

Chapter 7

A Proposal for Stability and Coexistence in East Asia



Acknowledging the Issues: Looking Squarely at the Causes of Instability

Territorial disputes are inclined to make people emotional, lose their power of reason, and lose their composure. Moreover, there are even those who exploit this provocative effect that territorial disputes have on people, fiercely stirring up the disputes with the nationalistic goal of inflaming the situations.

The factors causing instability between Japan and the Republic of Korea (ROK), and Japan and China include a number of issues relating to Japan's former colonial rule such as the problem of the perceptions of history and the textbook issue, as well as the issue of Japanese prime ministers visiting Yasukuni Shrine, where war criminals are enshrined. However, the disputes relating to Takeshima and the Senkaku Islands, insofar as they are territorial problems, are major flashpoints that will not readily disappear. Furthermore, untangling the knotted threads of this issue will require an extraordinary effort given that it also involves the utilization of both living and non-living resources in the exclusive economic zones (EEZs) in the vicinity of these islands. A thorough examination of the respective facts and what surrounds them should yield some clues as to resolving these problems, however.

As is well known and as has already been noted, the Senkaku Islands suddenly came to the attention of the countries of the world after a scientific seafloor survey by the Economic Commission for Asia and the Far East raised the possibility of a deposit of crude oil resources in the continental shelf of the East China Sea. In considering how to go about reaching a desirable solution, it will be necessary to return to this starting point. Furthermore, what triggered Takeshima to emerge as a problem was the ROK's attempt to use the Syngman Rhee Line to preserve its fishery resources by standing up to, and shutting out of its coastal sea areas, Japanese fishing boats whose superior technical strengths were enabling them to operate off the coast of the Korean Peninsula and catch large quantities of fish. These developments coincide with a general trend in post-World War II international law of the sea

of coastal States seeking to secure the use of maritime resources, particularly fishery resources and oil resources.

Where fishery resources are concerned, we have managed to conclude a new Japan-China Fisheries Agreement and a new Japan-ROK Fisheries Agreement for the 200 nautical mile era, and to establish Provisional Measures Zones (PMZs), for the time being, and efforts are being made to have a clearer outlook for managing and preserving those resources. Accordingly, the major problem that remains in the East Asia ocean area is the development of the continental shelf in the vicinity of the Senkaku Islands and the struggle between Japan and China over the continental shelf. In other words, behind the problem of sovereignty over the Senkaku Islands lies the problem of continental shelf boundary delimitation in connection with the exploitation of petroleum, as well as marine resources surveys in economic zones. This is the biggest challenge.

Neither, however, can these two new fisheries agreements escape the constraints that arise from bilateral treaties, namely, that treaties only impose obligations on the State parties to the treaties. In other words, the Japan-China agreement naturally applies to Japanese and Chinese fishing boats: it establishes that in the PMZs the State parties have supervisory authority over their own vessels and can caution the partner State's vessels, but it does not apply to ROK or Taiwanese fishing boats. In this respect it is insufficient from the standpoint of preserving resources and conserving the environment. In the same way, the Japan-ROK agreement applies to ROK and Japanese fishing boats, but Chinese and Taiwanese fishing boats also operate in the sea areas that the agreement covers. The problems of resource management, resource preservation, and environmental conservation will not be resolved by Japan and the ROK alone. As the fishermen know from daily experience, in the field of fishery resources utilization unstable factors also remain.

In the interests of resolving these problems on a realistic basis and in a future-oriented way, I present the following two proposals, which are based on the outcomes of the issues that have been considered up to Chapter 6. The first proposal is to establish a Senkaku Islands nature reserve and a Takeshima nature reserve. The other proposal is that Japan, China, the ROK, and Taiwan should set up joint fishing areas, as an international regime for conserving the resources and environment in the Sea of Japan, Yellow Sea, and East China Sea. The aim of these proposals is to make Japan a stable presence that is trusted in East Asia and the world.

Establishing the Senkaku Islands and Takeshima Nature Reserves

Other Countries' Precedents for Dealing with Island Territories

While keeping the Senkaku Islands and Takeshima in mind, we shall now examine treaties that have addressed and resolved problems of sovereignty over islands in conjunction with continental shelf boundary delimitation.¹

The first is the agreement between Abu Dhabi and Qatar reached on March 20, 1969. A territorial problem existed between the two countries with regard to three islands: Lasahat (Al Ashat), Shura'awa (Shara'iwah), and Daiyina (Dayyinah). Qatar and Abu Dhabi are adjacent to each other. Daiyina is slightly larger than the other two islands, and it flanks a median line. As a result of negotiations, it was decided that the first two islands, which lie toward Qatar, would be designated as Qatar's territory, and that they would be completely disregarded as datum points when undertaking continental shelf boundary delimitation. Daiyina, however, would be permitted to have 3 nautical mile territorial waters (Qatar and Abu Dhabi both have 3 nautical mile territorial waters). Accordingly, the agreed line is a median line that ignores the presence of the three islands, but with a circular projection to the Qatar side, around the circumference of Daiyina.

The second case is the Treaty between Australia and the Independent State of Papua New Guinea concerning matters of sovereignty and maritime boundaries in the area known as the Torres Strait, and related matters, which was signed in Sydney on December 18, 1978. The islands in the Torres Strait remained Australian territory even after Papua New Guinea became independent, but three islands, namely Boigu, Daunan, and Saibai, were problematic. In all cases the islands are separated from the Australian mainland by distances of 140 km or more, but they are less than 4 km away from the coast of Papua New Guinea, and around 700 people live on them. Following negotiations, it was decided that these three islands' territorial waters would be 3 nautical miles, even if Australia's territorial waters were extended to 12 nautical miles in the future.

What is extremely interesting to note is that the decision resolved four problems altogether—not simply the problem of sovereignty but also the delimitation of the continental shelf, the allocation of fishing zones, and the preservation of the indigenous people's lifestyle—while using a different method for resolving each. The continental shelf's boundary line runs close to Papua New Guinea, but the above-mentioned islands are completely disregarded as datum points. The boundaries of the fishing zones are taken to be the boundaries of the continental shelf, but special judicial authority is established for both countries. To the extent that at one point there was reportedly a proposal to try to make these three islands into a nature reserve, both countries have a duty to preserve and conserve the environment, and

¹See Chapter 1 of Serita, Kentarō. 1999. *Shima no ryōyū to keizai suiiki no kyōkai kakutei* (Sovereignty over Islands and the Delimitation of Economic Zones). Tokyo: Yūshindo Kōbunsha.

mining and commercial fishing are regulated so that traditional fishing by the indigenous people is not interfered with.

In considering the problem of the Senkaku Islands, these two treaties may seem too different to be able to serve as references, given the different circumstances of the countries concerned, the different circumstances that the islands are in, and the different positional relations of the islands at issue. Nevertheless, in terms of providing clues for resolving problems, these treaties are certainly not lacking in value.

Next it is worthwhile to examine the significance of islands in relation to continental shelf boundary delimitation.

As illustrated in *Shima no ryōyū to keizai suiiki no kyōkai kakutei*, practices differ by country, and through various proposals at the Third United Nations Conference on the Law of the Sea as well as some State practices and international precedents, some standards are provided respectively for the size of islands, their position, population, political and economic status, and so on. Of those standards, based on international judicial precedents that emphasize the geography itself, it can be surmised that the “size” of an island and its “position” are of considerable importance. As is well known, Article 121, Paragraph 3 of the United Nations Convention on the Law of the Sea (UNCLOS) stipulates that “Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.” No definition of any kind is offered for the “rocks” cited here. However, without the addition of artificial means, the Senkaku Islands and Takeshima could not conceivably sustain human habitation.

When the influence and effects that islands exert on continental shelf boundary delimitation are classified on the basis of continental shelf boundary delimitation treaties and other such agreements that countries have concluded thus far, it reveals the following:

1. Islands within a country’s own territorial waters and/or running alongside its coast qualify as datum points.
2. When the island in question is located around the median line, which is provisionally drawn without considering the existence of the island, that island is either completely disregarded as a datum point or is granted territorial waters only.
3. In the case of a solitary island in distant seas, such as Rockall Island in British territory, claiming a continental shelf on the basis of that island alone is problematic.
4. Islands that are far removed from the country concerned and close to another country will have territorial seas only, and depending on the circumstances, the territorial seas themselves will also be limited, as is stipulated in the treaty between Australia and Papua New Guinea of December 18, 1978. Or alternatively, the islands will have no territorial seas whatsoever, as with Argentina’s small island of Martín García, which is on the Uruguayan side of a boundary line established in a treaty between Argentina and Uruguay on November 19, 1973.

Incidentally, Martín García Island in Argentine territory agreed in the Argentina-Uruguay treaty, is to be used exclusively as a nature reserve intended for the

conservation and preservation of indigenous flora and fauna, according to Article 45 of the treaty.

Characterization of the Senkaku Islands and Takeshima

It is possible to characterize the Senkaku Islands and Takeshima as islands under dispute, as uninhabited islands, as islands far from a mainland, and as small islands on and around a median line. In this regard, it must be noted that Tsushima Island and Ikinoshima Island are considered as datum points for measuring the intermediate line stipulated in the Agreement between Japan and the Republic of Korea concerning Establishment of Boundary in the Northern Part of the Continental Shelf Adjacent to the Two Countries (Boundary Agreement), while Takeshima is not taken into account whatsoever. In other words, disputed islands are disregarded as datum points for delimitation of the continental shelf, meaning they have no effect on delimitation.

Additionally, the Senkaku Islands are no more than uninhabited islands with a total land area of a little over 6.3 km², comprising the largest island, Uotsuri Island, which has a land area of 4.32 km², followed by Kōbisho (1.08 km²), Minamikojima Island (0.46 km²), Kitakojima Island (0.31 km²), and Sekibisho (0.15 km²). Takeshima meanwhile has a total land area of 0.23 km². Tsushima's Kamijima Island, which was taken into account as a datum point in the Japan-ROK Boundary Agreement, has around 40 times the land area of the Senkaku Islands, making it roughly the same size as Iriomote Island or Ishigaki Island.

Understandably, there are islands that, based on their size, population, and geographical location, cannot be completely disregarded when it comes to drawing median lines, while neither is it possible to grant them full effect. In the case of the Anglo-French Continental Shelf Arbitration Award, a precedent existed in State practice of a partial (half) effect approach being adopted, namely that Kharg Island, an island in the Persian (Arabian) Gulf, belongs to Iran. Kharg Island is located approximately 17 miles off the coast of Iran and has a land area of approximately 20 km². However, excepting cases where there is a resident population, conceivably it is difficult to grant effect to an uninhabited island.

Under international law, it is possible to argue that both the Senkaku Islands and Takeshima are in all cases islands. Namely, they are "a naturally formed area of land, surrounded by water, which is above water at high tide," and consequently they possess "an exclusive economic zone and continental shelf."²

Uotsuri Island is approximately 90 nautical miles from Iriomote Island and approximately 120 nautical miles from Taiwan's Keelung Port, while Takeshima is a distance of 120 nautical miles from the Korean Peninsula and 115 nautical miles from the Japanese mainland. At the same time, there are also examples of an island that is far away from a main island being granted effect. The agreement reached

²UNCLOS, Article 121, Paragraph 1 and 2.

between Indonesia and Malaysia on October 27, 1969 is one such case. Under this agreement, even though Indonesia's Natuna and Anambas islands in the Borneo Sea are approximately 250 nautical miles away from the Borneo mainland, they are granted full effect in delimiting the boundary of the continental shelf between the Malay Peninsula and Sarawak.

Establishing Joint-Use Nature Reserves

The conclusion that we can reach from the above examination is that even if the sovereignty disputes were resolved, there would have to be cumulative and seemingly endless and futile debate in negotiating boundary delimitations, beginning with the positioning of the datum points. Immeasurable amounts of energy and time would have to be devoted to that.

Unnecessary discord could well emerge during that time. So, it would clearly be more prudent to utilize that energy and time for mutual friendship. Accordingly, the following are proposals for the Senkaku Islands and Takeshima.

The first proposal is the adoption of a collective approach to dealing with the Senkaku Islands through the establishment of a nature reserve and the joint development of the continental shelf.

Rather than Japan and China contesting the Senkaku Islands by both claiming the continental shelf, they should deal with the issues all at once by making the Senkaku Islands a nature reserve, thus redressing the overhunting of albatrosses, which once inhabited the islands in such large numbers that they were dubbed "*baka-dori*" (meaning "idiot birds" in Japanese, so called because they were so easy to catch), while simultaneously developing the continental shelf jointly through economic cooperation. It would undoubtedly be the best policy, since it would put to rest the issue of the Senkaku Islands once again, and, as they apparently had in the past, both Japan and China would mutually benefit from the joint development of the continental shelf in the vicinity of the Senkaku Islands. The only way to reach a final resolution would be to deal with the related issues collectively, not only the territorial right issue alone.

The second proposal is to establish Takeshima as a nature reserve.

No problem relating to continental shelf resources exists in the vicinity of Takeshima, so conceivably the only issue is fishing in the surrounding area. Additionally, as the area of water that encompasses Takeshima is currently a PMZ, this proposal would not involve transferring Takeshima to Japan, and neither would it involve making concessions to Japan over the issue. Consequently, establishing Takeshima as a nature reserve could be assumed to present virtually no emotional difficulties to the ROK people. Rather than blowing up the islands in order to resolve territory problems as a high-level ROK official is reported to have suggested, the best policy would surely be to make the islands into nature reserves, enabling all parties to work together in a forward-looking manner.

As a common proposal for both cases, instead of establishing territorial seas around these Senkaku Islands and Takeshima nature reserves, it would be better to

make 3 nautical mile or 12 nautical mile zones into fishing-prohibited areas. Currently fishing is not taking place in the area of water around Takeshima, and fishing is apparently not being carried out around the Senkaku Islands either, so this idea poses no particular obstacles. Above all else, this proposal can be recommended from the perspective of conserving marine resources, and furthermore, it would also generate positive outcomes for fishing and the state of resources in the surrounding ocean areas.

Another proposal is described below regarding the management of the Senkaku Islands nature reserve and Takeshima nature reserve. Since the Senkaku Islands are currently under Japan's control, it would make sense for Japan to manage them, and since Takeshima is currently occupied by the ROK, it would make sense for the ROK to manage it. In that way, the current circumstances would not change greatly, and neither would it be likely to irritate citizens. Researchers should be free to land on these nature reserves in order to conduct international or domestic joint research. Accordingly, the respective authorities should in principle approve such visits and the outcomes of the academic research should be promptly published.

Establishing an International Regime for Preserving the Resources and the Environment in the Sea of Japan, Yellow Sea, and East China Sea: Establishing a Joint Fishing Zone by Japan, China, the ROK, and Taiwan

In addition to Japanese fishermen, there are also ROK, Chinese, and Taiwanese fishermen operating in the Sea of Japan, the Yellow Sea, and the East China Sea; no doubt North Koreans will also be a presence in these seas before long. The Japan-ROK Fisheries Agreement and the Japan-China Fisheries Agreement apply to this area of sea, but as has already been noted, neither agreement can escape the limitations of being a bilateral agreement. Consequently, it would be desirable to develop a regime based on a multilateral treaty. That said, enormous amounts of energy were expended just to negotiate the present agreements, and conceivably even more energy would be needed to adopt a multilateral treaty. Accordingly, a realistic first step would be to begin by utilizing the existing agreements.

So what should be done specifically? The handling of Taiwan becomes an issue in connection with the One China principle. It is an issue that warrants careful discussion, taking into account the 20 million or more people living in Taiwan and the betterment of the relationship across the Taiwan Strait. A good start for the time being might be holding a joint resources protection sub-meeting or joint environmental conservation sub-meeting of the China-Japan Joint Fisheries Committee and the ROK-Japan Joint Fisheries Committee. Or, if this proves too political, the parties could hold a joint scientific research sub-meeting on the state of resources or the situation with regard to environmental destruction. To that end, the ultimate goal must be confirmed.

The ultimate goal (which is sure to be debated, and in fact should be broadly debated) should be the conclusion of a multilateral treaty among the countries/regions of Japan, China, the ROK, and Taiwan that contains the following:

1. Designate the Sea of Japan, Yellow Sea, and East China Sea, west of 135°30' east longitude as the area of sea that the treaty applies to;
2. Maintain the EEZs of each country/region at 35 to 52 nautical miles offshore, and designate the area beyond the EEZs a joint fishing zone;
3. Establish an international committee, which might be called the East Asian Fisheries Committee, in order to preserve and manage fishery resources and conserve the marine environment; and
4. Grant this joint committee the authority to enforce regulatory measures, such as the fish catches allocated to each country/region, and grant the committee itself the authority to supervise offending vessels rather than entrusting the supervision of vessels violating the treaty to each treaty party according to the flag State doctrine, in order to make the treaty something that is viable.

This proposal is not meant to exclude the Democratic People's Republic of Korea (North Korea), and the door should always remain open. In any event, a start first needs to be made, based on a clear vision of establishing order in East Asia.

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