State Practice of Asian Countries in International Law

Japan

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LAW OF THE SEA – AGREEMENT TO PREVENT UNREGULATED HIGH SEAS FISHERIES IN THE CENTRAL ARCTIC OCEAN

The Japanese Diet approved the Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean on May 17, 2019, and it was promulgated on July 26, 2019. The Agreement aims to prevent adverse impacts on ecosystems due to unregulated fishing in the high seas portion of the central Arctic Ocean. The need for such regulations has been recognized due to the increasing impact of global warming on the Arctic Ocean, which has reduced the sea ice cover and increased the potential of the area as a fishing ground.¹

In July 2015, the five Arctic coastal countries adopted the Declaration on the Prevention of Unregulated High Seas Fishing in the Central Arctic Ocean, and in December 2015, Japan, China, South Korea, Iceland, and the European Union joined these five countries to discuss and negotiate the Agreement to prevent unregulated high seas fisheries in the Central Arctic Ocean. The agreement was adopted and signed in Ilulissat, Greenland on October 3, 2018. The Agreement provides its objective as prevention of “unregulated fishing in the high seas portion of the central Arctic Ocean through the application of precautionary conservation and management measures as part of a long-term strategy to safeguard healthy marine ecosystems and to ensure the conservation and sustainable use of fish stocks (Art. 2).” Parties shall permit vessels entitled to fly their flags to engage in commercial and experimental fishing only in accordance with conservation and management measures (Art. 3). The Parties shall facilitate cooperation in scientific activities and shall prepare a joint plan for scientific research and monitoring within two years of its entry into force (Art. 4). Parties shall consider, *inter alia*, whether to initiate

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1 The Agreement states in the preamble as follows; “RECOGNIZING that until recently ice has generally covered the high seas portion of the central Arctic Ocean on a year-round basis, which has made fishing in those waters impossible, but that ice coverage in that area has diminished in recent years.”

negotiations to establish regional fisheries management organizations for fisheries management (Art. 5).

For Japan, participation in this agreement has the advantage of conserving and securing Japan's fishing opportunities in the agreed seas. Since the Agreement will enter into force upon conclusion by all 10 countries and organizations participating in the negotiations, Japan's early approval and deposit of the Agreement was a contribution towards the early entry into force of the Agreement.

INTERNATIONAL ECONOMIC LAW – U.S.-JAPAN TRADE AGREEMENT – U.S.-JAPAN DIGITAL TRADE AGREEMENT

The U.S.-Japan Trade Agreement and the U.S.-Japan Digital Trade Agreement were approved by the Japanese Diet on December 4, 2019, with an effective date of January 1, 2020. The U.S.-Japan Trade Agreement eliminates or reduces tariffs on certain agricultural and industrial products in order to expand bilateral trade between the two countries, which account for about 30 percent of the world's GDP, in a strong, stable, and mutually beneficial manner. Specifically, the U.S. side will eliminate or reduce tariffs mainly on industrial products, while the Japanese side will eliminate or reduce tariffs on pork, beef, and other agricultural products and processed foods within the scope of the Trans-Pacific Partnership (TPP).

The U.S.-Japan Digital Trade Agreement establishes a high level of rules in the digital trade arena and demonstrates that Japan and the U.S. will continue to play a leading role in creating global rules for digital trade. The agreement will facilitate smooth, reliable, and free digital trade between Japan and the United States. Specifically, the agreement includes the following provisions, which are like those in the TPP, as well as new elements that strengthen the provisions of the TPP, such as the prohibition of requests for disclosure of algorithms and codes, and provisions on civil liability for service providers such as social networking services. There will be no tariffs between the parties on the transmission of digital products (e.g., software, music, video, e-books). Neither Party shall accord less favorable treatment to a digital product created, produced, published, contracted for, commissioned, or first made available on commercial terms in the territory of the other Party, or to a digital product of which the author, performer, producer, developer, or owner is a person of the other Party than it accords to other like digital products (Art. 8.1). No less favorable treatment shall be accorded to digital products of the other Party than is

accorded to other digital products of the same kind. Localization of data shall not be required as a condition for doing business in the home country. There will be a prohibition on requests for the transfer of source code and algorithms.

For interactive computer services such as social networking services, measures that treat the provider as the originator of the information must not be adopted or maintained in determining liability for damages related to the distribution of information.

**ENVIRONMENTAL LAW – AMENDMENTS TO ACT ON
LIABILITY FOR OIL POLLUTION DAMAGE (ACT NO. 95
OF DECEMBER 27, 1975) – BUNKER CONVENTION – NAIROBI
CONVENTION**

On May 31, 2019, Japan amended the Act on Liability for Oil Pollution Damage to implement the 2001 International Convention on Civil Liability for Bunker Oil Pollution Damage (Bunker Convention) and the 2007 Nairobi International Convention on the Removal of Wrecks (Nairobi Convention).

The purpose of this Act is to protect victims and contribute to the sound development of marine transportation by clarifying the responsibility of the shipowner, etc. in case of ship oil pollution damage, and by establishing a system to guarantee the compensation for ship oil pollution damage. The Bunker Convention is designed to ensure the prompt payment of “appropriate and effective” compensation for pollution damage caused by spills and discharges of fuel oil from ships, and the Nairobi Convention is designed to ensure the payment of costs for the prompt removal of wrecks. By joining these conventions, Japan, one of the world’s leading shipping nations, will be able to claim payment directly from victims to insurance companies.

Japan has been dealing with oil pollution caused by tankers, but with this amendment to the law, Japan is now able to deal with oil pollution caused by fuel oil from ships in general.

**ENVIRONMENTAL LAW – WITHDRAWAL FROM IWC –
RESUMPTION OF COMMERCIAL WHALING**

Japan withdrew from the International Whaling Commission (IWC) on June 30, 2019. As a result, Japan is no longer subject to IWC research catch limits, and commercial whaling of large whales was resumed on July 1 of the same year,

limited to Japan's territorial sea and exclusive economic zone (EEZ). A quota of 227 whales was set for the six months from July to the end of December 2019, including 52 minke whales, 150 Bryde's whales, and 25 sei whales.

Japan's research whaling had long been criticized for being conducted for commercial purposes. In 2014, the International Court of Justice (ICJ) ruled that the then ongoing Second Phase of the Whale Research Program in the Antarctic (JARPAII) could not be considered research for scientific purposes as permitted by the International Convention for the Regulation of Whaling (Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)).

Taking account of this Judgment, Japan decided to implement the newly formulated research plan, the New Scientific Whale Research Program in the Antarctic Ocean (NEWREP-A). However, such research whaling ended with Japan's withdrawal from the IWC.

HUMAN RIGHTS – INDIGENOUS PEOPLE – AINU

Enactment of Act on the Promotion of Measures to Realize a Society in which the Pride of the Ainu People is Respected

On April 26, 2019, Japan enacted a new Ainu law (Act on the Promotion of Measures to Realize a Society in which the Pride of the Ainu People is Respected, Law No. 16). The law stipulates the following as its purpose:

In light of the situation of the Ainu tradition and culture, which is a source of pride for the indigenous Ainu people in the northern part of the Japanese archipelago, particularly Hokkaido, and the international situation concerning indigenous peoples in recent years, this Act establishes the basic principles, the responsibilities of the State and others, the formulation of basic policies by the Government, and the management of facilities that constitute a symbolic space for the coexistence of the Ainu peoples, with regard to the promotion of Ainu policies. In view of the situation of the Ainu people and the recent international situation concerning indigenous peoples, the Government of Japan shall promote Ainu policies by providing for the basic principles, the responsibilities of the State, etc., the formulation of basic policies by the Government, measures for the management of facilities that constitute a symbolic space for the coexistence of the Ainu people, the preparation of regional plans for the promotion of Ainu policies by municipalities and their approval by

the Prime Minister, special measures for projects based on such approved regional plans for the promotion of Ainu policies, and the establishment of the Headquarters for the Promotion of Ainu Policies. The purpose is to realize a society in which the Ainu people can live with pride and in which such pride is respected, and to contribute to the realization of a society in which all citizens can live together in mutual respect for each other's personality and individuality (Article 1).

The Act on the Promotion of Measures to Realize a Society in which the Pride of the Ainu People is Respected recognizes the Ainu people as an indigenous people of the northern part of the Japanese archipelago, particularly Hokkaido, and stipulates that the national government and local governments are responsible for promoting measures to realize a society in which the pride of the Ainu people is respected. It also stipulates that the government and local governments are responsible for promoting measures to realize a society that respects the pride of the Ainu people. In addition, when the government formulates a basic policy for the comprehensive and effective promotion of Ainu policies (Article 7.1), and municipalities prepare a plan for the promotion of Ainu policies within the area of the relevant municipality (Regional Plan for the Promotion of Ainu Policies) based on this basic policy and have it approved by the Prime Minister, the government shall be responsible for the costs of implementing projects based on this plan. If the plan is approved by the Prime Minister, the municipality is entitled to receive a grant for the expenses required to implement the project based on the plan (Article 15).

In addition to stipulating respect for the right to collect forest products to use national forest lands for Ainu rituals and other Ainu cultural promotion (Article 16.1), and consideration for salmon hunting (Article 17), it also stipulates the commissioning of the management of symbolic spaces for ethnic coexistence for the revival and development of Ainu culture.

In the Meiji era (1868–1912), the government changed the name of the island, which had been called “Ezochi” by the Japanese, to Hokkaido, and proceeded with assimilation policies such as banning traditional customs and practices, forcing the use of the Japanese language, and settling Hokkaido through large-scale immigration of Japanese people. In the past, the Ainu people tried to identify the owners of the land where they hunted, fished, and gathered, but at the time, very few Ainu understood the written language and there was no modern concept of individual ownership of land. As a result, few Ainu people acquired property rights. In addition, changes in the natural environment, such as rivers and forests, which were the basis of Ainu life, and restrictions on

trapping of birds and animals and river fishing, had a decisive impact on the lives and culture of the Ainu people.

In 1899, the government enacted the “Hokkaido Former Aborigines Protection Act,” and implemented measures such as providing free land (agricultural land), livelihood assistance, tuition benefits, and the establishment of elementary schools. In some cases, land unsuitable for agriculture or undeveloped land was given to the Ainu, and little agricultural guidance was given, so the poverty of the Ainu people was not sufficiently improved.

In terms of education, the elementary schools established under this law (known as “native schools”) gave priority to the Ainu children’s learning of Japanese, but science and geography were not taught, and there were times when the schooling period was limited to four years (six years for the Japanese).

The Act on the Promotion of Ainu Culture, and Dissemination and Enlightenment of Knowledge about Ainu Tradition, etc. (Act No. 52 of May 14, 1997) enacted in 1997 replaced the “Hokkaido Former Aborigines Protection Act” and focused on the promotion of Ainu culture.

There has been a growing international movement to eliminate discrimination against indigenous peoples and minorities and to protect their uniqueness and culture. In September 2007, the United Nations General Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples. In response, in June 2008, the Diet unanimously adopted a resolution calling for the Ainu people to be recognized as indigenous people. In 2009, the Ainu Policy Promotion Council was established to study the development of new Ainu policies. This resulted in the passage of the “Act on the Promotion of Measures to Realize a Society in which the Pride of the Ainu People is Respected (the new Ainu law)”.

However, even though the United Nations Committee on the Elimination of Racial Discrimination recommended in August 2018 that the Japanese government should protect Ainu rights related to land and resources, the new Ainu law did not include these rights.