

PERMANENT MISSION OF JAPAN  
TO THE UNITED NATIONS  
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The Permanent Mission of Japan to the United Nations presents its compliments to the Secretariat of the United Nations and the Commission on the Limits of the Continental Shelf and, with reference to its Notes Verbale SC/09/108 dated 25 March 2009, PM/09/735 dated 26 August 2009, SC/11/233 dated 9 August 2011 and SC/11/239 dated 15 August 2011 addressed to the Secretariat of the United Nations and the Commission on the Limits of the Continental Shelf, upon the commencement of the 29<sup>th</sup> session of the Commission, which continues the consideration of the draft recommendations to Japan, has the honour to reiterate Japan's position, as follows.

In the context of Japan's submission, the People's Republic of China and the Republic of Korea expressed their opinions on the interpretation of article 121 of the United Nations Convention on the Law of the Sea. However, neither of these two States claims sovereignty over Oki-no-Tori-Shima Island, located on the other side of the Japanese archipelago from them, or possesses any maritime area nearby which might overlap with the areas generated from the coastline of this island. They thus have no direct interest in the legal status of this island. That is to say, the matter they are raising cannot be considered as a "land or maritime dispute" between Japan and these States under paragraph 5(a) of Annex I of the Rules of Procedure of the Commission. Rather, it should be considered as a reflection of their views as to the interpretation of a specific provision of the Convention.

This is obvious from the fact that the People's Republic of China and the Republic of Korea themselves have chosen not to quote paragraph 5(a) of Annex I in their Notes Verbale. None of their Notes Verbale addressed to the Secretary-General of the United Nations, CML/2/2009 dated 6 February 2009, CML/31/2009 dated 24 August 2009 and CML/59/2011 dated 3 August 2011 from the Permanent Mission of the Peoples Republic of China to the United Nations, and MUN/046/09 dated 27 February 2009 and MUN/230/11 dated 11 August 2011 from the Permanent Mission of the Republic of Korea to the United Nations, referred to a dispute under that paragraph. While they avoid making a claim based on paragraph 5(a) of Annex I, those States are trying to give the Commission the incorrect impression that there exists some sort of dispute between Japan and those States and thus the Commission must refrain from making its Recommendations to Japan. As the Commission is already well aware, however, there is no legal basis for such argument, and accepting it would be a

deviation from the Commission's Rules of Procedure.

The neighbouring States which could rightfully be concerned about Japan's submission, as their continental shelves might potentially overlap with that of Japan extended from Oki-no-Tori-Shima Island, are the Republic of Palau and the United States of America. Japan would like to underscore that these relevant neighboring States have explicitly indicated through their Notes (Note No. 029/PMUNS/09 dated 15 June 2009 from Palau and the Note dated 22 December 2008 from the US) to the Secretariat of the United Nations that they have no objection to the Commission's considering Japan's submission and making its recommendations.

The Rules of Procedure of the Commission provide that the Commission shall not consider a submission "in cases where a land or maritime dispute exists". It is thus understood that, in cases where such dispute does not exist, the Commission *shall* consider a State's submission and make recommendations on it.

The mandate of the Commission is based solely on article 76 and Annex II to the Convention. Therefore, as explicitly stated in every recommendation issued by the Commission to date, "the Recommendations of the Commission only deal with issues related to article 76 and Annex II to the Convention and are without prejudice to matters relating to delimitation between States or application of other parts of the Convention or any other treaties". That is, the Commission is not legally responsible with the issue regarding the divergence of views between States as to the interpretation of article 121 of the Convention. Such recognition by the Commission has been confirmed in the Statement by the Chairperson on the Limits of the Continental Shelf on the progress of work in the Commission (CLCS/64) paragraphs 23 and 25, as follows: "The Commission reiterated that it had no role on matters relating to the legal interpretation of article 121 of the Convention," and "the consideration of submission by the Commission concerned issues related only to article 76 and annex II to the Convention and was without prejudice to the interpretation or application of other parts of the Convention."

In light of the above understanding, Japan considers the argument by the People's Republic of China and the Republic of Korea insisting that the Commission should not make recommendations on the regions relating to Oki-no-Tori Shima Island has no legal basis in any of the relevant legal documents: the Convention, the Annexes to it, or the Rules of Procedure of the Commission. In addition, one must be fully cognizant that, if such argument were to be accepted, the logical consequence would be that any State, even those without direct interest, would be able to arbitrarily disrupt the Commission's consideration of a submission made by another State. Such an outcome might ultimately result in the invalidation of the regime of the outer limit of continental shelf beyond 200 nautical miles, as established by the Convention.

Japan requests that the Commission act appropriately on the regions relating to Oki-no-Tori Shima Island under the relevant provisions of the Convention and Annex as well as the Rules of Procedure of the Commission, and promptly adopt the Recommendations on Japan's submission, in accordance with the mandate of the Commission and keeping with the principles of impartiality and independence.

The Permanent Mission of Japan to the United Nations requests the Secretariat and the Commission to restrict distribution of the present Note to Members of the Commission.

The Permanent Mission of Japan to the United Nations avails itself of this opportunity to renew to the Secretariat of the United Nations and the Commission on the Limits of the Continental Shelf the assurances of its highest consideration.

9 April 201

