Recent Developments in Maritime Delimitation: Any Implication for Territorial and Maritime Boundary Disputes in East Asia?¹

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Abstract

Recent judicial decisions and arbitral awards on maritime delimitation disputes have, to a considerable degree, clarified the ways by which maritime delimitation disputes may be resolved. The so-called three-stage approach has been fairly continuously followed by international tribunals. It is often suggested that, in international practice, islands have often been given reduced effect in comparison with land masses in terms of creating maritime zones and delimiting maritime boundary. In East Asia, there are some important territorial issues that certainly affect not only the delimitation of maritime boundaries in the region but also the allocation of natural resources such as gas and oil. Among these are the Northern Territories dispute between Japan and Russia, the Takeshima/Dokdo (or Liancourt Rocks, in English) dispute between Japan and Korea, the Senkaku/Diaoyudao/Diaoyutai Islands dispute between Japan and China, and the South China Sea Disputes. In each of these territorial and maritime disputes, the arguments employed by the parties involved include the applicability of major methodologies and approaches such as the natural prolongation theory, the equidistance/median line method, combined with relevant circumstances, and the legal status of an island under Article 121(3) of the United Nations Convention on the Law of the Sea. At the same time, however, one should take into consideration some other unusual factors that are pertinent in this region such as the legal status of Taiwan as a party to a dispute, arguments regarding China’s historic rights, and the legacies of the end of the Second World War. Against this background, this article discusses, particularly, whether recent developments in maritime boundary delimitation have any implication for territorial and maritime boundary disputes in East Asia, the extent to which the judgments will resolve those disputes in the region, and whether any particular historic element in this region should be specifically considered. In sum, recent developments in jurisprudence in this field may have
limited implications in the settlement of territorial and maritime disputes in East Asia mainly due to
the following three factors: (1) the legacy of the Second World War; (2) the lack of agreement among
the states concerned to use a third-party mechanism for the settlement of the dispute; and (3) the
experience of a more practical approach toward gaining immediate interests.

**Key words:** maritime boundary delimitation, territorial disputes, East Asia, Northern Territories,
Takeshima/Dokdo, Senkaku/Diaoyudao/Diaoyutai, South China Sea

1. **Introduction**

In East Asia, there are some unsettled territorial and maritime disputes over islands. Japan, for example, is engaged in three territorial disputes with neighbouring states over some islands. These include the dispute with Russia over the so-called Northern Territories, the dispute with South Korea over Takeshima/Dokdo (or Liancourt Rocks, in English), and the dispute with China over the Senkaku/Diaoyudao/Diaoyutai Islands. The territorial and maritime disputes over the islands and maritime areas in the South China Sea identified as the Paracel Islands issue involving China, Taiwan, and Vietnam, and the Spratly Islands issue involving Brunei, China, Malaysia, Philippines, Taiwan, and Vietnam — are high-profile issues these days, while China becomes a rising sea power in the area and takes an assertive stance.

The main purpose of this article is to deal with the following question: Do recent developments in maritime delimitation have any implication for territorial and maritime boundary disputes in East Asia? In order to answer this question, the author should like to address two points: first, the current situation of the abovementioned disputes; and second, the implication(s), if any, of recent judicial and arbitral settlement of territorial and maritime disputes. Therefore, this article does not aim at dealing with, let alone determining, the ownership issue of the disputes mentioned above, though it may touch upon this issue in so far as it is necessary to address the main question mentioned above.

2. **Current Situations in East Asia**

In East Asia, there are some differences of opinion among states over the legal status of baselines, bays, islands, and geographical features. The differing opinions have given rise to protests from other countries and others have become territorial and/or maritime disputes. This article starts with the northern part of this region, working in a southerly direction.

(1) **Japan and Russia**

Japan is engaged in a territorial dispute over the so-called Northern Territories with Russia,
which has been occupying these islands since the end of the Second World War. The dispute includes the conflicts between the two over the application and interpretation of the international instruments concluded during and after the Second World War, such as the 1945 Yalta Agreement, the 1951 San Francisco Peace Treaty, and the 1956 Japan-Soviet Union Joint Declaration. It is noteworthy that one of the key issues of the dispute derives from the Peace Treaty’s failure not only to give the detailed definition and scope of the ‘Kurile Islands’ but also to mention the recipient to whom Japan renounced the Islands. One can find a third party to some of these agreements, such as the United States, deeply involved in the entangled and complicated process of the negotiation and treaty-making.

There is, basically, no maritime boundary dispute yet, since the territorial dispute concerning the attribution of sovereignty over the Islands has not been resolved between these two countries, despite the current high-profile news concerning the summit meeting between the leaders of these two countries in Japan at the end of 2016. There is, however, a difference of opinion between the two states concerning the interpretation and application of the 1984 Agreement between Japan and the former Soviet Union concerning the Mutual Relationship in Offshore Fishery, particularly in terms of the respective positions each state has taken over their respective exclusive economic zones (EEZ). As a case in point, Japan’s act of entering Russia’s EEZ (which was established around the coast of the disputed islands), with the payment of a certain fee for sharing the cost necessary to cover the Russian preservation measures is a non-recognition of the EEZ of Russia.

It may be said that even under the current conditions, disputing countries can negotiate a bilateral agreement that there is a de facto maritime boundary in the maritime area of the disputed islands.

(2) Japan and South Korea

With respect to the territorial dispute between Japan and South Korea over Takeshima/Dokdo, there seem to be three major issues between the two states: first, the historical foundations of their claims; second, the validity of Japan’s incorporation of the Island (or a group of islets) in 1905; and third, the treatment of a series of international instruments, including the 1943 Cairo Declaration, which decided the disposition of the territories of Japan after the Second World War. As regards the first issue, one may say that the so-called historical facts in a dispute cannot objectively be evaluated without any help from a third party. Although each side maintains that its position is historically well founded, it does not seem to be easy to say that any side has fully met the requirement of effective occupation (effectivités) through the official channel of the states concerned, in the light of the evidence produced by them.

The 1905 Cabinet Decision on Japan’s incorporation of the Island into the Shimane Prefecture tends to beg some questions as to its validity under international law. Though Japan, for its part, issued the Decision in order to ‘reaffirm’ its intention to claim sovereignty over the
Island, which had been established by the seventeenth century, those who support the position of South Korea maintain that this act by Japan shows that it had not assumed sovereignty over the Island until 1905, as it deemed the Islands to be ‘terra nullius’. However, the context and timing of this incorporation has been open to severe criticism, since, to some advocates, the incorporation seemed to have been done for military purposes before the preparation of Japan’s eventual annexation of the Korean peninsula in 1910. From a Korean point of view, this may be regarded as the first step towards Japanese colonization of the Peninsula.

Moreover, one can also note that the interpretation and application of the 1951 San Francisco Peace Treaty is at issue again because there is no reference to the Island in the territorial clauses of this Treaty, under which Japan renounced ‘all right, title, and claim to Korea’. South Korea is of the view that there is no dispute over sovereignty of the Islands, as it has been occupying them since 1952, when it unilaterally installed the so-called ‘Rhee Syngman Line’ to encompass them.

The nature of the dispute is, thus, multifaceted: the dispute regards not only the attribution of territorial sovereignty and maritime delimitation between the states directly concerned, but also considers the consequences of the post Second World War territorial settlement and disposition with the involvement of a third party, whose significant role had an enormous, unpredicted impact on the future of this region. This latter point may sometimes be associated with the view that the Japanese claim over the Island, including its proposal to refer the dispute to the International Court of Justice (ICJ), is regarded as a revival of the image of Japanese colonialism.

In the light of the Qatar v. Bahrain case of 2001 and the Cameroon v. Nigeria case of 2002, however, the ICJ’s recent decisions may not be of great use, since it seems to have dissociated itself from a fundamental matter of colonialism. The Qatar v. Bahrain judgment seems to have thought much of the decision that had been made by Great Britain as a protecting power, principally relying on the 1939 British decision regarding the attribution of sovereignty of the islands in question. The Cameroon v. Nigeria, on the other hand, did not dwell on the issue of British colonialism vis-à-vis the people of Bakassi and Nigeria.

As regards delimiting the maritime boundary between Japan and South Korea, there arises the practical problem of the legal status of the Island as a point of reference. Since the size, location, and significance of the essentially uninhabited Island are not considerable, the boundary may basically be the median line between the two countries without considering the Island’s existence, as is often the precedence in the maritime delimitation cases decided by international tribunals. South Korea, however, has switched its position from regarding the Island as a rock to regarding it as an island.

In 2006, the consultation meeting took place, where South Korea abruptly showed its stance with respect to delimiting the EEZ in the Sea of Japan. Thus, it used the Island as a point of reference in delimiting the EEZ. As Article 121 of the UNCLOS stipulates, only an island, irrespective of its size, is entitled to the EEZ and the continental shelf. The ICJ only has two
requirements for determining whether a geographical feature is an island: that it is ‘naturally formed’ and that it is ‘above water at high tide’. On this point, Japan issued an order to enlarge its territorial waters by introducing a system of straight baselines at its 1996 ratification of UNCLOS. However, this invited the protest of South Korea, which argued that the order contradicts with international law and violates the 1965 Fisheries Agreement between the two countries.

Nevertheless, these two countries have been successful so far in concluding two sets of agreements in 1974 on the boundary of their adjacent continental shelf: one for the delimitation of the northern part of their continental shelf boundary on the basis of a median line, and the other for the establishment of a joint development zone on the southern part of their continental shelf. They also concluded a fishery agreement in 1998 to govern fishing in demarcated ‘provisional/intermediate zones’ in accordance with the principle of nationality. The latter agreement may be a good example of delimiting the EEZ between the disputing countries by way of a more pragmatic approach of sidestepping the disputed islands in order to gain immediate fishery interests, thus also enabling them to demarcate the continental shelf lying between them with a view to maintaining a friendly and cooperative relationship.

Three sets of similar bilateral fishery agreements between Japan, China and South Korea — the one between Japan and China, the one between Japan and South Korea and the one between China and South Korea — are of practical interest to all of these countries in and around the maritime areas in the Sea of Japan and the East China Sea, in spite of some problems on the exercise of jurisdiction. At the same time, it is noteworthy that there are still some problems such as the limits of application of the nationality principle under these bilateral agreements and the lack of agreement on the regulation in the overlapping maritime areas of more than three countries in both of the East China Sea and the Sea of Japan.

However, South Korea’s basic stance with respect to the delimitation of the continental shelf adjacent to the coast of Japan, which basically advocates the median line method, is based on the idea of natural prolongation, that is, that its outer limits beyond 200 nautical miles from its baselines ‘are located in the Okinawa Trough’. This has been reconfirmed and rather enhanced by its recent Partial Submission to the Commission on the Limits of the Continental Shelf (CLCS) soon after the China’s submission to the CLCS in December 2012, both of which are based on the idea of natural prolongation in terms of the delimitation in the East China Sea. Therefore, the East China Sea is now a frontline in the conflict between the method of median line supported by the island state, Japan, and the natural-prolongation approach maintained by the continent states, South Korea and China.

(3) Japan and China (with Taiwan)

The Senkaku/Diaoyudao/Diaoyutai Islands, which are currently occupied by Japan, are also claimed by China and Taiwan. Japan is of the view that there is no dispute over the Islands
since there is no doubt that they are an inherent part of Japan’s territory, in light of historical facts and based on international law. Under the 1972 Joint Communiqué of the Government of Japan and the Government of the People’s Republic of China, Japan recognizes the Government of the People’s Republic of China ‘as the sole legal Government of China’ and ‘fully understands and respects’ China’s stand that ‘Taiwan is an inalienable part of the territory of the Government of People’s Republic of China’. Since Taiwan’s statehood and its historical and geographical positions make the dispute more complex. This is because China and Taiwan do not totally share one view with respect to either the dispute itself or their foreign policy towards Japan over the dispute.

Therefore, this de facto double-standard regarding Japan, as well as Taiwan’s individualism, can be seen in the recent conclusion of an arrangement concerning joint fishery management which allows Taiwan’s trawlers to operate in a portion of Japan’s EEZ in the East China Sea. Even though this practice may function as one of the levers to the check against China’s maritime assertiveness in this maritime region, this pragmatic approach can be exemplified as a good model to overcome a similar case of territorial and maritime disputes.

Despite its apparently neutral attitude towards the territorial dispute, the United States has been, to a considerable degree, involved in the treatment and disposition of the Islands during the period between US occupation of Japan after the Second World War and the return of Okinawa islands to Japan in 1972. The United States holds that it ‘takes no position on the ultimate sovereignty of the Senkaku islands’, though it reaffirms the applicability of the 1960 Japan-US Security Treaty to the Islands on the ground that the Islands are ‘under the administration of Japan’. This US position is certainly not acceptable to China, which considers that the Islands should have been returned to China with Taiwan on the ground that China’s sovereignty over the Islands were restored at the end of the US occupation of the Islands. Even this kind of neutral position held by a third party may afford some measure of support to either side of party of the dispute.

Since no mention was made of the Senkaku/Diaoyu Islands in the San Francisco Peace Treaty, this has led Japan and China to two conflicting positions. Japan, which incorporated the Senkaku Islands, previously considered terra nullius, into the Okinawa Prefecture by the Cabinet decision of 1895, contends that the Senkaku is not included among the territories whose claim Japan renounced under the San Francisco Peace Treaty. Denying the terra nullius status of the Islands on the basis of their effective control, China and Taiwan are of the opinion that under the Peace Treaty, Japan renounced the Islands, which have long since been part of Taiwan.

Here, again, arises an issue as to the validity of Japan’s incorporation of the Islands in question into its own territory during a war period or in connection with war. In fact, international law does not seem to give any clear-cut general rule specifically applicable to similar cases as these. One can also see the legacy of the settlement and disposition of territories after the Second World War, with the United States’ leading role in this process. In addition, actually, this settlement has so far turned out to be indefinite and tentative in terms of the territorial and
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maritime settlement between the states concerned in the region. It is intriguing that the seemingly rushed work of the San Francisco Peace Settlement may eventually hold true for other territorial and maritime disputes that involve Japan as a concerned party.

As regards the legal status of the Islands, both countries’ positions are in conflict with each other. Japan treats the Islands as the one entitled to have an EEZ and the continental shelf, while China denies this view for the reason that they are too small to ‘sustain human habitation or economic life of their own’. This point is related to the Chinese position concerning the treatment of the Ryukyu Islands as the basis to effect the delimitation of the East China Sea. China is of the view that the natural prolongation of the land mass extends to the edge of the Okinawa Trough, where China’s continental shelf ends. On the other hand, Japan holds that the median line between the baselines of China’s coast and the ones of the Ryukyu Islands and other chains of islands that are spread from the mainland of Japan should be the boundary of their continental shelf in the East China Sea. China’s view is such partly because it would also question the Japanese ownership of the Ryukyu Islands (or Okinawa Islands), according to the background of Japan’s disposition of these Islands around the beginning of the Meiji Era.

Since every single boundary case is distinct, however, each requires particular attention regarding the geographical and geophysical situations, the demographic situation, and some other relevant circumstances. Where the disparity of coastal lengths was considered, one may assume that the continental state’s coastlines will have an advantage over those of the island state (that is, the country with a chain of islands in question) because the provisional median line tends to be adjusted in accordance with the relative lengths of the relevant coastlines in order to reach an equitable result. What makes the delimitation more problematic is the territorial dispute between the two countries over sovereignty of the Senkaku/Diaoyu Islands, as mentioned above.

The cooperative atmosphere created by the 2008 agreement on cooperation in joint development of a maritime area hovering around the theoretical median line in the East China Sea has been unfortunately wrecked. Moreover, Japan’s recent action in September 2012 of purchasing some of the Islands from a private owner, which is often referred to as a ‘nationalization’ by Japan of the islands in question, has created gloomy prospects for bilateral relations as a whole. This caused two successive and related reactions of China with respect to Japan’s unilateral conduct that, for China, tremendously undermined the status quo based on the bilateral tacit agreement, the existence of which, Japan denies, though. These reactions are (1) China’s deposit to the UN Secretary General of a chart and a list of geographical coordinates of point with regard to the baselines for the territorial sea of the Islands upon its unilateral statement of 2012; and (2) its partial Submission to the CLCS concerning the outer limits of the continental shelf beyond 200 nautical miles in part of the East China Sea on the basis of its natural-prolongation approach.

Here again arises an argument that in settling the territorial disputes and effecting maritime delimitation by way of the application and interpretation of international law, a particular view
point must be considered, and must specifically take account of the historical background of East Asia because most judicial and arbitral decisions concerning territorial acquisition and loss may not fully take account of the whole historical backgrounds underlying under the relations between former colonial powers and former colonies. This viewpoint tends to have much bearing upon the dispute in the South China Sea. This issue is far beyond the scope of this article, and the issues related to this have been discussed elsewhere. Therefore, the most essential point directly related with this article’s theme is that the viewpoint of China cannot easily be overcome unless the states concerned and the international society share the same historical recognition.

(4) The South China Sea

Despite its ratification of the UNCLOS, China holds that the so-called ‘nine-dotted line’ in the South China Sea as drawn on a Chinese map has been historically and widely accepted, and that, accordingly, the line should not be evaluated by the UNCLOS because the latter cannot be retrospectively applied to the former. For these grounds, however, China’s historic right in this maritime area may contradict with contemporary international law.

An optimistic view concerning the Philippines’ unilateral referral of a dispute with China to arbitration over the conflicts in the South China Sea, under Annex VII of the UNCLOS and its arbitral award of 2016 may be very significant steps forward to enhance the idea of the rule of law in this region. This process and its outcome may be attractive for those who would like to use a third-party dispute settlement mechanism under the law of the sea including the UNCLOS. However, its consequences on the real solution of the dispute are yet to be seen, particularly when the world is impacted by the unprecedentedly capricious foreign policies pursued by recently elected leaders in the Philippines and in the United States.

It has been reported that China and the Philippines may have successfully agreed on a tentative deal over a fishery matter in the relevant maritime area as a result of the consequent summit meeting on the de facto shelving of the 2016 award.

(5) South Korea and China

South Korea and China have conflicting views over the use of a high tide elevation in delimiting the EEZ between them. Since China is of the view that the theory of natural prolongation should be applied to both the Yellow Sea and the East China Sea, it does not recognize the Japan-South Korea joint development zone of their continental shelf in the East China Sea or their bilateral fishery agreement in the Sea.

As regards the fishery zone, both countries have agreed upon establishing a joint fishery commission. However, the demarcation of this fishery zone in accordance with the equidistance line has been in conflict with China’s position on the use of its natural-prolongation approach, according to which China denies the Joint Development Zone and the shared fishery zone between
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Japan and South Korea.  

3. Conclusions

In sum, recent developments in jurisprudence concerning territorial and maritime disputes seem to have limited implications for the settlement of similar disputes in East Asia. Some temporary thoughts will include the following practical realities. First, precedence concerning the territorial and maritime delimitation will be of limited value to the actual settlement of the dispute over the attribution of territorial sovereignty. As is often quoted from the ICJ’s famous pronouncement in the North Sea Continental Shelf cases, ‘the land dominates the sea’. There will, in principle, be no demarcation of territorial and/or maritime boundaries without first settling the dispute over a territorial sovereignty issue. Second, every geographical feature is distinct and may be unique. Third, a historic viewpoint may need to be considered as a decisive factor in some of the regions and areas in the international society, though this issue is not generally and squarely dealt with under the current framework of international law.

One may safely say that the provisional median line method implies the possibility of adjustment in accordance with special circumstances such as the disparity of coastal lengths of the parties concerned. Further, the idea of natural prolongation per se does not have a significant role to effect delimitation of maritime boundary, and that an island, regardless of its size, is entitled to the EEZ and the continental shelf. Therefore, the limits and limited implications of the judicial and arbitral decisions concerning the territorial and maritime disputes in this region are exemplified by the following three points.

First, one cannot deny an insightful observation made by a scholar with respect to the territorial and maritime disputes in East Asia that ‘much of the uncertainty surrounding the territorial demarcation is a by-product of immediate post-World War II boundary decisions and territorial dispositions’. In order to settle the territorial disputes and, if necessary, to demarcate a boundary in the disputed maritime areas in this region, the abovementioned viewpoints regarding the historical facts and the foundation of contemporary international law should be duly addressed. The existence of and the considerable involvement of a third party, such as the United States, in the territorial disposition through agreements have caused some barriers to the dispute resolution process. This may be one of the reasons why the parties concerned to the disputes in question, China and South Korea in particular, are not willing to have recourse to a third-party mechanism of dispute settlement under international law.

Contemporary international law may not necessarily reflect the historical background as a whole in the way that these countries wish. Recent judicial and arbitral case law does not, in their view, reflect historic factors such as colonialism in East Asia and the non-western perspective. How to overcome the legacy of the Second World War is still crucial in this region. In this sense,
one can say that, unless there is any agreement, the use of recent judgments will be limited in terms of the peaceful settlement of the territorial and maritime disputes in East Asia only through the strict application of contemporary international law.

Second, with regard to the countries involved in the territorial and maritime disputes in East Asia, it is peculiar that, basically, none of the claimant states can, without consent of the other state concerned, have recourse to third-party assistance for the settlement of the disputes, owing to the fundamental rule of international dispute settlement. For example, while Japan would be willing to use the ICJ, for instance, to settle the territorial disputes over the Northern Territories with Russia, and over the Takeshima with South Korea, it would have no intention to refer the territorial issue over the Senkaku to any dispute settlement mechanism. No occupying state would be willing to give consent to any invitation by the opponent state to settle the territorial dispute in a third-party mechanism. Under these circumstances, therefore, consultation and negotiation between the parties concerned over the territorial and maritime disputes, if it occurs, would have limited use of the indication of recent judicial and arbitral precedence concerning this field of disputes.

Third, it is noteworthy that one wise and practical approach more widely utilised in East Asia to maintain relatively peaceful and cooperative relations with neighbouring states is that of virtually and de facto shelving the territorial disputes in order to gain immediate interests such as fishery rights through a mechanism of joint management of resources. Besides judicial and arbitral settlement, these pragmatic approaches will also merit elaboration among the states concerned in this region. However, this approach is possible only when an agreement is achieved between the states concerned in the dispute.

Endnotes


3 See, for example, Thomas J. Schoenbaum, (Ed.), Peace in Northeast Asia: Resolving Japan’s Territorial and Maritime Disputes with China, Korea and the Russian Federation, Cheltenham: Edward Elgar, 2008.
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4 See, for example, Kimie Hara & Geoffrey Jukes, (Eds.), *Northern Territories, Asia-Pacific Regional Conflicts and the Åland Experience: Untying the Kurillian Knot*, London & New York: Routledge, 2009.


7 Some recent cases at the International Court of Justice (ICJ) are relevant in terms of the geographical similarities, historical relations, and the characters of the disputes. See, in particular, the Pedra Branca/Pulau Batu Puteh (Malaysia/Singapore) case of 2008, the Maritime Delimitation in the Black Sea (Romania v. Ukraine) of 2009, and the Territorial Dispute and Maritime Delimitation (Nicaragua v. Colombia) of 2012.

8 The Northern Territories are four islands consisting of Habomai, Shikotan, Kunashiri and Etorofu.


11 It (or Liancourt Rocks, in English) comprises of two main islands and their surrounding islets.

12 This may be among actual examples of ‘exercises of sovereignty or acts à titre de souverain’ (as was pronounced by the International Court of Justice (ICJ) in Indonesia/Malaysia, para. 126; Nicaragua v. Colombia, paras. 80-84) over the island.

13 Article 2(a) of the San Francisco Peace Treaty.


19 See *Nicaragua v. Colombia*, paras. 36-37. See, in particular, paragraph 183 of this judgment in order to compare a rock with an island in terms of the entitlement to the EEZ and the continental shelf.


Notification concerning Korea’s Submission, CLCS.65.2012.LOS, 28 December 2012.


The issue of the Okinotorishima Island (its territorial sovereignty is not disputed) is not considered here. As its legal status as an island under the UNCLOS is controversial, the EEZ established by Japan has been contested by both China and South Korea. See J. Ashley Roach, ‘Maritime Boundary Delimitation: United States Practice’, Ocean Development & International Law, Vol. 44, Issue 1, pp. 1-27, 7-8.


See a recent announcement on the fishery arrangement of April 2013.


Ji, supra note 18, p. 205.

See Nicaragua v. Colombia, para. 95.


Article 121 of the UNCLOS. For the application of this article to the cases in the Pacific Ocean, Yann-huei Song, ‘The Application of Article 121 of the Law of the Sea Convention to the Selected Geographical Features Situated in the Pacific Ocean’, Chinese Journal of International Law, Vol. 9, 2010, pp. 663-698.

Executive Summary of China’s Submission (p. 5) states ‘[t]he Okinawa Trough is the natural termination of the continental shelf of ECS.’ December 2012.

See Schoenbaum, supra note 3, pp. 85-86.

See the ICJ cases such as the Libya/Malta case, the Jan Mayen Case and the Nicaragua v Colombia case. In these cases, the Court checked whether the disparity was ‘substantial or not’. See, for example, Nicaragua v. Colombia, paras. 210-211.

For example, see Clive H. Schofield & Ian Townsend-Gault, ‘Choppy Waters Ahead in “a Sea of Peace Cooperation and Friendship”?: Slow Progress Towards the Application of Maritime Joint development to the East China Sea’, Marine Policy, Vol. 35, 2011, p. 27.

See China’s deposit, M.Z.N.89.2012.LOS, 21 September 2012, and Japan’s protest, PM/12/303, 24 September 2012.


See Ikeshima, supra note 6, 2017.


44 See Jon M. Van Dyke, ‘Chapter III. Disputes over Islands and Maritime Boundaries in East Asia’, in Hong & Van Dyke (Eds.), *supra* note 2, pp. 55-58.