

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 the Note Verbale CML/59/2011 dated 3 August 2011 from the Permanent Mission of the People's Republic of China to the United Nations addressed to the Secretary-General of the United Nations, has the honour to express Japan's position, as follows.

Paragraph 5 (a) of Annex I to the Rules of Procedure of the Commission on the Limits of the Continental Shelf provides that the Commission shall not consider a submission "in cases where a land or maritime dispute exists". In the aforementioned matter, it is a fact that no State other than Japan claims sovereignty over the Oki-no-Tori Shima Island or possesses any maritime area nearby which might overlap with the areas generated from the coastline of the island. The island is geographically located far from China, on the other side of the Japanese archipelago. As regards Oki-no-Tori Shima Island, China is not a "State with opposite or adjacent coasts" and therefore cannot have a "dispute" over the island with Japan. Moreover, it should be noted that Palau and the United States, whose continental shelves could potentially overlap with that of Japan from Oki-no-Tori Shima Island, explicitly indicated in their Notes to the Secretariat of the United Nations, Palau's Note No. 029/PMUNS/09, dated 15 June 2009, and the Note of the United States dated 22 December 2008, that they would not object to the Commission's considering Japan's submission. In that light, there exists no land or maritime dispute with regard to Oki-no-Tori Shima Island, and Japan thus considers that the Commission will be fulfilling its mandate by considering and making recommendations concerning Japan's submission.

The position of China expressed in the aforementioned note is based on the country's particular interpretation of article 121 of the United Nations Convention on the Law of the Sea. However, as stated in paragraph 18 of the Statement by the Chairman of the Commission of 1 October 2009 (CLCS/64), the Commission has "no role on matters relating to the legal interpretation of article 121 of the Convention". The Commission is well aware that its mandate is based on article 76 of and Annex II to the Convention, which include no article or provision governing matters pertaining to the interpretation of articles of the Convention. It is for that reason that recommendations issued by the Commission always include a disclaimer which reads, "the recommendations 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". If the Commission should decide, on the other hand, not to make recommendations based on the position

of China, that decision in itself would be regarded as a matter of interpretation of the Convention.

In light of the above understanding, the only possible conclusion is that the position of China expressed in the aforementioned Note has no legal basis in either of the relevant legal documents, the Convention and the Rules of Procedure of the Commission. Moreover, if the Commission were to take into account the position of China, the logical consequence would be that any State could arbitrarily disrupt the Commission's consideration of a submission made by another State, which in turn might result in the invalidation of the entire regime of the outer limits of the continental shelf beyond 200 nautical miles, as established by the Convention.

As stated in paragraph 26 of the Statement by the Chairman of the Commission (CLCS/64), while the Commission instructed the Subcommission to proceed with the consideration of the full submission of Japan, the Commission also decided, regarding the draft recommendations related to Oki-no-Tori Shima Island, that "it shall not take action..., *until the Commission decides to do so*" (emphasis added). For the reasons stated above, Japan strongly hopes that the Commission will make any such decision on its own and proceed to make recommendations on all areas included in Japan's submission, in fulfilling its mandate as provided in the Convention.

The Permanent Mission of Japan 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 August 2011

