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Enacting the Basic Ocean Law—the Process and the Background

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1 Enacting the Basic Ocean Law

In April 2007, Japan enacted its first ever Basic Ocean Law, which then came into effect in July. Although this was a members’ bill, it received backing in the Diet not only from the governing Liberal Democratic Party (LDP) and New Komeito, but also from the main opposition parties—the Democratic Party of Japan (DPJ), the Japanese Communist Party, and the People’s New Party—and it was passed by overwhelming majorities in both houses.

What is the Basic Ocean Law? Its objectives are outlined in the first article of the law, as follows: “The ocean is essential in sustaining human life. In recognition of the importance of seeking accord on the development and use of the oceans and on conservation of the ocean environment through international collaboration based on the UN Convention on the Law of the Sea and international initiatives such as the Rio Earth Summit, the Basic Ocean Law prescribes fundamental principles, specifies the responsibilities of the national government, local authorities, businesses, and the public, formulates a Basic Plan for the Ocean, and identifies issues to serve as a basis for other policy measures concerning the ocean. It also provides for the creation of a Headquarters for Comprehensive Ocean Policy within the cabinet to promote ocean policy measures in a comprehensive and systematic manner. In this way, Japan aims to attempt to bring about the healthy development of economic society, to attempt to improve the stability of people’s lives, and to make a contribution to coexistence between mankind and the oceans.”

As is common knowledge, the UN Convention on the Law of the Sea (UNCLOS) introduced a maritime system encompassing territorial waters of 12 nautical miles, exclusive economic zones of 200 nautical miles, and the new concept of the continental shelf.

Based on the Basic Ocean Law, the cabinet’s Headquarters for Ocean Policy, headed by the prime minister, has already held its first meeting. An expanded body, consisting of the Headquarters for Ocean Policy supplemented by a group of councilors made up of private citizens, is to hold its first meeting this week, on 18 October. The speaker has been appointed a member of this group. The law creates the new position of Ocean Policy Minister, and it has been announced that Minister of Land, Infrastructure and Transportation Tetsuzo Fuyushiba will assume this post.

For Japan, taking on the problems of the oceans was a key issue that brooked no delay. However, the reason why the fully fledged Basic Ocean Law, consisting of 38 articles, was enacted as a members’ bill is that, in simple terms, it was not possible for the government to enact it (that is, it could not come to fruition in the form of a government-proposed law approved by the cabinet), since the management of maritime issues, which must be addressed in a comprehensive and systematic fashion, and the management of maritime policy is divided up between eight different government ministries and agencies. Moreover, the activities of private organizations exerted a significant influence on the process by which this members’ bill was drafted. As will be described in this presentation, this process of enacting the Basic Ocean Law is of vital significance to the debate over maritime issues and deliberation over maritime policy in Japan.

2 Opinions Offered by the Public and Inauguration of the Basic Ocean Law Study Group

The process of drafting this legislation was directly influenced by the Basic Ocean Law Study Group, a combined government, public-sector, and private-sector body founded in April 2006.

The Basic Ocean Law Study Group was a non-partisan study group that included Diet members from the LDP, New Komeito, and the DPJ, and which boasted former member of the House of Councilors Keizo Takemi as caretaker representative and Shigeru Ishiba, the current minister of defense, as chairman. The group also included academic experts involved with maritime issues, representing the private sector, and government officials. Discussion commenced in April, and in December general principles for maritime policy and the outline of a basic ocean law were adopted and published.

The requisite background to the enactment of the Basic Ocean Law in terms of these general principles for maritime policy may be summarized as follows.

“While recent years have seen growing antagonism between states over the enclosing of areas of the ocean, progressive over-fishing of resources, and intensifying environmental problems, the oceans play a hugely important role in guaranteeing the water, food, natural resources, and energy required by a growing global population as well as its importance in transportation. It was against this backdrop that UNCLOS was concluded. While the convention adhered to freedom of navigation, it granted sovereign rights and jurisdiction to coastal nations, at the same time imposing on them obligations with regard to environmental protection. The Rio Earth Summit adopted Agenda 21, an action program that touted sustainable development and required that coastal nations engage in integrated management of oceans beset by mutually inter-related problems.

Japan has thus far derived various benefits from the ocean, and protected by the ocean, it has succeeded in developing as a state.

In terms of the exclusive economic zones established by UNCLOS, Japan boasts the sixth most extensive waters in the world. However, development of policy and infrastructure for the integrated management of the ocean has not advanced—ocean issues are being dealt with by dividing them up between different departments according to function, just as has always been the case, and ocean issues are not being resolved. This is causing major delays in the demarcation of territorial waters, the development and use of natural resources, and protection of the environment. There has likewise been virtually no progress on the legal structure for the preservation of maritime security and order. It would be no exaggeration to say that Japan is the most laggardly maritime state of all, in terms of international action based on international cooperation.

To cope with these conditions, Japan must develop a new system for dealing with ocean issues and develop a comprehensive and integrated maritime policy. To this end, the most pressing issue has been the enactment of a Basic Ocean Law.”

In fact, in 2005 the Nippon Foundation (chaired by Yohei Sasakawa) and the Ocean Policy Research Foundation (chaired by Masahiro Akiyama) published “Japan and the Oceans—Recommendations for Maritime Policy in the Twenty-First Century,” based on the work of the Basic Ocean Law Study Group. These recommendations emphasized the need for a basic ocean law, and in substance it essentially constituted a prototype of the current Basic Ocean Law. These recommendations immediately caught on within the government and the LDP, and motivated the LDP to enact the Basic Ocean Law. Hidenao Nakagawa, then-chairman of the LDP’s Policy Research Council, handed these recommendations down to Keizo Takemi, member of the House of Councilors; a Select Committee on Maritime Policy, chaired by Shigeru Ishiba, was set up within the LDP; and externally the Basic Ocean Law Study Group was established. The study group was a non-partisan body, and New Komeito and the DPJ also engaged constructively in the enactment of the Basic Ocean Law.

3 Oil and Gas Resource Development on the Continental Shelf in the East China Sea

The background to why the ruling LDP and New Komeito, as well as the DPJ, the major opposition party, were all so responsive to the recommendations of a private organization is as follows.

The landing by Chinese activists on the Senkaku Islands in March 2003 led the LDP to form the Select Committee on Maritime Rights, and the protection of Japan's maritime rights in the form of its territories, territorial waters, and exclusive economic zones became a major political issue. Since 2004, China's active expansion of its oil and gas development efforts on the continental shelf in the East China Sea in the vicinity of the intermediate line between China and Japan has been a problem. China has also frequently attempted to conduct oceanographic surveys unannounced in Japan's extensive exclusive economic zones in the western Pacific, and has asserted that the Okinotorishima Islands do not constitute part of Japan's coastline and thus are not a point of reference for a Japanese exclusive economic zone. At the same time there have also been many incidences in the area around Takeshima island and in the area around the Northern Territories in which Japan's sovereignty and jurisdiction have been ignored. Although Japan is a nation that has never really expressed strong concerns over maritime rights, this string of incidents has caused Japan to turn its attention to these rights and other maritime issues. With the formation of its Select Committee on Maritime Rights, the LDP has responded strongly to these incidents, in addition to which the DPJ, the major opposition party, has also swung into action over the protection of Japan's maritime rights. For its part, the DPJ submitted a member's bill to the Diet for the development of natural resources on the seabed and another to promote resource exploration and scientific surveys in exclusive economic zones.

At the instigation of the LDP, New Komeito has undertaken to submit a "secure waters" bill to the Diet aimed at countering China's oil and gas development, and has at the same time asserted the importance of developing domestic laws to accommodate UNCLOS. In this way, New Komeito demonstrated a positive response towards the proposed enactment of the Basic Ocean Law.

The national press has begun to focus on maritime issues as a topic of profound interest. With newspaper organizations having handled ocean issues in a disjointed fashion and proven incapable of reporting on them accurately, some national newspapers have established special multi-disciplinary teams and developed specific reporting programs for ocean strategy planning. When the Basic Ocean Law Study Group published its general principles for maritime policy and its outline of a basic ocean law, there was extensive press coverage regarding the possibility of enacting such a law, and the press played a major role in shaping public opinion.

In addition, the Ministry of Land, Infrastructure and Transport—newly formed in the major administrative reforms of 2001 through the amalgamation of the old Ministry of Construction, Ministry of Transport, National Land Agency, and Hokkaido Development Agency—enjoys wide-ranging responsibility for maritime administration and took great interest in the Basic Ocean Law, exhibiting a desire to see it passed and the Headquarters for Comprehensive Ocean Policy established. As a result, the minister of land, infrastructure and transportation has been appointed to the additional post of ocean policy minister.

4 The UN Convention on the Law of the Sea and a Paradigm Shift in Maritime Affairs

Given this background, maritime issues—in particular the protection of Japan’s maritime rights—have become a major political issue. Why, however, has Japan opted for a comprehensive response in the form of the Basic Ocean Law, instead of responding to problems such as ocean resource development, disputes with China, and oceanographic surveys individually?

In fact, these maritime issues that had begun to draw the attention of the nation were essentially issues that were closely related to the legal framework of UNCLOS. Oil and gas development on the continental shelf in the East China Sea is bound up with the issues of the demarcation of the exclusive economic zones and the continental shelf that were introduced by UNCLOS. Likewise, the issue of the Okinotorishima Islands relates in reality to the way in which UNCLOS is interpreted. Regarding oceanographic surveys (as in the case of the issue over the area around Takeshima island), under the convention surveys are handled differently according to their nature—that is, depending on whether they are scientific surveys, natural resource development surveys, or military surveys. In line with UNCLOS, the Rio Summit’s Agenda 21, which is heavily stressed within the international community, strongly advocates the sustainable development and use of the oceans. The preservation of the ocean environment and the regulation of the development and use of the oceans are major topics of Agenda 21, and Agenda 21 also relates to the UN Convention on Biological Diversity. The way forward for the fishing industry is also closely related to this latter convention. In recent years these types of maritime environment issues, such as the bleaching and decrease of coral, the problem of rubbish on seashores, the massive proliferation of echizen jellyfish, and meteorological fluctuations have grabbed Japan’s attention.

There has been various coverage relating to the preservation of maritime security and order. Chinese submarine incursions into Japan’s territorial waters; attacks by pirates and the rise of terrorism at sea that threatens the security of the sea lanes, which are fundamental to Japan’s existence as a state; military surveys by other nations in Japan’s exclusive economic zones; and the occurrence of large-scale natural disasters in the oceans have stoked major fears among the Japanese people.

The various issues relating to the oceans, as described above, are in reality closely bound up with one another. Accordingly, the necessity for comprehensive and integrated management of the oceans is clearly stated in both the preamble to UNCLOS and in Agenda 21. This is precisely why the development of a comprehensive ocean policy is required.

For long periods of history, it was possible to use the oceans freely—in other words, there was “freedom of the seas.” Maritime states made free use of the oceans for fishing and other activities. However, after the end of World War Two, there was a shift to “management of the seas,” with the expansion of territorial waters, the appropriation of natural resources on the continental shelf, the establishment of exclusive fishing grounds, and the introduction of exclusive economic zones. At present, 40 percent of the world’s seas are under the jurisdiction of one coastal nation or another. For a long time Japan’s strategy was to continue to insist on broad international waters and limited territorial waters; unfortunately, however, it proved unable to adapt to the global trend and the paradigm shift in maritime affairs. UNCLOS came into effect in 1994 and was ratified by Japan two years later. However, in the intervening period Japan has thus far failed to tackle maritime issues adequately.

These conditions are probably a major reason for the sudden turnaround and enactment of a basic ocean law to deal with the various maritime issues of which the nation is now keenly aware, as recommended by a public organization.

5 Future Development of Maritime Policy

The Basic Ocean Law requires the government to formulate a Basic Plan for the Ocean. The immediate issue is that while the Headquarters for Comprehensive Ocean Policy will formulate this basic plan, the fundamental principles for dealing with these maritime issues are determined by the basic law. There are six fundamental principles as follows.

Coordination of the development and use of the ocean with preservation of the ocean environment

Securing safety on the ocean

Improvement of scientific knowledge regarding the ocean

Improvement of the health of maritime industries

Management of the ocean in a comprehensive fashion

International cooperation with regard to the ocean

In terms of substance, the basic law also enumerates 12 articles that spell out basic measures. The law thus elucidates specific measures based on the six principles, thereby determining the Basic Plan for the Ocean. It is understood that this work is scheduled to proceed on the premise that the plan will be defined by the beginning of next year. In addition to the presentation of policy, changes to the law and new legislative work will probably be necessary. The development of organizations for building a system for comprehensive management of the ocean is again likely to become a major issue.

Japan has only just begun to develop a comprehensive maritime policy. The Basic Ocean Law that has been enacted and the accompanying framework enshrines coexistence between mankind and the ocean, and currently ranks among the best in the world. However, the key issue is whether Japan as a newly emerging maritime nation can put its heart and soul into this framework.