

January 12, 2023

China's Expansion into the West Pacific Geographical and Strategic Importance of "Okinotorishima"

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I. What is Okinotorishima?

Okinotorishima is the southernmost territory of Japan, located at 20°25' north latitude and 136°04' east longitude. It is the only Japanese territory south of the Tropic of Cancer. It is more southerly than Hong Kong and Taiwan and sits at about the same latitude as Hawaii. Okinotorishima is located roughly halfway between the main island of Okinawa and Guam, where U.S. military bases are located.

Okinotorishima is an elongated circular coral reef island with an east-west length of about 4.5 km, a north-south length of about 1.7 km, and an outer circumference of about 11 km. Okinotorishima has two marine landforms, North Kojima and East Kojima, which are exposed to the sea's surface at high tide.

The Japanese government considers Okinotorishima to have historically been established as an island and believes that an exclusive economic zone (EEZ) can be established based on Okinotorishima. The Japanese government first surveyed Okinotorishima in 1922 by dispatching the naval survey ship *Manshu* to the island, and, in 1931, the island was incorporated into the Ogasawara Branch Office of the Tokyo Metropolitan Government in a public notice by the Ministry of Home Affairs.

In 1977, Japan enacted the "Act on Temporary Measures Concerning Fishery Waters" and established "fishery waters" (so-called "fishery exclusive waters") within 200 nautical miles from the baseline of the low tide line of Okinotorishima, as the area in which Japan has jurisdiction over fishing (harvesting and/or cultivating aquatic animals and plants). In 1996, in conjunction with the ratification of the United Nations Convention on the Law of the Sea (UNCLOS), the "Act on the Exclusive Economic Zone and Continental Shelf" was enacted, and an EEZ was established surrounding Okinotorishima using the island's low water line as a baseline, extending 200 nautical miles from the baseline. In March 2007, a lighthouse installed to enable safe navigation of ships and safe operation of fishing vessels began operating.

II. Submissions for Extension of Japan's Continental Shelf

The UNCLOS stipulates that a continental shelf may be established beyond 200 nautical miles (about 370 km) if a review by the Commission on the Limits of the Continental Shelf (CLCS)

finds that the continental shelf is topographically and geologically continuous beyond 200 nautical miles. Japan began surveying its continental shelf in 1983, submitted to the CLCS information on the limits of its continental shelf beyond 200 nautical miles from the baselines in 2008, and received the CLCS's recommendations in 2012. The CLCS recommendations approved the extension of four of the seven sea areas that Japan applied for, covering approximately 310,000 square kilometers, equivalent to about 80% of Japan's land area.

In response to the recommendations, Japan enacted a Cabinet Order to define the extent of the extended continental shelf for the two sea areas of the "southern sea area of the Oki-Daito ridge" and the "Shikoku basin sea area," which came into effect in October 2012. As a result, the continental shelf was expanded to a total of 177,000 square kilometers, consisting of approximately 3000 square kilometers in the southern area of the Oki-Daito Ridge and 174,000 square kilometers in the Shikoku Basin area. The two areas of the "South Iwo Jima Sea" and the "Ogasawara Plateau Sea" that were also approved for extension may overlap with the extended continental shelf based on the Northern Mariana Islands of the United States (in which case negotiations with the U.S. government to delimit the continental shelf would be required), and therefore are not currently part of Japan's continental shelf. The recommendations for the Minami-Torishima and Mogi seamount sea areas were not made as per Japan's submissions.

III. Chinese and Korean Notes Verbales in Response to Japan's Application

Meanwhile, with regard to the "southern area of the Kyushu-Palau Ridge" located south of Okinotorishima, the CLCS postponed making a recommendation on this area as it is not in a position to do so until the issues mentioned in the notes verbales by the Chinese and Korean governments, namely, the status of Okinotorishima under international law (whether it is an "island" or "rock" under international law), are resolved.

In a note verbale to the UN Secretary-General dated February 6, 2009 (CML/2/2009), the Chinese government stated that "It is to be noted that the so-called Oki-no-Tori Shima Island is in fact a rock as referred to in Article 121(3) of the Convention." and "Available scientific data fully reveal that the rock of Oki-no-Tori, on its natural conditions, obviously cannot sustain human habitation or economic life of its own, and therefore shall have no exclusive economic zone or continental shelf. Even less shall it have the right to the extended continental shelf beyond 200 nautical miles. Since the rock of Oki-no-Tori does not have any ground to claim continental shelf, it is not within the mandate of the Commission to make any recommendation on the portions of continental shelf both within and beyond 200 nautical miles measured from the rock of Oki-no-Tori as contained in Japan's Submission. Therefore, the Commission is kindly not to take any

action on the above mentioned portions.”¹

The Korean government also stated in a note verbale to the UN Secretary-General dated February 27, 2009 (MUN/04/09) that “the Oki-no-Tori Shima, considered as a rock under Article 121, paragraph 3 of the Convention, is not entitled to any continental shelf extending to or beyond 200 nautical miles from the baseline from which the breadth of the territorial sea is measured, as defined in Article 76 of the Convention.”²

If, as the Chinese and Korean governments claim, Okinotorishima is not an “island” but a “rock” under the UNCLOS, and if it is not permissible to establish an EEZ and continental shelf based on Okinotorishima, that would mean the waters surrounding Okinotorishima that are Japan’s EEZ and continental shelf are high seas. In other words, in the western Pacific Ocean area centering on Okinotorishima, countries would be free to conduct a wide range of activities such as marine scientific research (MSR) and military exercises based on the principle of the “freedom of the high seas.”

The Chinese and Korean governments do not dispute that Okinotorishima is Japanese territory. Both governments object to the vast EEZ and continental shelf that Japan has established in the waters surrounding Okinotorishima, as well as the vast continental shelf that Japan intends to extend beyond 200 nautical miles, and object to Japan’s sovereign rights and jurisdiction over the area. EEZ coastal States have sovereign rights to the natural resources and jurisdiction to MSR, the establishment and use of artificial islands and the protection and preservation of the marine environment (Article 56, Paragraph 1 of the UNCLOS).

IV. China’s Expansion into Western Pacific Waters

China has been expanding into the South China Sea since the 1970s, into the East China Sea since the 1980s, and into the Western Pacific Ocean since the beginning of the 21st century. China frequently conducts MSR and military exercises in the waters surrounding Okinotorishima in the middle of the Western Pacific Ocean.

In recent years, on July 9, 2020, a Japan Coast Guard (JCG) patrol vessel observed a Chinese oceanographic survey vessel deploying observation equipment underwater in Japan’s EEZ, about 310 kilometers north-northwest of Okinotorishima. Conducting MSR without the consent of the EEZ coastal State is a violation of international law. Article 246, Paragraph 2 of the UNCLOS stipulates that “Marine scientific research in the exclusive economic zone and on the continental

¹ The note verbal of the Chinese government is available at https://www.un.org/depts/los/clcs_new/submissions_files/jpn08/chn_6feb09_e.pdf (last accessed on April 3, 2023).

² The note verbal of the Korean government is available at https://www.un.org/depts/los/clcs_new/submissions_files/jpn08/chn_6feb09_e.pdf (last accessed on April 3, 2023).

shelf shall be conducted with the consent of the coastal State.” The JCG issued a warning and demand to the Chinese survey vessel, “research activities without Japan’s prior consent are not allowed in Japan’s EEZ. We demand that research activities be stopped.” The Chinese survey vessel retrieved the observation equipment, moved to another area in Japan’s EEZ, and put the equipment back into the sea before leaving Japan’s EEZ on July 27 of the same year.

In the western Pacific Ocean is the island of Guam, home to the U.S. Navy’s nuclear submarine base. By claiming that Okinotorishima is not an island but a rock, China denies Japan’s exercise of jurisdiction over the EEZ surrounding the island and is thought to be collecting data on the seafloor topography, water temperature, tidal currents, and the like in the waters surrounding the island, with plans to ensure that it will be able to prevent the U.S. Navy from launching a sortie in the event of a Taiwan emergency or other incident.

V. Need for Establishing Laws Regulating Marine Scientific Research

It is important for Japan not to allow Chinese oceanographic survey vessels to freely conduct research activities in Japan’s EEZ surrounding Okinotorishima, and, to this end, to regulate MSR in Japan’s EEZ by Japanese law,³ to strengthen patrols in the waters surrounding Okinotorishima to ensure the enforcement of said regulations, and to properly manage Okinotorishima to maintain its status as an “island.”

Currently, there is no domestic laws directly regulating MSR in EEZs in Japan, and based on the agreement of the relevant ministries and agencies of the Japanese government dated July 20, 1996, “Handling of Scientific Research by Foreign Countries in Japan’s Territorial Waters, Exclusive Economic Zone, or Continental Shelf” (Guidelines), the Government of Japan demands that the country (person) conducting the MSR apply for prior consent through diplomatic channels at least 6 months prior to the scheduled start of the research activities to determine whether it is acceptable.⁴ In March 2011, the Headquarters for Ocean Policy in the Cabinet Secretariat decided that the relevant ministries and agencies would work together to review the guidelines and develop other systems, while appropriately operating the system related to prior consent

³ For the significance of enacting Japanese law regulating MSR in Japan’s EEZ, *see*. TSURUTA Jun, 2015, “‘Marine Scientific Research’ in the Exclusive Economic Zone (in Japanese),” *Maritime Transport Studies (Annual Report)*, Vol. 64, pp.63-72.

⁴ For the contents of the Guidelines, *see*. SAKAMOTO Shigeki, 1999, “Marine Scientific Research without Consent of Coastal States in the Exclusive Economic Zone (in Japanese),” *Marine Scientific Research and Issues on the International Law of the Sea, First Annual Report of the Study Group on the Law of the Sea*, Japan Institute of International Affairs, pp.56-57., and ENOKI Takahiro, 2013, “Marine Scientific Research in the Exclusive Economic Zone and Continental Shelf (in Japanese),” in *Various Aspects of Ocean Development (Survey Material 2012-5 Research Project on Science and Technology Research Report)*, National Diet Library Research and Legislative Reference Bureau, pp.132-134.

applications based on the Guidelines.⁵

Since 2009, the Japanese government has confirmed about 30 cases of MSR by foreign ships (including official vessels of foreign governments) in Japan's territorial waters or EEZs every year, of which about 10 cases are either MSR without prior consent application based on the Guidelines or MSR with prior consent application and consent granted, but with some problems such as being in a different sea area or with content that differs from the prior consent application. In some of the activities, there are suspicions of seafloor mineral resource exploration involving the use of air guns and streamer cables. The JCG has been demanding that foreign ships conducting these activities of a problematic nature cease them.

The provision "maintaining the order of navigation of ships at sea," which was added to Article 2 and Article 5 in the partial revision of the Japan Coast Guard Act (Act No. 28 of 1948)⁶ that was passed and enacted in August 2012, is intended to clarify the legal grounds for the exercise of enforcement jurisdiction by the JCG, such as requesting official vessels of foreign governments to leave Japanese territorial waters and requesting the suspension of MSR conducted without prior notification in the EEZ of Japan.

However, Okinotorishima could be submerged in the future due to rising sea levels caused by climate change. If Okinotorishima were submerged, Japan would be unable to maintain its EEZ and continental shelf based on the island and would lose its sovereign rights to the area's marine living resources (skipjack, tuna, and others) and seafloor mineral resources (manganese nodules, methane hydrates, and more).

⁵ The Decision of the Headquarters for Ocean Policy in the Cabinet Secretariat, dated March 11, 2011, "Policy on Future Responses to Mineral Exploration and Scientific Research in the Exclusive Economic Zone" is available at <https://www.kantei.go.jp/jp/singi/kaiyou/dai7/siryou.pdf> (only in Japanese) (last accessed on April 3, 2023).

⁶ The Japan Coast Guard Act is available at <https://elaws.e-gov.go.jp/document?lawid=323AC0000000028> (only in Japanese) (last accessed on April 3, 2023).