largely equitable one, following the expansion of the South Korean fishing industry and the limitation of Japanese fishing operations off the Korean coast. The regime has even been characterized by a degree of predictability.

Japanese–DPRK fishery relations, maintained to this day at the private–level, also owe much to the pragmatic interests and concerns of the parties. The impact of the Cold War and the absence of diplomatic ties between Tokyo and Pyongyang have not deterred the two countries from developing arrangements for Japanese fishermen to harvest fish off North Korean coasts in return for financial and equipment contributions to the North Korean fishing industry. Although it is unclear when Tokyo and Pyongyang will establish diplomatic relations, once their relations are normalized, they will likely negotiate a fisheries agreement that would more closely resemble the existing fisheries agreement between Tokyo and Seoul. Such an agreement would accommodate Pyongyang's political desire to be treated on an equal footing with Seoul in their relations with Tokyo and its economic need to expand its fishing capacity.

Bilateral regimes, highly developed or highly underdeveloped, have been critical factors in restricting the otherwise unmitigated pressure on fishery resources in the Sea of Japan. In exercising political will and pursuing economic interests, the countries on the rim of the Sea of Japan have often underestimated the implications of their decisions for the biological sustainability of the resources they have sought. The political and economic side of the equation has tended to push the biological side to its limits. Only through the bilateral channels of negotiation afforded by government or private–level agreements have the aggressive fishing interests of the parties been subjected to institutionalized access limitations.

The exact limitations of the resources in question have escaped the full understanding of the marine resource scientists in the region. This has been both a result of the limitations of the sciences involved and, perhaps more importantly, a consequence of the region's political economy. During the period of the Cold War, even the most developed scientific information and the most advanced technological capability available could not have brought the marine resources of the area under adequately systematic and comprehensive scrutiny. The division of the Sea of Japan into political spheres of influence had a chilling effect on potential cooperation among the marine scientists in the region. Moreover, the scientific community unfortunately could not take full advantage of the opportunity afforded by the temporary thaw in the ideological conflict during the 1970s because of the national enclosures that ensued in the form of twelve-mile territorial seas and 200-mile fishery zones. Indeed, the national appropriation of the sea into economic spheres of interest since the 1970s has further eroded the scientific community's ability to monitor the health of the trans-boundary resources in the area.

On the other hand, the adoption of the principle of the coastal state's primary interest and responsibility with respect to the fisheries that transcend national boundaries as part of the new international law of the sea has generated a keen awareness of the need to develop scientific cooperation among the countries of the region. The concept of the coastal state's primary interest and responsibility for the conservation of coastal marine resources has given rise to increasing domestic political support for the development of national legal, policy-related, and scientific institutions for that purpose. In this area, Japan's experience is the most extensive, although by no means is it ideal. Experience in the ROK is fast developing. In contrast, there is little information available about the experience and expertise in marine resource conservation in the DPRK. Furthermore, the deterioration of an institutional foundation for resource conservation and management that has followed the disintegration of the Soviet Union has serious implications for the fishery and other marine resources of the Sea of Japan.

The changes in the bilateral fishery regimes in the Sea of Japan, as described in the foregoing analysis, have been forced upon the parties both by the domestic developments in the countries themselves and by the changing international fisheries regime, as represented by the adoption of the U.N. Law of the Sea in 1982. The countries on the rim of the Sea of Japan have shown readiness to accept their international obligations as both coastal states and fishing states, both within the Exclusive Economic Zones and on the high

seas. Unilateralism has been limited and bilateralism (in the form of bilateral negotiations) has become the accepted mode of regime change in the region, as urged by the 1982 Convention. A number of disconcerting issues remain, however, including the interpretation of some terms of legal rights and obligations in the international treaty, the level of national technical expertise required for full compliance with the international law, the definition of legal terms concerning resource conservation and management, and the effectiveness of the new law in dispute settlement. Formal discussion of these issues among the countries facing the Sea of Japan has been limited. No multilateral forum for discussion exists. Moreover, multidisciplinary discussions are yet to be developed among the countries that would take into consideration legal, economic, and scientific factors affecting or being affected by their policies and fishing activities.

The growing pressure on the marine resources of the Sea of Japan and the fairly recent adoption of the new law of the sea point to the need to expand the common knowledge base of the countries in the region. Only through international cooperation can the countries develop the adequate legal, economic, and scientific knowledge base required for effective management, development, and conservation of the resources in question. In this connection, the countries of the region should promptly develop multilateral forums to compare and contrast their nations' laws and regulations regarding fisheries within their respective areas of jurisdiction and to identify areas of potential conflict due to incompatible national practices. The forums should also identify discrepancies between the national practices in the region and the international law of the sea. They should also develop recommendations for clarifying the uncertain aspects of the 1982 Convention and for strengthening its effectiveness. Independent forums for fishery scientists and economists to exchange information on fishery resources and fishing activities should be established.

International law scholars from each of the Japan Sea-rim countries, including China, should be brought together in multilateral forums to compare and contrast their nations' laws and regulations regarding the fisheries within their respective areas of jurisdiction, and to identify areas in which conflict may arise due to incompatible legal provisions and state practices. They should also identify discrepancies between the practices of their respective governments on the one hand and, on the other, the international law of the sea as represented by the U.N. Convention. The presence in private capacity of a U.N. official versed in the international law of the sea may facilitate the discussion as well. The participants may also inform each other of the



developments pertaining to their respective countries' preparation for the ratification of the U.N. Convention. Private-level, as opposed to government-level, consultations will allow a free exchange of information and ideas without prejudicing the participants' views in favor of their respective governments.

Similarly, independent forums of fishery scientists and economists from the five countries should be established to exchange information on the fishery resources and fishing activities in the Sea of Japan. Again, the purpose should be strictly for a free exchange of information and ideas. This will help the participants gain access to badly needed data on the status of fishery resources, the scope of national fishing activities, and the impact of the latter on the former. The presence in a private capacity of Food and Agriculture Organization (FAO) official familiar with the issues of fishery resources and fishing practices in the area will be useful as well. It is important that such forums be independent of the government-appointed fisheries commissions that currently exist in the region. The recommended forums will also be helpful in assessing each country's market demand for Sea of Japan fishery resources.

Exchange of information among the participants in these two sets of forums may be facilitated by the use of modern communications technology such as the computer and other electronic communications equipment. Participants should inform each other of the availability of such facilities and, to the extent possible, assist each other in gaining access to the technology. They may form an informal transnational lobbying group bringing to the attention of possible funding agencies the need to develop a transnational communications network. Other logistic cooperation may include the publication of working papers and proceedings of the proposed forums. By coming together in forums as proposed here, the countries bordering the Japan Sea will be able to ensure that the policy adjustments required for the management of its fisheries will be negotiated equitably and on the basis of current information, thus enhancing the prospects of the preservation of these fisheries for the benefit of generations to come.