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JAPAN AND INTERNATIONAL CONVENTIONS RELATING TO NORTH PACIFIC FISHERIES

SHIGERU ODA*

INTRODUCTION

Japan has a vital interest in high seas fishing which provides her with a major source of food for her inhabitants¹ and a useful commodity for export.² At the present time, this island nation is among the world's leading producers of fishery products.³ The number of Japanese engaged in the fishing industry in Japan is considerable.⁴ The high seas fishing efforts of Japan, however, have at times conflicted with the interests of other nations. Indeed, on occasion this writer has emphasized that we face a very difficult question regarding allocation of high seas fish resources among the nations.⁵ Japan was confronted with this question, and the international fisheries agreements involving the North Pacific, of which Japan is a party, show different ways of allocating fish resources resulting from the negotiation process.

This paper will begin with a treatment of the North Pacific Fisheries Convention of 1952. After exploring this treaty and the abstention formula embodied in it, a study of the Northwest Pacific Fisheries Convention of 1956 and the formula incorporated therein will be undertaken. After studying the 1952 and 1956 Conventions, the paper will proceed to examine the recent fisheries agreement of 1965 between

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¹ The following table indicates the per capita quantities of food, protein and calories taken daily in Japan in 1964, and the portion thereof composed of fish resources:

	Food	Protein	Calories
Total:	1239.1 grams	74.4 grams	222.6 grams
Fish—shellfish:	86.3 "	17.5 "	116.4 "

Of protein taken, 28.7 grams were taken from animal protein. See OFFICE OF THE PRIME MINISTER, JAPAN STATISTICAL YEARBOOK 602 (1966). [hereinafter cited as STATISTICAL YEARBOOK].

² In 1964, total Japanese exports amounted to \$6,673.73 million, of which fish and oils of fish and marine mammals contributed \$246.84 million. See 1964 U.N. YEARBOOK OF INTERNATIONAL TRADE STATISTICS at 408.

³ In 1964, Japan produced 6,334,700 metric tons of fish products out of total world production of 51,600,000 metric tons. Japan was second, next to Peru which produced 9,130,700 metric tons. The United States produced 2,638,000 metric tons. In the year 1963-1964, Japan caught 24,080 units of whale of the 63,001 world total. The United States caught only 273 units. See 1965 U.N. STATISTICAL YEARBOOK at 155, 157.

⁴ Those who were engaged in fisheries and aquaculture in 1966 amounted to 590,000 of the 48,470,000 employed persons. See STATISTICAL YEARBOOK at 54.

⁵ See, e.g., Oda, *Recent Problems of International High Sea Fisheries: Allocation of Fishery Resources*, 1 PHILIPPINE INT'L L.J. 510 (1962).

Japan and the Republic of Korea. This last agreement contains an idea of equal sharing of high seas fish resources among the nations concerned.

I. THE NORTH PACIFIC FISHERIES CONVENTION OF 1952⁶

The negotiations which produced the 1952 Convention between Canada, Japan and the United States, took place prior to the signing of the peace treaty in an atmosphere of anxiety. The American fishing industry was apprehensive over the possible return of the Japanese as competitors in Alaskan waters where certain stocks had already been fully utilized by the Americans and Canadians. One of the most important problems considered at the conference was whether any of the participating states had acquired any right or privilege regarding fishing on the high seas.

The United States delegate proposed that exercise of the right under international law to exploit high seas fisheries should be waived with respect to those resources which had been so fully utilized in the past that future intensive fishing would be unwise. According to the United States view, however, waiver of the right to fish particular fishery resources should be lifted in the case of any state which had recently begun or was currently employed in developing or maintaining, on a substantial scale, the exploitation of fish resources; or if such fish resources were located in areas of the high seas contiguous to that state's territorial sea; or if fishing in the area was being done chiefly by a country or countries not party to this convention. Thus, the waiver requirement for purposes of conservation did not apply to all countries; rather, it was recommended that, in certain circumstances, some states should be exempt from the application of waiver of the right to fish.

Japan, on the other hand, argued for a principle of free access and free competition on the high seas, although she did not oppose the implementation of certain conservation efforts. The exemption principle proposed by the United States delegate was dropped from the final text of the convention, after it had met with strenuous objection from the Japanese delegate. However, without referring to the general principle, the United States and Canada succeeded in keeping Japan from fishing in certain specified fisheries.

The main idea embodied in the 1952 Convention is the abstention

⁶The historical background and a legal analysis of this convention can be found in S. ODA, *INTERNATIONAL CONTROL OF SEA RESOURCES* 65-71 (1963).

formula. That formula requires that one state, Japan, abstain from fishing pursuant to the agreement. This state receives nothing in return, while others, exempt from the obligation of abstention—for whatever reasons considered justifiable—are entitled to maximum utilization of the resources in the convention area. In effect, the abstention formula ensures a maximum share to one party, while giving nothing in return to others. The writer does not hesitate to count the 1952 Convention as one of the most epoch-making treaties in the history of international law, in that it broke with previous conceptions of the exploitation of marine resources, namely, that all nations concerned should compete with each other on an equal basis to acquire as many resources as possible within limitations (applying equally to all) aimed at conserving those resources.

According to the annex to the treaty, which forms an integral part of the agreement, Japan agrees to abstain from fishing certain stocks of fish, while Canada and the United States agree to continue to carry out necessary conservation measures for those stocks. The 5-year period, in which no determination or recommendation should be made as to whether the stocks would continue to qualify for abstention, expired on June 12, 1958. Certain stocks of herring and halibut have been removed from the original annex, in accordance with recommendations of the International North Pacific Fisheries Commission established pursuant to the convention.⁷ The contracting parties agreed in the protocol to the convention that longitude 175°W. and the line following the

⁷ The following stocks have been removed from the annex as stocks with regard to which Japan agreed to abstain from fishing:

herring: the herring stocks off the coast of Alaska south of the Alaskan Peninsula and east of the meridian passing through the extremity of the Alaskan Peninsula—1959 Session;

the herring stocks off the coast of the United States, south of the entrance to the Strait of Juan de Fuca—1961 Session;

the herring stocks off the west coast of the Queen Charlotte Islands—1962 Session.

halibut: the halibut stock of the eastern Bering Sea—1962 Session.

Thus, paragraph 1 of the annex concerning stocks with regard to which Japan agrees to abstain from fishing, now reads:

- (a) Halibut—The Convention area off the coast of Canada and the United States of America, exclusive of the Bering Sea, in which commercial fishing for halibut is being or can be prosecuted. Halibut referred to herein shall be those originating along the coast of North America.
- (b) Herring—The Convention area off the coast of Canada in which commercial fishing for herring of Canadian origin is being or can be prosecuted, exclusive of the waters of the high seas north of latitude 51°56'N. and west of the Queen Charlotte Islands and west of a line drawn between Langara Point on Langara Island, Queen Charlotte Islands, and Cape Muzon on Dall Island in Southeast Alaska.
- (c) Salmon—(as it stands in the original Annex)

meridian passing through the western extremity of Atka Island would determine the area in which, in accordance with the provisions of the annex, Japan would abstain from the exploitation of salmon and in which conservation measures for salmon would be enforced by Canada and the United States. The 175° line was considered provisional and subject to confirmation and readjustment. The Commission was expected to conduct suitable studies to determine a line or lines which best divided the salmon of Asiatic origin from the salmon of Canadian and United States origin. No commission study has shown beyond a reasonable doubt that any other line would more equitably divide Asian and North American salmon; the "provisional" line adopted in the 1952 Protocol still demarcates the abstention areas.

There is mutual discontent with the 1952 convention. The United States and Canada are not satisfied because they feel that Japanese fishermen are able to fish for North American salmon on the high seas. Japan wishes to eliminate the abstention formula; but she has taken no formal action to reject that formula by terminating the 1952 convention. Japan has voiced disapproval of the abstention formula in recent negotiations. In November, 1962, the government of Japan informed Canada and the United States of its desire to hold negotiations on revision of the convention. These negotiations were to take place in anticipation of the possibility that Japan or the other parties would terminate the convention. Termination was possible because the convention provided that the agreement was to be mutually binding only for a period of 10 years, that is, until June 12, 1963; thereafter any party on one-year notice could terminate the convention. The first meeting of the three countries was held in June of 1963.⁸ In the course of this conference, the Japanese delegate argued that the abstention formula was intrinsically unfair since it was actually designed for the protection of fishing industries in certain countries rather than for conservation of the fishery resources. After voicing his objections to the abstention formula, the Japanese delegate proposed a new convention which would replace the abstention formula with a provision stating that joint conservation measures should be established on a scientific and nondiscriminatory basis, and that fishery management conducted by Canada and the United States should be given due consideration in determining joint conservation measures. The United States and Canada rejected this proposal. The Canadian delegate regarded the ab-

⁸ See Oda & Owada, *Annual Review of Japanese Practice in International Law—II* (1963), 9 JAP. ANN. INT'L L. 101, 122-25 (1965).

stention formula as sound, saying it was designed to provide for rational utilization of specific fisheries which could no longer survive without it. The United States also thought that the abstention formula provided a clearly defined procedure for dealing with special situations where certain stocks of fish had been made more productive by extraordinary efforts of a particular nation. The United States delegate concluded that the present convention provided the basis for resolving current North Pacific fishery problems and would provide sound and progressive precedents for the development of international practice in this field.

Needless to say, the June 1963 negotiations were not successful. Japan opposed the abstention formula; the United States and Canada supported it. Two subsequent meetings between Canada, Japan and the United States in September-October, 1963, and in September-October, 1964 failed to produce any definitive results.⁹ The 1952 North Pacific Fisheries Convention remains in force, but its future is uncertain.

II. NORTHWEST PACIFIC FISHERIES CONVENTION OF 1956¹⁰

In 1956, Japan and the Soviet Union entered into negotiations to provide for the regulation of high seas fishing efforts in the Northwest Pacific Ocean. These negotiations took place prior to the consummation of a peace treaty between the Soviet Union and Japan, and immediately after the Soviet Union had issued a decree purporting to regulate salmon fishing in the high seas areas of the Okhotsk Sea. The issues of how the convention came into being, however, are beyond the scope of this paper.

The main features in the Northwest Pacific Fisheries Convention of 1956 are the total prohibition of salmon fishing in certain specified areas of the high seas and the limitation of annual salmon catch in other areas. The extent of the prohibited areas for salmon fishing is described in detail in the annex attached to and forming an integral part of the convention. The annex, and hence the extent of the prohibited area, is to be revised, if necessary, by the Japan-Soviet Northwest Pacific Fisheries Commission established pursuant to the convention. Revisions must be based on scientific data. The prohibited areas for

⁹ See *id.* at 125-26; see also Oda & Owada, *Annual Review of Japanese Practice in International Law—III (1964)*, 10 JAP. ANN. INT'L L. 56, 72-73 (1966).

¹⁰ The historical background and a legal analysis of this convention can be found in S. ODA, *supra* note 6, at 28-31, 72-76.

salmon fishing were gradually expanded up to 1962, so as to cover the Sea of Japan north of latitude 45°N. and the Okhotsk Sea and the western part of the Bering Sea (see map 1, appendix). So also, the total annual salmon catch in certain areas is to be determined by the Commission. In 1962, the parts of the convention areas which had not theretofore been specified as regulation areas were designated as Regulation Area B while the former regulation areas became Regulation Area A (see map 1, appendix). The following table indicates the allowable amount of salmon catch per year:

	<i>Regulation Area</i>	<i>Other Convention Areas</i>
1957	120,000 tons	free
1958	110,000	free
1959	85,000	free
1960	67,500	free
1961	65,000	free
	<i>Regulation Area A</i>	<i>Regulation Area B</i>
1962	55,000	60,000
1963	57,000	63,000
1964	55,000	55,000
1965	56,000	59,000
1966	48,000	48,000
1967	52,500	55,500

At the time the convention was adopted, the Soviet Union had not engaged in salmon fishing on the high seas on a large scale, and she did not contemplate doing so in the future. Most Russian salmon fishing takes place in the rivers of the Soviet Union. Consequently, the provisions of the convention do not significantly affect Russian salmon fishing, while Japanese salmon fishing within the convention area is subject to control by the Commission. While the domestic policies of the Soviet Union on conservation within her territorial rivers should be of vital importance to the Commission in setting forth conservation measures applicable to Japanese fishing vessels on the high seas, in fact, this convention has subordinated an overall policy of high seas fishing for migratory salmon to conservation policies unilaterally pursued by the Soviet Union within her own territory. Thus, the stocks of salmon in the Northwest Pacific are distributed in such a way as to be advantageous to the Soviet Union, which has a free hand in adopting fishing policies within her territorial limits.

The quota system incorporated into the 1956 Convention tends to

favor the coastal state over the state engaged in high sea fishing operations. Even though negotiations are held each year to determine the quotas of the regulation areas, these negotiations have failed to protect the Japanese high sea fisheries. In fact, the determination of the total annual catch of salmon has been the most difficult task facing the Commission at its annual sessions, especially in its early period. Since 1957, the Commission has spent as much as 52, 100, 122, 107, and 105 days, discussing this matter at its annual sessions. Theoretically, the reduction in quotas affects both nations, but in fact only Japan is regulated because the convention extends to international waters only. Because salmon are an anadromous fish, the Soviet Union is able to take significant quantities of salmon by operating within territorial waters. The Soviet Union is theoretically free to take as many salmon as it wishes inside its own territorial waters.

The quota system, like the abstention formula, is ostensibly designed to conserve particular stocks of fish. In fact, these principles seem to provide a scheme whereby the coastal state is able to regulate the high seas fishing activities of Japan, thereby reducing the Japanese take, while maximizing its own fishery production.¹¹

Another formula for artificial sharing is found in the 1956 Convention, with respect to king crab off the western coast of Kamchatka Peninsula. Although the convention itself does not provide for any fixed catch of king crab by the two parties, the Commission, at its session in 1959, divided between the Japanese and the Russians the fishing areas for king crab in the areas as mentioned above. Since 1958, the amount of the catch of king crab for the Soviet Union and Japan has been determined by the Commission in the ratio of 3:2. This ratio was amended by the Commission in 1965 to be 7:4. Another amendment was undertaken by the Commission in 1967 for the year 1969 and thereafter; the ratio will be 2:1.

West Kamachotka King Crab Quotas

	<i>Soviet Union</i>	<i>Japan</i>	<i>Ratio</i>
1958	480,000 boxes	320,000 boxes	3:2
1959	420,000	280,000	3:2
1960	390,000	260,000	3:2
1961	390,000	260,000	3:2

¹¹ It would be unfair not to mention that the Soviet Union caught 56,223 tons of salmon in 1966, while Japan caught 111,760 tons (Area A: 47,782 tons; Area B: 53,395 tons; coastal waters not covered by the convention: 10,583 tons).

	<i>Soviet Union</i>	<i>Japan</i>	<i>Ratio</i>
1962	378,000	252,000	3:2
1963	378,000	252,000	3:2
1964	378,000	252,000	3:2
1965	420,000	240,000	7:4
1966	420,000	240,000	7:4
1967	406,000	232,000	7:4
1968	432,000	224,000	—
1969	432,000	216,000	2:1

III. FISHERIES CONVENTION OF 1965 BETWEEN JAPAN AND THE REPUBLIC OF KOREA¹²

After many disagreements over conflicting fishery policies,¹³ Japan and the Republic of Korea entered into the Agreement on Fisheries, with the conclusion of the Normalization Treaty and related documents on June 22, 1965.

Both countries mutually recognized that each party has the right to establish a fishery zone of 12 miles within which it will have exclusive fishery jurisdiction.¹⁴ Both parties agreed not to raise any objections to the exclusion of the fishing vessels of the other from fishing operations in their respective fishery zones (article 1). This convention is the first and only international agreement under which Japan has consensually recognized the establishment of a 12-mile fishery zone.

The convention also provides for a joint regulation zone to be established off the Korean coast outside the 12-mile zone (article 2) and for a joint resources survey zone outside of the joint regulation zone (article 5) (see map 2, appendix). The extent of the joint resources survey zone and the nature of the survey to be conducted within it are to be determined after consultation between both countries on the basis of recommendations made by the Japan-Republic of Korea Joint Fisheries Commission established pursuant to the convention (article

¹² The English translation of this agreement and other related documents prepared by the Ministry of Foreign Affairs of Japan are printed in 10 JAP. ANN. INT'L L. 264-83 (1966). The author's brief comments on this agreement are found in Oda, *The Normalization of Relations between Japan and the Republic of Korea*, 61 AM. J. INT'L L. 35, 52-53 (1967).

¹³ The fisheries disputes between Japan and the Republic of Korea in the post-war period are explained in S. ODA, *supra* note 6, at 26-28.

¹⁴ The straight baseline was used by Korea at four points on the Korean Peninsula after consultation with the Japanese Government (Exchange of Notes concerning the Straight Baselines for the Fishery Zone of the Republic of Korea). In addition, the Korean fishery zone was extended, as a provisional measure, beyond the originally agreed upon 12-mile limit in the area around Cheju Island (Exchange of Notes concerning the Fishery Zone of the Republic of Korea).

5). In fact, the zone for the first joint resources survey was recommended by the Commission at its first session in 1966.

Within the joint regulation zone, which is demarcated by the lines as indicated in the attached map (see map 2, appendix), the provisional regulation measures described in the annex are to be implemented with respect to dragnet, seine, and mackerel-angling fishing by vessels of over 60 tons, until such time as conservation measures necessary to maintain maximum sustained productivity of fishery resources are implemented on the basis of sufficient surveys (article 3). Enforcement and jurisdiction in this joint regulation zone, including the halting and boarding of vessels, are exercised only by the party whose flag the vessel flies. Each party is obliged to give the exercise pertinent guidance and supervision of its own nationals and vessels in order to ensure that they faithfully observe the provisional regulation measures, and to carry out domestic measures, including appropriate penalties against violation thereof (article 4). It is noted with interest that both parties, in the agreed minutes between the two countries, agree to respect the other's domestic fishing ban areas, *i.e.*, that either government will take necessary measures to prevent fishing vessels of its country from engaging in fishing operations in the fishing ban areas of the other.

Conservation measures in the joint regulation zone as prescribed in the annex are based principally on orthodox conservation measures applicable to both parties, such as size of fishing vessels, mesh size, and power of fish-luring lights. It is beyond the scope of this paper to consider the appropriateness of these measures in light of fishery science. It should be noted with interest that, in addition to these measures, conservation measures designed to enable Japan and the Republic of Korea to catch equal amounts of fish are provided for in terms of the maximum number of fishing vessels or fishing units in operation. In fact, in the agreed minutes between the two countries, the standard amount of the total annual fish catch by dragnet, seine, and mackerel-angling by fishing vessels of not less than 60 tons is made equal at 150,000 tons with an allowance of 10 percent upwards or downwards. Thus, the Japan-Republic of Korea agreement on fisheries is notable because it incorporates orthodox fishery regulations and the idea of equal sharing of sea resources as well.

The Japan-Republic of Korea Joint Fisheries Commission, composed of two national sections, was established to effectuate the purposes of this agreement (article 6). All resolutions, recommendations,

and other decisions of the Commission are made only by agreement between the national sections. The Commission is empowered (article 7) to make recommendations to the parties with respect to: (1) scientific surveys conducted for the study of fishery resources in waters of common interest, and regulation measures taken within the joint regulation zone on the basis of such survey and study; (2) the extent of the joint resources survey zones; (3) measures for the revision of the provisional regulations made on the basis of results of deliberation on matters concerning them; (4) measures to be taken on the basis of deliberation on necessary matters concerning the safety and order of operation among the fishing vessels of the parties and methods for handling accidents on the sea between the fishing vessels of the parties; (5) the enactment of schedules of equivalent penalties for violations of the agreement; (6) measures concerning various technical questions arising from the implementation of the agreement.

Any dispute over interpretation and implementation of the agreement is to be settled first through diplomatic channels. When this fails an ad hoc arbitration board is supposed to settle the matter. This board is composed of three arbitrators, one to be appointed by each party and the third to be agreed upon by the two arbitrators. Both governments have agreed to abide by any award made by the arbitration board (article 9). This arbitration clause is unique; only the European Convention on Fisheries of 1964 has a similar provision. This is an indication of the difficult and complicated fisheries problems faced by Japan and the Republic of Korea, as well as the distrust that each party holds against the other.

This convention was brought into force on December 18, 1965. It will continue in force for a 5-year period and thereafter until one year after either party gives notice of terminating the convention (article 10).

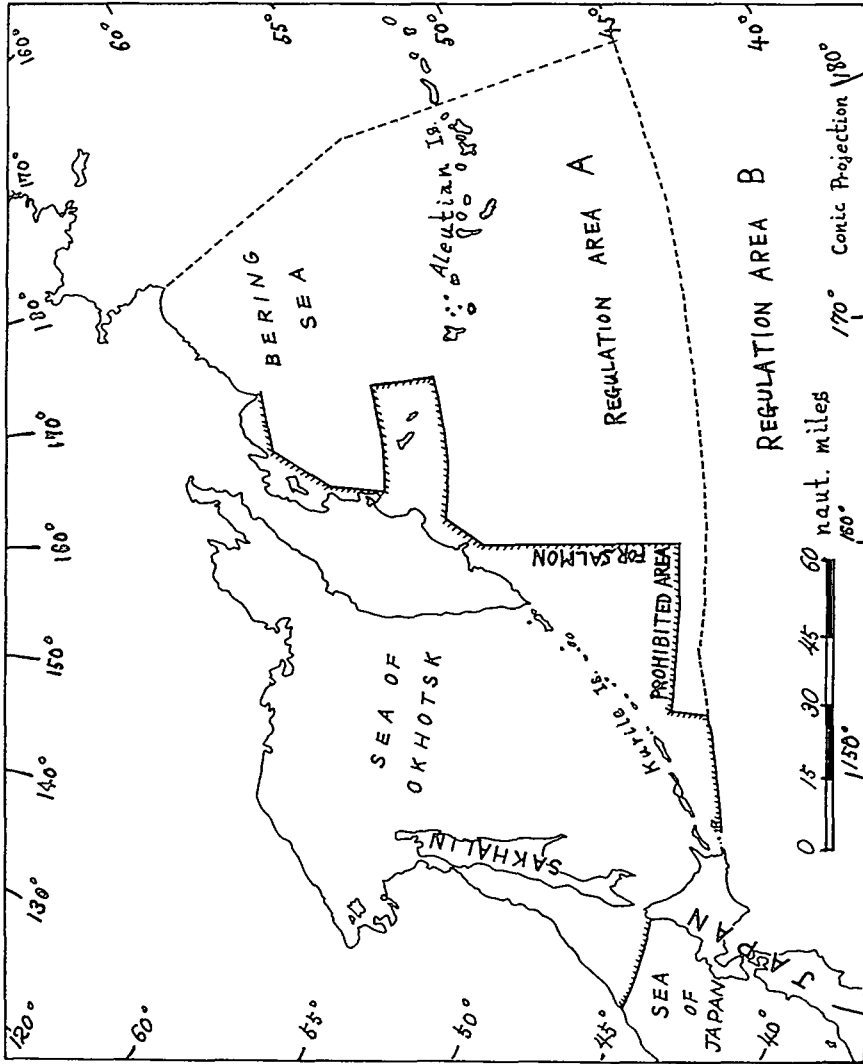
IV. CONCLUSION

After having explored three international agreements concerning North Pacific fisheries, of which Japan is a party, we discover that the traditional formula of free competition of fishing on the high seas has been replaced by different formulas for allocating these fishery resources. Japan, one of the most advanced fishing nations, could have exploited a great many high seas fisheries if the agreements had been drafted so as to permit her to compete freely on the high seas with

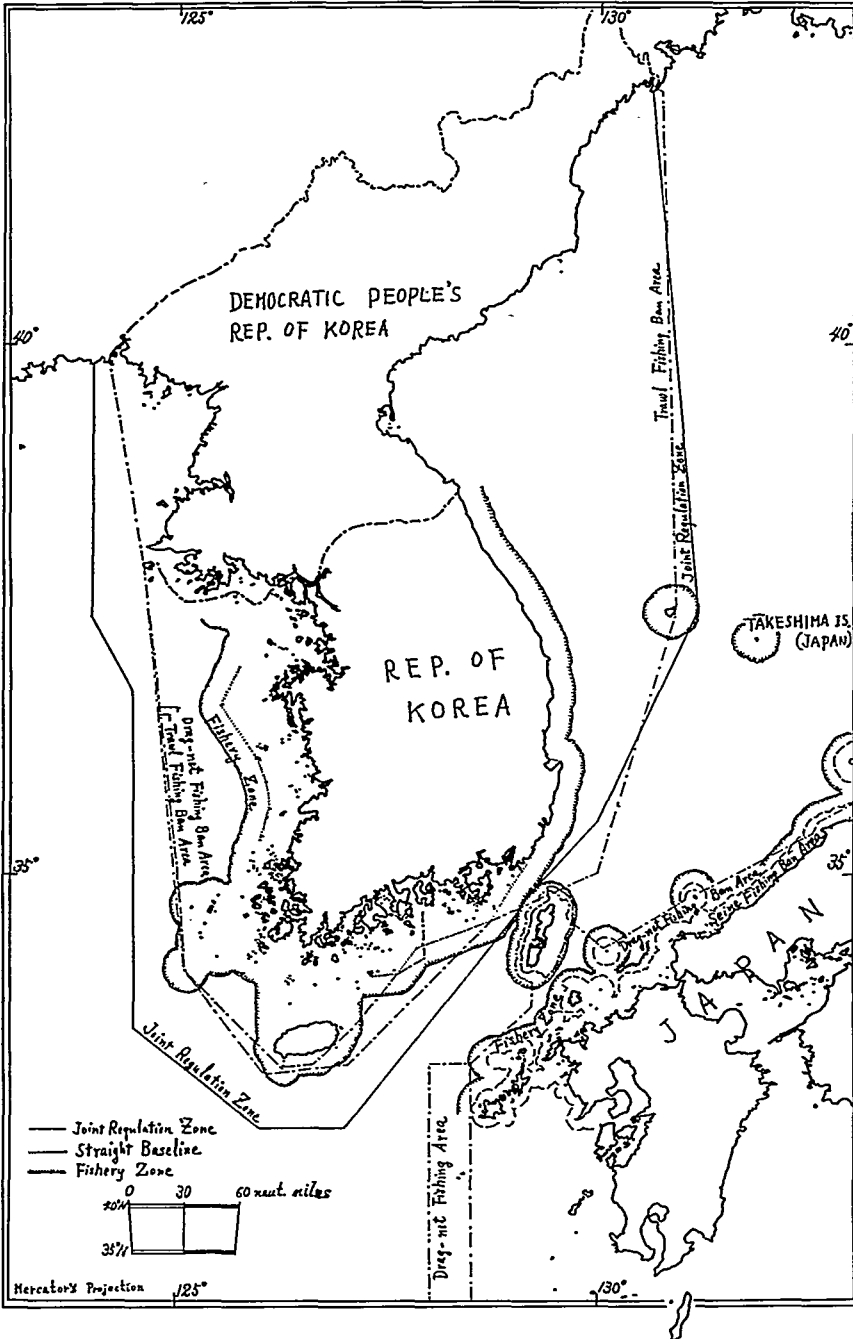
other nations (even with a restriction fixed for conservation purposes). It is not the writer's intention to blame the conventions themselves or to suggest that Canada, the United States or the Soviet Union were not actually concerned with the conservation of fish stocks. The writer only wishes to point out that these conventions are simply the results of detailed negotiations with respect to the allocation of fish resources under different situations, and that it is too premature to generalize any principle supporting the artificial allocation of fish resources for the benefit of some historically or geographically privileged States, or to discard the principle of free competition endorsed by modern history in many fields as one of the basic values.¹⁵ Few will doubt that, until the time comes, when, as in the municipal society, some super-authority can guarantee equitable sharing of different resources among the nations, the states will continue to argue for adoption of principles most favorable to their own interests in the field of high seas fishing.

¹⁵ Cf. S. Oda, *Distribution of Fish Resources of the High Seas—Free Competition or Artificial Quota?*, June 27, 1967 (Paper presented at the Law of the Sea Institute, Kingston, Rhode Island).

APPENDIX



Map 1



Map 2

