Chapter VIII

Okinotorishima: A “Rock” or an “Island”?
Recent Maritime Boundary Controversy between Japan and Taiwan/China

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I. Introduction

In 1987, it was reported that Japan had begun construction of defensive facilities surrounding Okinotorishima in order to protect it from submersion caused by wind and water erosion. In January 1988, after reading news reports, Professor Jon Van Dyke of the University of Hawaii at Manoa, William S. Richardson School of Law, wrote a letter published in the New York Times stating that: “Okinotorishima—which consists of two eroding protrusions no larger than king-size beds—certainly meets the description of an uninhabitable rock that cannot sustain economic life of its own. It is not, therefore, entitled to generate a 200-mile exclusive economic zone.”

Supporters of Okinotorishima, however, maintain that it conforms to the description of an “island” in Article 121 paragraph 1 of the 1982 United Nations Convention on the Law of the Sea, and thus they claim that it is entitled to generate

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1 Okinotorishima, in Japanese 沖ノ鳥島, was formerly called Parece Vela (Portuguese or Spanish for “it looks like a sail”) or Douglas Reef (named after the British navigator John Meares’ subordinate officer William Douglas in 1789). For more information, visit Wikipedia, the Free Encyclopedia, available at http://en.wikipedia.org/wiki/Okino_Torishima.


a 200-nautical mile (n.m.) exclusive economic zone (EEZ) and a continental shelf. Japan has carried out a variety of actions, such as drawing up plans to build a lighthouse, constructing surveillance radar, fostering coral reefs, opening a fishing station, establishing a domicile (on paper only), establishing official address plaques, promoting ocean data surveys, banishing foreign fishing vessels or survey boats, and so on. The main objective of these measures is to maintain the “island” status of Okinotorishima as well as to give credence to the claim that sets the 200-n.m. EEZ around Okinotorishima.

Starting in 2004, China began raising questions concerning the legal status of Okinotorishima and the Japanese claims regarding sovereign rights and jurisdiction in the waters surrounding this feature. China argues that because Okinotorishima does not sustain human habitation or economic life of its own, according to Article 121 paragraph 3 of the Law of the Sea Convention, it cannot have a 200-n.m. EEZ or a continental shelf. In July 2005, Taiwan also raised questions against Japan concerning the legal status of Okinotorishima, and, mirroring China’s viewpoint, Taiwan took the position that Okinotorishima’s 200-n.m. EEZ is insupportable in light of the relevant international legal regulations.

On October 8, 2005, a Taiwanese registered fishing boat, Long Rong No. 2, was detained by a Japanese Coast Guard patrol boat at 22°30’3” N and 136°14’9” E (close to Japan’s Okinotorishima) for fishing in the Japanese-claimed EEZ. On October 11 of the same year, after the fishers deposited financial securities in the amount of 4,083,000 Japanese Yen into the designated account in Japan, Long Rong No. 2 was released. After this incident, Taiwan’s fishing industry officials lodged complaints against Japanese law enforcement measures, because they considered Okinotorishima completely uninhabited and thus incapable of generating a 200-n.m. EEZ. At the same time, they supported the idea of filing of an international lawsuit regarding this incident.4

The main purpose of this paper is to discuss, from an international law viewpoint, the legal status of Okinotorishima, which is currently uninhabitable and unable to sustain economic activity. In particular, this paper is concerned with answering the question whether this islet enjoys the right to claim a 200-n.m. EEZ and a continental shelf. According to Article 121 paragraph 3 of the Law of the Sea Convention, if Okinotorishima cannot sustain human habitation or economic life of its own, then Japan’s behaviours such as banishing, arresting, detaining and then imposing fines on Taiwanese fishing boats in the waters surrounding Okinotorishima, which should be treated as high seas, is a violation of existing international law. On the other hand, if Japan can prove that Okinotorishima is an “island,” then its right to generate a 200-n.m. EEZ and a continental shelf can-