Chapter V

A Possible Practical Solution for the Dispute over the
Dokdo/Takeshima Islands from the Perspective of
the Law of the Sea

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I. Introduction

This chapter will deal with the dispute between Korea and Japan over the
Dokdo/Takeshima Islands from the perspective of the law of the sea and not as
a typical territorial dispute as such. It will focus upon the recent incidents that
have occurred between them. The reason why the author finds an undoubted
significance in such an examination is that the cooperation and differences1
which the two countries acknowledged and realized in these occasions are
strongly expected to be able to shed practical light upon the dispute that exists
at present.

For instance, in 2005 Korea and Japan narrowly in a friendly manner man-
aged a conflict in the case in which the Japanese Coast Guard exercised hot pur-
suit under Article 111, paragraphs 1 and 2 of the United Nations Convention
on the Law of the Sea (UNCLOS) against a Korean fishing boat. The Korean
vessel was alleged to have committed illegal fishing in the Exclusive Economic
Zone (EEZ) of Japan. After the Korean vessel escaped into the high seas, the
Japan Coast Guard vessel and Korean Maritime Police vessels faced off against
each other. After a two-day standoff, this incident was peacefully resolved
through intensive negotiations on the spot at sea. The master of the Korean
fishing boat was handed over to the Korean authority and Japan accepted a sort
of bond from the Korean boat.2

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1 The cooperation accomplished between the two countries will be touched upon later in appro-
 priate places in relation to issues of fisheries and delimitation of the Continental Shelf existed
 between them.

2 Regarding the incident, see Atsuko Kanehara, Fisheries Law Enforcement by Japan in Its Exclusive
 Economic Zone and Hot Pursuit from the Exclusive Economic Zone onto the High Seas of a Foreign
Then in 2006, the two countries faced tense situations concerning marine scientific research planned by each country and actually conducted by the Korean side in the sea areas where claims of the two countries for the Exclusive Economic Zone (EEZ) overlapped due to the territorial dispute over the Dokdo/Takeshima Islands.\(^3\) Japan declared its plan for marine scientific research to be conducted in April of 2006, and in the face of harsh protests by Korea, Japan refrained from carrying out its plan. Then, Korea, in turn, made public its plan to conduct marine scientific research in July of the same year, and despite the formal protest against it by Japan, Korea exercised its marine scientific research. After intensive negotiations, both countries finally decided to conduct their marine scientific research cooperatively being accomplished in 2006. Such cooperation is expected to continue.\(^4\) In addition, they agreed to resume negotiation in respect to the issue of maritime delimitation, especially that of the EEZ including the sea areas where the claims of the two countries for the EEZ overlapped, and this was after a six-year pause since 2000. This resumption of negotiations can be regarded as a successful result through the substantial talks between the two countries.

Generally speaking, islands cause many difficult problems under the law of the sea.\(^5\) In the case of the Dokdo/Takeshima Islands, however, Korea and concerning which the resolution of the conflict situation was achieved was the high seas and the EEZ of Korea at the same time, depending on matters. In relation to the matters designated by Article 56 of the UNCLOS the sea areas were the Korean EEZ, and for others they are the high seas. From such a viewpoint, too, this incident provoked an interesting issue regarding to the distribution of a sovereign right and jurisdiction between a country conducting the hot pursuit country and the coastal state of the EEZ or the flag state in respect to a fishing boat flying its flag on the high seas. Id. at. 114–120.

\(^3\) As for the incident and some analysis principally from the perspective of Article 74, Paragraph 3 of the UNCLOS, see Atsuko Kanehara, Marine Scientific Research in the Waters Where Claims of the Exclusive Economic Zones Overlap between Japan and the Republic of Korea-Incidents between the Two States in 2006, 49 JAPANESE ANN. INT’L L. 98, 98–122 (2006).


\(^5\) Article 121 of the UNCLOS prescribes the condition for a rock to be entitled to have their own jurisdictional sea areas and sea beds. For a thorough examination in Japanese of the various positions of countries and drafting history of the relevant provisions of both 1958 Geneva