

Maritime Boundary Delimitation in the East Sea and its Impact on the Naming Issue between Korea and Japan

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The most practical solution to the naming issue in the East Sea would be the concurrent use of both names, "East Sea" and "Sea of Japan". The gradual increase in the use of both names respecting to the disputed areas in the international society indicates the legitimacy of that solution. Especially, it should be much more desirable if the relevant countries accept that solution after making agreements on the maritime boundary delimitation in the disputed areas. Therefore, many more agreements have yet to be reached on maritime boundaries between Korea and Japan. In that context, we should reexamine maritime boundary delimitation in the East Sea and its impact on the naming issue.

Actually, Korea has the task of delimiting maritime boundaries with three neighboring countries. With North Korea, Korea will have no choice but to recognize as a provisional maritime boundary, the Northern Limit Line, as long as the two Koreas continue to coexist under the Armistice Agreement. With China, Korea should complete boundary delimitation in the Yellow Sea. As there exist no disputed islands between the two countries, it looks like that there are no major stumbling blocks that will tangle delimitation negotiations. However, the two countries' negotiation will not come to an agreement in the near future due to their distinct views on the principle of delimitation. With Japan, the delimitation issue spans from the East Sea to the East China Sea, and neither front offers any easy solutions. In the East Sea, the success of boundary negotiation depends on how efficiently the two countries deal with the outstanding issue, Dokdo. In the East China Sea, the most significant issue is whether they can draw a single boundary for the continental shelf and the EEZ, or separate boundaries respectively.

With this background in mind, I'd like to look into boundary delimitation in the East Sea and the significance of boundary in international law in the context of naming issue between Korea and

Japan.

Conclusion of the Korea–Japan Fisheries Agreement in 1999 led to the question of whether Korea and Japan can tackle boundary delimitation first despite the enduring territoriality issue, or whether the two countries should delimit a boundary after settling the territorial dispute first. Considering that territorial disputes are generally long drawn-out battles, it would be reasonable to leave territorial claims to Dokdo for the time being and discuss boundary delimitation first.

A review of state practice shows that several states tend to interpret the definition of the island as broadly as possible to extend their maritime jurisdiction. However, all points considered, it would be natural for the time being to describe Dokdo as rocks, as stipulated in Paragraph 3, Article 121 of the 1982 LOSC.

For Japan, the interpretation of Paragraph 3, Article 121 is probably a more complicated issue because of its rather numerous uninhabited islands and rocks in the adjacent waters which can be used as basepoints of EEZs or continental shelves. For example, it could be said that Okinotorishima in the Pacific cannot have an EEZ or continental shelf of its own if viewed in the light of that paragraph.

As regards Dokdo, it could theoretically be given full effect or half effect by recognizing its status not as rocks as stipulated in Paragraph 3, Article 121 of the LOSC, but as an island. As long as the tug-of-war over Dokdo continues, however, the very possibility of a Korea–Japan agreement on who should have the right to claim the islet as the basepoint would seem remote. For this reason, it would be rational to view Dokdo as rocks as defined in that paragraph and not recognize its basepoint effect at all or otherwise recognize it only to a limited extent. To Korea, the ideal scenario would be to disregard Dokdo and fix the median line between Ullungdo and Okinoshima as the boundary. Doing so would mean the boundary line will lie 18 miles away from Dokdo toward Japan.

Also, Torishima and Danjogunto are an immediate problem to the boundary delimitation process between Korea and Japan. Inasmuch as Korea has denied Dokdo's characteristics as an island and instead viewed it as rocks, it has expected Japan to similarly apply a strict interpretation to the status of Torishima and Danjogunto. However, Korea's hope for

Japan to show up at the negotiating table ready to link the East Sea case to the East China Sea example may very well be wishful thinking.

Besides the method of delimiting boundary line, some Japanese scholars as well as Korean scholars suggest establishing kind of enclaves around Dokdo. But, in any case, this proposal would bear an equivalent meaning to the downsizing of the "intermediate zone" created under the current fisheries agreement.

It is a formidable task to resolve delimitation issues rationally in a short period of time when each coastal state's positions are entangled. At this juncture, it would be worth recalling the fundamental meaning of maritime delimitation *per se* to the coastal states in Northeast Asia. The significance of maritime delimitation in the enclosed or semi-enclosed seas, namely those of Northeast Asia, ultimately lies in the establishment of a rational maritime order through the efficient allocation of jurisdiction or maritime resources. The question that arises here is whether states must go as far as seeking maritime boundary delimitations at the risk of stirring up territorial controversies, which can never bring satisfactory outcomes to all the coastal states involved, if it is possible to establish a sound maritime order without clear-cut delimitations. In short, realistically, it would be optimal for the states involved to come up with a means by which to efficiently exploit and utilize maritime resources while at the same time settling territorial disputes over islands in a roundabout way.

Anyway, Korea and Japan have no choice but to settle delimitation issues within the framework of a new maritime legal order, based on cooperation and mutual concessions. As professor Tadao Kuribayashi pointed out, international boundaries are not only territorial by nature but also multi-functional: they are preserved or altered by a combination of historical, geographical, cultural, political, and economic factors¹⁾. To that context, the long-drawn-out naming issue in the East Sea should be understood as well.

If we focus our attention on the territorial aspects of maritime boundary, it would be almost impossible to settle boundary issue between Korea and Japan.

1) Tadao Kuribayashi, "Kokusaihouniokeru kyoukaino kukantekikouzou(Spatial Structure of Boundary in International Law)", *Kokusaihou to Kokunaihou(International Law and Municipal Law)*(A Tribute to 60th Anniversary of Soji Yamamoto's Birth), 1991, p.295