CHAPTER IX

THE 1963–1964 NEGOTIATIONS

Since most of the significant phases of the law of the sea which bear upon the Japanese-Korean dispute have now been considered, the stage has been set for an examination of the recent negotiations between the two states, namely, those of 1963–1964.1 To be sure, the two sides have continued to issue pronouncements similar to those which they have released for more than a decade. Thus, Prime Minister Hayato Ikeda on January 26, 1963, described the Rhee Line as "illegal"2 in the face of international law, while in April of the same year a group of leading Korean politicians asked that the then pending normalization talks be discontinued and that "no concessions"3 be made with regard to the Line. Actually, the parties have not been immune to, and unaware of, the developments which have taken place during and since the Geneva Conferences and have somewhat retreated from and modified their earlier intransigent stand.

Japan, a stout supporter of the three-mile rule, even though on occasion, for instance during the course of the Franco-Prussian war, in favor of neutrality zone of six miles or "three ri," which was held to be "the range of the cannons,"4 has proposed the lifting of the Rhee Line and the establishment of a system analogous to the 1960 United States-Canadian joint compromise. She has expressed readiness to accept a twelve-mile fishing area off the coasts of Korea divided into two parts: a six-mile territorial sea and a second six-mile "exclusive" fishing zone, with the latter accessible to her.5 And Korea's Foreign

1 For the prior negotiations, see Chapter II supra. For the subsequent ones, see Postscript infra.
4 See Jessup, The Law of Territorial Waters and Maritime Jurisdiction 46 (1927); Riesenfeld, Protection of Coastal Fisheries under International Law 247 (1942).

Note, however, that the initial Proclamation of neutrality of July 28, 1870 upheld the three-mile doctrine and that the expansion occurred only subsequently. In her reply to the Questionnaire of the League of Nations' Committee of Experts for the Progressive Codification of International Law, the Japanese Government stated that among the action which makes "clear" her adherence to the three-mile limit is the Declaration of neutrality issued during the Franco-Prussian war of 1870.6 U.N.L.S. 29 (1957).

Minister Yong Shik Kim, after seeing a "growing possibility" of settling the conflict, dispatched Se Hwang Choi and Myung Nyun Kim to Tokyo with a "reasonable" project which he thought Japan could accept if she possessed "a spirit of reciprocity." This plan, which in the words of the Korean delegates was the "biggest concession" made in years, called for the abolition of the Rhee Line and the substitution of a forty-nautical-mile exclusive fishing zone with a belt of restricted waters placed along the rim of the zones. The forty-mile area was regarded as an absolute necessity for protecting the petty fishermen, especially as result of the vast divergence which exists between the fishermen of the two countries. Therefore, the adoption of a system which would aid them in obtaining "substantial" rather than "nominal equity" was considered imperative. Toshio Urabe advised his opposite number that Japan faced similar problems, yet assured him that his Government did not wish to place the Koreans at a disadvantage and indicated willingness to discuss the issue of technical assistance for the South Korean fishermen. But the proposal, which also envisaged the creation of a joint fisheries committee whose objective was the surveying of marine resources and the mediation of fishery disputes, was described as "harsh" and found totally unacceptable. As a matter of fact, the Japanese restated their position and observed that, in view of the international trend, a twelve-mile limit was the "maximum concession" which they were prepared to make. The Koreans were not deterred and at subsequent meetings advanced a thirteen-point program which outlined the gratuitous Japanese aid which they sought for their fishing industry. The draft proposal itself was supported on the basis of international precedents, such as the tripartite Convention for the High Seas Fisheries of the North Pacific Ocean and the bilateral Convention for the High Seas Fisheries of the Northwest Pacific Ocean, and on Japan's historical practice.

Since the significance of the Conventions has already been discussed, reference need only be made at this point to the historical aspects. Here it is rather noteworthy that the first fishery laws promulgated in Korea, during the early part of the twentieth century, created exclusive fishing rights in certain grounds, forbade a number of steps harmful to fishing in designated areas, required the securing of permits,