

Maritime Boundary Delimitation Around the Korean Peninsula and Its Implication for Naming Issues

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Each state attempts to place under its jurisdiction as broad a maritime zone as possible by asserting delimitation criteria that are advantageous to itself. The approaches adopted by Korea, Japan, and China toward maritime delimitation fall in line with this trend. China, for example, places weight on geographic conditions such as the coastline length or seabed configuration and thus calls for the equitable principles; Japan, on the other hand, emphasizes the equidistance principle. In addition to each state's conflicting positions on the basic principles of maritime delimitation, delimitation in Northeast Asian waters entails a number of other pending issues. These include the treatment of disputed islands, the handling of the trijunction, or the area to which the three countries have common claims, and the delineation of the relationship between existing continental shelf boundaries and new EEZ boundaries. Therefore, many more agreements have yet to be reached on maritime issues including delimitation between Korea and Japan. In that context, this article examines maritime boundary delimitation around the Korean Peninsula and its implication for naming issue, with special emphasis on the relationship between Korea and Japan.

1. Introduction

It can be said that under current circumstances one of the most realistic solution to the issue of naming 'East Sea' is to secure simultaneous use of 'East Sea' and 'Sea of Japan'. Gradual increase in the use of both names in disputed areas in the international society justifies the legitimacy of this solution. It would be much more desirable for the relevant parties, if they accept that kind of solution after making

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agreements on the maritime boundary delimitation in disputed areas. Therefore, many more agreements have yet to be reached on maritime issues including delimitation between Korea and Japan. In that context, this article examines maritime boundary delimitation around the Korean Peninsula and its implication for naming issue, with special emphasis on the relationship between Korea and Japan.

2. Korea's maritime boundary delimitation

Of all the many law of the sea issues in the Northeast Asia, maritime boundary delimitation is one of the most difficult issues to be settled in the future. Boundary delimitation is a significant way to settle the clash of overlapping jurisdictions claimed by the coastal States.

By the way, as Korea is surrounded by China and Japan, it is very difficult for the Korean government to secure reasonable maritime areas vis a vis China and Japan. If one looks at the map of the Korean Peninsula upside down, he/she will notice that Korea is in a difficult position to extend outwards to the sea just like Germany was in the 1969 North Sea Continental Shelf Case. Germany is also surrounded by Netherlands and Denmark in the North Sea. So, Korea stands at a disadvantage in that respect.

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. Theoretically, the two Koreas should delimit their maritime boundaries on both sides of the Korean Peninsula. However, they don't recognize each other as legal States so far. 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.

Apart from North Korea's boundary delimitation vis a vis Russia and China, there are five agreements relating to the EEZ or continental shelf related treaties in the seas around the Korean Peninsula: that is, two bilateral agreements on the continental shelf between Korea and Japan, and three bilateral fisheries agreements between Korea, China and Japan. Except for the 1974 Korea Japan Agreement on the Boundary of the Northern continental shelf, the other four agreements are the provisional arrangements stipulated in the 1982 United Nations Convention on the Law of the Sea.

Korea's position on maritime delimitation can be summarized as follows: first, Korea has concluded only one maritime delimitation treaty with a neighboring state – a continental shelf agreement with Japan. While it has yet to complete delimiting the EEZ, it postponed the fixing of clear boundaries with Japan and China and instead settled the fisheries issue by concluding the new Korea–Japan Fisheries Agreement and Korea–China Fisheries Agreement. Second, Korea does not specify any consistent criteria or principles of delimitation in negotiations with neighboring countries; it prefers to reach agreements based on the general principles of international law. Third, though delimitation talks may be in hard sail, Korea is hesitant to turn to the means of dispute settlement stipulated in Paragraph 1, Article 287 of the LOSC, such as the ITLOS, the ICJ, and an arbitral tribunal.

3. East Sea

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. All points considered, it would be natural for the time being to describe Dokdo as rocks, as

stipulated in Article 121(3) of the 1982 LOSC. Of course, should Korea and Japan each interpret Article 121(3) flexibly according to their needs, Dokdo could qualify as an island, not rocks.

For Japan, the interpretation of Article 121(3) 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.

Generally, international cases and international practice have set various types of precedents on just how much basepoint effect islands should be given in maritime delimitation. In sum, islands as basepoints can be given full effect, partial effect, or zero effect. Dokdo could theoretically be given full effect or half effect by recognizing its status not as rocks as stipulated in Article 121(3) of the LOSC, but as an island. 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. For this reason, it is rational to view Dokdo as rocks as defined in the Paragraph of the LOSC.

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.

4. East China Sea

The Korea–Japan fisheries agreement established an ‘intermediate zone’ in the East China Sea, thereby postponing boundary delimitation in the South Sea of the Korean Peninsula as well. The two countries are requested to settle much more complicated legal issues in this area than in the East Sea. They are faced with the challenge of building a consensus on the criteria of maritime delimitation, defining the relationship between the continental shelf and the EEZ, and choosing the appropriate mode of delimitation in the East China Sea.

Japan maintains that the equidistance principle should serve as the standard in boundary delimitation in the East China Sea: Japan does not believe the equitable principles will bring it much benefit owing to the topography of the seabed in nearby maritime zones, particularly the Okinawa Trough.

Korea, on the other hand, is opposed to the blanket application of equidistance principle to boundary delimitation. Korea is likely to object to a single boundary as long as the equidistance principle is applied. Korea emphasizes agreement with Japan by considering relevant circumstances over EEZ delimitation and believes it will benefit by drawing separate boundaries for the continental shelf and the EEZ if possible.

The question of delimiting a single boundary in the East China Sea ultimately boils down to the relationship between the EEZ and the continental shelf and how Korea and Japan view it. The continental shelf and the EEZ overlap to a minimum 200-mile extent, and they share a range of similar characteristics. Because of the differences in their formation process, however, they are dealt with separately in the LOSC.

In its Submarine Mineral Resources Development Act of 1970, Korea unilaterally stipulated the setting up of continental shelf mining fields in surrounding maritime zones while failing to lay down provisions on continental shelf delimitation with adjacent or opposite states. However, Paragraph 2, Article 2 of the 1996 EEZ Act specifies that EEZ delimitation between the ROK and an opposite or adjacent state (a concerned state) shall be effected by agreement on the basis of international law.

By enacting the "Law on the EEZ and Continental Shelf" in 1996, Japan for the first time established a domestic legal framework in respect of the EEZ and the continental shelf. The law first carves out a certain section of a maritime zone—the EEZ—and then assigns the seabed and its subsoil in that part of the maritime zone to the continental shelf.

Although distance criteria have grown stricter within the 200 miles of the maritime zone, the continental shelf and the EEZ remain widely apart in terms of their formation process, legal grounds, and substance. Accordingly, there exists no state obligation to draw a single boundary for the two regimes.

In cases where continental shelf boundaries already exist, concerned states generally agree to view the existing continental shelf boundary and the EEZ boundary

as a single boundary. However, as the maritime delimitation treaty between Australia and Papua New Guinea of 1978 and the Australia–Indonesia maritime delimitation treaty of 1997 indicate, some countries opt to introduce the boundary of another EEZ or fishing zone.

5. Concluding remarks

There has been controversy over the interpretation of Article 121(3) in relation to the legal status of Dokdo. It is because the boundaries of the maritime areas of Korea and Japan depend on the effects given to that insular feature. The maritime delimitation in the *East Sea* between Korea and Japan presupposes the resolution of Dokdo issue. However, if the two countries focus their attention on the territorial aspects of maritime boundary, it would be almost impossible to settle boundary issue between them.

Anyway, it is desirable for the two countries to address delimitation issues within the framework of peaceful settlement of disputes in international law. 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 factors or values.¹ To that context, the long-drawn-out naming issue in the *East Sea* should be understood. Distribution of maritime jurisdiction as well as settlement of naming issue in the *East Sea* can be completed by boundary delimitation therein.

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