

P

STA/INROER / FAR 22499-73

19 NOV 1975

(H)

ES
Not last

FAR

22499

~~A. DSB~~

~~B. CRIF~~

C. DSB

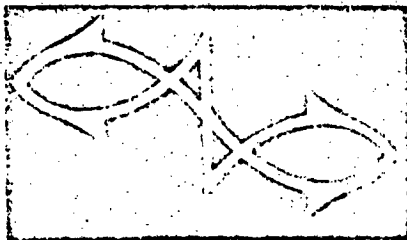
FISHERIES ISSUES
IN
THE YELLOW SEA AND THE EAST CHINA SEA
by
Choon-ho Park

The rights of the author of this document in and to all the contents are protected by law. Further reproduction of this document in whole or in part is not authorized.

Quotation for publication, whether governmental or private, from the contents of this document may not be made without the prior consent of the author.

OCCASIONAL PAPER #18

SEPTEMBER 1973



Occasional Paper Series
Law of the Sea Institute
University of Rhode Island

The Law of the Sea Institute
University of Rhode Island
Kingston, Rhode Island 02881

Financial support for the Institute's activities is provided by
(listed alphabetically):

- (1). The Ford Foundation
(Grant No. 70G-0433)
- (2). The National Ocean Survey (NOAA)
United States Department of Commerce
- (3). The National Sea Grant Program (NOAA)
United States Department of Commerce
(Grant No. 04-3-158-3)
- (4). The United States Coast Guard
(Grant No. DOT-CG-24240-A)
- (5). The University of Rhode Island

THE OCCASIONAL PAPERS are distributed by the Institute as a means of stimulating the flow of ideas and facilitating responsible debate. The Papers, which are selected for their substantive and innovative contribution to the discussions on the seas, may be highly informal in presentation. Their selection in no way precludes the possibility that they, or revised versions, will be published in formal journals and publications at a later date. Subscribers are invited to respond to the papers and to submit comments which may then be selected for distribution. The ideas expressed here are the author's. The Law of the Sea Institute, itself, takes no policy positions.

THE LAW OF THE SEA INSTITUTE is dedicated to the stimulation and exchange of information and ideas relating to the international use and control of the marine environment. In meeting these goals, the institute holds conferences and workshops, distributes papers, and provides bibliographic and other services for scholars. The Institute takes no position on issues but seeks to bring together all important points of view and interest that are relevant to the formulation of marine issues.

The Law of the Sea Institute - University of Rhode Island, Kingston, Rhode Island

Executive Board

Dr. John King Gamble, Jr.
Executive Director
University of Rhode Island

Dr. Lewis M. Alexander
Department of Geography
University of Rhode Island

Professor William T. Burke
School of Law DO-10
University of Washington

Dr. Francis T. Christy, Jr.
Resources for the Future, Inc.
1755 Massachusetts Avenue, N.W.
Washington, D. C. 20036

Professor Thomas A. Clingan, Jr.
School of Law
University of Miami

Professor Douglas Johnston
Dalhousie University
Faculty of Law
Halifax, Nova Scotia, Canada

Dr. John A. Knauss, Dean
Graduate School of Oceanography
University of Rhode Island

Professor Edward Miles
Graduate School of International Studies
University of Denver

Dr. Giulio Pontecorvo
Professor of Economics
Graduate School of Business
Columbia University

Dr. Warren Wooster
Rosenstiel School of Marine &
Atmospheric Science
University of Miami

Mr. Richard Young
Counsellor at Law
Van Hornesville, New York 13475

Advisory Board

Mr. Edward W. Allen
DeGarmo, Leedy, Oles and Morrison
Suite 3108
1001 Fourth Avenue
Seattle, Washington 98104

Mr. Arthur H. Dean
Sullivan and Cromwell
48 Wall Street
New York, New York

Mr. G. W. Haight
Forsyth, Decker, and Murray
New York, New York

Mr. William C. Herrington
P.O. Box 153
Staffordville, Ct. 06077

Professor Myres S. McDougal
Sterling Professor of Law
Yale University School of Law
New Haven, Ct. 06520

Dr. Oscar Schachter
UNITAR
801 United Nations Plaza
New York, New York

Mr. Jacob J. Dykstra
Point Judith Fishermen's Cooperative Association
Point Judith, Rhode Island

Mr. Lowell Wakefield
Consultant, Wakefield Seafoods, Inc.
Port Wakefield, Alaska

CONTENTS

I.	GENERAL.....	1
1.	Geographical Circumstances.....	1
2.	Fisheries Resources and their Development.....	3
II.	FISHERY RELATIONS BETWEEN JAPAN AND KOREA.....	4
1.	Historical Background.....	4
2.	Japanese-Korean Fishery Dispute (1952-65) and its Settlement.....	7
	Features of the Treaty.....	10
	Appraisal and Prospects.....	11
III.	FISHERY RELATIONS BETWEEN CHINA AND JAPAN.....	13
1.	Background.....	13
2.	Structure of Non-Governmental Agreement.....	13
3.	China's Unilateral Claims.....	14
4.	Extensions and Revisions.....	15
5.	Regulation of Seining Operations.....	17
6.	Observations.....	18
	A. Use of Non-Governmental Agreements.....	18
	B. Unilateral Claims.....	19
	C. Prospects.....	20
IV.	FISHERY RELATIONS BETWEEN CHINA AND OTHER SOCIALIST STATES.....	21
1.	China and North Korea.....	21
2.	West Pacific Fisheries, Oceanology and Limnology Research Cooperation Agreement.....	21
V.	CONCLUSION.....	23
	Footnotes.....	24
	MAPS NO. I. Demarcation around Cheju Island	
	No. II International Regulation of Fisheries in the Yellow Sea and the East China Sea (China-Japan and Japan-Korea)	

I. GENERAL

1. Geographical Circumstances

The Yellow Sea and the East China Sea are semi-enclosed by the territories of China, Japan and Korea. Legal problems involving the law of the sea are created by the natural facts of geography in the first instance; and for this reason, it is deemed essential to describe the geographical features of the area in some detail here.

¹
China on the east and south faces on to five maritime areas; Pohai Bay, the Yellow Sea, the East China Sea, the Gulf of Tong King, and the South China Sea. The Chinese coastline is so irregular and indented that, on the mainland alone, it runs to almost 11,000 kilometers (km). Almost half of this -- 5,100 kms -- borders the Yellow Sea and the East China Sea. Along the coastal and offshore areas of China are found 3,416 islands, over two thirds of them in the coastal waters of the East China Sea. Along with that of Taiwan, these island coastlines together measure over 10,000 kms in length.

²
Japan consists of 3,922 islands including Hokkaido, Honshu, Shikoku and Kyushu, which constitute Japan proper. It faces the Sea of Okhotsk on the northeast, the Pacific on the east and south, the East China Sea on the southwest. The coastlines of the four main islands, also very irregular on the west, are 15,748 kms long and those of the 3,918 islands about 14,000 kms. However, only the west coast of Kyushu -- the westernmost of the four main islands -- and the Ryukyu Islands face the East China Sea, and Japan is not a littoral state of the Yellow Sea at all. It may also be noted that the prefecture of Okinawa, which comprises the Ryukyu Islands, is a sparse chain of volcanic islands forming a seaward arc between Kyushu and Taiwan, consisting "73 islands plus numerous coral outcroppings, sand bars and crowns of submerged land masses, which are sometimes classified as islands."³ Strictly speaking, therefore, Japan is a littoral state of the East China Sea in a broader sense that China is.

⁴
Korea is a peninsula about 1,000 kms long and about 250 kms wide, bordering with China on the north and with Russia on the northeast. On the east lies the Sea of Japan, called the East Sea in Korea; on the west the Yellow Sea, called the West Sea in Korea; and on the south the East China Sea, southward of Korea's island province of Cheju situated about 30 kms south of the mainland. The coastline is so deeply and irregularly indented on the west and south that its length reaches about 8,600 kms. The coastal waters on the west and south are studded with 3,579 islands -- half of them uninhabited, their coastlines totalling over 9,600 kms. Altogether this makes the length of Korea's coastlines over 18,000 kms. The waters that surround the Korean peninsula between China and Japan are:

The Sea of Japan is about one million square kms in size and is semi-enclosed by Japan, Korea and Russia. The average depth is about 1,700 meters, its deepest area reaching over 4,000 meters. The 200-meter isobath runs very close along the coasts of the three countries.⁵

The Yellow Sea is about 400,000 sq kms in size and is semi-enclosed by Korea on the east and by China on the west, fronting the Pohai Bay of China on the northwest. On the south, it is contiguous to the East China Sea at a direct line connecting Cheju Island of Korea and the north bank of the Yangtze River of China.

It is a shallow region with depths that average 55 meters and nowhere exceed 125 meters. The Sea takes its name Huang Hai from what the Yellow River -- Huang Ho -- has deposited in it: masses of clayey soil derived from the northwest regions of China and carried down southward by the current. According to an estimate, the amount of sand alone which the Yellow River washes down into the Yellow Sea every year may be as much as 1,380 million tons.⁶ Another source says that at one time the entire Shantung Peninsula which protrudes deep into the Sea was a coastal island but has been bridged by the sediment thus brought down.⁷ To a much lesser extent, the Yangtze River which flows in the East China Sea further south also contributes to the yellowish appearance of the Yellow Sea. As the rivers flowing into this sea from the Korean peninsula are not so large, the eastern half of the Sea is much less yellow.

A similar degree of contrast exists in the topography of the sea-bed. The influence of the two Chinese rivers extends far beyond the shoreline on the west, so that a smooth gentle slope (1:26,000) from the west meets the steep and less regular slope (1:6,000) from the east in an axial valley two-thirds across on the eastern side of the Yellow Sea. The subsoil of the sea-bed shows a similar distribution of sediments, the eastern third being floored by sand derived from the mountains of Korea, the rest on the west side from the clay brought down by the two rivers of China.

The East China Sea is bordered by China on the west and by Kyushu and the Ryukyu Islands of Japan on the east and south respectively, and faces Korea and the Yellow Sea on the north. On the southwest, it ends at a direct line connecting the Pingtan Island of the mainland coast and the northern end of Taiwan, and communicates with the South China Sea through the Strait of Taiwan. It is about 700,000 sq kms in size and the water gets gradually deeper on the southeast until the bottom meets the 120-meter contour line near the Okinawa Trough, which forms the southeast margin of this Sea. On the northeast, the Trough ends in a wedge-shape formation at a point between the Korean Cheju Island and the Japanese Kyushu. Yellowish traces of the surface water are also found in the sea, but along the Chinese coastal areas on the west.

The sea-bed topography of the East China Sea is also fairly similar to that of the western part of the Yellow Sea, but the southeastward extension of the smooth gentle slope abruptly ends at the Okinawa Trough. In the absence of a land mass on the east to project a westward slope as in the Yellow Sea, the contrast here is not between east and west but between the inner and outer halves of the sea-bed. Otherwise, the distribution of sediments is also similar to that of the Yellow Sea, that is, silt and clay on the inner half and sands on the outer half.⁸

Currents and tides of the Yellow Sea and the East China Sea are two important factors, among others, that play an essential role in making the area so fertile for fisheries. A branch of the North Equatorial Current, the Kuroshio -- meaning "the black current" in Japanese -- travels northward through the East China Sea; it is still some 300 kms wide and 200 meters deep, and moves at the rate of 50 to 75 kms a day, depending on the wind and the season. At its return trip southward from the Pohai Bay, it flows along the mainland coast of China as a cold current, having been cooled down by the cold Kamchatka current flowing southward along the Siberian and Korean Coasts. Rich fishing grounds are formed at the points where the warm and cold currents intermix. To this mixture of currents is added a phenomenal tide. On the average, the difference between high and low tide along the west coast of Korea is about six meters, with a maximum of 9.7 meters at Inchon; and along the east coast of China about three meters, with a maximum of fifteen meters at Hangchow Bay south of Shanghai.⁹ Fish culture and salt farms which prosper along the coasts of China and Korea in the Yellow Sea and the East China Sea owe their development to these favorable natural conditions.

2. Fisheries Resources and Their Development

China: As up-to-date statistics of the Chinese fishing industry are not available, only a general account of Chinese fishery resources can be given, based on relatively old Chinese sources. The total area of coastal and offshore fishing grounds to the depth of 200 meters along the coasts of China is approximately 1 1/2 million sq kms, which comprises as much as 23.7% of the world total and is, therefore, larger than that of any other country.¹⁰ The number of species in this vast area of the sea exceeds 1,500 altogether, of which the Yellow Sea shares some 250 and the East China Sea some 400. However, coastal and offshore fishing in China concentrates mainly on some fifty species only, with four of them yielding more in terms of catch than all the rest put together. These so-called "four majors" are represented by the small croaker, the large croaker, the girdle fish and the white-scale herring, of which the two species of croakers alone used to contribute no less than 40% of the total annual catch up to 1959,¹¹ and probably still do. In this regard, however, it should not be overlooked that China has recently shown much interest also in fishing mackerel and horse-mackerel by means of seining operations in the Yellow Sea and the East China Sea. Up to 1970, this type of fishery had been virtually monopolised by the Japanese, with the Chinese merely trying it on an experimental basis in the South China Sea. Chinese interest appears to have been aroused by the success of these experiments as well as by Japanese over-fishing of these species in waters close to the Chinese coast.¹²

China's catch was estimated to have been approximately 5.8 million tons in 1970, when the world total was 69.3 million tons. This conflicts with a figure given in a Chinese source which records the 1958 catch as 6.03 million tons, though "the great leap forward" from the previous year -- 3.12 million tons in 1957 -- might invite some doubt about its accuracy. It is of much interest to note estimates regarding the future potential of Chinese fishery resources. According to a prediction in 1956 (the latest one available to the author), the total catch would reach as high as 9.6 million tons per year, including inland fisheries. Another more extravagant estimate places the potential annual output at 30-40 million tons.¹³ Despite the difficulty of ascertaining the exact amount of its annual catch at the present time, it is clear from all indications that, together with Peru,¹⁴ Japan and Russia, China ranks as one of the four major fishing states in the world, whose catch altogether is approximately one half of the total world catch. In 1970, for example, Peru caught 12,600,000 tons, Japan 9,300,000 tons and Russia 7,300,000 tons.

Geographically, the areas of fishing operations in the coastal and offshore waters of China may be divided broadly into four major zones: the Northeast, the North, the East and the Central-South China Fishing Zones. The Chinese fishing grounds in the Yellow Sea and the East China Sea comprise the first, the second and the northern half of the third zones. In these waters there are five principal methods of coastal and offshore fishing: Otter trawl, drag net, gill net, set net and longline set,¹⁵ with seine-fishing expected to catch up rapidly, as noted above.

Finally, China's inland fisheries deserve to be mentioned briefly in passing. By virtue of natural conditions exceptionally favorable for fresh-water fisheries at large, China is the largest as well as the oldest inland fishing state in the world, with fresh-water fisheries established since the 11th century B.C. There are over 500 fresh-water species of which 35 are exploited in significant quantities. "Four of the best fish raised domestically in China are the black carp, the silver carp, the Chinese ide and the big head."¹⁶ The harvest from numerous rivers, lakes, ponds and rice fields usually account for at least a third of the total annual catch of fish. Extraordinary efforts are being made to develop this aspect of China's fishery resources.¹⁷

Japan: In 1969, Japan landed 8,613,400 tons, the second largest national catch, after Peru whose landings were 9,243,000 tons. In terms of value, however, the Japanese catch was worth about \$2,400 million, whereas that of Peru, over 95 percent of which was anchovies for reduction to fish meal, was less than \$120 million -- about a twentieth of Japan's.¹⁸ Japan dwarfs not only Peru in terms of value but also two of its most ambitious competitors, China and Russia, both in terms of tonnage and value.

The Yellow Sea and the East China Sea together constitute one of the eight coastal and offshore fishing sectors of Japan, the others being the Hokkaido, the three (north, middle and south), the two (north and west) Sea of Japan, and the Seto Inland sectors. Foremost among some thirty different species caught in the East China-Yellow Sea Sector are mackerel, horse-mackerel, sardine, cod, tuna and skipjack in order of their landing in 1969; and the major fishing methods used are various types of seining, angling and trawling.¹⁹

Korea: Major species caught in great quantity in the coastal and offshore areas on the west and south of Korea are hair tails, corvenias, mackerels, sauries, flounders and squids, in order of the amount landed in 1970.²⁰ Numerous other species are caught in lesser quantity. In 1970 Korea landed about 935,000 tons altogether, including those from distant-water fishing (90,000 tons), offshore whaling (2,000 tons), aquaculture (120,000 tons) and inland fishing (400 tons). This means that most of the total catch was from coastal and offshore fishing, which amounted to over 720,000 tons.²¹ Of this, more than 555,000 tons were caught from the waters of the west and south, which is sufficient proof of the utmost importance to Korea of the fishery in the Yellow Sea and the East China Sea.²²

The main fishing methods which are used by Korean fishermen in these areas are drag net, gill net, purse seine and staw net. Trawling is a predominantly popular type of fishing, particularly in the Yellow Sea, because of the shallow water and smooth bottom of the sea. Furthermore, the variety and abundance of the stocks of fish as well as the climatic conditions of the area enable fishermen to operate virtually throughout the year. Catches vary with the season and the species available.²³ This catch variability tends to reduce the profitability of the fishing.

II. FISHERY RELATIONS BETWEEN JAPAN AND KOREA

1. Historical Background

Geographically, Korea is favorably placed to develop marine resources.²⁴ Yet Korean use of the sea for fishing or navigation has been modest in comparison with other countries with similar geographical advantages. As far as fishing is concerned, a number of reasons can be given for this relative indifference to the sea. First, under the Confucian social system during the feudal ages, the status of fishermen in Korea was lower even than that of peasants. Fishing was therefore confined to the inhabitants of the coastal areas to whom other trades were inaccessible. They were also open to severe extortion by the ruling class. Second, in striking contrast with the observance of a fish-day in medieval Europe, which created greater demand for fish,²⁵ the killing of fish and other forms of life was often branded as an act of blasphemy under the Buddhist tenet of absolute respect for all living creatures. At different times, fishing was totally forbidden and nets were burned under royal decrees. Third, some coastal areas of Korea on the south were always vulnerable to plunder by Japanese pirates against whom the central government of Korea was not sufficiently powerful

to provide protection. As a result, some fishing villages had to be abandoned completely at times.²⁶

The third factor is particularly important in the context of the fishing history of Korea. Fishery relations between Japan and Korea have always reflected the state of Japanese-Korean relations in general. Fishery disputes were often the sources of conflict between the two countries. Formal arrangements to settle fishery problems date back to the early 15th century, when, in 1426, Korea agreed to permit Japanese fishermen to settle at three designated Korean ports. To regulate their inter-fishing, a crude form of agreement was made in 1442, which in modern terms would have been a fishery treaty. But Korea failed to foresee that the influx of Japanese fishermen would be the beginning of a series of violent conflicts with its own fishermen, which in fact culminated in the so-called "Japanese fishermen's uprising" in 1510.²⁷ This incident led to a complete severance of relations between the two countries, and as a result Japanese fishing in Korean waters was totally outlawed. The Japanese continued, however, to haunt Korean fishing grounds as before and indeed they were so familiar with the Korean coastal areas that they could serve as pilots during the Hideyoshu invasion of Korea beginning in 1592.²⁸ From the mid-17th century Japanese-Korean fishery relations entered a quiescent period of over 200 years, when the Tokugawa shogunate of Japan adopted a closed-door policy (Sakokurei: the order of closure) in 1639, whereby exit to any foreign country for any purpose including fishing was strictly limited. It was not until 1853 when the American Commodore Perry's "Black Ship" made its awe-inspiring appearance at Uraga, Japan, that its door was reluctantly opened.

With this basic change of Japan's external policy, its fishermen were now free to leave for the Korean coastal waters again, and relations between the two countries began to be strained once again. Both sides sought to avoid further conflict by regulating their inter-fishing. In 1893, for example, a trade agreement included a reciprocal fishery clause (art. 41). Based on this provision a fishery treaty was concluded in 1889, which was superseded by another in 1908.²⁹ On the face of it, each of these fishery agreements was reciprocal, but was in fact only a "Trojan horse" that helped to place the Korean fishery gradually in the hands of Japan. As long as no Korean fishermen wished, or were able, to operate near the coasts of Japan -- and few do even today -- a reciprocal agreement by each party to open part of its coastal areas to the fishermen of the other was entirely one-sided, merely inviting Japanese fishermen to operate legitimately in Korean fishing grounds.³⁰

The fishery treaties did not, however, help to improve the everworsening relations of the two countries, since few Japanese fishermen were reasonably prepared to respect the provisions. The fishery technique of Korea was so backward at that time that only a limited amount of coastal stocks could be harvested by Koreans, whereas the west coast fishermen of Japan, still without motorboats, could find no other fishing grounds so near and so rich. The statistics of 1908-10 show that, in terms of catch, the Japanese were almost four times as efficient as Korean fishermen.³¹ In these circumstances, the Japanese fishermen were always tempted to ignore the treaties, especially since Korea could not enforce them in any event. Between the 1880's and the 1900's, the Japanese were so rapacious in the coastal areas of Korea, especially in the Cheju areas, that the fishery chronicle in Korea depicts their behavior as sheer piracy. Resentment was deeply rooted in Korean memories, ready to surface whenever a fishery issue with Japan emerged as a cause of friction between the two countries.

Around the turn of the century, Japan was not the only fishing competitor along the coastal waters of Korea. Mainly on the west, Chinese fishermen also began to exploit the fishing grounds after the 1882 Sino-Korean trade agreement was signed including a fishery clause. Along the east coasts of Korea, whaler's

from Russia started to operate from their base in Vladivostok after 1891 when a whaling company was formed specifically for this purpose.³² However, Japan's victory in two wars for hegemony in Korea -- over China in 1895 and over Russia in 1905 -- effectively eliminated its competitors from the Coastal areas of Korea. When Korea became a protectorate of Japan in 1905 and was finally annexed to it in 1910, the fishery history of Korea entered a new era of superficial modernisation. In 1909 the first fishery regulation law was enacted. This was drafted by the resident authorities of Japan and was promulgated at the coming into force of the fishery treaty with Japan concluded the year before. Under this domestic law and the treaty, Japanese fishermen in Korea were granted an equal opportunity to operate within the coastal waters of Korea. From then on, fishing in Korea was now entirely in the hands of Japan and was making progress at an unprecedented pace.

The extraordinary rate at which Korean fishery developed after the Japanese take-over in 1910 may be seen from what was actually achieved during the first two decades of Japanese rule (1911-31):³³

	<u>1911</u>	<u>1921</u>	<u>1931</u>	<u>1970 (South only)</u>
Fishery Population	194,362	343,700	480,025	1,165,232
Boats	13,024	27,513	39,974	68,355
Catch (tons)	66,365	442,233	1,039,470	935,461

This was made possible through a number of positive measures which were undertaken by Japan immediately after the annexation. As a first step to develop the fishing industry in Korea, basic innovations in fishery administration were introduced through legislative and organizational reforms. Second, fishing methods were greatly improved with the introduction of more efficient fishing vessels, though it was not until 1920 that motor-boats began to be used for fishing in Korea. Third, besides increasing the catch, much effort was also made to promote other aspects of the industry such as fish culture, manufacturing and marketing. Fourth, the influx of Japanese fishermen into Korea was actively promoted by means of what may be called subsidised immigration. In fact, it was these "recruited fishermen" and their managers from Japan that came to dominate all segments of the Korean fishing industry.

This rapid fishery growth in Korea reached its peak in 1937 when the total catch amounted to 2,115,785 tons, a record still unbroken even by the combined efforts of both Koreans.³⁴ This was made possible by indiscriminate overfishing which was carried on by large-scale fishery interest from Japan. From the historical viewpoint of the fishery relations between Korea and Japan, it is essential not to overlook the background, extent and consequences of this overfishing in Korean waters up to the early 1930's. First, under a system of licensing all fishing activities, the industry was quickly monopolized by a limited number of large investors. This was a means of helping to accumulate fishery capital at the expense of a potential colonial industry, as was rightly observed by Japanese analysts.³⁵ Naturally, rapid as the development of the fishery was at the time, it offered little benefit to the people around whose coasts it was being developed. This was bitterly resented by Korea. Second, the sea resources and their feeding grounds had been so completely depleted by Japanese trawlers and drag nets that these two types of fishing on the Korean coastal and offshore areas had to be strictly limited by Japan itself.³⁶ Third, the recent acrimonious fishery dispute between the two countries, which lasted fourteen years (1952-65), had its roots in this overfishing, as will be seen hereafter.

During the period of the Allied occupation of Japan (1945-52), Japanese fishing was placed under restrictions, which remained in effect almost up to the restoration of its sovereignty on April 28, 1952, when the San Francisco Peace Treaty came into force. The restrictive measures were implemented within what came to be called "the MacArthur Line": all fishing activities were limited by reference to period, area, instrument and species.³⁷ The Peace Treaty (Art. 9) placed Japan under the obligation to negotiate "with the Allied Powers so willing for the conclusion of bilateral and multilateral agreements for the regulation or limitation of fishing and the conservation and development of fisheries on the high seas." Article 21 entitled Korea to the benefits of Art. 9. Upon Korea's proposal in October 1951 to hold fishery talks, Japan showed no positive reaction, while, on the other hand, it agreed to negotiate with Canada and the United States, which resulted in its reluctant acceptance of the so-called principle of abstention in the North Pacific Fisheries Convention.³⁸ Korea was concerned about the probable return of Japanese fishermen to the waters around its coasts, once the impending abolition of the MacArthur Line unleashed them. Hence, Korea was justifiably concerned with the need to protect its sea resources which had been so thoroughly destroyed by Japanese overfishing, as noted above, but which had barely been restored to productivity as a result of "the peace in the sea" maintained by virtue of the War and the MacArthur Line. Aside from the need for conservation, Korea foresaw another problem which could not be ignored under the circumstances of the time. To a divided peninsula engaged in a civil war, one half against the other half, it was unthinkable for its coastal waters to be studded with the fishing vessels of a foreign country for which the war itself was a distraction rather than a matter of national concern, and even a source of economic benefit.³⁹ As a consequence Korea shocked Japan by issuing the Presidential Proclamation of Sovereignty over the Adjacent Sea on January 13, 1952, which preceded the abolition of the MacArthur Line by three months. In substance, the declaration closely resembled the Peruvian Decree of August 1, 1947. The extent of sovereignty thus claimed unilaterally by Korea ranged from approximately 20 to 200 miles from the coasts of Korea and was delimited by what came to be called "the Peace Line" (map no. II) allegedly intended to keep peace with Japan by avoiding conflicts at sea. Thus began the fishery dispute between Japan and Korea, which lasted fourteen bitter years of confrontation before it was finally settled in the form of a negotiated agreement in 1965 when friendship between the two countries was officially restored for the first time since 1910.⁴⁰

2. Japanese-Korean Fishery Dispute (1952-65) and Its Settlement

The Korean declaration of 1952 was met with a strong protest by Japan within a week on the ground that it violated the freedom of the high seas. Protests were also served on Korea by Great Britain, China and the United States because of what they asserted to be extravagant unilateral claims. But it was Japan, as a traditional fishing state and one of Korea's nearest neighbors, that was the most disturbed by the unexpected advent of what appeared to be an East Asian version of the Latin American claims to extensive maritime jurisdiction. Concern in Tokyo was especially acute because of the impending withdrawal of the MacArthur Line, which would have freed Japanese vessels to fish in Korean coastal waters. From the Korean standpoint, however, it was a distortion of international law and justice for Japan to attempt to destroy Korean marine resources for the second time by relying on an empty cliché entirely unpersuasive to Korea: the freedom of the high seas. The defense of Korea was invariably accompanied, nonetheless, by "well-established international precedents" and "the impending need of safeguarding, once and for all, the interest of national welfare and defence," as asserted in the Preamble of the declaration. By "precedents" were, of course, meant the Latin American Claims, even though it was yet to be seen how well they were established,⁴¹ and by "the need of national defence" the accentuated

war-time situation of Korea under ideologically hostile circumstances. On the face of it, the controversy thus assumed the form of a legal dispute, whereas it was essentially a political dispute between a resentful liberated colony and its "unrepenting" former ruler that was being argued in the polite language of international law and diplomacy. It may also be added that the political nature of the dispute had its origin in the hatred and distrust of Japan which was so deeply rooted in the hearts of the Korean people. It was further dramatized by the dominant influence of a personality whose twelve-year leadership (1948-60) was characterized by unmitigated enmity against Japan. "Anti-Japan-ism" was made literally one of the two national preoccupations, the other being anti-Communism.⁴²

It was clear from the beginning, as Japan could easily imagine from other indications, that the Peace Line was going to be enforced by Korea as rigidly as it could. The declaration was supplemented by the Fishery Resources Protection Law⁴³ of 1954, whereby fishing within the delimited zones was placed under regulation by the Korean government. All Japanese fishing vessels found operating within the Line were seized by Korean coastal patrols, their catch confiscated, and the crew tried under Korean law. These measures were presented as a renewed effort by Korea to prevent its marine resources from being depleted by Japan again, for the post-war seizure of Japanese fishing vessels was by no means anything new in northwest Pacific waters. There had been seizures by China since 1948, by Korea since 1947, and by Russia since 1946, when they were found violating the MacArthur Line or the territorial sea of the coastal states. Between 1947 and 1964 (the year preceding the settlement of the dispute with Japan), Korea seized 327 vessels and 3,929 fishermen. This may be compared with the seizure by China of 227 Japanese vessels, including 31 by the Nationalist regime during 1943-49, and by Russia of 1,114 vessels up to the same year. In 1952 when the Peace Line was declared, only ten vessels with 132 fishermen were seized by Korea, although as many as 2,400 with 38,000 fishermen were estimated to be operating within the Line, their catch amounting to approximately US\$20 million, according to the Japanese Foreign Ministry.⁴⁴

The relations of the two countries went from bad to worse as Korea continued to seize Japanese fishing vessels. But it was not only the seizure itself but also the way it was responded to by Japan that came to intensify the strong feeling against each other. Korea was often irritated to find so many Japanese vessels audacious enough to be fishing in waters so close to its coasts as to be easily spotted from the shores. Yet at times the Korean patrols had to abandon hot pursuit, finding themselves unable to catch the faster Japanese vessels. But what contributed highly to the deterioration of relations was not the series of charges and counter-charges exchanged between their governments, or the desperate races on the sea, but the variety of retaliatory measures which Japan began to launch against Korea in search of a breakthrough in the confrontation. The difficulty for Japan was that it had diplomatic relations with none of the three "seizer states,"⁴⁵ and the nature of the fishery issue with each of them such that it could not be considered in isolation. This left it with few alternatives but to press hard on the most vulnerable party, which happened to be Korea. Retaliation against Korea was carried out in a number of ways, sometimes in vain. The first victims of Japanese retaliatory pressure were the 600,000 Koreans residing in Japan,⁴⁶ who had to face every conceivable form of discrimination against them. Koreans accused of illegal entry into Japan were subjected to cruel mistreatment in reprisal for the alleged, and grossly exaggerated, ill-treatment of Japanese fishermen serving their terms in Korean prisons. Occasionally groups were repatriated, usually on a head-count basis, but the problems of Korean residents in Japan became worse between 1949 and 1967

when Japan repatriated 89,000 of them to North Korea on terms arranged with Pyongyang but not at all acceptable to Seoul.⁴⁷ These political retaliations were further aggravated by Japanese economic pressure against South Korea. At times, Japan refused to import Korean sea products and to export fishing gears and nets to Korea. So long as each side sought to indulge itself in anything that would displease the other, the prospect of settling the fishery issue and thereby restoring friendship had to remain bleak.

Amid ever-growing outcries of protest against each other, however, circumstances had by the beginning of the 1960's begun to change considerably, so that neither of them could keep on calling the other's bluff. Two points may be emphasized in this regard.

First, from the viewpoint of the international law of fisheries, the dispute hinged basically on the nature and extent of a coastal state's preferential right to manage the living resources of the sea adjacent to its coasts. The evolution of this newly-emerged concept may be briefly noted here. The individual claims of some Latin American countries, which were motivated by the Truman Declarations of 1945, assumed a more definite basis as a regional claim in 1952 when the CEP states (Chile, Ecuador and Peru) at Santiago proclaimed "as a principle of their maritime policy that each of them possesses sole sovereignty and jurisdiction over the area of the sea adjacent to the coast of its own country and extending not less than two hundred nautical miles." By 1956 this Santiago principle had spread to other countries of the region⁴⁸ and attracted support elsewhere. The issue had ceased to be a regional one, when it became one of the important topics for consideration by the International Law Commission in 1952 and by the Technical Conference on the Conservation of the Living Resources of the Sea held at Rome in 1955, both under the auspices of the United Nations.⁴⁹ With the adoption of the four Geneva Conventions on the Law of the Sea in 1958, the special interest of the coastal state in the maintenance of the productivity of the living resources of the high seas near its coast was expressly recognized, namely, in Arts. 6 and 7 of the Fishing and Conservation Convention. This definition was satisfactory neither to Korea, because it was not strong enough to justify the Peace Line, nor to Japan, because it was not weak enough to invalidate the claims of Korea, but was nevertheless meaningful enough to suggest lines along which their dispute could be settled.

Second, in Korea the 1960's began with two revolutions, one in 1960 and the other in 1961. With the first ended the rigidity of the anti-Japanese posture in leadership, and with the second began a strong desire to achieve economic growth, for which restoration of friendship with Japan was deemed necessary and desirable. In the face of mounting opposition, often inspired by recurring resentment against Japan, the second new government actively sought to break out of the deadlock. In doing so, the biggest obstacle was always the fishery issue, which had been blocking settlement of all other major issues, such as the legal status of Korean residents in Japan, property claims by Korea, and the repatriation of Korean cultural assets from Japan. Once Korea felt a strong urge to enhance economic relations with Japan, however, fishery negotiations took place in a spirit of genuine willingness to seek a compromise.

It was mainly by virtue of these two changes -- one legal and external, and the other political and internal from the standpoint of Korea -- that in 1965 the two countries finally came to terminate their confrontation and re-establish normal relations with each other for the first time in half a century. It took no less than fourteen years of strenuous efforts during which as many as seven rounds of talks were held after 1952, with each of the first five ending in sheer frustration and in exchanges of trivialities and even abuse. The titles of the

five major treaties, which were supplemented by various annexes -- twelve for the fishery treaty alone -- reflected the historic importance and drama, as well as the outcome, of the strenuous negotiations which produced them: Agreements on Basic Relations, Property Claims, Legal Status of Korean Residents in Japan, Cultural Assets and Cooperation, and Fisheries.⁵⁰

A. Features of the Treaty:

The treaty authorizes each party to establish an exclusive 12-mile fishery zone along its coasts and delimits a joint control zone adjacent to the exclusive zone of Korea. (map no. II) The numerous provisions of the treaty and its supplements therefore focus largely on the provisional joint regulation of inter-fishing within the joint control zone (map no. II). There are two points of great importance. First, the resources within the joint control zone are to be shared on an equal basis as a provisional measure. Second, each party is not to interfere with the fishing vessels of the other, even if they are suspected of, or even found to be, violating the treaty within the joint control zone. All that can be done is to notify the other party of the suspicion or violation. The treaty is thus characterized by the exclusiveness of the fishery zone of each party and by the two unusual features, as noted below.

Exclusive Fishery Zone: The 12-mile fishery zone has become a fairly common practice among a large number of coastal states. There are now as many as sixty-two "12-milers" including those that claim the same extent of territorial sea. In addition, there are nineteen countries whose territorial sea or fishery zone extends beyond this limit. Thus, according to a survey of 123 independent states and other political entities no less than ninety-six of them limit foreign fishing within 12 miles of their coasts.⁵¹ The restrictions they impose on foreign fishermen vary according to season and area of operation. In addition to the principle of phasing out foreign fishing in new exclusive fishing zones, there have emerged different combinations based on the abortive Geneva principle of the so-called "six plus six" such as "three plus nine" (U.S.), "nine plus three" (Mexico), and even "ten plus two" (Albania and Yugoslavia). The Korean fishery zone is not only a departure from the Geneva formula, but also an incorporation of the post-Geneva trend. In the context of the Peace Line declaration, however, it was a significant retreat and therefore deeply regretted at its inception. From the standpoint of Japan, the retreat on its part was also significant in the sense that this was the first occasion at which it formally agreed to recognize the claims of a coastal state beyond the traditional limit of three miles, either for territorial sea or for fishery regulation. Recent indications now show that it is ready to retreat further from its position as the lonely flag-bearer of the traditional three-mile limit and to compromise with the general trend in the law of the sea.

Distribution of Resources: The arrangements to share the resources of the joint control zone on an approximately equal basis also represent a rather rare example. A precedent may be seen in the Fraser River sockeye salmon fishery treaty of 1937 between Canada and the United States.⁵² Examples based on a predetermined quota system other than a fifty-fifty ratio seem to be more common, as for example in the International Whaling Convention of 1948, the Northwest Pacific High Seas Fisheries Convention of 1956 between Japan and Russia, and the North Pacific Fur Seals Convention of 1957 between Canada, Japan, Russia and the United States.⁵³ In most situations, a fifty-fifty ratio of distribution would appear to be perfectly fair. Japan, relying on its dominant fishing capability, has always sought to maintain a system of free competition everywhere. For Korea this was considered an unfair system, for apart from the great disparity of fishing technique between Korea and Japan, the competition was to take place not in the distant open sea but in the coastal waters adjacent to its own fishery zone.

In general, the adoption of a particular ratio is a matter for negotiation between the parties concerned, but just as important as the ratio itself is the technique of maintaining it in a reliable way. In this connection, the Japanese-Korean treaty sets a maximum annual catch on each party for specified major types of fishing, namely, 150,000 tons with a 10% fluctuation. But the only way for one party to determine the amount caught by the other is to rely on the quarterly reports to be exchanged, hopefully in good faith. Certainly it is not so important to ascertain how much has been caught as how much is being caught. Arrangements to conduct occasional prearranged joint inspection of operations and landings to not seem sufficient to meet the ultimate purpose for which the treaty was concluded.

Enforcement: One of the first steps to enforce treaty provisions within joint regulation zones is to authorize each party to inspect suspected offenders of the other. Under current fishery treaty practices, the scope of this right is confined to visitation and arrest of offenders, but jurisdiction for prosecution rest solely with the state to which the suspected belong. Under a system of joint regulation, it is only fair and proper to provide the means for each party to ascertain violations of the treaty. In the case of the Japanese-Korean treaty, however, the coastal state is denied this right. Jurisdiction for prosecution rest on the "flag-state principle," whose origin -- still more its legal nature within the international law of fisheries -- is obscure and misleading. The exclusion of this right explains Japan's deep concern to relieve its fishermen of the threat of seizure by Korea, in contrast to the arrangements in other fishery treaties to which Japan is a party, such as those with Russia, with Canada and the United States, and with China.⁵⁴

B. Appraisal and Prospects

By any standard, the fishery treaty of 1965 between Japan and Korea represents one of the most complicated of its kind in structure, the principal text being supplemented by four exchanges of notes, four verbal notes, two letters on non-governmental arrangements, a record of discussion and an agreed minute. Undeniably the authors "erred" on the side of complexity, whether by necessity, design or accident. In addition to the exceptional features noted above, it is interesting to note a curious omission: although the treaty is clearly intended to supersede the Peace Line declaration, no reference is found to this effect in the text. Korea has even held that the treaty did not in any way affect the legal nature of what it has been called upon to eliminate. So far there is no evidence to support that it has changed its stand in this regard. It would have to be admitted, however, that the prospect of reviving the Peace Line from its present dormant status is dim.⁵⁵ If, because of its negative features or what it has left unsettled, the treaty has failed to become an ideal alternative to the Peace Line as the parties would have preferred, it is only fair to measure its real value in terms of the fact that it has effectively settled so acrimonious a dispute. This is a genuine contribution to the cause of law and order in the international community, and this accomplishment alone is sufficient to outweigh the effects of any controversy on its merits or demerits.

In 1965 when the Japanese-Korean fishery treaty was concluded together with four other major agreements, Korea found itself with a limited choice. Politico-economic considerations had to be allowed to take precedence over rigid adherence to its fishery interest, which, as a source of continuing grievances against Japan, had been blocking restoration of friendship between the two neighbors. With their relations thus normalised, the way was rapidly paved for increasingly closer economic exchanges, from which both of them have benefited, especially Korea which has gained unprecedented prosperity since then. The inter-fishing

within the joint control zone has created little friction between their fishermen who could hardly stand the sight of each other prior to the conclusion of the treaty. In December 1970 when the five-year mandatory period of the fishery treaty was to have expired, neither side chose to exercise its right to give the one-year notice of abrogation. Nor has either indicated any intention to do so since. Furthermore, the provisional character of the various stipulations receives less emphasis with the passage of time. From these indications, it seems safe to say that the fishery issue will continue to remain subordinate to larger issues by which it was overridden in 1965.

In the current wake of international preoccupation with the need to ensure equitable sharing of the common heritage of mankind, however, the East Asian countries have begun to extend their maritime jurisdiction, in some cases well beyond the seaward limits of claims by others. So far they are preoccupied mainly with the delimitation of their continental shelf boundaries. In due course, this expansionist trend is bound to present Korea with another choice to make, which is basic to and more permanent than the matter of its exclusive fishery zone vis-a-vis Japan: it would need to define the extent of its territorial sea. It happens to be the only state in the region that has not done so. The highly irregular indentation of its coastlines as well as the presence of over 3,000 islands along the west and south coasts would sufficiently justify the adoption of straight baselines. Korea is of course aware that its continental neighbors all maintain a 12-mile limit, with Japan ready to compromise its position of the traditional 3-mile limit, and that in drawing straight baselines it would have a recall its treaty commitment to Japan, even if only in relation to the exclusive fishery zone. Article 1(1) of the treaty stipulates that straight baselines should be drawn in consultation with the other party.⁵⁶

Korea's decision on the extent of its territorial sea will have to be made with reference to a few important points. First, its timing could not possibly precede the planned Third Law of the Sea Conference of the United Nations, scheduled to begin substantive formal sessions at Santiago in 1974. Second, with regard to its extent, there seems to be little reason to expect Korea to adopt one narrower than 12 miles, unless the Santiago Conference happens to adopt one much wider, improbable as the chances seem to be. Third, decision on the extent of the territorial sea will bring about the "honourable retirement" of the Peace Line. Fourth, in adopting a 12-mile territorial sea, Korea would have to give careful consideration to the problem of straight baselines in light of the fact that the fishery treaty with Japan has, along part of the Korean coastline, specified four straight baselines from which the 12-mile fishery zone of Korea was measured (map no. II). Unless the new ones for the territorial sea of Korea happened to coincide with those agreed upon with Japan for the purposes of the fishery treaty, their legal status in relation to the existing arrangements would give rise to some controversy. If even one of the territorial baselines happened to fall on the landward side of any existing straight baselines, it would seem that Korea was bound to allow Japanese fishing within part of its territorial sea, as long as the fishery treaty remains in force. Difficulty would also arise in deciding whether Cheju Island, the largest island and the smallest province of Korea situated about 50 nautical miles south to the mainland, may be placed within or outside the baselines. As a matter of fact, arguments on this point were so strong during the negotiations of the fishery treaty that it had to be left to a provisional arrangement to include it within Korea's exclusive fishery jurisdiction (map no. I). The provisions of the Geneva Convention on the Territorial Sea and the Contiguous Zone, Art. 4(2) and (4) in particular, are open to differing interpretations on this issue. From these observations, it may be seen that the fishery treaty retains the potential to be a source of controversy not just over fishery issues but over problems of maritime jurisdiction in general.

III. FISHERY RELATIONS BETWEEN CHINA AND JAPAN

Fishing problems between China and Japan in the Yellow Sea and the East China Sea are regulated by non-governmental arrangements. The first such agreement was signed in 1955, the second in 1963, and the third in 1965. Currently in force, the third is a revised version of the previous two and has been supplemented since 1970 by an additional agreement to regulate seining operations in certain parts of the treaty area. The politico-legal background of the fishery relations between the two states is extremely complicated.

1. Background

In December 1950, Japanese fishing vessels operating along the Chinese coastal waters in the Yellow Sea and the East China Sea found themselves open to seizure by the People's Republic of China. The first incident took place on December 7 when one of them was seized in the middle of the East China Sea.⁵⁷ As in the case of earlier seizures by the Nationalist authorities--thirty-one vessels during 1948 and 1949 -- the reason for seizure was made clear from the beginning: violation of the MacArthur Line. In the absence of diplomatic relations with the People's Republic, however, Japan was left with no means to protest effectively against the seizure, much less to prevent it. Up to April 1955 when a nongovernmental fishery agreement was signed in Peking, the number of Japanese fishing vessels so seized by China rose as high as 158 with 1,909 fishermen.⁵⁸ The basic cause of such unfriendly fishery relations was of course to be found in their rapidly deteriorating political relations as a result of Japan's pro-Taiwanese policy, a policy which was inevitable after the outbreak of war in Korea in 1950. The conclusion of a peace treaty with Taiwan in 1952 was one of the major factors that intensified enmity between Tokyo and Peking.

Under the circumstances, therefore, the settlement of any issue with China had to be attempted through private initiative. Thus the Japanese fishing industry itself became preoccupied with the search for freedom from seizure of, in a term fondly used in Japan, for safety of operation. An organized movement began in September 1952 when there was formed in Tokyo the so-called Japan-China Fishing Entrepreneurs' Association representing those with marine fishing interest as well as friendship with China.⁵⁹ The movement gained sympathy among local fishing interests, especially those in the west of Japan, and became a national endeavor by 1953. This movement at home coincided with changes taking place in the international political environment. In 1953, the Korean War ended in the form of a cease-fire, thereby easing tension in the Yellow Sea and the East China Sea. In 1954, China demonstrated a peace-oriented foreign policy with a five-point peace principle, which was first applied in its dealings with India. By October 1954, it was fairly certain that fishery issues could be discussed in the spirit of cooperation at an informal level. A month later the seven major fishery organizations of Japan formed the Japan-China Fishery Association of Japan in order to open negotiations with its Chinese counterpart through the good offices of the People's Diplomacy Council of China. Beginning at Peking on January 13, 1955, the negotiations lasted for three months, putting the Japanese delegation to a strenuous test of tenacity and patience. Finally, they ended on April 5 with the signing of a non-governmental fishery agreement between the Fishery Association of China and the Japan-China Fishery Association of Japan. It was to remain in force for a period of one year.

2. Structure of Non-Governmental Agreement

The agreement consisted of ten documents altogether: the principal text appended with four, equally binding, annexes, two memoranda, two exchanges of letters, and a joint communique.⁶⁰ Six fishing zones were established off the

Chinese coasts, with the conditions of motor trawl operations specified in terms of size of fleet and the length of season for each. A seventh zone was also proposed by China to be established separately in the middle of the sea, adjacent to the Korean Peace Line, on the ground that a large concentration of small croakers takes place there during the winter. In face of strong opposition by Japan, this proposal was subordinated to an inoperative entry in the Memoranda. From the viewpoint of the international law of fisheries, however, the two letters exchanged between the delegations were particularly significant. Japan agreed, even in an informal way, to respect the exclusive measures which the Chinese government had taken in the interest of maritime security and conservation of fishery resources in the Yellow Sea and the East China Sea. In fact, it was because of these unilateral measures, as noted below, that the broad offshore areas along the Chinese coasts were excluded from the treaty area (Art. 1 and map no. II).

3. China's Unilateral Claims

In the course of negotiations the Japanese delegation was greatly astonished to be notified by its Chinese counterpart that the following three military zones and the conservation zone originally established by the Chinese government in 1950 would apply to Japanese fishermen as well, namely (map no. II):

- (1) The Military Warning Zone in the northern part of the Yellow Sea, in which Japanese fishing vessels would not be admitted except by permit of the Chinese government;
- (2) The Military Navigation Zone in the coastal waters south of Shanghai, in which Japanese fishing vessels would not be admitted at all;
- (3) The Military Operations Zone in the waters north of Taiwan, and south of the 29th northern latitude, in which Japanese fishing vessels would enter only at their own risk; and
- (4) The East China Motor Trawl Prohibition Zone along the coastal waters of the Yellow Sea and the East China Sea for conservation of fishery resources, in which trawling by the Chinese as well as Japanese fishermen was banned.

Though the exact dates and sources of these three military measures are yet to be ascertained, China's motive in tightening its maritime security was no doubt to cope with the tension arising from its own involvement in the Korean War. But the military purposes for which they were established, though now less imperative, overwhelmed the Japanese delegation's attempts to reassert the freedom of fishing on the high seas. Furthermore, there was the technical difficulty for a private delegation to contest an "act of state" by a foreign government. The Japanese delegation had little choice but to agree to comply with these restrictions with the understanding that China would apply them to all ships regardless of nationality.

The East China Motor Trawl Prohibition Line -- which was sometimes called the Mao Tse Tung Line, in the personal fashion of the MacArthur Line, the Rhee Line, the Clark Line, and the Bulganin Line⁶¹ -- was drawn by the Fisheries Management Bureau of the East China Military Administration Committee on December 16, 1950. It was a provisional conservation measure subject to alteration by general provisions to be made by the central government (Para. 13). Originally two separate lines were drawn, connecting twenty-nine base-points, on from the south of the Pohai Bay to the north of the Taiwan Strait and the other around

Taiwan. It is important, therefore, not to overlook the fact that the line as specified in the agreement of 1955 was an entirely new one, said to have been drawn in 1954 to replace the original one of 1950. This new line with only five base-points was much simpler, beginning from the east of the Shantung Peninsula to the 29th eastern longitude, but was more extensive in terms of distance from the coasts of China (map no. II). It is not clear whether the line enclosing Taiwan had been abolished or revised in the re-drawing of 1954.⁶²

As to Japan's acceptance of the prohibition line, it is of interest to note that at first China proposed to divide with Japan the entire fishing grounds of the Yellow Sea and the East China Sea by means of a joint control buffer zone between the 124th and 125th eastern longitude. This proposed division of the sea as well as the delimitation of the seventh fishing zone Japan had to oppose strongly not only because of their limiting effect on its fishing rights, but also because of their bearing on its fishery relations with Korea. The 124th eastern longitude happens to coincide with the western margin of the Korean Peace Line over which an acrimonious dispute with Korea had begun only three years before.

During the negotiations, the Japanese delegation took great pains to challenge the legality of the motor trawl prohibition line, arguing that the domestic laws of a state cannot bind the fishing vessels of another on the high seas. This argument was not at all persuasive to the Chinese, who not only repeated the incompetence of private delegations to discuss such an issue, but also emphasized that a state's conservation measures belong to its domestic affairs and do not require the concurrence of another state.⁶³ The protracted controversy over this and the three military zones brought the negotiation almost to the point of break-down. But because of their determination to insure safety of operation for their fishermen, the Japanese had to resign themselves to what may be called a second version of the abstention principle, whereby they would of their own accord keep their fishermen from operating within the prohibited zone.

4. Extensions and Revisions

The first agreement of 1955 was extended twice, in 1956 and 1957, at Japan's request. Upon the coming into force of the agreement, the number of Japanese fishing vessels seized by China dropped virtually to nil; only three were seized between the middle of 1955 and early 1958. When the political relations between the two parties deteriorated due to China's distrust of Japan's pro-Taiwanese Kishi government; however, China not only refused in June 1958 to extend the agreement which was due to expire then, but also resumed the seizure of Japanese fishing vessels that violated its security and conservation measures.⁶⁴

China's refusal to extend the agreement does not seem to have been entirely due to political reasons. During the early months of 1958, there was marked increase in the number of Japanese fishing vessels violating the agreement. Furthermore, the disciplinary actions which, as the enforcing agent of the agreement on the Japanese side, the Japan-China Fishery Association of Japan took against the Japanese violators were entirely perfunctory. For instance, between April 1955 and the end of 1957, the Japanese Fisheries Agency patrols found as many as 196 Japanese vessels violating the agreement, but only forty cases were reported to have led to punishment. During the same period, the Chinese spotted 273 Japanese vessels and notified their Japanese counterpart for proper action, but only eleven cases were reported to have led to punishment.⁶⁵

On the other hand, Japan seems to have anticipated China's refusal of extension. The Japan-China Fishery Association of Japan had prepared what it called the Provisional Regulation for Fishing Operations and put it into effect immediately upon expiry of the agreement on June 12, 1958.⁶⁶ This was a form of self-restraint on the part of Japan, which, in the absence of any regulatory arrangement with China, the Association imposed on Japanese fishermen operating in the former treaty area. This Regulation was so faithfully observed by the Japanese fishermen that, during the five years up to November 1963 when a second agreement was signed, only five Japanese vessels were seized by China. In addition to this voluntary measure, and informal reciprocal understanding was also reached between the parties on October 31, 1959, relating to the provision of emergency shelter for fishing vessels in distress.

The second agreement⁶⁸ signed in Peking on November 9, 1963, was made possible as a result of improved trade relations between China and Japan and was basically the same as the first, with only minor changes required to bring it up to date and to make it more practical. First, the new agreement was to remain in force two years instead of one. Second, the six fishing zones were marginally adjusted in terms of latitude and longitude, apparently to comply with the motor trawl prohibition line as revised again in July 1957⁶⁹ and with the 12-mile limit of China's territorial sea announced in September 1958. This meant that the three military zones had also to be adjusted accordingly. Third, the prescribed size of the Chinese fleet in the 3rd and the 6th fishing zones, which in each case was smaller than that of the Japanese, was increased to parity this time. Fourth, for the protection of the sea-bream, the period of operation in the 4th zone was cut down from seven months to one. It should also be noted that in negotiating the Exchange of Memoranda, the Chinese delegation again reminded its Japanese counterpart of the need to regulate operations in the seventh fishing zone, in order to protect the small croaker. This was accepted by the Japanese, but no actual measure was agreed upon.

The third agreement,⁷⁰ also basically the same as the second agreement and currently in force, was signed in Peking on December 17, 1965, incorporating three further restrictions on Japanese fishing in the treaty area. That the restrictions were going to be more substantial this time than in the previous renewal was indicated by China's preference of a new agreement to a revised extension of the second agreement. First, the 1st and 2nd fishing zones were extended eastward by fifteen minutes of longitude each. Second, protective measures were adopted for young fishes by limiting the mesh size of trawl nets for certain species. Third, Japan had to accept without reservation what China had proposed for the third time: in the isolated 7th zone during the four months beginning with October, the number of trawlers could not exceed eighty each.

The agreement was also to remain in force for two years, but at the end of this period it was extended by a year in 1967 and 1968. At each Japanese request for extension, China made it clear that further extension would be contingent upon the improvement of their political relations. It was specifically pointed out that the extremely hostile policy of the Sato government toward China would bear heavily on their fishery relations. At the end of the second extension in December 1969, China granted Japan a probationary period of six months up to June 1970 and indicated that further extension would depend on the attitude of the Japanese government toward China as well as on the willingness of Japanese fishermen to respect "the productivity and the safety of our fishermen's life and property." In June 1970, both sides agreed in Peking to extend the agreement for two more years up to June 1972, but with additional restriction on Japanese fishing in the treaty area.

These additional restrictions of June 1970 may be noted with interest. First, during March and April, both sides would refrain from catching shrimp in the 1st fishing zone. Second, Japanese seine fishing for mackerel and horse-mackerel in certain parts of the treaty area would be limited under terms to be negotiated before the end of 1970. Third, Japan would pay China 20 million yen (about US \$60,000) as an indemnity for some twenty cases of injury done to Chinese fishermen in the course of interfishing. In June 1972, when the two-year extension of June 1970 was to have expired, China notified Japan that the agreement would be extended by a year but refused to modify the regulations on seining operations as requested by Japan.⁷¹

The chronicle of extensions and revisions may be summarised as below:

The 1st agreement

April 15, 1955:
May 8, 1956:
May 5, 1957:
June 12, 1958:

signed in Peking, to be in force for
one year from June 12, 1955.
extended by one year from June 13, 1966.
extended by one year from June 13, 1957.
expired.

The 2nd agreement

Nov. 9, 1963:
Dec. 22, 1965:

signed in Peking, to be in force for
two years from Dec. 23, 1963.
expired.

The 3rd agreement

Dec. 17, 1965:
Dec. 21, 1967:
Dec. 7, 1968:
Dec. 21, 1969:
June 20, 1970:
June 22, 1973:

signed in Peking, to be in force for two
years from Dec. 23, 1965.
extended by one year from Dec. 23, 1967.
extended by one year from Dec. 23, 1968.
extended by six months from Dec. 23, 1969.
extended by two years from June 23, 1970.
to expire.

Seine Fishing Regulation

Dec. 31, 1970:
June 22, 1973:

signed in Peking, to come into force on
Jan. 30, 1971, as a supplement to the
agreement of Dec. 17, 1965.
to expire.

5. Regulation of Seining Operations.

On December 31, 1970, a seine fishing agreement⁷² was signed in Peking, which was in form subject and supplementary to, but basically separate from, the existing fishery agreement as revised and extended in June of that year. Under this additional arrangement, seine fishing would be strictly regulated within the area west of what may be called a second Mao Tse Tung Line. The area of the sea so enclosed by the two lines--the motor trawl prohibition line and this seine fishing regulation line--was divided into three seining zones. No Japanese seining for mackerel would be allowed at all in the 1st zone. In the 2nd and 3rd zones, fifteen units of seventy-five Japanese seiners as against thirty-five units of 140 Chinese each would be allowed for the limited period of four months a year. Additional provisions were also made in great detail, including one that is particularly noteworthy for its specification whereby violators of either side may be asked by the observer patrols of the other for a written statement of violation (para. 6-2). The impact of this new arrangement on Japanese seine fishing may be seen from the fact that Japan used to land over 400,000 tons of mackerel a year from the Yellow Sea and the East China Sea, which amounted to a third of its total annual catch of mackerel, but the fleet operating in the area would now be limited to half the usual size. In contrast,⁷³ it was not until 1971 that China began to show keen interest in seine fishing.

On June 22, 1972, when the two-year extension of June 1970 was to have expired, China notified Japan that the fishery agreement would be extended by a year, but that the Japanese proposal to merge the 1st and 2nd seining zones was not acceptable. The reason given for this refusal was that the merger would not only create disorder in operations but would also affect the conservation of resources. China instead offered to allow additional units of five Japanese seiners within each of these two zones "in consideration of the desire of the Japanese fishermen." The Chinese notice of extension also included a proposal to hold further negotiations on fishery issues. However, this was believed to refer solely to the problem of technical cooperation on culturing shrimp in the Pohai Bay area.⁷⁴

6. Observations

A. The Use of Non-Governmental Agreements

The fishery relations between the People's Republic of China and Japan have always been parallel to their political relations, as in the case of Japan and Korea between 1952 and 1965. It is certainly no exaggeration to say that "Japanese fishing interests have been used as a pawn in Asian power politics," as was adeptly held by an observer.⁷⁵ Under such circumstances, therefore, the Sino-Japanese fishery agreement has been non-governmental only to the extent that, in the absence of diplomatic relations, neither government has chosen to involve itself in any formal way. In order to be practical, a non-governmental agreement usually has to rely on the degree of self-restraint which the parties are prepared to exert on themselves in the interest of reciprocity. Non-governmental as the arrangement between China and Japan is in form, it nevertheless deals with matters, such as enforcement, emergency rescue and mooring of foreign fishing vessels, and scientific exchanges, which, under normal circumstances, would require a formal treaty for proper regulation. For these reasons, the agreement is non-governmental faute de mieux.⁷⁶

Regulation of inter-fishing under the terms of the agreement takes place only along the coastal and offshore waters of China, not of Japan, and negotiations for the agreement began at the initiative of Japan, not of China. From the Japanese standpoint, however, the absence of diplomatic relations with China can not be said to have been the only reason for leaving the agreement non-governmental. The problem of diplomatic recognition apart, the government of Japan would have chosen to remain non-committal in the fishery agreement in any event, lest its formal involvement should imply acceptance of China's unilateral measures, such as the three military zones and the conservation zone. In this connection, it is of interest to note another example of a non-governmental or a quasi-governmental fishery agreement between Japan and another Asian country, namely, the Banda Sea tuna fishery agreement of July 1968 between the Indonesian government and the private fisheries interest of Japan.⁷⁷ There exist normal diplomatic relations between these two states, but the Japanese government appears to have been anxious to avoid any action which might be construed as acceptance of the 12-mile territorial sea and the archipelago theory of Indonesia.

These political problems notwithstanding, the merit of the Sino-Japanese agreement lies in the fact that, by virtue of negotiated agreement, tension has been greatly alleviated in the fishery relations between China and Japan and that a standing procedure has been established whereby problems may be met in an orderly way, not at arm's length as had been the case before.⁷⁸ The limitations of this non-governmental agreement do not diminish its intrinsic value decisively, but rather enhance the desirability of a formal treaty, when conditions permit in due course.

B. Unilateral Claims

In 1950 when the three military zones of China were established tension prevailed in the Yellow Sea and the East China Sea mainly because of the war in Korea in which China itself was also deeply involved. Of the three security measures thus taken, the Military Warning Zone in the northeastern Yellow Sea is restrictive, entry being possible by permit only; the Military Navigation Zone south of Shanghai entirely exclusive; and the Military Operations Zone north of Taiwan also restrictive by implication, entry being left "at entrants' own risk." It is not clear whether they were originally intended to be provisional or permanent. It is relevant to compare them with the Clark Line, which the United Nations Command established around the Korean peninsula for basically similar purposes in September 1952 and abolished in August 1953 upon cessation of hostilities in Korea a month before. In terms of distance from the coast as well as in restrictiveness, both are fairly similar to each other. A significant difference is that the Clark Line survived by only a month the tensions from which it originated, whereas the Chinese military zones are still in force after two decades since the end of the Korean War.

The nature of maritime security jurisdiction may not be considered against the background of the current practice of coastal states. According to a survey⁷⁹ of 123 states and other political entities regarding their various national claims to maritime jurisdiction, there are thirty-three that maintain different types of maritime security measures, which may be classified into five categories by virtue of their spatial extent from the coast. Sixteen cases coincide with the limit of the claimant's territorial sea, eleven are wider, three are narrower, two claim no specified limit, and one has a specified limit of security zone but no specified limit, and one has a specified limit of security zone but no specified limit of its territorial sea. It may be noted that, with the exception of the United States, the thirty-three do not include the traditional maritime or naval powers of the world. Furthermore, the security situations which occasioned the adoption of these maritime security measures do not appear, on the whole, to have been as extreme as that from which the Chinese claim originated in 1950. For a war-time measure to outlast its causal situation, however, there should be some continuing justification. As far as the maritime security zones of China are concerned, such justification would depend on the validity of the argument that the 1953 cease-fire in Korea has not yet ended the state of war. The chronic status quo -- a stoppage of shooting but less than peace -- has long since defied attempts at a satisfactory definition.⁸⁰ In the absence of a suitable objective definition, the matter is left to a subjective substitute, with all the risks of abuse to which military pretexts are usually widely open. In case of conflict with the national claims of a coastal state to maritime security jurisdiction, foreign claims to the freedom of fishing in the same area of the high seas tend to be placed at a psychological disadvantage. The impact of the Clark Line on Japanese fishing around the Korean peninsula in 1952 and 1953 represents a typical example in support of this argument, as far as it relates to the freedom of fishing in the Yellow Sea and the East China Sea.

The East China Motor Trawl Prohibition Zone was originally established in December 1950 as a provisional conservation zone in the name of a local military administrative unit, for the purpose of regulating motor trawling in the areas so designated. The exact date when it became a permanent and totally prohibitory measure proclaimed by the central government is not clear, though it was undoubtedly before the signing of the non-governmental fishery agreement in April 1955. In December 1950, Japanese fishing was not possible in the coastal and offshore waters of China because of the MacArthur Line, nor was its abolition in 1952 foreseen at that time. This forecloses the possibility that this conservation measure by China was specifically directed against Japanese or any other foreign fishermen.

Furthermore, the concept of a coastal state's preferential rights was yet to emerge in the international law of fisheries, eventually to be incorporated into the Geneva Convention of 1958 on fishing and conservation of living resources (Arts. 3-7).

The immediate motive underlying the adoption of the measure should, therefore, be found in the physical features of the areas for which it was thought to be necessary. The coastal and offshore waters of China fronting the Yellow Sea and the East China Sea are so shallow and the sea-bed so smooth, forming an unusually gentle slope from the mainland of China, that the 20-fathom (37 meter) contour line runs at many points over a hundred nautical miles from the coast. There are also numerous patches of great sand banks, the largest being the Great Yangtze Bank whose east end protrudes almost 150 nautical miles eastward into the East China Sea from the estuary of the Yangtze River. The entire area of the sea enclosed by the conservation line is therefore exceptionally favorable for motor trawling. It is beyond doubt that, unless strictly regulated, motor trawling in this area will not only deplete the resources but also destroy the bottom feeding grounds, as on the Korean side of the Yellow Sea were Japanese over-trawling had ruined productivity during the late 1930's.⁸¹ China's conservation measure was only restrictive at the beginning, but was made totally prohibitory on its own trawlers soon afterward. In similar circumstances, where conservation needs necessitate the prohibition of fishing even by domestic fishermen, few coastal states, and certainly not Japan, would leave their coastal and offshore fishing grounds at the mercy of foreign fishermen.

The legality of these four unilateral Chinese measures may be considered from a practical point of view. First, the circumstances which gave rise to the three military zones in 1950 have substantially changed, raising doubts about the legality of their continued existence. Furthermore, military need is generally not only provisional but also completely distinguishable from questions of high seas fishing. The military measures of China will probably be put to a reappraisal on the occasion of the formal bilateral review of Sino-Japanese fishery relations which is expected to take place before the current non-governmental agreement expires in June 1973. Second, in contrast to the military zones, the motor trawl prohibition zone is based on an intrinsically stronger argument: the need of resource conservation. Though it is true that conservation is a cause which is as much open to abuse as to compromise, this Chinese measure derives validity from three potential factors which hardly require further elaboration: the physical features of the area it covers, its precedential character in relation to Japan, and the preferential rights of China, the coastal state, as specified in the Geneva Convention. The second factor, the precedential character of what has been accepted in a non-governmental agreement and remained in force throughout the term of the agreement will have the impact of a fait accompli on future intergovernmental efforts to conclude a regular treaty to take its place. Claims to complete freedom of the high seas in the area seem futile, and it remains to be seen whether Japan will be able to refute the need for conservation as alleged by China.

C. Prospects

Non-governmental regulation of inter-fishing between China and Japan in the Yellow Sea and the East China Sea has resulted in the progressive imposition of restrictions on Japanese fishing in the area. In legal terms, it has been a confrontation between a coastal state relying on its preferential rights and a traditional fishing state relying on the freedom of fishing on the high seas as well as on historic rights to fish in the coastal and offshore waters of the other. Due to the abnormal political relations existing among the five littoral states, it has not been possible to regulate fishing in the area by means of a single multilateral treaty binding on all of them, nor could any of them have been a party to all of the four fishery treaties applicable to the Yellow Sea and the East China

Sea.⁸² Although each of them is a highly ambitious fishing state, chaotic inter-fishing and serious over-fishing are being prevented not so much by their conscious efforts to abstain as by their cautious determination to avoid a possible "fish war."

With the restoration of friendship between China and Japan in September 1972, it has become probable that they will now negotiate a formal fishery treaty, presumably before the current non-governmental agreement expires in June 1973.⁸³ On the face of things, however, it is difficult to foresee a new arrangement which would be very different from the existing non-governmental agreements. It would be in the regional interest, and technically possible if not probable, to make such a new treaty open to accession by other littoral states on the basis of reciprocity. This done, the fishery issue would for the first time in its long acrimonious history help to improve instead of aggravate the political relations of the littoral states.

IV. FISHERY RELATIONS BETWEEN CHINA AND OTHER SOCIALIST STATES

There are two other fishery agreements to which China, as the major coastal state of the Yellow Sea and the East China Sea, is or was a party, namely, the bilateral agreement of 1959 with North Korea and the multilateral agreement of 1956 among the socialist states of the western Pacific region. In contrast to the Sino-Japanese and Japanese-Korean agreements, however, these two originated not as a means of settling disputes over fishing rights, but as a means of cooperation between the parties, since there were no such acrimonious disputes between them as between Japan and China or Japan and Korea. Proper analysis of these two agreements is handicapped by the scarcity of literature. The following is based on what is available from widely scattered sources.

1. China and North Korea

The fishery agreement between China and North Korea was concluded in Peking on August 25, 1959. Its purpose was to "provide for the full and rational exploitation of marine resources in the Yellow Sea by both parties in a joint endeavor to develop fisheries and relevant projects."⁸⁴ The fact that the treaty area does not include the East China Sea should be noted, but the difficulty for Korean fishermen from the North as well as from the South to operate freely in the East China Sea cannot be attributed to legal or technical reasons or to the absence of historical rights, but to the abnormality of political relations among the coastal states of the Yellow Sea and the East China Sea.

2. West Pacific Fisheries, Oceanology and Limnology Research Cooperation Agreement

The multilateral agreement for cooperation in research on fisheries, oceanology and limnology was signed in Peking by China, North Korea, North Vietnam and Russia on June 12, 1956.⁸⁵ The treaty area covers the Sea of Japan, the Yellow Sea, and the East and South China Seas (Art. 1). A fishery research commission was established with its seat in Peking. It has four sections dealing with fisheries, oceanography, fresh water, limnology and protection of fishing resources. Land-locked Outer Mongolia joined the agreement on December 15, 1958,⁸⁶ presumably out of its interest in fresh water limnology. China, originally the host party to the agreement, is reported to have withdrawn from it in 1967, when it abrogated two other multilateral treaties of socialist states at the same time.⁸⁷

The Commission seems to have held regular and special sessions every year up to 1964.⁸⁸ A number of joint research activities were also reported, such as a fishing resources survey conducted by a team of scientists from China, North Korea and Russia in the Yellow Sea and the East China Sea, from which new winter fishing grounds were said to have been found, and a tide zone investigation conducted by Chinese and Russian oceanographers around the Hainan Island of China.⁸⁹ Publications of the Commission show that its research interest covers a wide range of subjects. For instance, the proceedings of its fifth plenary session held in Peking in 1960 record forty-one papers and those of the sixth held in Ulan Bator, Outer Mongolia, in 1961 thirty-four papers.⁹⁰ References to papers presented at other plenary sessions are also found in other oceanographic literature of China.

Recent literature on the activities of the Commission is not available, so that it is not possible to confirm whether its annual sessions since 1964 have been held regularly and to what extent the agreement itself has been affected by China's withdrawal in 1967. It should be noted in all fairness that, as the only multilateral arrangement for the regulation of the living resources in the Yellow Sea and the East China Sea, this agreement has effectively demonstrated the desirability of a regional collective arrangement for the sake of reciprocity on the part of all the coastal states. This agreement is the only one on the Yellow Sea and the East China Sea that is open to accession by any other state in the region, subject to the unanimous concurrence of the parties -- even though the current political climate there is not yet likely to engender such an atmosphere.

V. CONCLUSION

The Yellow Sea and the East China Sea are only a small area of the sea semi-enclosed by China, Japan and Korea. The shallow and fertile fishing grounds are most favorable for coastal and offshore fisheries. This natural advantage often caused serious disputes over high seas fishing rights between the coastal states. For the past few decades, their political relations have never been close enough to engender a friendly atmosphere so that fisheries in the area could be jointly regulated by all the participants. Ironically enough, therefore, the sea retains its productivity partly by virtue of the individual coastal states' cautious attitude to avoid further disputes. This has resulted in the inequity that China reaps a lion's share to the silent dissatisfaction of Japan and Korea.

Currently there are four treaties which are intended to regulate fisheries in the Yellow Sea and the East China Sea. But none of them is binding on all the coastal states, nor is any state a party to all four. Any area of the sea so fertile in living resources and enclosed by states so capable in fishing is bound to be exhausted by competitive exploitation. Such a danger is not all unreal in view of the fact that the coastal states differ from one another in almost every aspect of their maritime practice: for instance, in the limit of territorial sea, China is a 12-miler, Japan a 3-miler and Korea an unspecified claimer; and in the concept of "economic zone", China is protagonist, Japan antagonist and Korea also antagonist but for different reasons from Japan.

The danger of resources depletion can also be enhanced by some external factors. First, the continental shelves of the area are thought to have a high oil potential, and exploration is already at an advanced stage. Second, Japan and Korea rely entirely on the import of oil by sea. Japan being the biggest importer, there is an unbroken chain of tankers linking its major ports and the Persian Gulf. Pollution of the sea by oil from either exploitation or transport will mean another "Santa Barbara" or "Torrey Canyon" to the coastal states with the flow of warm and cold currents threatening to maximize the damage to the living resources.

Thus it is simply imperative for the coastal states to realize the importance of regional arrangements for this area; since one of them can destroy what it will take all of them to restore. The step forward by China, Japan and Korea from bilateral agreements to regional cooperation would not only help to sustain the productivity of sea resources, but might also serve as a point of departure for unity in other aspects of their relations.

FOOTNOTES

1. S.J. Yeh and Hs. T. Liu: Chungkuo Tzuian Tili Tsunqlun (natural geography of China) 37 (Peking, Shangwu Yinshu kuan, 1959); I Hu: Tsukuo ti Haiyang (the fatherland's ocean) 3 (Peking, Chungkuo Chingchien Chupanshe, 1956); and C. Yuan: Chungkuo Haian ho Taovu (China's seacoast and offshore islands) 13-5 (Taipei, Haiwai Wenku Chupanshe, 1957).
2. Japan Statistical Yearbook 1970 1 (Tokyo, Bureau of Statistics, Office of the Prime Minister, 1970).
3. 56 Okinawa (Japanese quarterly) 109 (Tokyo, Nampo Doho Engokai, March 1971).
4. Korea Annual 1972 Seoul 1972, 324-5.
5. Fisheries in Korea 60-1 (Seoul, Office of Fisheries, 1966).
6. S.C. Fan and Y.S. Chin: "Chungkuo Tunghai ho Huanghai Manpu Tichi ti Chupu Yenchiu" (study on the bottom structure of the East China Sea and the southern Yellow Sea) 2(2) Haiyang wu Huchao (Oceanologia et Limnologia Sinica, quarterly in Chinese): Chungkuo Haiyang Huchao Hsueh-hui, ed., (Chinese Society of Oceanology and Limnology) 83 (Peking, Kohsueh Chupanshe, April 1959); and 23 Encyclopaedia Britannica 1970, 884.
7. J.E. Fairchild: 23 Collier's Encyclopedia 1964, 691.
8. With the exception of those otherwise indicated, figures and other data in this section are from Yuan: China's seacoast...13-7; Sovereignty of the Sea; Geographical Bulletin No. 3, U.S. State Dept. Pub. No. 7849, rev. ed. Oct. 1970 18 (Washington, Government Printing Office); K.O. Emery: I Technical Bulletin 1968 13-27 and II ibid. 1969, 3-43 (Bangkok, Economic Commission for Asia and Far East -- ECAFE); M.V. Klenova: "Haiyang Tichihtu" (sea-bed topography, with abstract in Russian) 1 (2) Oceanologia et Limnologia Sinica May 1958, 243-50; and Fan and Chin: ibid 82-5.
9. Fisheries in Korea 58: Yeh and Liu: 44-7 (footnote 1 supra); and P.S. Chang: Chungkuo Yuyeh Shengwu Tzuoyuan ti Yenchiu (study of fishery resources of China 359-70 (Taipei, Taiwan Shangwu Yinshuekuan, 1968).
10. C. Chu: Tsukuo ti Yuyeh (the fatherland's fisheries) 4 (Peking, Tsai-cheng Chingchi Chupanshe, 1956); and Yeh and Liu: ibid. 51 (footnote 1 supra). This would, however, depend on the definition of "fishing grounds"; other countries such as Canada and the Soviet Union have a larger shelf area. The coastal and offshore fishing grounds of China are found in the Pohai Bay, the Yellow Sea, the East China Sea, the Gulf of Tong King and the South China Sea. However, the first, the fourth and the fifth have little to do with Korean fishing, since the former was declared the internal waters of China in 1958 and the latter two are not visited by Korean fishermen at all.
11. Chu: ibid. 8; C. T. Cheng: "Huanghai ho Tunghai Chingchi Yulei Chushi" (notes on the economic fish fauna of the Yellow Sea and the East China Sea) 2 (1) Oceanologia et Limnologia Sinica March 1959, 54-6; and Yeh Liu: ibid. 51 (footnote 1 supra). For details on the fauna and flora of the Yellow Sea and the East China Sea, see the four Research Reports, Nos. 73-6 with English and French abstracts, by the Institute of Oceanography, Academia Sinica, as reprinted in 2(1) Oceanologia et Limnologia Sinica March 1959, 27-60, of which the above article by Cheng is one. For details on part of the species in the Pohai Bay and the Yellow Sea, see C.L. Chang and five others: Huangpohai Yulei Tiaocha Paokao (Survey of fish fauna in the Pohai Bay and the Yellow Sea) Peking, Koshueh Chupanshe, 1955; this volume deals with 201 species to be found north of the Shantung Peninsula, and an abridged version covering 71 major species was also put out by the same publisher in 1954. For an ecological survey of the "four majors," see Hs. W. Chang and Hs. S. Liu: "Shih-nien-lai Wokuo Ssuehchung Chuyao Haichan Chingchi Yulei Shengtai ti Tiaocha Yenchiu" (a decade of ecological investigations on the four important marine food fishes of China, with English abstract) 2(4) Oceanologia et Limnologia Sinica Oct. 1959, 233-43.

12. In the first half of 1972, China landed more mackerel and horse-mackerel by means of seine fishing than it did during the whole year of 1971 (People's Daily, Sept. 17, 1972). On the Chinese experiment in the South China Sea, see Asahi Shinbun (Japanese Daily, Tokyo) Jan. 1, 1971. In 1969 when Japan caught 8,613,000 tons of fishes altogether, it landed 1,350 tons of mackerel and horse-mackerel, about a third of it -- 440,000 tons -- from the Yellow Sea and the East China Sea (Japan Statistical Yearbook 1970, 152). Japanese over-fishing is said to have been particularly conspicuous in the Chinese coastal waters off Shanghai since 1969 to the point of being accused of violating the territorial sea of China twice in 1969 (Asahi Shinbun, *ibid.*).
13. For the 1970 figures, see 34(1-2) Commerical Fisheries Review Jan.-Feb. 1972, 34; and 30 FAO Yearbook of Fishery Statistics 1970, 4 and 228. On the interpretation of Chinese statistics, see F. T. Christy and A. Scott: The Common Wealth in Ocean Fisheries: Some Problems of Growth and Economic Allocation⁵² and 105 (Baltimore, Johns Hopkins Press, 1965). For the latest published figures and the future potential of fisheries in China, see Y. T. Chang: "Fishermen's Record Hauls" 11 Peking Review March 17, 1959, 12-3; and Chu: *ibid.* 8 and 37 (footnote 10 *supra*). For a long-range fisheries policy of China, see the National Program for Agricultural Development 1956-1967 (Para. 19), which was drafted in 1956 and was finally adopted in 1960 after a few revisions; the Chinese text of this master plan may be seen in 6 Chunghua Jenmin Kungchoku Fakuei Huipien (collection of laws and regulations of the People's Republic of China) 37-; for the English translation and comments on its background, see Leslie T. C. Kuo: The Technical Transformation of Agriculture in Communist China 7-10 and 241-62 (New York, Praeger Publishers, 1972) or 781 Current Background Feb. 14, 1966, 1-17 (text only); and for the Japanese translation, see the pamphlet entitled: 1956 - nen kara 1967 ni itaru Zenkoku Nogyo Hatten Yoko (the national program for agricultural development 1956-1967) Peking, Waiwen Chupanshe, 1960. Follow-up plans subsequent to 1967 are yet to be traced. Para. 19 of the above Program reads (Kuo: *ibid.* 255 *supra*):
19. Raise the output of marine and freshwater products and develop their breeding. In marine fishing, on the basis of co-operative organisation the latent potentialities of existing gear should be fully tapped and the fishing techniques gradually improved. Attention should be paid to increasing public accumulation funds, replenishing and improving fishing equipment, and gradually increasing the number of motor trawlers and motorised junks. Safety measures for production should be strengthened so as to extend fishing to deep seas. All possible water resources should be used to develop freshwater fish farming. The work of breeding good stocks of fish and preventing and dealing with fish diseases should be strengthened. Energetic steps should be taken to promote fish farming in shallow sea waters and the work to breed fish, shell-fish and aquatic grasses strengthened.
14. For the possible decline of fishing industry in Peru due to unexpected oceanographic changes, see the New York Times, August 12 and 20, 1972.
15. For the major fishing zones, see F. M. Pan: Tsukuo ti Yuyen (the fatherland's fish and salt) 8-20 (Shanghai, Tachungkuo Tushuchu, 1953); and for details on the major types of fishing in the Pohai Bay and the Yellow Sea, see Huangpohai Chuyao ti Chunchung Yuyeh chi Chi Chishu Kaichin (major mass fisheries in the Pohai Bay and the Yellow Sea and their technical improvement), Bureau of Mass Fisheries, Ministry of Fisheries, People's Republic of China 7-44 (Peking, Koshueh Chupanshe, 1956).
16. XV China Reconstructs Jan. 6, 1966, 30-1.

17. Chungkuo Tanshui Yangyu Chingyen Tsungchieh Weiyuanhui (general committee on fresh water fish culture experience of China): Chungkuo Tanshui Yulei Yangchihhsueh (fresh water fish culture in China) 47-8 (Peking, Kohsueh Chupanshe, 1962); 12 Peking Review Nov. 12, 1965, 37-3; and Chu: ibid. 40 (footnote 10 supra). For details on the fresh water fisheries in China up to the mid-1960's, see J.J. Solecki: Economic Aspects of the Fishing Industry in Mainland China 24-68 (Institute of Fisheries, British Columbia University, Vancouver, 1966); and F. Bartz: II Die Grossen Fischereiraume der Welt, Wiesbaden, 1965, 227-41.
18. 30 FAO Yearbook of Fishery Statistics 1970; 7, 9, 76 and 87.
19. Japan Statistical Yearbook 1970, 152-3 and 157.
20. Korea Yearbook of Fishery Statistics 1971, Office of Fisheries, Seoul, 177.
21. Ibid. 35 (footnote 20 supra).
22. Ibid. 83 (footnote 20 supra). To be exact, by "the East China Sea" is meant here the coastal waters south of the Korean peninsula and north of Cheju Is, a relatively small area commonly known as the South Sea.
23. For details, see Hankuk Susansa (history of fishery in Korea), Office of Fisheries, Seoul, 1968, 742-61; and "Major Fishing Grounds by Type of Fishing and by Species" (front page illustration no. 1), Korea Yearbook of Fishery Statistics 1971. Another major sea product of Korea is the variety of sea weeds, but this has little to do with international regulation of fishing, as it grows close to the shoreline. The angling of squids is also an important fishery in Korea, but this is done mostly along the coastal waters on the east, hence is only remotely related to the present discussion.
24. See Chap. I(1); Geographical Circumstances supra.
25. T.W. Fulton: Sovereignty of the Sea. Edinburgh 1911, 58.
26. For these historical reasons, see Hankuk Susansa (history of fishery in Korea) 22-3 and 69-71 (footnote 23 supra). For the influence of Buddhism on fishery in Japan, see K. Yamaguchi: Nihon Gyogyoshi (history of fishery in Japan), Tokyo, 1957, 16; and T. Seiko: Gyogyono Rekishi (history of fishery), Tokyo, 1952, 31-2.
27. Hankuk Susansa (history of fishery in Korea) 185-6 (footnote 23 supra).
28. Ibid. 187 (footnote 23 supra).
29. The text (Art. 41 only) of the 1883 trade agreement, written in classic Chinese after the fashion of the time in Korea, may be seen in Hankuk Susansa (history of fishery in Korea) 232 (footnote 23 supra); the Japanese text in full in 16 (1883) Nihon Gaiko Bunsho (NGB: diplomatic documents of Japan) 282-9; and the English translation in full in 77 (1895-6) British and Foreign State Papers (BFSP) 413. The Chinese text of the 1889 fishery agreement may be seen in Hankuk Susansa (history of fishery in Korea) 282-3 (footnote 23 supra); the Korean text in ibid. 190-1; the Japanese text in 22 (1889) NGB 370-81; and the English translation in 81 (1898-9) BFSP 261-3. The agreement in 1889 was preceded by a 9-article provisional arrangement in 1888, limiting the amount of Japanese fishing in areas not open to Japan; for its text, see Hankuk Susansa 234; and the Japanese text in 21 (1888) NGB 258-71. The Korean text of the 1908 fishery treaty may be seen in Hankuk Susansa 220-1; the Japanese text in 41-1 (1906) NGB 774-9; and the English translation in 101 (1907-8) BFSP 1032.
30. This was the case with most other treaties which Japan and Korea concluded between 1876 when a friendship treaty was imposed on Korea--the first modern treaty Korea ever entered--and 1910 when it was finally annexed to Japan. Korea did not realize the implication of Japan's consular jurisdiction on Korean territory as specified in various treaties it signed with Japan. Where treaty-making with Korea was concerned, therefore, Japan was simply passing on to Korea what it had so bitterly experienced earlier with the Western Powers.
31. Hankuk Susansa (history of fishery in Korea) 166 (footnote 23 supra).

32. The Chinese fishermen were said to have also been rapacious against Koreans. They also engaged themselves in smuggling besides fishing. Hankuk Susansa (history of fishery in Korea) 229-31 (footnote 23 supra). As for the Russian whalers, they had been catching whales in the coastal and offshore waters of Korea for as long as nine years before the Korean authorities became aware of it and began to issue permit in 1898 (ibid. 227)
33. Hankuk Susansa (history of fishery in Korea) 369 (footnote 23 supra); and Korea Yearbook of Fishery Statistics 1971, 2, 13, and 35.
34. Hankuk Susansa 369. In 1971, South Korea alone caught 1.07 million tons of fish. Figures are not available of the North Korean catch, but it is usually assumed that the amount of catch is considerably below that of the South, so that the total of both Koreas would still not exceed two million tons. It is also note-worthy that fisheries in Japan began to decline since 1937 when the Sino-Japanese War began, reaching their bottom in 1945 when the Second World War ended.
35. For details on this point, see T. Shimura: Nihon Gyogyo Shigenno Chikuseki (capital accumulation of Japanese fisheries), Tokyo, 1965, 113-29
36. Foreign Affairs Assn. of Japan: The Japan Yearbook 1938-9 Tokyo, (p. 480);

At present the Government is restricting trawlers in the Inland Sea, the East China Sea and the Yellow Sea to 70 vesselsIt also prohibits trawlers, by special regulations, from operating in the near-by seas in order to keep the coastal waters free from the devastation caused by the destruction of immature fish, etc. (emphasis added).

37. For details on the MacArthur Line, see The Japan Yearbook 1949-52, Tokyo, 1952, 435-48.
38. For the text of the agreement, see 65 United Nations Treaty Series (UNTS) No. 2770, 205 (International Convention for the High Seas Fisheries of the North Pacific Ocean). For details, see D.N. Johnston: International Law of Fisheries, Yale University Press, 1965, 274-82 and 289-97; W.C. Herrington: "Problems Affecting North Pacific Fisheries," 26 US State Dept. Bulletin 1952, 340-2, and "Comments on the Principle of Abstention." Papers Presented at the International Technical Conference on the Conservation of the Living Resources of the Sea (UN Document A/CONF. 10/7) Rome 1955, 344-9; and S. Oda: "Yokusino Gensokuni Tsuite" (on the principle of abstention), I Umino Shigeno Kokusaiho (see resources and international law) Tokyo, 1971, 117-76. Details on the negotiation of this Convention may be seen in Nichiheika Gyogyo Choyakuno Kaisetsu (interpretation of the Canada-US-Japan fisheries treaty), Ocean Fisheries Assn. of Japan, Tokyo, 1952; and the bilingual minutes (English and Japanese in separate volumes) entitled Tripartite Fisheries Conference: Canada-US-Japan, Foreign Ministry, Tokyo, 1952.
39. In this regard, it should be noted that a Sea Defense Zone was established by the United Nations Command in September 1952, as a "strictly war time measure designed to safeguard the Korean coastline.....and to bar the Korean coast to enemy agents and contraband." (M.W. Clark: From the Danube to the Yalu, New York, 1954, 154) The Line enclosed by what was called the Clark Line was abolished in August 1953, a month after the signing of the armistice in Korea. Foreign ships were subject to search upon entering the blockade. Japan argued in vain that it had nothing to do with its fishing.
40. For the text of the Korean declaration, see Laws and Regulations on the Regime of the Territorial Sea, United Nations Legislative Series (UN Doc. ST/LEG/SER. B/6. 1956 and B/8 1959), 30-1.

For a comprehensive discussion of its legal character, see G. Weissbert: Recent Developments in the Law of the Sea and the Japanese-Korean Fishery Dispute, The Hague, 1966.

For the opinion of a foreign observer on Korea's need to protect her sea resources, see B.H. Brittin: International Law for Sea-Going Officers, US Naval Institute, 1956, 7a-9. where he says:

During the years of occupation of Korea by Japan, this area was so badly depleted by the Japanese beam trawlers that the fishing in the area was practically unproductive due to the destruction of bottom feeding grounds and sea grasses. During the war period....., nature has rectified this destructive overfishing and productivity was largely restored. Therefore, from the conservation angle, the Korean government has a point in advocating the necessity of controlling fishing in the area. It might also be added that Korean fishermen do not use trawling methods but rely on hand-fishing which has no bad effect on fishing grounds. For the text of the fishery agreement of 1965 and its annexed documents, see 10 (1966) Japanese Annual of International Law (JAIL); and 4 International Legal Materials (principal text only), No. 6, Nov. 1966. The English translations are not identical in these two sources, having been done by different translators and would therefore require comparison either with each other or with the Korean or Japanese texts.

41. Korea's was the 26th of the 36 such proclamations made up to the time of the 1958 Geneva Conference on the Law of the Sea (UN Legislative Series, B/1, B/6 and Supp. ibid.)
42. Syngman Rhee: he served three terms in the presidency (1948-1960) and was elected for a fourth term in 1960, but was compelled to resign in April 1960 in the face of strong popular opposition headed by students. He died in Hawaii in 1965.
43. For the text, see UN Legislative Series, ibid., 523-4.
44. Figures in this section are quoted from S. Oda: 8 (1964) JAIL 127-8; 9 (1965) ibid. 126; 10 (1966) ibid. 67; 327 Jurisuto (jurist, Japanese monthly) Aug. 1, 1965, 17; and Kaiyono Kokusaiho Kozo (structure of the law of the sea), Tokyo, 1956, 52 and 119.
45. With Russia barely since 1956 by virtue of a peace declaration (263 UNTS No. 2768, 99-117)
46. This is part of some two million Koreans drafted into war industries in Japan proper before 1945. At the end of the War, Japan was not in a position to repatriate them to Korea, so that they had to stay on.
47. 14 Haqa Gaikono Kinkyō (foreign policy white book), Foreign Ministry of Japan, Tokyo, 1970, 87-8.
48. For the background of the Santiago Declaration, see S.A. Rayitch, Inter-American Law of Fisheries, New York, 1957, 489; for its text, see B. Mac Chesney: LI (1956) International Law, Situation and Documents, US Naval college, 1957, 265-74; on Costa Rica's accession, see B.B. L. Auguste: The Continental Shelf, Geneva, 1960, 139; and for subsequent developments in Latin America, see MacChesney: ibid. 237-65 and 275-82; Rayitch; ibid. 16; and II (1956) International Law Commission (ILC) Year book, 65 and 275-82.
49. For the work of the ILC on this point, see II (1951) ILC Yearbook, 141-4; II (1953) 217-20 and 241-69; II (1955) 28-34; and II (1956) 290-1. On the Rome Conference, see Report of and Papers Presented at Rome Conf., (A/CONF. 10/6 and 7. Paras. 18, 44-9 and 80-3 of The Report, in particular).
50. For a comprehensive analysis of each of these five agreements, see T. Ueda; "Nikkan Kankeishi" (history of Japan-Korea relations), 1-27; T. Sogawa: "Nikkan Kihon Joyaku" (agreement on Japan-Korea basic relations), 28-54; F. Ikeda: "Bunkazai, Bunka Kyoryoku Kyotei" (cultural properties and cultural cooperation agreement), 55-75; K. Nakamura: "Nikkan Gyoogyo Kyotei" (Japan-Korea fishery agreement), 76-104; and J. Akiba: "Hote Chii" (legal status of Koreans in Japan), 137-61' 64(4-5) Kokusaiho Gaiko Zasshi (international law and diplomacy), 1965, a feature issue on Japan-Korea relations; and S. Oda: "The Normalisation of Relations between Japan and the Republic of Korea," 61(1) American Journal of International Law (AJIL), 1967, 35-36.

51. 36 International Boundary Study, Series A, Limits of the Seas, January 3, 1972, and its Addendum, March 31, 1972, entitled: "National Claims to Maritime Jurisdictions," Office of the Geographer, US Dept. of State: and Oda: ibid. 1971, 376.
52. For the text, see 184 LNTS, No. 4255, 305-17; and for other details of this treaty, see Johnston: ibid. 384-90.
53. For the text of the 1946 whaling convention, see 161 League of Nations Treaty Series, No. 2124, 72-111; and for other details see Z. Ohira; "Fishery Relations between Soviet Russia and Japan," 2(1958) JAIL, 1-18. For the text of the 1957 four-party fur seals treaty, see 314 UNTS, No. 4546, 105-59; and for other details, see Johnston: ibid. 264-9.
54. It should be noted that the Sino-Japanese non-governmental agreement on the regulation of seine fishing signed in Peking on December 31, 1970, maintains that (see Chap. III-5: Fishery Relations between China and Japan, *infra*):

"When a seiner of one side is found to have violated the regulations, an inspector of the other side is entitled to demand a written material from the seiner concerned, and then make a report to the fishery association of his own side so that it may notify the other fishery association for handling the matter" (Para. 6-2; 4815 SCMP Jan 4-8, 1971 235-6; *emphasis added*).

55. The Peace Line has even been encroached upon at its southwest and by the Seine-fishing Regulation Zone No. 1 which has been established by the above Sino-Japanese agreement of December 31, 1970.
56. In this regard, the oft-quoted passage from the judgement of the Anglo-Norwegian Fisheries Case 1951 is noteworthy (International Court of Justice-ICJ Reports, 1951, 132):

"The delimitation of sea areas has always an international aspect; it can not be dependent merely upon the will of the coastal state as expressed in its municipal law. Although it is true that the act of delimitation is necessarily a unilateral act, because only the coastal state is competent to undertake it, the validity of the delimitation with regard to other states depends on international law."

57. Z. Ohira and T. Kuwahara: "Fishery Problems between Japan and the People's Republic of China," 3(1959) JAIL 109.
58. See sources referred to in footnote 44 *supra*.
59. Nitchu Kokkyo Kaifuku Kokumin Kaigi (national assn. for the restoration of Sino-Japanese relations): Nitchu Hakusho (Japan-China white book), Tokyo, 1959, 128; and Ohira and Kuwahara: ibid. 112 (footnote 57 *supra*).
60. For the Chinese text, see 4 Chunghua Jenmin Kungchokuo Tiaoyuchi (People's Republic of China treaty series: TYC), Chunghua Jenmin Kungchokuo Waichiapu (Foreign Ministry of the People's Republic of China) 265-78; for the English translation (principal treaty only), see MacChesney: ibid. 368-70 (footnote 48 *supra*); for the German translation with a brief remark, see Vertrage der Volksrepublik China mit anderen Staaten (VdVRD: IX-1-1962 Schriften des Instituts fur Asienkunde in Hamburg) 150-69; and for the Japanese text, see Nitchu Kokkyo Kaifuku Sokushin Giin Renmei (parliamentarian assn. for the restoration of Sino-Japanese relations): Nitchu Kankeishiryō 1945-71, Tokyo, 1971, 325-34.

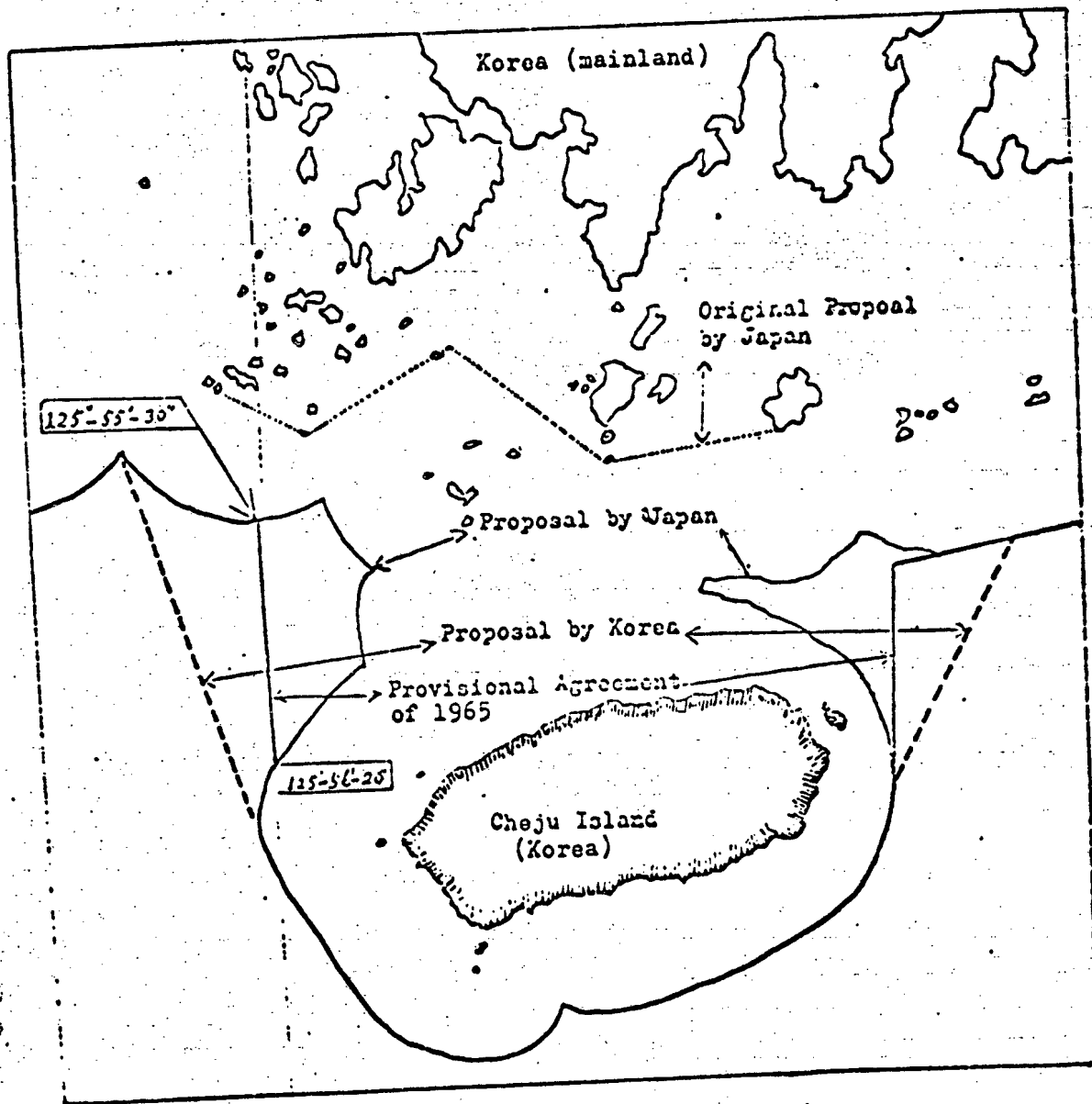
61. This Line was declared by Russia in March 1956 as a provisional measure to regulate salmon fishing in the Okhotsk Sea and the western part of the Bering Sea. Japan found itself compelled to enter negotiations with Russia for a fishery treaty, which was signed on May 14, 1956, a day before the regulatory season (May 15-Sept. 15) as specified in the Bulganin Line proclamation. Though the Line was superseded by the fishery treaty even before it was applied to Japanese fishermen, it was nevertheless employed as an effective means to press Japan into concluding the fishery treaty immediately. For the text and details, see Ohira: "Fishery Problems between Soviet Russia and Japan," 2(1953) JAIL 1-18; and M. Whiteman: 4 Digest of International Law, 1020-1 and 1151-4.
62. For the text of the original announcement as a provisional measure (with 29 base-points specified latitude and longitude) whereby motor trawling within the Zone was to be placed under regulation by the East China Military Administration Committee, see II Huatungchu Tsaiching Chincchi Faling Huipien (collection of laws and regulations on financial and economic affairs in East Coast) 1333-7 (Peking, Huatung Jenmin Chupanshe, 1951).
- Three points need to be made clear here. First, the date of the announcement (East-Fishery-Admin-50-1758) was given as December 16, 1950, in the above source, not as December 10 (Ohira and Kuwahara: ibid. 111, footnote 57 supra) or as December 6 (S. Oda: International Control of Sea Resources, Leiden, 1963, footnote 110 at 52; and Weissberg: ibid. footnote 24-at-71, footnote 40 supra). Second, the Line as referred to in the 1955 agreement was not one "modified slightly in 1954" (Oda: ibid.), but was entirely different from that of 1950 (map no. II); it remains to be confirmed exactly when in 1954 the new announcement was made and whether by the same local authorities or by the central government. Third, the original Line of 1950 was provisional and restrictive, whereas in 1955 it was notified to the Japanese Delegation as permanent and prohibitory, but not so "since 1955" (T. Cheng: Communist China and the Law of the Sea, 63-1 AJIL 65). Pending confirmation, therefore, it may be possible to guess that, as related in its Para. 13, the original announcement of 1950 by the local authorities was superseded by a general measure of the central government in 1954 (cf. footnote 69 infra.)
63. Oda: ibid. (1956) 129 (footnote 44 supra).
64. The first agreement was twice extended and was due to expire on June 12, 1958, but Japan had sought a third extension on March 7, April 17, May 2 and 31, 1958, only to be refused by China on June 11, 1958 (Nitchu Kankei Shiryo 340- footnote 60 supra). One of the apparent reasons of China's refusal is attributed to the so-called "Nagasaki flag incident: of May 2, 1958, when a Japanese young man destroyed the Chinese flag flying at the trade exhibition center in Nagasaki, Japan, thereby arousing a strong feeling in China (R. Kurai: "Present Status of Japan-Communist China Relations," 1(1961) Japanese Annals of International Relations, Tokyo, 91-157).
65. Nitchu Hakusho 130 (footnote 59 supra).
66. Nitchu Hakusho 125 (footnote 59 supra). It is also noteworthy that, upon receipt of China's refusal of extension on June 11, 1958, the Japan-China Fishery Assn. of Japan replied that Japanese fishermen would be advised to continue to respect the provisions of the expired agreement (ibid. 340).
67. Nitchu Kankei Shiryo 341 and 430 (footnote 60 supra).
68. For the Chinese text, see 12(1963) TYC 254-72 (footnote 60 supra); for the English translation, see 724 Current Background Dec. 6, 1963, 1-2 and 4-15 for the German translation with a brief remark and a cartographic illustration, see VdVRC (XII-4-1968 Schriften des Instituts fur Asienkunde in Hamburg) 168-73 (footnote 60 supra); and for the Japanese text, see Nitchu Kankei Shiryo 345-55 (footnote 60 supra).

69. On July 26, 1957, the State Council of China made public a supplement to the Yellow Sea and the East China Sea Motor Trawl Prohibition Order (People's Daily, Aug. 18, 1957). It was a southward extension of the Mao Tse Tung Line to the 27th from the 29th n. latitude, and at the same time meant opening part of the Military Operations Zone formerly closed to Japanese trawlers. Though it was a supplement to a previous announcement of the central government, it is yet to be traced what it actually supplemented. From the fact that the two new basepoints given in the supplement coincide with none in the provisional measure of 1950 by the local authorities, however, it is clear that there was another announcement by the central government between 1950 and 1957 (cf. footnote 62 supra). For the Chinese notice to Japan on this revision of 1957, see Nitchu Kankei Shiryo 338-9 (footnote 60 supra).
70. For the Chinese text, see People's Daily Dec. 18, 1965; for the English translation, see 3613 Survey of Mainland China Press (SCMP) 27-42 (Jan. 10, 1966); for the German translation with a brief remark, see WVWC (XII-4-1966 Schriften des Instituts fur Asienkunde in Hamburg) 173-83 (footnote 60 supra); and for the Japanese text, see Nitchu Kankei Shiryo, 355-69 (footnote 60 supra).
71. For the repeated extensions and revisions of this third agreement, see Nitchu Kankei Shiryo 369-74 (footnote 60 supra); 32(8-9) Commercial Fisheries Review Aug. Sept. 1970, 62; Nihon Keizai Shinbun (Japanese economic daily) June 22, 1972; and Yomiuri Shinbun (Japanese daily) June 30, 1972.
72. For the Chinese text, see People's Daily Jan. 1, 1971; and for the English translation, see 4815 SCMP Jan. 4-8, 1971, 234-39; and for the Japanese text see Nitchu Kankei Shiryo 375-78 (footnote 60 supra).
72. See Chap. I(2): China and footnote 12 supra.
73. See Mainichi Shinbun (Japanese daily) June 22, 1972; and Nihon Keizai Shinbun (Japanese economic daily) June 22, 1972.
75. Johnston: *ibid.* 232.
76. For the meaning of "semi-official" agreements, see D.M. Johnston and H. Chiu: Agreements of the People's Republic of China 1953-1967: A Calendar, Harvard University Press, 1968, viii-ix.
77. This is also an unusual example whereby Japanese fisherman are required to obtain a permit from the Indonesian Embassy in Japan and to pay an "admission fee" for entrance into the Banda Sea fishing ground. For details, see Oda (1971), 361-2 (footnote 38 supra).
78. China and Japan shared the same opinion on this point. See Nitchu Hakusho 130-32 (footnote 59 supra); or the six-points comment by Y. Yang, Chairman, the Fishery Assn. of China: Jinrin Chugoku (People's China, Japanese monthly published in Peking) Aug. 1957, 10-11.
79. 36 International Boundary Study (footnote 51 supra).
80. In this regard, two points are worth noting in legal context. First, the joint communique issued at the occasion of signing the third agreement on Dec. 17, 1965 says: "At present, the increasing expansion of the aggressive war launched by U.S. imperialism in Vietnam has seriously menaced peace in Asia and security on the Yellow and East Seas. Moreover, the signing of the "Japan-Korea treaty" has further aggravated the situation" (Para. 3, 3613 SCMP Dec. 22, 1965, 28). Second, the Chou-Tanaka joint communique signed in Peking on Sept. 29, 1972 says: "The termination of the state of war..... between China and Japan.....will open a new page in the annals of relations between the two countries" (Preamble Para. 3, The New York Times Sept. 30, 1972; emphasis added).
81. See footnote 40 supra.
82. See Chap. IV *Infra*.
83. Paragraph 9 of the Chou-Tanaka joint communique of Sept. 29, 1972 (the New York Times, Sept. 30, 1972) says in part that China and Japan "agree to hold negotiations aimed at the conclusion of agreements on trade, navigation, aviation, fishery, etc.....taking into consideration the existing non-governmental agreements" emphasis added). Initial contacts at governmental level for both sides to prepare themselves toward formal negotiations were reported in late Nov. 1972 (Mainichi Daily News, English ed., Nov. 25, 1972).

84. 2038 SCMP Sept. 2, 1959, 35; and People's Daily Sept. 1, 1959. The text of this agreement is not found in 8 (1959) TYC 1959, nor elsewhere, still less information on the follow-up activities of the parties. For a brief description of this agreement, see K. Grzybowski: The Socialist Commonwealth of Nations: Organisations and Institutions, Yale University Press, 1964 165-66; and J.J. Solecki: ibid. 124-26 (footnote 17 supra).
85. For the Chinese text, see 5(1956) TYC 169-72.
86. 11(1962) TYC 131; and 1849 SCMP 39.
87. 19(29) Current Digest of Soviet Press Aug. 9, 1967, 9-10.
88. The Annual meetings were held as following: 1st (1956) in Peking, 2nd (1957) in Moscow, 3rd (1958) in Pyongyang, 4th (1959) in ?, 5th (1960) in Peking, 6th (1961) Ulan Bator, 7th 1962 in Moscow, 8th (1963) in ?, 9th (1964) in Hanoi, and 10th (1965) was decided, at the 1964 Hanoi session, to have been held in Peking but no report available. For the details, see SCMP 1312 (22-23), 1740 (36), 1747(46), 1837(57), 1845(51), 1899(39), 2385 (38-41), 2389 (35-37), 2585(25-26) 2223(28), and 3343(17).
89. 1740 SCMP Mar. 27, 1958, 26; and 1845 SCMP Sept. 3, 1958, 51.
90. For the proceedings of the 5th (1960) session held in Peking, see Taepvongyang Sobu Oop Yen-gu Niwonhoi Jeccha Jonwonhoi Lonmun Jip (proceedings, 5th plenary session, West Pacific Fisheries Research Commission), 333 pages in Korean, Pyongyang, North Korea, Susan Chulpansa, 1964. For the proceedings of the 6th (1961) session held in Ulan Bator, see Taipingyang Shipu Yuyeh Yenchiu Meiwenhui Diliotzu Chuentihui Lonwenchi (proceedings, 6th plenary session, West Pacific Fisheries Research Commission), 288 pages in Chinese, Peking, Kohsueh Chunpanshe, 1965. Neither volume identifies the time and place of the meeting. Furthermore, it is interesting to note that the North Korean version was classified "for internal use." Therefore, it is not quite accurate to say that "no report on its work has ever been published" (Cheng: 63-1 AJIL footnote 20 at 50).

Demarcation around Cheju Island

Map No. I



Legend-Map II

International Regulations of Fisheries
in
The Yellow Sea and the East China Sea
(China-Japan and Japan-Korea)

..... 1950 East China Motor Trawl Prohibition Line
(as declared by China)

.... 1952 Peace Line (Rhee Line)

..... Straight Base-Lines off China Coast
(interpretation by U.S. State Dept. of 1958
Declaration by China)

China-Japan Fishery agreements (non-governmental):
April 15, 1955-June 12, 1958
November 9, 1963-June 22, 1965
June 22, 1965-
December 31, 1970-Seine Fishing

Fishing Zones 1-7

+ 1955 intersections of straight line segments
1963-65
1965- extensions of zones 1 and 2

East China Motor Trawl Prohibition Line
(in effect June 12, 1958-November 9, 1963
but not as part of fishery agreements)

+ 1955-58 intersections of straight line segments
(declared by China in 1954, a revisions of the
1950 line). line extended in 1957, 1958

1963-65

1965- same line as 1963-65

Military Zones

(in effect June 12, 1958-November 9, 1973 but
not as part of fishery agreements)

..... 1955- Warning and Navigation Zones (declared by China in 1960)
(revised November 9, 1963 as declared by China in 1958)

↓ 1955 Operations Zone south of 29° North Latitude
(declared by China in 1950) revised
revised to 27° North Latitude July 26, 1957

Seine Fishing Regulation Zones 1-111

----- 1970 westerly boundaries same as motor trawl line of 1963-65
Japan - Korea fishery agreement: June 22, 1965

..... Straight Base-Lines off Korea

..... 12 mile Exclusive Fishery Zone of Korea

----- Joint Regulation Zone

