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Intelligence Appraisal

JAPAN: LAWS OF THE SEA IN TROUBLED WATERS (U)

21 APRIL 1977

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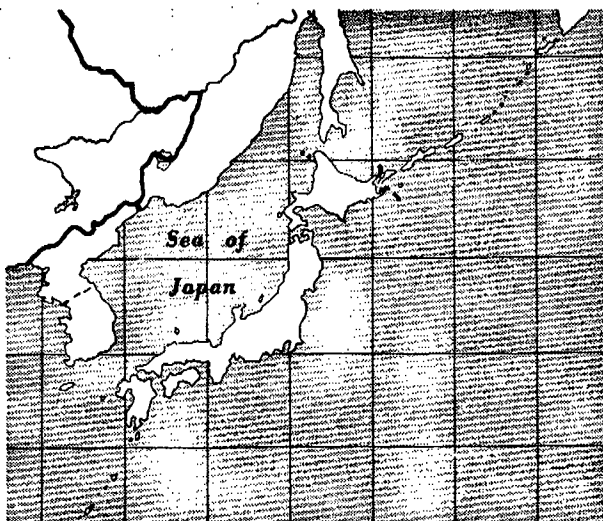
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JAPAN:

LAWS OF THE SEA IN TROUBLED WATERS (U)



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CONFIDENTIAL**JAPAN: LAWS OF THE SEA IN TROUBLED WATERS (U)**Summary

(C/NOFORN) The weakened mandate of the Liberal Democratic Party following last December's lower house election is requiring the LDP to compromise with the opposition and is forcing Japan to reconsider certain of its international postures in light of Diet criticism.

(C/NOFORN) Currently, Japan's Law of the Sea (LOS) positions are being reassessed as the result of slow progress on establishing a new treaty and recent worldwide unilateral expansions of sea sovereignty. Changes evolving from this apparent recalculation of Japanese concerns may seriously damage US interests in LOS negotiations.

(C/NOFORN) Japanese domestic political pressure for extension of the country's territorial sea to 12 nautical miles, in conjunction with the official ban on the presence of nuclear-armed ships in Japanese waters, may force Tokyo to break ranks with the other major maritime powers -- UK, France, USSR, and US -- over their position of unfettered transit of straits used for international navigation. Coming on the heels of recent agreement among the five that the present definition of the straits problems was satisfactory, if such a reversal occurred it would seriously complicate the group's position and tactics at the May session of the Law of the Sea Conference in New York. It also endangers the integrity of the position adopted by the major sea powers on still broader issues of coastal state jurisdiction. In addition, contentious territorial disputes with neighboring countries appear certain to resurface.

Background

(C/NOFORN) During the past five years of Law of the Sea negotiations, Japan has been an active member of the Group of Five major maritime powers,

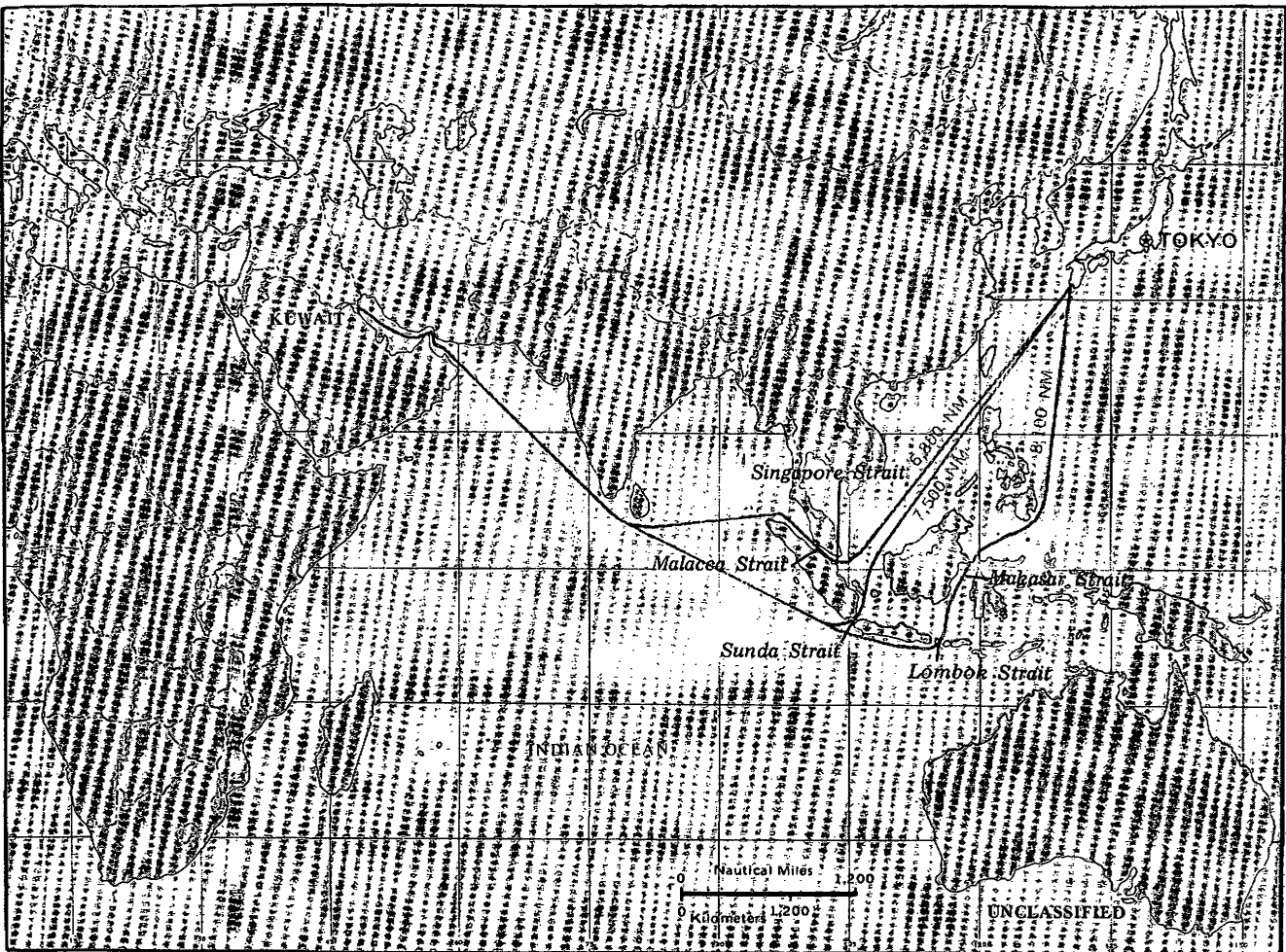
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TANKER ROUTES TO JAPAN FROM PERSIAN GULF

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which also include the US, USSR, UK, and France. The Group of Five -- whose existence is confidential -- has been bound by common interests in resisting excessive restrictions on freedom of the seas and in opposing unilateral actions that could limit navigational freedom deemed essential to the maritime powers pending promulgation of a new LOS Treaty. Japan, the only member without a major naval force, has been primarily interested in guaranteeing continued noninterference for its merchant fleet, ensuring fishing rights, and supporting its allies' interests.

(C/NOFORN) After five years of intermittent sessions, LOS negotiators have compiled a revised single negotiating text that forms the basis for further negotiations. Treaty issues that have proven most pressing and complicated include regime of territorial waters, international straits navigation, economic zones, the continental shelf, the high seas, sea resource development and conservation, pollution, marine scientific research, rights of access for landlocked countries, treatment of archipelagic states and islands, and settlement of dispute provisions. Since these issues are interrelated, adoption of a position on one point in many instances virtually mandates maintaining a consistent position on the rest. Japan's current domestic controversy deals with territorial waters, economic zones, and straits used for international navigation as they pertain to fishing and the transit of nuclear-armed vessels. The transit of nuclear-armed vessels is of particular concern to Japan as its three nonnuclear principles -- prohibiting the possession, production, or presence of nuclear weapons -- have been interpreted as not allowing nuclear-armed vessels in Japanese waters.

DiscussionJapan's Overriding Interests

(C/NOFORN) Japan has shown no indication of becoming a major naval power. Thus, its sea interests are commercial in nature and revolve around protecting

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its fishing industry and merchant fleet from damaging restrictions. Fish are an essential part of the Japanese diet, providing some 50 to 60 percent of the available animal protein. Japan has been especially interested in limiting the rights of coastal states to contiguous high seas. Nearly one-half of Japan's catch comes from within 200 nautical miles of foreign shores, and sharp reductions in the catch would pose not only economic but political problems for the government.

(C/NOFORN) Japan has the second largest merchant fleet. It has more than 9,700 flag vessels with a total of some 41.66 million deadweight tons. This ocean lifeline assures a continuing flow of energy and raw materials to Japan's industries as well as distribution of finished goods to world markets. Japan seeks to protect this conduit by resisting potentially excessive control over its commercial shipping through the world's major straits. Of particular interest to Japan is the Malacca Strait through which passes some 90 percent of its oil. Closure of this strait and alternate passages could double the sailing distance from the Middle East and put an additional burden on Japan's economy. Japan is also bound by treaty obligations and its own security interests to support the US presence in the region.

Japan and the Group of Five

(C/NOFORN) Less-developed countries' demands for a new more restrictive ocean regime forged the alliance between the Group of Five. Solidarity has permitted the members to ensure that their major interests have been protected during LOS negotiations. Of particular concern to the Group has been the key issues on maritime sovereignty, including territorial seas, international straits passage, and economic zones.

(C/NOFORN) Concerning territorial seas, Japanese negotiators at the LOS conference have taken positions consistent with those of the Group which

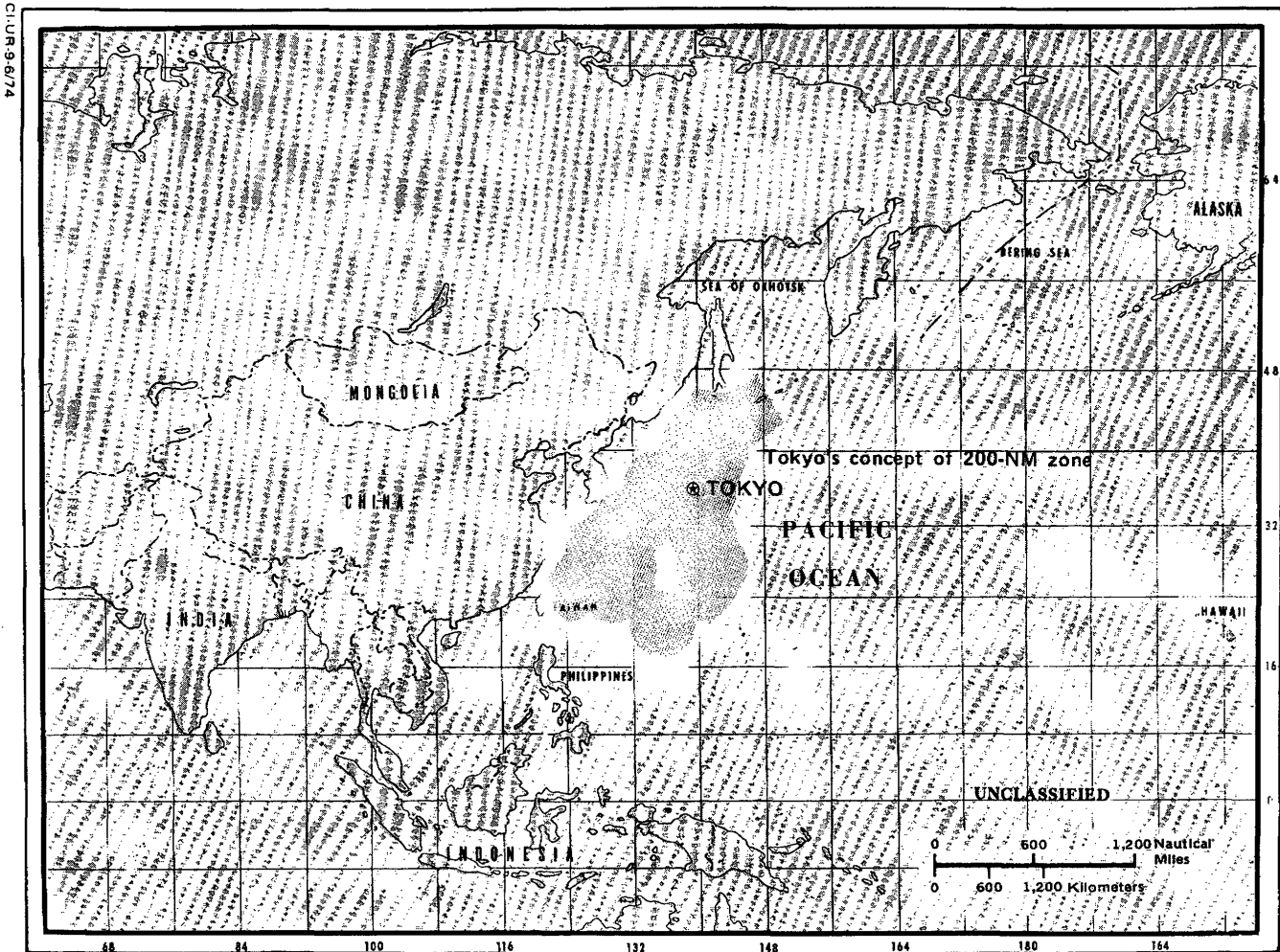
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support the innocent passage regime in territorial seas. In the draft text, passage is innocent as long as it is not prejudicial to the peace, good order, or security of the coastal state. This precludes almost any activity by military craft other than passage. Some coastal states have argued for exclusion of certain types of ships or cargos from the territorial seas. Tokyo fears that certain ships, such as its supertankers, which are considered by some nations as potentially dangerous, might be denied passage. Thus, Japan's LOS negotiators support allowing the passage of all vessels and favor permitting nuclear-armed or nuclear-powered ships and supertankers to transit subject only to coastal state regulations on safety of navigation. By including itself with the naval powers whose main concern is assuring global military mobility, Tokyo hopes to achieve its more narrow commercial interests.

(C/NOFORN) The issue of international straits is closely tied to the question of territorial seas. If a new LOS treaty establishes a 12-nautical mile limit as international law, some 116 straits will fall within the territorial seas of coastal states. This would include such key passages as Gibraltar, Dover, and Tsushima straits. The Group of Five has insisted that unimpeded passage through international straits within territorial seas be guaranteed in international law and stressed that recognition of the 12-mile limit would be conditional upon satisfaction of this fundamental issue. In January this year, the Group including Japan agreed that the present negotiating text on passage of straits used for international navigation is satisfactory. Known as transit passage, it has fewer restrictions than innocent passage. It allows ships and aircraft to transit such straits in a continuous and expeditious manner subject only to traffic separation or other safety measures. However, certain states including Malaysia and Indonesia have argued for coastal state sovereignty over international straits. They insist that the more stringent innocent passage regime should be applied.

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JAPAN'S 200-MILE ZONE



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(C/NOFORN) On the third major issue of exclusive economic zones, Japan has supported the Group's stance that such zones should await a final treaty. These zones would give the coastal state sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources -- whether living or nonliving -- of the seabed sub-soil and the superjacent waters. Unilateral declarations of 200-nautical mile exclusive fishing zones by most of the Group derogated from their argument that economic zones should await final resolution of the treaty. Of the Group of Five, only Japan did not declare such a fishing zone on 1 March.

(C/NOFORN) Despite Japan's community of interests with the Group of Five, there are some contradictions. Basic to these differences is Japan's economic rather than security interest in freedom of the seas. The Group insists on freedom for all ships, but Tokyo can accept restrictions that would be intolerable for a naval power as movement of war ships is not an overriding concern for Japan. Thus, so long as its supertankers are not impeded, Tokyo is able to abide with more limitations on passage through international straits. As a result, while a community of interests exists among the Group of Five for freedom of navigation, the basic premise underlying this consensus breaks down when types and activities are differentiated.

(C/NOFORN) Innocent passage is another area of contradiction between the Group. Japan's LOS negotiators have agreed with the Group's position on innocent passage for all vessels. However, this stand is not consistent with Tokyo's domestic policy, which considers nuclear-armed vessels as incapable of innocent passage through Japanese waters under any circumstances. While this nuclear ban is not strictly enforced, Japan has been trying to change its restrictive official interpretation of innocent passage to make it consistent with its international posture since some nations have argued that other types of ships, such as supertankers, are also incapable of innocent passage.

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(C/NOFORN) Heretofore, these contradictions had remained submerged in the broader interest of freedom of the seas. Uncertainties on when and if a new treaty would be established have, however, exacerbated the Groups' differences and is placing them at odds. Most recently, other Group members are either denying access or limiting the catch of Japanese fishermen in the new exclusive fishing zones.

Japan's Changing Position

(C/NOFORN) Both Tokyo's policy of awaiting a new LOS treaty and maintaining solidarity with the Group of Five has been eroded by limited progress in reaching agreement and by recent unilateral moves of various countries to restrict their waters. These international developments along with domestic pressures for protection of coastal fishing areas are bringing about Japanese modifications to their position.

(C/NOFORN) Tokyo is well aware of the grab for sea areas under way around the world, while it has been defending the position of the Group of Five. As a result, Japanese fishermen are being excluded from traditional fishing grounds in distant waters while at the same time they are facing stiff competition from a ravenous Soviet fishing fleet for the catch off the coast of Japan. Japanese leaders perceive that others in the Group left Japan to fend for itself making Tokyo's adherence to the previous united position of awaiting a new treaty completely untenable as to fishing zones. Moscow's intransigence on terms for continued Japanese fishing in the Soviet 200-mile zone resulted in Tokyo's 29 March declaration that Japan would shortly establish a similar zone.

(C/NOFORN) In regard to territorial seas, Tokyo supports the 12-nautical mile limit, but has wanted to wait for a new LOS treaty to be completed before making such a proclamation for Japan. In this way, the government hoped to avoid raising the issue of

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the relevance of its nuclear ban to the expanded sea area, particularly in regard to the several important straits that would then be within Japan's territorial sea. A new treaty could be used by the government to argue that international law took precedence over the existing national policy. However, the government has been under considerable pressure at home for the last several years to exclude foreign fishermen from Japanese coastal waters.

(C/NOFORN) Recent unilateral moves by Group of Five partners place Japan in a dilemma that makes the government vulnerable to criticism from both the political opposition and the domestic fishing lobby. The ruling Liberal Democratic Party's weakness in the lower house of the Diet and its apparent poor posture entering the July upper-house elections has made it reluctant to continue resisting domestic pressures lest its strength in the Diet decline further. The foreign ministry proposed establishing a 12-nautical mile exclusive fishing zone, but access to US and Australian 12-mile zones had previously been retained on the grounds that the Japanese traditionally fished these waters. Thus, Tokyo perceived that it would be forced to yield to the Soviets for the same reasons. Since Japan has no tradition of permitting foreign fishing in territorial seas, the pressure for complete exclusion of the Soviets dictated extension of the territorial sea rather than simply declaring a fishing zone.

Territorial Sea Expansion Declared

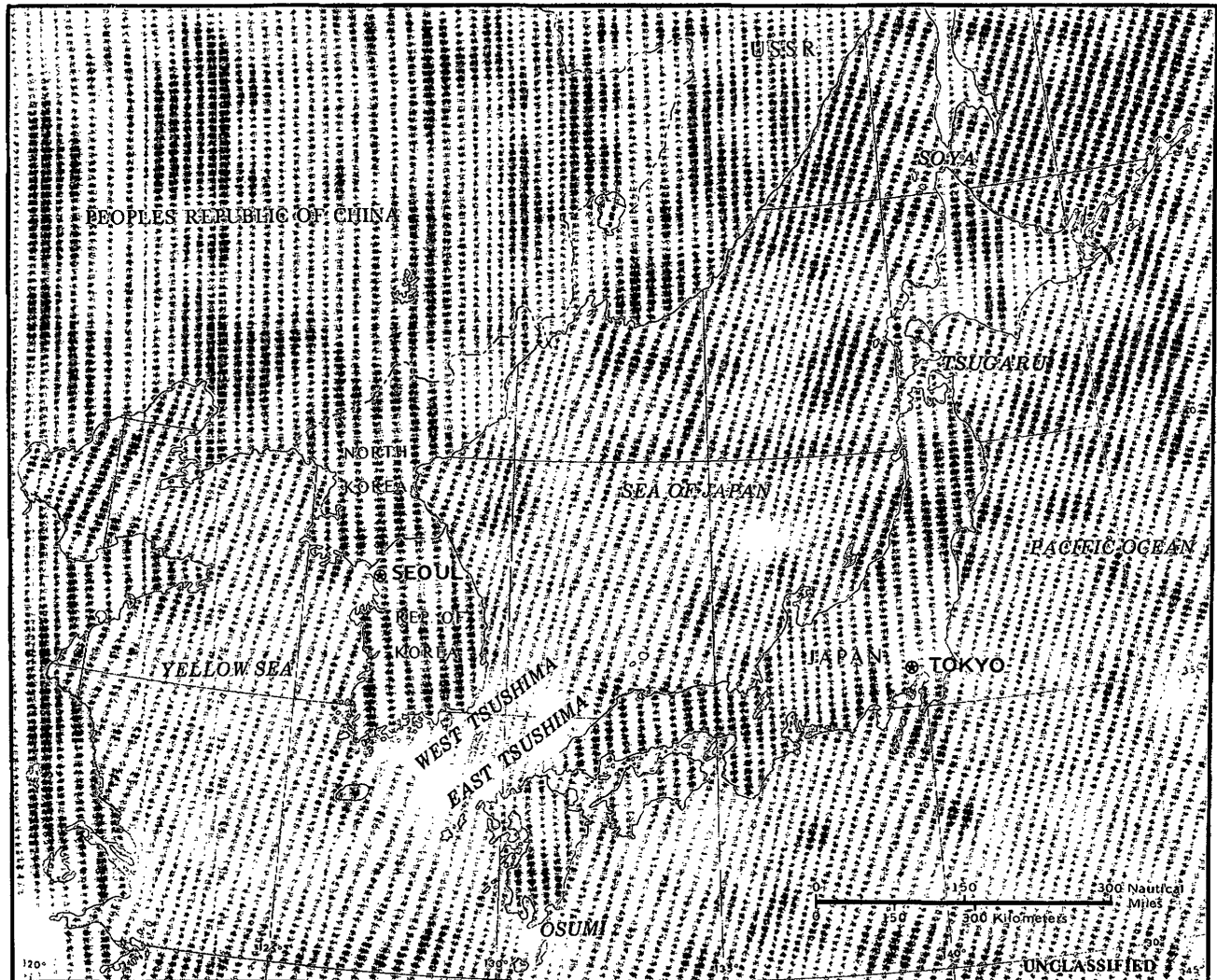
(C/NOFORN) On 27 January, the Japanese Government announced its intention of expanding the territorial sea to 12 nautical miles. This extension raises the question of the status of some 60 Japanese straits and passages used for international navigation. By using a 12-mile limit to protect coastal fishing, Japan would bring these straits under the restrictive policy of innocent passage, which in Japan excludes nuclear-armed ships. If the Japanese impose these restrictions, their LOS position on straits would be damaged considerably. Also, since both the Soviet and US navies use certain key Japanese straits, especially the Tsushima, there would also be severe

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JAPAN EXEMPTS FIVE KEY STRAITS

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international repercussions. The Soviets have in fact already warned Japan against restricting the straits. Tokyo's solution to this dilemma is to exempt five key straits -- the Osumi, Soya, Tsugaru, and East and West Tsushima -- from the 12-mile declaration. However, unilaterally specifying those as international straits concurrently stipulates which straits are not in that category. Japan seemingly places itself with those coastal states that would like to assert national sovereignty over their straits.

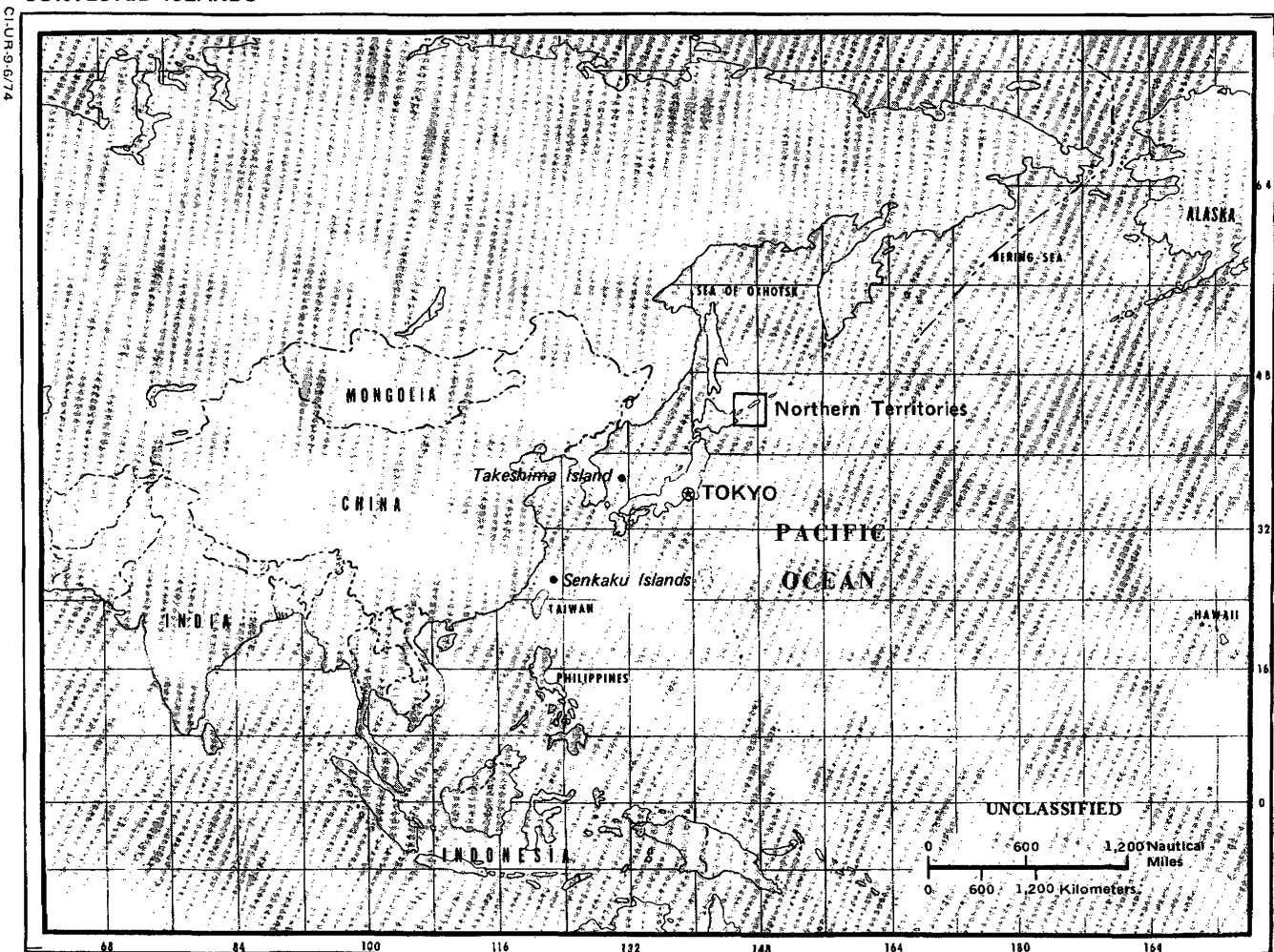
(C/NOFORN) While there is a general consensus in the Diet favoring the 12-mile limit, there also is opposition to any change to Japan's official policy that innocent passage excludes nuclear-armed ships. Moreover, the opposition wants restrictions added on overflights in international straits and on submarine operations. It also insists that the three nonnuclear principles be applied to strait transits. The weakness of the ruling Liberal Democratic Party precludes their forcing a favorable bill through the Diet. The government, however, has listed the exempt straits in the bill submitted to the Diet on 29 March hopefully to minimize debate over the nonnuclear issue. This tactic is also designed to appease the fishing lobby by reassuring them that there will be only minor exceptions to the 12-mile limit.

Territorial Disputes Resurrected

(C/NOFORN) The coming extension of Japan's maritime boundaries has already rekindled conflicting claims over peripheral islands despite Tokyo's wish to keep the issues separate. These longstanding disputes cannot be resolved easily, and their re-emergence only complicates Tokyo's problems in the Diet. Internationally, Japan has already informed both China and South Korea that their fishing operations would not be adversely affected by a Japanese 200-mile fishing zone. While this should keep fishing problems with these two neighbors manageable, it does not remedy the underlying contested territorial claims.

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CONTESTED ISLANDS



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(C/NOFORN) Japan's Northern Territories, four islands occupied by the Soviets since World War II, have long hampered improvement of Japanese-Soviet relations. Enforcement of the Soviet 200-mile fishing zone around these islands has become a major bone of contention in negotiations for continued Japanese fishing in Soviet waters. Tokyo's plans to include the islands in its 12-mile sea extension and 200-mile fishing zone will certainly pique Moscow and will complicate further negotiations for fishing rights.

(C/NOFORN) Relations with South Korea have already been irritated by reiterations in the Japanese Diet of claims to Korean-occupied Takeshima or Tokto Island in the Sea of Japan. Sovereignty over this island has been disputed for centuries, and both governments want this issue to remain dormant. However, Diet questioning on Japan's sea extension bill will lead to renewed statements of dominion by Tokyo. Considered in conjunction with the likelihood that the long-delayed Korean continental shelf agreement will not gain Diet ratification during this session, there is certain to be increased friction between Tokyo and Seoul concerning maritime boundaries.

(C/NOFORN) Thus far, Japan's seven-year-old dispute with China and Taiwan over the contested Senkaku Islands in the East China Sea has not been resurrected. In fact, Peking is supporting Japanese claims to the Northern Territories. Any present reaction concerning the Senkakus will be limited to perfunctory reassertions of sovereignty.

Outlook

(C/NOFORN) The machinations occurring in Japan over the territorial sea extension are illustrative of the problems the government will continue to encounter because of the weak majority of the ruling Liberal Democratic Party. Bipartisan compromise and consensus will increasingly become the pattern in the Diet. The LDP can no longer dictate government policies, which must now also reflect opposition interests. Tokyo wants to retain close ties

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with the US and is desirous of a continuing American presence in Asia. However, it will become more and more difficult for the government to continue supporting US interests when they are not domestically acceptable.

(C/NOFORN) The Japanese decision to extend their waters to 12 miles has been made and the bill is before the Diet. Tokyo is firmly committed to establishing a 200-mile exclusive fishing zone and will introduce legislation this Diet session. The government believes that the opposition parties will not risk the wrath of the fishing lobby by tying up the bill in the Diet for a lengthy period, especially in light of recently heightened anti-Soviet sentiment over the impasse in fishing negotiations. Thus, prospects are favorable for the bill's swift passage. However, opposition critics say that the government is attempting to weaken the nonnuclear principles in exempting the key straits. If Diet opponents continue to press the government about the inconsistencies between official policies and LOS negotiating positions, Tokyo will be caught in a severe dilemma. The government will have difficulty justifying these differences and could be forced to change its LOS positions.

(C/NOFORN) By specifying the exempted straits in its domestic legislation, the Japanese may prompt other nations to initiate unilateral measures concerning their straits, perhaps with even much more adverse consequences. Japan's action certainly erodes the Group of Five position on the nearly settled straits articles and will encourage amendments in the LOS negotiations set for May in New York. Heretofore, Malaysia has had little support in its efforts to amend these articles, but Tokyo's handling of its straits problem strengthens Malaysia's contention that the Malacca Strait be declared a special case as well. Moreover, Kuala Lumpur is not satisfied with the existing LOS negotiating text and wants more restraints on ship transits, especially those considered inherently dangerous such as nuclear-armed or nuclear-powered vessels. Such amendments would be tantamount to restoring innocent passage to the straits transit regime.

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(C/NOFORN) The damage to the Group of Five's LOS position remains to be seen; however, a decline in the Group's solidarity would make the chance of establishing a new LOS treaty further remote. Japan's action will serve to harden the stance of the coastal states, making compromise during negotiations more difficult than before. The wave of the future would seem to be unilateral or bilateral action concerning the sea. (GDS-31 Dec 83)

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