

2000-18

■

2000. 12

, ,

(Magna Carta)

1994

가

가

1996

200

가

1996

(EEZ : Exclusive Economic Zone)

5

EEZ

가

가

EEZ

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EEZ

가

가

EEZ

74

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121

(Rocks)

EEZ

가

121

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EEZ

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가

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2000 12

韓國海洋水產開發院
院 長 李 廷 旭

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2.	6
2 EEZ	8
3	15
1.	15
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1)	61
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A.J.I.L.	American Journal of International Law
B.J.I.L.	Brooklyn Journal of International Law
B.Y.I.L.	British Yearbook of International Law
I.C.J	International Court of Justice
I.C.L.Q.	International and Comparative Law Quarterly
I.J.E.C.L.	International Journal of Estuarine and Coastal Law
I.O.R.	The Indian Ocean Review
I.L.M.	International Legal Materials
G.J.	Geographical Journal
M.P.	Marine Policy
N.Y.B.L.	Netherlands Yearbook of International Law
O.D.I.L.	Ocean Development and International Law
R.I.A.A.	Reports of International Arbitral Awards
S.D.L.R.	San Diego Law Review

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- EEZ 가

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2 EEZ

- “ - ” “

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- EEZ 74 3
: “ 가 가

38

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가

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121

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“1.

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2. 3

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121

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- 가
- (: Aves)
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- 121 3
- 가 .
- 가
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- 가 , 가
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- 1 : -
- 2 : -
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- 가 가 ,

4

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가

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가

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가

1.

1996 (EEZ: Exclusive Economic Zone)¹⁾ 5
EEZ

가

가, 가

가 ,

가

EEZ

가

1) 5 (55 - 75)
D. J. Attard *The Exclusive Economic Zone in International Law*, Oxford (1987)
EEZ

가

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, EEZ 가

가

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2.

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EEZ 74 1 121 가

. 74 1 .

“ 가 가

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38

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EEZ

74 1 .

74 1

가 .

121

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(Rocks) EEZ 가

3

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“

가 .”

가

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가?

가?

가

가?

가?

가

가

가

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74

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121

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가

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가

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(ICJ : International Court of Justice),

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5

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EEZ

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2 EEZ

EEZ 200

400 가

200 EEZ 가

가 EEZ

가 EEZ

EEZ

가

1958 6 () 1

“1. 2

가

가 ,

.”

가 ,

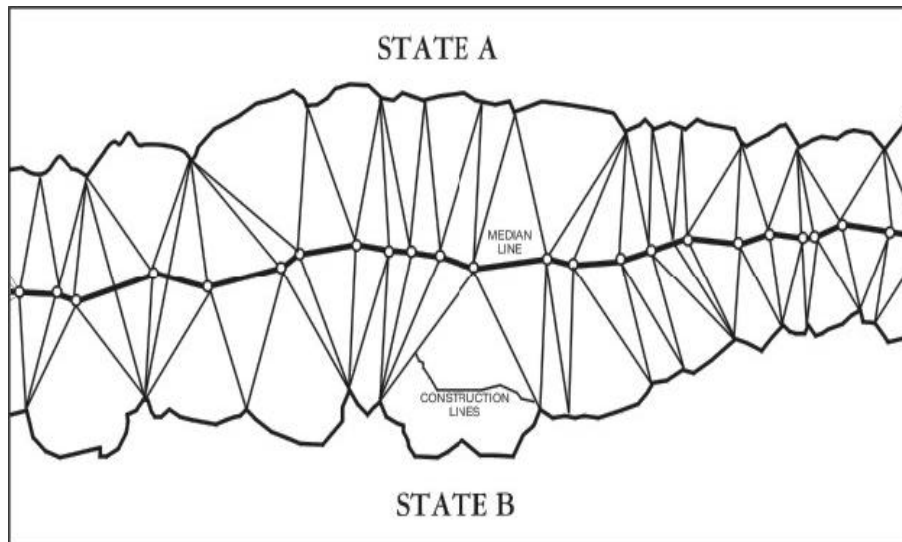
“ (Special Circumstances) ”

‘ -

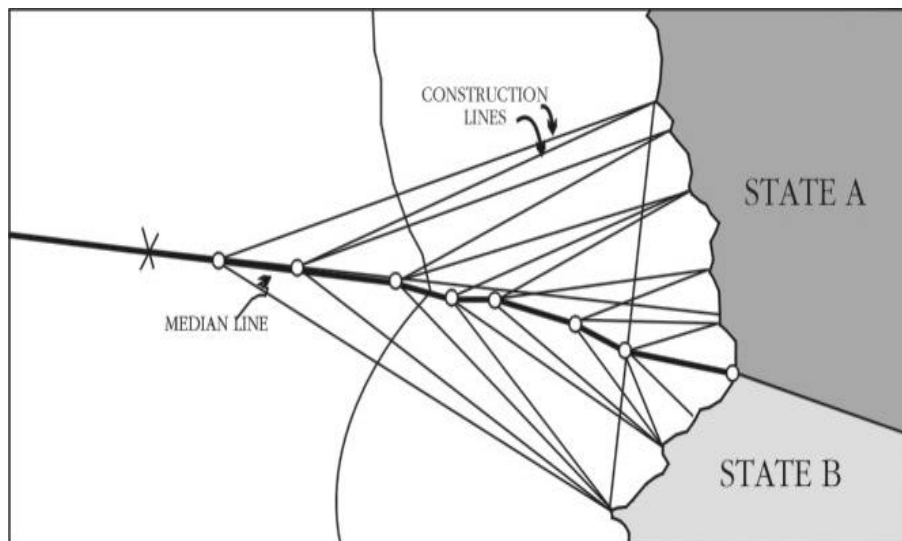
1-1(a)> <

1-1(b)>

< 1-1(a)>



< 1-1(b)>



1969 “ - , . “ , ”2) “ - , “ - , 74 1 EEZ . “ 가 가 , 38 ” 83 1 74 1 . 74 1 83 1 EEZ “ ” , EEZ (Equidistance- Principles-Relevant Circumstances)’ ‘ - (Equitable , (prima facie) 가

2) ICJ, ICJ *Reports*, 1969, para. 101(c)(1).

“ - , “ - .
 , .

6 가 , 가 “ -
 , “ - 가

“ 1958
 (funda-
 mental norm)
 .”³⁾

3 (UNCLOS III: The Third United Nations Conference
 on the Law of the Sea, 1973 1982)

NG 7(Negotiation Group 7) 1981 3
 가 10
 . 3 가
 Tomy Koh 가 . Koh

74 1 83 1 . 74 1

“ 가 가
 ,
 38
 .”

74 1 83 1 ,

3) The Channel Arbitration Case, 18 *R.I.A.A.*, para. 97.

Koh

4)

.5)

Koh

가

,

,

.6)

38

,

가

38

“1.

(a)

(b)

(c)

(d)

가

...”

3

4) (interpretative declaration)
가
(understanding)

, 가가

(1966), pp.189-190

5) UNCLOS III Official Record Vol. XV, p.40.

6) M. D. Evans, “Delimitation and the common maritime boundary”, 64 *B.Y.I.L.*, 1993, p.294.

NG 7

Manner

74

1

“ ...

)

(

가

.”7)

Evans

“

,”

.”8)

74(1)/83(1)

가

가

가

EEZ

가

가

가

7) E. J. Manner, “Settlement of Sea-Boundary Delimitation Dispute According to the Provisions of the 1982 Law of the Sea Convention”, *Essays in International Law in Honour of Judge Lachs*, 1984, p.639.

8) M. D. Evans, *Op. cit.*, . Although this provision is almost entirely vacuous, it has been endorsed as an accurate statement of customary international law, although that in itself it does not take the latter very further.

(although ... recourse to the median line in case of a delimitation between opposite coasts is just a provisional step...)

“The Court has itself noted that *the equitable nature of the equidistance method is particularly pronounced in cases where delimitation has to be effected between States with opposite coasts.*”¹⁰⁾

가

10) 1985 ICJ *Reports*, para. 62.

3

1.

3

가

가

.¹¹⁾ 3

3

12

,

200

EEZ

350

.¹²⁾

가

(Common Heritage of Mankind)

가

가

1958

가

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(‘ ’) 10

“1.

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2.

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1 (b)

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樣

海床

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121

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11)

가

‘

(Common heritage of mankind)’

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’

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12)

76

2,000

100

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350

“1. , .

2. 3 , , 가

3. 가 .”

200 EEZ 200 가

가

가 EEZ 가

가 가 ,

121 3 (Arvid Pardo)

“ , 200 , 가 .”¹³⁾

가 , EEZ,

13) UN Sea-Bed Committee Doc. A/AC.138/SR.57, p.167. . If a 200 mile limit of jurisdiction could be founded on the possession of uninhabited, remote or very small islands, the effectiveness of international administration of ocean space beyond national jurisdiction would be gravely impaired.

15) Bowett, "Islands, Rocks, Reefs, and Low-Tide Elevations in Maritime Boundary Delimitation", Charney and Alexander, eds., *International Maritime Boudary*(, Bowett(a)); M. D. Evans, Relevant Circumstances and Maritime Delimitation, 1989, pp.133-151; Kwiatkowska, "Equitable Maritime Boundary Delimitation - A Legal Perspective", 3 *I.J.E.C.L.*, 1988, pp.287-304; Oda, Dissenting Opinion in the Tunisia/Libya case, 1982 ICJ Reports, para. 150 and paras 170-173; P. Weil, *The Law of Maritime Delimitation - Reflections*, 1989, pp.74-75.

“ 3 가

, 가
(islets)

(open seas:)

.” 16)

EEZ

, 가 “ ,

.” 17)

16) UNCLOS III *Official Records*, Vol. II, Summary Records of Meetings, Second Committee, 39th meeting, paras.1-5.

. If the Conference decided to grant coastal states extensive rights in the form of broad exclusive economic zones, then consideration should be given to the question of to what extent, if at all, those zones could be claimed on the basis of the possession of islets and rocks which offered no real possibility for economic life and were situated far from the continental land mass. If such islets and rocks were to be given full ocean space, it might mean that the access of other countries to the exploitation of the living resources in what was at present the open sea would be curtailed, and that the proposed International Sea-Bed Authority would also be reduced.

17) UN Office of Legal Affairs, *Legislative History of Article 121 of the United Nations Convention on the Law of the Sea*, p.107.

. Without such a provision tiny and barren islands, looked upon in the past as mere obstacles to navigation, would miraculously become the golden keys to vast maritime zones. This would indeed be an unwarranted and unacceptable consequence of the new law of the Sea.

가

,

, 3

가

,¹⁸⁾

가

(沖島),¹⁹⁾

, Rockall,²⁰⁾ Clipperton,²¹⁾ Aves,²²⁾ Jan Mayen,²³⁾

Kiribati, Iwo Jima the
Commonwealth of the Northern Mariana²⁴⁾

rocks

,²⁵⁾

가

가

(灣) Pulo Wai,

St. Peter and

18) UNCLOS III *Official Records*, Vol. I, Plenary Meetings, 37th meeting, para.11; Summary Records of Meetings, Second Committee, 39th meeting, paras. 72 and 73.

19) 東京 1,300 .

20) Iceland 402 , Faeroes 332 , Ireland 226
Outer Hebrides 200 . B. Kwiatkowska and
A. Soons, "Entitlement to Maritime Areas of Rocks Which cannot Sustain Human
Habitation and Economic Life of their Own", 21 *N.Y.I.L.*(1990), pp. 174-180.

21) 580 . *Ibid.* .

22) Venezuela 300 , Dominica 70 .

23) Norway 540 , Iceland 290 , Greenland 240

24) B. Kwiatkowska and A. Soons, *Op. cit.*, p.146.

25)

J. R. V. Prescott *The Maritime Political Boundaries of the World*, 1985, p.176
. Prescott

(New Moore
Purbasha , South Talpatty).
Andaman Sea (Narcondam Island)

1986

Narcondam

,

가

Barren island

가

(the maximum possible claims)

.

St. Paul Rocks, L'Esperance Rock,
 Clarion Guadalupe islets .²⁶⁾

EEZ

가

가

가

가

. 3

가

(consensus)

가

2.

121

121 3

가 . 1930

“

가

(land)

(area)

.”²⁷⁾

Gidel 1930

26) *Ibid.*

27) League of Nations, *Acts of the Conference for the Codification of International Law*, Vol.3, 219 (League of Nations Doc. No. C.230M.117. 1930.V),
 . Every island has its own territorial sea. An island is an area of land, which is permanently above high-water mark.

가
 가 . Gidel
 “
 ,
 ”²⁸⁾
 1930 “ 가
 (capable of occupation and use)”
 ,
 가
 가
 121 1 2 1958 10
 1958 1 121(3) 3
 121 3 3
 가
 3 Sea-Bed Committee
 1971 (other than the principle
 islands of an island State or archipelagic State)
 .²⁹⁾ 1973 Sea-Bed Committee
 가
 , , 가 가
 가 .³⁰⁾ Sea-Bed Committee 1973

28) B. Gidel, *Le droit international public de la mer*, p.684(1934), A. Soons, *Artificial Islands and Installations in International Law*, 17 Law of the Sea Occasional Paper No. 22, 1974. . An island is a natural elevation of the

sea-bed, surrounded by water, which is above water at high-tide and the natural conditions which permit the stable residence of organized groups of human beings.

29) M. H. Nordquist et al., *United Nations Convention on the Law of the Sea 1982 Commentary*, Vol.3, Kluwer, 1985, p.328.

30) *Ibid.*

1km² Island , 1km² Islet .³¹⁾ 1973 1
2
3

“Islets and small islands, uninhabited and without economic life, which are situated on the continental shelf of the coast, do not possess any of the shelf or other marine space of the same nature.”³²⁾

121 3 가 1974
islets, small uninhabited islands without economic life
islet 가 1
km² islet “any island which is not or cannot be inhabited (permanently) or which does not or cannot have its own economic life” .³³⁾

- “3. Islands without economic life and situated outside the territorial sea of a State shall have no marine space of their own.
4. Rocks and low-tide elevations shall have no marine space of their own”.³⁴⁾

‘Rocks’ 가
가 Rocks , Rocks
. 1974
14 가 islet, rock, low-tide elevation

31) *Ibid.*

32) *Ibid.*, p.330.

33) *Ibid.*, p.332.

34) *Ibid.*, p.333.

, 가

- “3. An islet is a smaller naturally formed area of land, surrounded by water, which is above water at high tide.
4. Rock is a naturally formed rocky elevation of ground, surrounded by water, which is above water at high tide.
5. A low-tide elevation is a naturally formed area of land which is surrounded by and above water at low tide but submerged at high tide.”³⁵⁾

1974

가

가

1975 3

2

가

3

2

(ISNT/Part II)

132

121

3

ISNT/Part II

132

가

. 1976

4

“

(Islands without a life of their own, without a permanent and settled population, that are closer to the coastline of [an]other State[s])” EEZ 가

,³⁶⁾

. 1982

11

121

3

35) *Ibid.*

36) *Ibid.*, p.336.

121 3
121 3 3
1979
Hamilton Shirley Amerasinghe

- 37) R. D. Hodgson and Smith, "The Informal Single Negotiating Text (Committee II): A Geographical Perspective", *O.D.I.L.*, Vol.3, 1976, pp.225, 233.
- 38) UN Office of Legal Affairs, *Op. cit.*, p.93.

39)

가

121

,

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3.

‘ (unfounded claim)’

.

.

가

,

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17

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121

가

가

가 . 1998

Smith Thomas

39) E. D. Brown, *The International Law of the Sea*, Vol.1, Dartmouth, 1994, p.150.

“

가

,

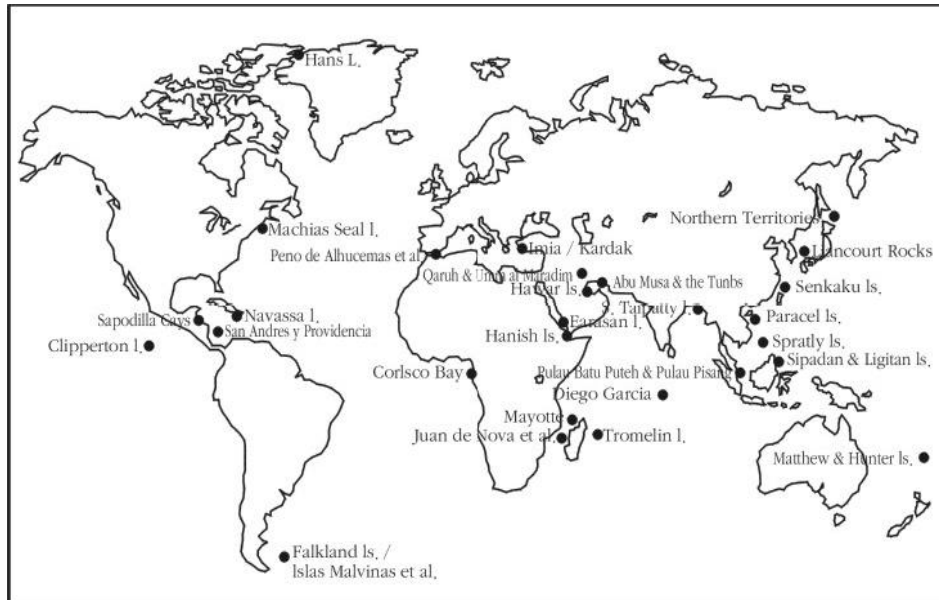
30 40

”40)

Smith Thomas

30

< 3-1> S m i t h T h o m a s 가



40) Robert W. Smith and Bradford L. Thomas, *Islands Disputes and the Law of the Sea*, 1998, p.15. . It is fair to say that maritime resources jurisdiction is at least at issue in almost all island disputes, whether or not openly stated in the publicity surrounding those disputes, regardless of when and over what issue the dispute originated. **This aspect of island dispute is clearly more pronounced than it was three or four decades ago.**

가

가

가

가

Tromelin

Machias

.41)

Seal North Rock

(a landward terminus of the

boundary)

.42)

()

Hans Island

1973

Hans

Hans

1

.43)

. 1958

‘Al-Baina as-Saghiran’, ‘Al-Baina al-Kabir’ , ‘Al-Baina al-Kabir’

.44)

41) Victor Prescott, “France(Reunion)-Mauritius”, Charney & Alexander, eds., *Op. cit.*, pp.1354-1358.

42) 1984 ICJ *Reports*, p.211.

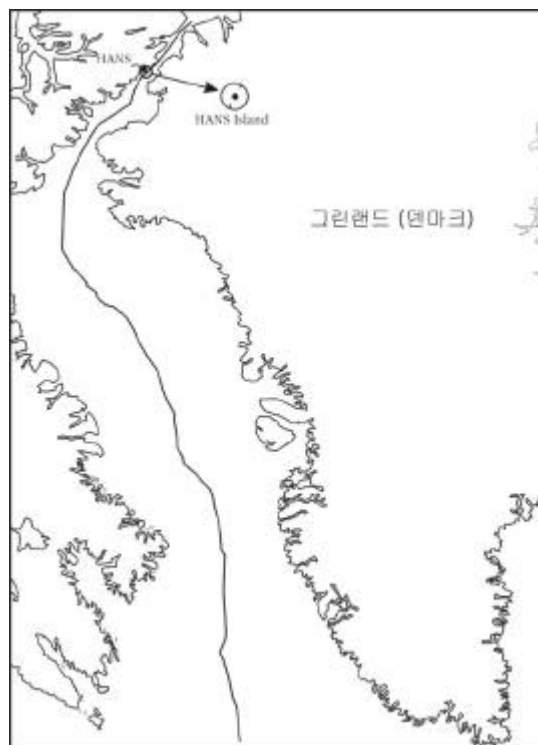
43) Lewis M. Alexander, “Canada-Denmark(Greenland)”, Charney & Alexander eds., *Op. cit.*, p.372.

44) R. Pietrowski, “Bahrain-Saudi Arabia”, Charney & Alexander eds., *Op. cit.*, pp.1495-1497.

가
 . Qarah Umm-al Maradim 가
 . 1961 가
 ,
 .45)
 가 UAE
 Abu Musa Sharjah(1971 UAE 가)가
 , 1971 11
 .46)

< 3-2>

()



45) H. Fox, *Joint Development of Offshore Oil and Gas*, 1989, p.55.

46) A. A. El-Hakim, *The Middle Eastern States and the Law of the Sea*, 1971, pp.127-128.

4. 121 3

1) 121 3

EEZ

121 3 가 .

가

1994 11

1996 2 , 1996 7

가 가 ‘

(persistent objector)’ .

121 3

‘Pacta sunt servanda ()’

.⁴⁷⁾

가

309 “

”

121

3 .⁴⁸⁾

? 121 3

47) , “UN ”, 「 」, , 1998, p.230.

48) 가가 , , , , 2 가 .

.49)

가

121 3

121 3 1958

“

가 , 121 3

가

.50)

?

Charney

가

.51) Charney 가 121

3

.52)

121 3

가

“laconic provision”⁵³⁾

가

가가

3

49) “ (international custom, as evidence of a general practice accepted as law)”

가 가 38

山本草二 著(), 「 」, , 1999, p.86.

50) Barbara Kwiatkowska & A. H. Soons, *Op. cit.*, pp.174-180.

51) J. I. Charney, “Rocks that cannot sustain Human Habitation”, 93 *AJIL*, 1999, p.872.(Charney(a)).

52) *Ibid.*

53) *Ibid.*, p.863.

121 3

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EEZ

가

가

2) 121 3

가?

121 3

가

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.54)

121 3

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31 ()

, 32 ()

가

31 “

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32 31

가

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121 3

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가

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가

1968 1969

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3) 121 3

121 3

“

가 .”⁵⁵⁾

(1) ‘Rocks’ 가?

‘rocks’ “solid stony part of the earth's crust” .⁵⁶⁾

121 3 rocks continental crust
(sand islands) cays
가

121 3 .⁵⁷⁾

Dilpa

(geological)

가

121 3

‘rocks’

(rocky structure)

.⁵⁸⁾

55) “Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf”.

56) Webster ‘rocks’ ‘ (A mass of stone lying at or near the surface of the water) ‘a barren islet’ . : Webster's Third New International Dictionary, 1971. ‘Navigation Dictionary’ ‘island’ ‘ , 가
(track of land smaller than a continent, completely surrounded by water)
가 ‘rock’ , (

) , 潮水

水面下 水面 . Pinnacle

. United Nations Naval Oceanographic Office,

Navigation Dictionary, 2nd ed., 1969.

57) Prescott, *Op. cit.*, p.73 : “must consist of solid parts of the continental crust. Sand islands or cays could never be construed to fall under the terms of the provision about rocks, even though they may be capable of sustaining habitation or economic life of their own.”

58) H. Dilpa, *Le regime juridique des iles dans le droit international de la mer*, 1984, pp.272-73. Kwiatkowska and Soons, p.152, footnote 34 .

(solidity)
 , 3 가
 . 가 “A rock is a..rocky elevation
 of ground...” rocks
 , 121 3
 rocks
 121 3 ‘ , EEZ
 ‘ ’(rocks)
 .
 (atoll) cays 121 3 .59)
 (soils) 가
 (land protrusions) 121 3
 가
 가
 (granite)
 Rockall , (volcanic) Jan Mayen ,
 121 3
 , cays
 60) reefs Aves (small, sandy Aves Island)
 , rocks 121 3
 . Aves rocks가
 island (basepoint)
 가 .61) 3
 가 , 121 3
 ‘rocks’ (legal vocabulary) , (scientific

59) Van Dyke and Brooks, “Uninhabited Islands: Their Impact on the Ownership of the Ocean's Resources”, 12 *O.D.I.L.*, 1983, p.283.

60) Cays

Cays

Prescott, *The Maritime Political Boundaries of the World*, p.73; J. Morgan, “Commentary”, *The UN Convention on the Law of the Sea: Impact and Implementation*, Proceedings of Law of the Sea Institute 19th Annual Conference, 1985(1987), pp.351-354.

61) Prescott, *Op. cit.*, p.352. Aves Island

Venezuela 1/3 가 増減

vocabulary)

‘rocks’

Hudgson Smith

, ‘ (rock)

.⁶²⁾

(International Hydrographic Bureau :

IHB) Hodgson

⁶³⁾

3

‘islands’

‘rocks’

‘rocks’

. 3

‘rocks’

가가

, 9

, ‘rocks’ ‘ , ‘ ,

121

3

‘rocks’

‘any island formation’

가

. EEZ

가 가

가

(

,

)

가

가

.

EEZ

가 가

가 가

‘islets’ ‘small islands’,

가

(islands)

rocks,

‘

가

islets

rocks(islets and rocks which

offered no real possibility for economic life)’, ‘10’ (the

Proposal of Ten States)

가 가

‘islands’, ‘rocks’

‘islets’

.

EEZ

가

가

(geomorphological)

62) Hodgson and Smith, “The Informal Single Negotiating Text(Committee II) : A Geographical Perspective”, 3 *O.D.I.L.*, 1976, p.225. . “‘rock’ is intended to refer to a small-sized island”.

63) Hodgson, “Islands: Normal and Special Circumstances”, *Law of the Sea: The Emerging Regime of the Oceans*, pp.137, 196.

가

, ‘
.

,

EEZ

,

EEZ

,

가

EEZ

.

EEZ

.

rocks

EEZ

rocks

,

가

.

121 3

가

.

121 3

가

가

‘

(All kinds of island which cannot sustain human habitation or economic life of their own)’

.

,

가

,

가

가

.

121 3

.

EEZ

rocks

.

,

121 3 rocks

sandbanks, reefs cays 가 가
가
. Prescott , 가 Minerva Reefs,
Great Barrier Reef (reefs)
EEZ
.64)
121 3
‘islands’ , ‘rocks’
, rocks islands
EEZ 가
가 , , ‘islands’
가 ,65) ,
121 3
가
, rocks 가 가
가

(2)

(potable water)
(tillable soil), (natural
resources)

64) J. R. V. Prescott, “Straight Baselines: Theory and Practice”, E. D. Brown and R. R. Churchill eds., *The UN Convention on the Law of the Sea: Impact and Implementation*, Proceedings of Law of the Sea Institute 19th Annual Conference, 1985(1987), pp.288, 314.

65) UNCLOS III 121 가 (island)

EEZ . . 가
 가 (naturally) 가
 가 가 .66)
 가 ,
 ‘ (habitable)’
 가
 가 .67) ‘
 ’(human habitation) ‘ ,
 가 .
 , ‘ ,
 가 . ,
 , 가 가
 , rocks ‘ ,
 가 ,
 , (radio station),
 , (guaono harvesting), (collecting birds' eggs),
 (turtles) .
 가
 ‘ ,
 ‘ ,
 rocks
 , rocks
 ‘ ,
 가 .68)
 가

66) Hodgson and Smith, *Op. cit.*, p.231.

67) J. I. Charney(a), *Op. cit.*, p.732.

68) Kwiatkowska and Soons, *Op. cit.*, p.165.

가
가 가 ,
가 121 3
.
.
1934 가 Gidel
가
“ (stable residence of organized groups
of human beings)”가 가 “ ”(natural conditions)
.
가 Gidel ,
가
가
가 가
1934 EEZ
가 가
20 1954 Francois Gidel ,
(a radio station) (weather observation post)
.
(International Law Commission: ILC)
가

1900

, 가

(, ,) (, , ,)
가 .

,
. 1923 (Imperial Conference)
3

,
“
(capable of use or habitation)
.”⁶⁹⁾

. 가
“capable of use or habitation”

“ ‘...capable of use’
, ‘capable of habitation’
.”⁷⁰⁾

“capable of use or habitation” 가

69) E. D. Brown, “Rockall and the Limits of National Jurisdiction of the UK, Part 1”, 2 *M.P.*, 1978, p.206. . The word “island” covers all portions of territory permanently above high water in normal circumstances and **capable of use or habitation**.

70) Kwiatkowska and Soons., *Op. cit.*, p.154. . The words “capable of use” should mean capable, without artificial addition, of being used throughout all seasons for some definite commercial or defence purpose, and that “capable of habitation” should mean capable, without artificial addition, of permanent human habitation.

“ 가
가 ,
.”⁷¹⁾
가가
가
3 가 가
가
,
(rocks)
“
,
가 가
,
가

71) *Ibid.*, . It is recognized that these criteria will in many cases admit of argument, but nothing more definite could be arrived at in view of the many divergent considerations involved. It is thought that no criteria could be selected that would not be open to some form of criticism.

.72)

3

. 가 가 EEZ

1958

가 가 (

) 가

가

.73) 가

(,

)가

가

.74) 121

3 가 .

가

.75) ,

가 Gidel

3 .

-
- 72) UN Office of Legal Affairs, *Op. cit.*, p.66. . In various parts of the world, even in very recent times, several islands which had been inhabited and even self-sufficient had become uninhabited as a result of temporary or long-term changes in climate or economics. Other small islands, formerly uninhabited had been populated or repopulated. Particularly, where the economy of a State, or regions of a State, with such islands was precarious, it would be grossly unfair to deprive them of, say, an economic zone which might prove a more permanent and certain means of achieving satisfactory development in the face of otherwise overwhelming geographical disadvantage.
- 73) UNCLOS III Official Records Vol. II, pp.48-51.
- 74) UNCLOS III Official Records Vol. II, pp.13-15.
- 75) Kwiatkowska and Soons, *Op cit.*, p. 166.

(the stable residence of organized groups of human beings)'가
 가 ,⁷⁶⁾ Van Dyke
 Gidel .
 가 () 가 , 가 가
 .⁷⁷⁾ “ 가(statehood) (rocks)
 .”⁷⁸⁾
 rocks ,
⁷⁹⁾ rocks 가 . ,
 4 5
 . EEZ
 가 가
 가? , (permanent)
 가? ‘ 가
 , 가? 가 .
 Gidel Van Dyke , Charney
 121 3 가
 ,
 .⁸⁰⁾
 Charney Van Dyke .
 가

76) B. Gidel, *Op. cit.*, p.684, 1934; A. Soons, Artificial Islands and Installations in International Law, Law of the Sea Occasional Paper No. 22, 1974, p.17.

77) UN Office of Legal Affairs, *Op. cit.*, p.97.

78) *Ibid.* . “for - unlike the legal criteria of statehood where there must be permanent (stable) habitation of the area possessed by a State-an island (rock) is required to possess not human habitation per se, but the capacity to sustain human habitation”

79) , , 가 ,

80) J. I. Charney(a), *Op. cit.*, pp.862-877.

가 , 가
가 .
(Tunisia/Libya case) 가
Jerba
.81) Maine (Gulf of Maine case)
Seal Island (half effect)가
가 Maine ‘ ,
rocks(tiny islands, uninhabited rocks)’
121 3 .82)
Fifla
.83) 가
가 Van Dyke
“ , , ,
.”84)
“cannot sustain”
121 3 ‘ (cannot sustain)’
, ‘ (do not sustain)’

81) 1982 ICJ Reports, para.120.

82) 1984 ICJ Reports, para.201 at pp.329-330 and para.222 at pp.336-337.

83) 1985 ICJ Reports, para. 64 at p.48, and para.72 at p. 52.

84) J. M. Van Dyke et al., “The Exclusive Economic Zone of the Northwestern Hawaiian Islands: When do uninhabited islands generate an EEZ”, 25 *S.D.L.R.*, 1988, p.449. . In summary, recent arbitrations, judicial decisions, and negotiations have been relatively consistent in refusing to give full effect to small insular formations in delimiting maritime boundaries.

Kwiatkowska and Soons, *Op. cit.*, p.160. . The use of the words 'cannot sustain', instead of 'do not sustain', proves that the test in question covers the capacity of rocks to sustain human habitation or economic life of their own, rather than the factual situation of sustaining/not sustaining human habitation or economic life of their own. In other words, the definition refers to uninhabitable rather than to uninhabited islands (rocks).

rocks	factual situation	capacity	1982
語 Text	語 Text		12 l(3)
.	12 l(3)	語 Text	“Le rochers qui ne se
prêtent pas a l'habitation...”		語 Text	“Las rocas no aptas para
maintenir habitacion...”			

가 rocks가
가
121 3 EEZ

Necker, Nihoa, Laysan Lisianski (rocks)

.86) rocks
(,)

EEZ (claim)

3

(Drafting Committee)

Nelson

“ , (121 3) “cannot sustain” (rocks)

rocks가

가 .

가

.”87)

86) J. M. Van Dyke et al, *Op. cit.*, pp.425, 468-472.

87) Brown and Churchill eds., *Op. cit.*, p. 358.

. “Cannot sustain”, I presume, must mean that we are dealing with the present. Whatever may have happened centuries ago would not be relevant to the notion of what a rock is not able to sustain today. So one has to look at what is happening today, the capability of that rock-like formation at the present time. 가 Nelson Aves 例
Aves “ Aves

가
” . L. D. M. Nelson, “The Delimitation of Maritime Boundary in the Caribbean”, D. M. Johnstone and P. M. Saunders eds., *Ocean Boundary Making: Regional Issues and Development*, 1988, pp.142, 175.

rocks가 EEZ

.

rocks

'cannot' 'do not'

가 EEZ

가

‘(potentially)’

, rocks

121 3

.

가

.

가 rocks .88)

‘ , ’

가 가 가

가가 가

가?

(aid to navigation)

, , ,

rocks ‘

, 가

.89)

, 가

Horsburg 가

88) “rock” EEZ 가 Evans “rock” 가

89) E. D. Brown, *Supra* note 67, pp. 181, 207; SM, ICNT, 3 O.D.I.L, 1976, pp. 225, 233; Prescott, *The Maritime Political Boundaries of the World*, 1985, p.73; Kwiatkowska and Soons, *Op. cit.*, p.167.

.90) ‘ 가 Jan Mayen Jan
Mayen , 가 Jan Mayen 121
3 .91) ‘ 가
(a shelter)
Minerva Reefs, Aves
Clipperton , (a rock
from which bird's eggs and turtles are collected)
가
‘ ,
,
(海床)
. Jan Mayen Jan Mayen
가
, ‘ ,
(,)
. 가 가
,
‘ ,
121 3
, Pulo Wai Rockall
(seabed) 가
Clipperton ‘

90) V. L. Forbes, "Singapore's Maritime Jurisdiction", 2 *I.O.R.*, 1989, No.2, pp. 13-17.
91) The 1981 Report and Recommendation of the Conciliation Commission. 20 *ILM.*, 1981.

가
(continental land mass)가
가
,⁹²⁾ Charney
(offshore
waters)’
,⁹³⁾
121 3
, 121 3
121 3
(
)
Jan Mayen
Jan Mayen
, Jan Mayen
, 121 3
, 가
(not a necessarily permanent population)
(necessarily)
,⁹⁴⁾

92)

South Pacific Fisheries Agency

93) J. I. Charney(a), *Op Cit*, p.868.94) Kwiatkowska and Soons, *Op. cit.*, pp.168-169.

가 1923 가
 (without artificial addition)
 .95) (explanatory memorandum)
 “ ,
‘capable of use’ ,
 , ‘capable of habitation’ ,
 .”96)
 121 3 , Nelson
 ‘ (of their own)’ rocks
 rocks rocks
 rocks ‘ ,
 EEZ .97) Van
 Dyke rocks
 rocks가 가
 , ‘ (of
 organized groups of human being)’ ‘ (stable)’
 ,
 rocks 121 3 rocks

95) E. D. Brown, *Op. cit.* p.206 .

96) E. D. Brown, *Op. cit.*, p.206.

97) “The Phrase ‘of their own’ means that a State cannot avoid a rock being denied both an EEZ and a shelf by injecting an artificial economic life, based on resources from its other land territory.” Nelson, *Op. cit.* pp. 174-175, quoting Bowett, *Op. cit.* p.34; Attard, *The Exclusive Economic Zone in International Law*, 1987, pp. 259-260.

.98)

Nelson Van

Dyke . , ,

121 3 , , rocks

121 3 rocks 가

121 3 가 .

(變改) rocks

121 3 rocks

가

가 , rocks

가

1988 99)

가

.100)

rocks

.

?

98) Jon Van Dyke 1930 Gidel

99) 2,000km 「 가 」(小笠原) 諸島
800km 東西 5km 1km가
3m 4.7m 1m 2.6m
2 . The New York Times, January 4, 1988, pp.

1, 8; 東亞日報, 1987 9 4日字.

100) Andrew L. Silverstein, "Okinotorishima : Artificial Preservation of a Speck of Sovereignty" 26 *B.J.I.L.*, 1990, pp.409-410.

가 가

가?

. 1958 10 1 1982
121 1 ,
(insular status) , ‘
(direct human intervention) ’
, (artificial islands)
, ‘ (the juridical status of islands)’
,¹⁰¹⁾ , 10 1 121 1
(natural islands)
(without human intervention)
, ‘ (naturally formed)’ ,
, ‘ (areas of land)’ ‘
(any man- made constructions)’ 10 1 121
1 ,¹⁰²⁾
(high-tide elevations)
, rocks(submerged rocks)
10 1 121 1 .

가

가?

EEZ

가 가? rocks
rocks rocks
rocks ‘ , rocks
, .

101) Kwiatkowska and Soons, *Op. cit.*, p.172; N. Papadakis, *The International Legal Regime of Artificial Island*, 1977, p. 93; Symmons, *The Maritime Zones of Islands in International Law*, Martinus Nijhoff Publishers, 1979, p.36.(Symmons(a)).

102) Kwiatkowska and Soons, *Op. cit.*, p.172.

121 3

(變改)
가 . 103)
, 3 (islands)
2가
rocks
가 가
가
rocks
가 가
121 3 가
Charney
121 1 , 121 3
가 .¹⁰⁴⁾ Charney rocks
(filling polders)
rocks
rocks가

103) 60 .
104) J. I. Charney(a), *Op. cit.* p.867.

- rocks
- rocks Charney , 121 3 rocks EEZ A B , rocks EEZ 가 , 121 3 B A 가 .¹⁰⁶⁾ rocks가 EEZ , 107)
- 121 1
- Kwiatkowska Soons , rocks가 (their original status) , (their nature)’
-
- 105) rocks rocks rocks 定義 rock rock ‘islets’ ‘islets’ ‘rock’ 가 . J. I. Charney, “Central East Asian Maritime Boundaries and the Law of the Sea”, *AJIL*, vol.89, 1995, p.734.
- 106) A國 가 例 rocks 121 3 A國 EEZ 121(3) rocks EEZ A國 B國 rocks A國 B國間 B國 -
- 107) 前者 rocks 가 2 , 後者 가 가

Burke (practical uses)' .108)

“

” 109)

Burke ()

Kwiatkowska Soons Burke

rocks

Kwiatkowska Soons

“

(rocks)

108) Kwiatkowska and Soons, *Op. cit.*, p.171.

109) Myers S. McDougal and William T. Burke, *The Public Order of the Oceans: A Contemporary International Law of the Sea*, 1987, pp. 387-388.

. The chief criterion for appraising the reasonableness of a claim to delimit the territorial sea, or an area of internal waters, from an artificially formed area of land surrounded by water, is whether it is constructed for practical use or rather only as a disguised attempt to extend the territorial sea or internal waters without other relation to local interest. When the construction of an area of land serves a consequential coastal purpose, it would seem to be in the common interest to permit the object to be used for delimitation purposes.

.”¹¹⁰⁾

Burke

Kwiatkowska

Soons

, rocks

rocks

, rocks

121

3

.

가 rocks

rocks

.

rocks

. , Burke

12

,

200

.

12

200

가

.

12

200

EEZ

, ‘

,

.

,

(discretionary)

rocks

, ‘

,

rocks

가

,

rocks가

121

2

‘islands’

,

121

3

.

rocks가

가

(

,

¹¹⁰⁾ Kwiatkowska and Soons, *Op. cit.*, p. 173.

. It would appear that the criterion of construction ‘for practical use’ could - by analogy - also be accepted as a decisive factor in determining the legal status of a natural island (rock) whose area has been artificially extended.

.¹¹¹⁾ , 3 12 1

3 ‘or’ ‘and’

.¹¹²⁾ rocks가 islands가

. 12 1 3 ‘or’ ‘and’ ,

. ,

H ‘ , E ‘ ,

, 12 1 3 ‘ (H E) Rocks’ .

가 , ‘ H E Rocks’ .

, ‘ 가 ,

가 ‘가 . ‘and’

‘islands’가

12 1 3 . ‘and’

가

.¹¹³⁾

12 1 3 가 ,

가 .

. ‘or’

111) Charney island가 . Charney ‘and’ . Charney(a), *Op. cit.*, p.868.

112) UN Office of Legal Affairs, *Op. cit.* p.99.

113) , ‘or’

. , 1988 6 6

oil platform oil platform 1989

가

가 .

rocks islands가 12 1 3 가 가 rocks

. International Herald Tribune (20 November 1989), p. 13 .

“
 (human habitation would inherently be linked
 to the notion of economic life)”¹¹⁴⁾ 가 . Van
 Dyke
 가 ,
 .115)
 가
 가 가
 .
 . 3
 2 Yankov 가 ,
 (consensus)
 .
 ‘constructive ambiguity’ .
 가
 .
 121 3 rocks ‘constructive
 ambiguity’
 rocks 가
 121
 3 rocks Hodgson
 .
 “ Clipperton Ascension 200
 12 5 .
 , 가? 가

114) Kwiatkowska and Soons, *Op. cit.*, p.165.

115) Jon Van Dyke et al., *Op. cit.*, p.437.

가 100 1/8 .

.

.”116)

rocks

rocks

가

rocks

rocks

rocks

가

가

가

가가

가

EEZ

가

121

3

rocks

(rocks)

가

EEZ

Gidel

Van Dyke 가

EEZ

가

가

'가 가

,

가

116) Hodgson, “Islands: Normal and Special Circumstances”, J. Gamble, eds., *Law of the Sea: The Emerging Regime of the Oceans*, p.137.

. A 200-mile boundary about Clipperton or Ascension, for example, allocates to each approximately 125,000 square miles of seabed. Do they warrant such great areas with the corresponding reduction in the international zone? The uninhabitable rocks may or may not deserve one-eighth of a million square miles of seabed; however, to avoid future disputes, the negotiators must be aware of their significance and must face the issue. The effects of the scattered islands of the Trust Territory of the Pacific Islands and of French Polynesia will be astronomical.

‘ , .
 121 3 ‘ ,
 ‘ (a single concept)¹¹⁷⁾ . ‘or’
 가 ‘and’
 .

117) Van Dyke et al, *Op. cit.*, p. 437.

1.

1)

가

가

EEZ

Hodgson

4가

1,000

(2,950km²)

(islands)

,

.118)

5

Manitoulin (2,766km²),

Saaremaa (2,674km²)

,

699

(1,810km²) Hodgson

가

.119)

가

EEZ

.

.120)

,

,

118) R. D. Hodgson, "Islands : Normal and Special Circumstances", in J. K. Gamble and G. Pontecorvo(eds.), *The Law of the Sea : The Emerging Regime of the Oceans*, Ballinger Publishing Co., 1973, pp. 150-151.

119) *Ibid.*, p.182.

120) E. D. Karl, "Islands and the Delimitation of the Continental Shelf : A frame work", *A.J.I.L.*, Vol.71, 1977, p.655.

.¹²¹⁾ 1974

가

가

1969

,

,

,

.¹²²⁾ 1978

Aves (0.02

)

3

가

.¹²³⁾

가

가

,

Rockall

,

가

.¹²⁴⁾

,

가

.

가

가

,

. 가 ,

1969

Matuna (815

) Anambas (260)

.

.

,

121) *Ibid.*, pp.655-657.

122) C. R. Symmons(a), *Op. cit.*, pp. 190-191.

123) M. B. Feldman and David Colson, "The Maritime Boundaries of the United States" 75 *A.J.I.L.*, (1981), p.747, ; David Colson "The Maritime Boundaries of the United States : Where Are We Now?" 20 *Law of the Sea Institute Proceedings*, p. 466.

124) C. R. Symmons, *Op. cit.*, p.191

(islands)

(entitlement)

, EEZ

(mainland)

(1974, 1976)¹²⁵⁾, -

(1976),¹²⁶⁾ Faroes - (1979),¹²⁷⁾

- (1977),¹²⁸⁾ - (1984),¹²⁹⁾

- (1958)¹³⁰⁾

Kerguelen Island the Heard and McDonald

Islands - (1982),¹³¹⁾ Sardinia Menorca

- (1974),¹³²⁾ Corsica Sardinia

- (1986),¹³³⁾ Reunion -

(1980),¹³⁴⁾ Tokelau Samoa

- (1980),¹³⁵⁾ Samoa -Cook Islands

(1980),¹³⁶⁾ Carribean Sea Guadeloupe

Martinique - (1987),¹³⁷⁾ Martinique

125) Charnrey et al, *International Maritime Boundaries*, No. 6-10(1) (2).

126) *Ibid*, No. 6-9.

127) *Ibid*, No. 9-1.

128) *Ibid*, No. 1-4.

129) *Ibid*, No. 8-4.

130) *Ibid*, No. 7-3.

131) *Ibid*, No. 6-1.

132) *Ibid*, No. 8-5.

133) *Ibid*, No. 8-2.

134) *Ibid*, No. 6-5.

135) *Ibid*, No. 5-14.

136) *Ibid*, No. 5-5.

137) *Ibid*, No. 2-15.

-St. Lucia (1981)¹³⁸

가 .

가 .

가가 (adjacency)

가 ,

가 -

가 ,

가 ,

가 ,¹³⁹

가 ,

가 ,

.¹⁴⁰

가

138) *Ibid*, No. 2-11.

139) The comparison of coastal lengths is of course not a comparison of total coastal lengths: for India's coasts are longer than Sri Lanka's, as Norway's are longer than the Faroes' and the US coast longer than Cuba's. The comparison is only between the lengths of that part of each coast which has a projection or prolongation seaward overlapping with the projection of the other coast. The extent of overlap, and therefore the extent of the relevant coasts, is only partially determined by using intersecting arcs drawn from the coast. In the main it is a matter of judgement rather than geometry. D. W. Bowett, "Islands, Rocks, Reefs, and Low-Tide Elevations in Maritime Boundary Delimitations", J. I. Charney et al., *International Maritime Boundaries*, pp.132-133.

140) 1985 ICJ Reports, para. 53.

가

1977

‘Channel Islands

가(semi-independent States)

가

. 141)

Channel Islands

(geographical factor)

. 142)

2)

121 1

‘island’

(island)

가

가가

가

1973

143)

Baffin,

Devon

Ellesmere

Greenland

Greenland

. 144) 1974 -

145)

Great Nicobar Island() Sumatra

141) UK/France Delimitation of the Continental Shelf case, 18 I.L.M.,(1979), para., 186.

142) *Ibid.*, para. 187.

143) Charney et al, *International Maritime Boundaries* No. 1-1.

144) *Ibid.*, No. 1-1. Greenland

145) *Ibid.*, No. 6-6(1); No. 6-6(2).

Great Nicobar Island 1,000

. Great Nicobar Island가

가

가

(mainland coasts)

가

1978 (1978)¹⁴⁶⁾

Great Nicobar Island

, 가 32

Similan

(1986)

Great Nicobar Island Andaman

.¹⁴⁷⁾ 가 Great

Nicobar Island Great Nicobar

Island 가

- Channel Islands Great Nicobar Island

, (,)

.¹⁴⁸⁾

Great Nicobar Island Andaman Channel Island

‘ (圍繞地 : enclave)’

Great Nicobar Island

가

. 가 가

(Antilles) (1978)¹⁴⁹⁾

146) *Ibid*, No. 6-11.

147) *Ibid*, No. 6-3.

148) Channel Island Great Nicobar Island Andaman 가 Great

, . (가

Nicobar Island 300 , Andaman 150 .)

149) Charney et al., *International Maritime Boundaries* No. 2-12.

Aruba, Curacao, Bonaire

30

,¹⁵⁰⁾

Channel Island

(a

modified equidistant line)

(proportionality criteria)

,¹⁵¹⁾

가 Channel Islands

,¹⁵²⁾

(Aves Los Monjes) 가

Channel Islands

,

Aves

Antilles(Saba)

(Virgin island)

Los

Monjes

-

Aruba, Curacao, Bonaire

St. Pierre

Miquelon

Newfoundland

. 1972

¹⁵³⁾

, St. Pierre

Miquelon

가 .

St. Pierre Miquelon

가

가

¹⁵⁰⁾ D. W. Bowett(a), *Op. cit.*, p.146.

¹⁵¹⁾ *Ibid.*, p.146.

¹⁵²⁾ *Ibid.*, p.146.

¹⁵³⁾ Charney et al., *International Maritime Boundaries*, No. 1-2.

가

.

.

가

가

.

3)

가

.

4

7

가

, islands가

rocks

가

. 1965

, ¹⁵⁴⁾ 1968

-

, ¹⁵⁵⁾ 1973

(Greenland)

, ¹⁵⁶⁾ 1978

1989

¹⁵⁷⁾

1980

¹⁵⁸⁾

rocks

.

. 1971

-

Ko Racha Noi

, ¹⁵⁹⁾

-

(Jan Mayan)

154) *Ibid*, No. 9-9.155) *Ibid.*, No. 9-14.156) *Ibid.*, No. 1-1.

157) Roegen ()

Poland

Roegen

Griefswalden Oie

. Charney et al.,

Ibid., No. 10-7; No. 10-6(1).

158) Papua New Guinea Wuvulu

; Charney et al., *Ibid.*, No. 5-10.159) D. Bowett(a), *Op. cit.*, p.150.

Kolbeinsey Hvalbakur 200

. 1980

8

Aland

(Bogskar)

.¹⁶⁰⁾

가

. 1969 -

.¹⁶¹⁾

. ‘ (mainland-to-mainland equidistant line)’ .

.¹⁶²⁾

1982

-

¹⁶³⁾

1988

¹⁶⁴⁾

가가

4)

가

.

가

가

.

160) *Ibid.*, p.150.

161) Charney et al., *Op. cit.*, No. 7-6.

162) D. Bowett(a), *Op. cit.*, p.149.

163) Charney et al., *Op. cit.*, No. 5-1.

164) *Ibid*, No. 5-4.

1965

Walcheren, Schouwen, Texel, Vlieland
,¹⁶⁵⁾ 1971 30

. ¹⁶⁶⁾ 1980

가 Wallis
Futuna 가 , 가
(main island groups) Niua

Fou .¹⁶⁷⁾ 가 1974 -

Masandam Peninsula Great and
Little Quion .¹⁶⁸⁾

가 가

Laccadive 100 Minicoy Maldive (atoll)

, Cocos Dos Amigos Ecuador
Colon .¹⁶⁹⁾

Cocos
Islas de Malpelo .¹⁷⁰⁾

Sardinia

rocks

.¹⁷¹⁾ 172), -

165) *Ibid*, No. 9-13.

166) *Ibid*, No. 6-13.

167) *Ibid*, No. 5-8.

168) *Ibid*, No. 7-5.

169) *Ibid*, No. 6-8; No. 3-8.

170) *Ibid*, No. 3-6.

171) *Ibid*, No. 8-2.

172) *Ibid*, No. 2-9.

, 173)

-

174)

Aves

가

Leeward Islands

가 . 1978

, 175)

Aves

Aves

가

3

가

Aves

, 176)

(Aves)

가

가

(adjacency)

60

San Clemente

San Nicolas,

Guadeloupe

, 177)

Murray Island

Christie Island

Stork Islet, 46 Ft Islet

Pachumba Islet

173) *Ibid*, No. 7-2.174) *Ibid*, No. 7-3.175) *Ibid*, No. 2-14, No. 2-12.176) *Lecture Notes on Coastal and Estuarial Studies*, No. 27, in *A New Law of the Sea for the Caribbean* 255-6 (Gold ed., 1978).177) Charnrey et al, *Op. cit.*, No. 1-5.,

. 178)

Butang

Langkawa

. 179)

가

,

가

가

.

5)

가

가

가

가

가

‘ (distort)’

.

가

.

가

가

,

,

,

가

가

178) *Ibid*, No. 6-4.179) *Ibid*, No. 6-12.

가 73 4

가 , 가
가
(three-quarters) (half-effect), 3/4

, ,

가 , 가
가

, .

.¹⁸⁰⁾ Corfu, Kefallinia Zakynthos , Otranto
가 Channel 3/4 Strofades
(half effect)

.¹⁸¹⁾ Borneo (Sarawak ()
) Borneo
(Kepulauan Natuna Besar Kepulauan Natuna Seltan)
가 0.86, 0.74,

180) *Ibid*, No. 8-4.

181) *Ibid.*, No. 5-9.

1969

56% , 22 4 3 가 25
가

0.68, 0.56

.¹⁸²⁾

가

,

Kharg

8

가

17

.¹⁸³⁾

Scillies

.¹⁸⁴⁾

,

-

-

, -

Maine

-

Scilly

Ushant

,

Scilly

.

Scilly

.¹⁸⁵⁾ 1982

-

Ras Kaboudia

11

Kerkennah

가

.

-

.

,

가

가

.¹⁸⁶⁾

182) *Ibid.*, pp.181-182.

183) *Ibid.*, p.189.

184) *Ibid.*, No. 7-7, No. No. 9-5.

185) *Anglo-French Continental Shelf Case Award*, 1997, paras.251, 254.

186) D. Bowett(a), *Op. cit.*, p.140.

가

6) Mid-way Island

‘
 ,
 가
 (an island ‘straddling’ an equidistant line).¹⁸⁷⁾ ‘mid-way island’
 .¹⁸⁸⁾ mid-way island
 .
 가 가
 가 가
 ,
 가
 가
 가
 mid-way island 가
 - Farsi
 Arabi 12
 , -UAE Sirri () Sir Abu
 Nuayr (UAE)
 mid-way island 가
 12
 가 . -UAE (1969),¹⁸⁹⁾
 (1968),¹⁹⁰⁾ -

187) *Ibid*, p. 141.

188) *Ibid*, p. 142.

189) Charney et al., *Op. cit.*, No. 7-9.

190) *Ibid*, No. 8-7.

(1971)¹⁹¹⁾ UAE(Abu Dahbi) Daiyina , Pelagruz
Pantellaria, Linosa, Lampedusa
12

.
-
.
-
.
192)
1965 - 193) mid-way island
Jabuka () ,
가
(compensation)
194) mid-way island
.
,
(enclave)¹⁹⁵⁾
1969
Pelagruz Caiola
12 가
196)
1988 197)

191) *Ibid*, No. 8-6.

192) 1971

13 가 38 , 60 Pantallaria, Lampedusa, Linosa, Lampione
Pantelleria Lampione 13

193) Charney et al., *Op. cit.*, No. 8-7(1).

194) D. Bowett, *Op. cit.*, p.143.

195) enclave 가 . 1
Kenney

가
, 가
가
가 , 1988. 7,
p.155 .

196) *Ibid*, p.194.

197) Charney et al., *Op. cit.*, No. 10-9.

Gotland Gotska Sandon 75%
 198) mid-way island
 199) mid-way island
 1984 200) mid-way island
 Bornholm, Leasø, Anholt, Hesselø
 Gotland Gotska Sandon
 201)
 Gotland Gotska Sandon
 mid-way island
 가

198) Sweden
 1988 1 13 「
 4 14
 Gotland Gotska Sandon (Sweden) Hiiumaa Saaremaa ()
 가 가 Gotland 55,000 가 가 가
 125km, 52km 3,200km² Sweden 가
 Sweden 112 , 39
 Gotland 가
 , Gotland 가 75%
 199) 12

가

Sweden was obliged to grant the USSR fishing quotas of 18,000 tons for 20 years, and the USSR obliged to grant quotas to Sweden of 6,000 tons in a special zone: the same 75:25% was thus respected, but in reverse. D. Bowett, *Op. cit.*, pp.143-145.

200) 1974

Tsushima

: Charney et al., *Op. cit.*, No. 5-12

201) D. Bowett(a), *Op. cit.*, pp.141-142.

7) 가 202)

가

가

가

가

가

- , - (가) -

203) , Guayaquil Ecuador ,
가 Le Grand Connetable , Pemba

Islas Ladronez Isla Montuosa
Cocos , (a perpendicular to the coast)
1982 -

(the general direction) , Jerba
() ,204)

202) , . 1971
Lampedusa(3) Linosa(2) 3 無人孤島 Lampione
4
13
(Limpione 12)
1971 6
Pentelleria 가 9,000 , Lampedusa 4,387
1958 Bagrain
Saudi Arabia , 1968 Iran Saudi Arabia ,
1974 (UAE) (Agreement Concerning the
Boundary Line Dividing parts of the Continental Shelf between Iran and the United
Arab Emirates, *Limits in the Seas*, No.63, 1975)
가
203) (latitude) 東西 直線劃線
204) 1982 ICJ *Reports*, para.18.

가 .
가? 가
가 가 (adjacency) ,
가 가
(adjacent) 가 .
가 가
가 .
가가
가가
가
가
EEZ 가 가
- (1969) Halul
, ‘ , Navassa
(Haiti) ,
(1977) 3
,

가

. Kachchaitivu

(1974)

Kachchaitivu

Narcondam Island Barren Island²⁰⁵⁾

가 ‘
having its sovereignty recognized)’

가(the price one party has to pay for
.206)

1970 2

3

.207)

가

가 . - (1969)

205) Andaman (India)
가

70 , 57

Narcondam Island

가

. D. Bowett(a), *Op. cit.*, p.145.206) *Ibid*, p.136.

207)

12

Pelagruz Kajola

가 10 , 가 6²

12

1958

, - (1974)
 , ()
 Kennedy Channel .

12

Tremiti

,
 , ,
 ,208)
 ,
 가 .
 (가
 , ,)
 가 , , ,
 .

. 1982 -
 Ko Losin (rock) .
 가 1971 - -
 80 Pulau Perak (rock) ,
 1988 - Outer Hebrides
 180 Rockall (rock)
 . (rocks)
 .
 가
 , 121 3
 . 1982 6 13 1
 (reefs) 가
 , rocks

208) *Ibid.*, p.189.

· , 7 13 1

rocks

가

가

rocks가

121

3

, rocks가

·

8) 가

·

가

가

·

Clipperton

,

Clarion

·

121

3

·

Rockall

·

200

가

·

,

,

(

가

가),

(

가

가),

·

,

가

·

가

·

가

가

2. (case law)

‘ (special geographical features)’ (the general coastal configuration)

가
1977 - Channel Islands
,209) 가 3
(Eddystone Rocks,²¹⁰) Channel Islands Scilly Isles²¹¹)
가
Channel Islands
가 Scilly Isles
가 Channel Islands Eddystone
Rocks Scilly Isles (mid-oceanic

209) *Case concerning the Delimitation of the Continental Shelf Between the United Kingdom of Great Britain and Northern Ireland, and the French Republic*, Decision of June 30, 1977, 18 R.I.A.A., 95.

210) 14 . 18 R.I.A.A., p.74, para.144.

211) Scilly Isles 21 (34km) 48

islands)

6

Scilly Isles

Scilly Isles

Scilly Isles

12

rocks

Channel Islands

Jersey Bailiwicks

(special circumstances)

12

.212)

.213)

Scilly Isles가

가

Scilly Isles

.214)

1

(primary boundary)

2

가

가

가

12

.215)

Channel Islands

12

enclave

212) *Ibid*, para.202.

213) *Ibid*, para.184.

214) *Ibid*, para.249.

215) *Ibid*, paras. 201, 202.

Scillies

,²¹⁶⁾

가

(Isle of Ushant)

2

,

,²¹⁷⁾

,²¹⁸⁾

Scillies

가

가

Kerkennah Islands

,²¹⁹⁾

Jerba

,²²⁰⁾

(minor geographical features)’

,²²¹⁾

“ 가

,

rocks

,

”²²²⁾

Filfa

,²²³⁾

Seal Island

,²²⁴⁾

216) Prosper Weil, *The Law of Maritime Delimitation - Reflections*, 1989, pp.230-231.

217) , para.248.

218) *Ibid.*, para.251.

219) 1982 ICJ *Reports*, para.128.

220) *Ibid.*, para.120.

221) 1984 ICJ *Reports*, para.201.

222) *Ibid.*

223) 1985 ICJ *Reports*, para.64.

224) *Ibid.*, para.222.

.²²⁵⁾ (가)

‘islets’ 가 , 가 가 ‘rocks’²²⁶⁾

(a graduated effect of island)

가 , (general configuration) (coastal length)

(proportionality of coast) Jerba

Jerba

.²²⁷⁾ Kerkennah Islands

.²²⁸⁾ Kerkennah Islands

Jerba , Kerkennah Islands Jerba

가 Jerba

.²²⁹⁾

225) Ibid., para.222.

226) Prosper Weil, *Op. cit.*, p.232.

227) Jerba
(a perpendicular to the coast) 가 ,

가
228) 1982 ICJ *Reports*, para.131.

229) *Ibid.*, para.120.

,
.
,
.

3. 가

가 가
.
가
(equitable) 가
.
,
,²³⁰⁾ 가

가

,
가 가
가
가
.

²³⁰⁾ D. W. Bowett(a), *Op. cit.*, p.132.

가
가

,²³¹⁾

4.

1) Rockall

(1)

St. Kilda 190 (300km) Rockall Donegal
240 (380km)

가 61

가 ,²³²⁾

< 4-1>

R o c k a l l



231) *Ibid*, pp.143-144.

232) Van Dyke et al., *Op. cit.*, pp.452-453.

Rockall 3 Rockall
Trough가 233) 400 600 (640km
960km) Rockall Plateau가 .234) Rockall
Plateau Rockall
가
.
1955 가
가 . 가 1955 .
1972 'Rockall (the Island of Rockall Act of
1972)' 가
235) 1976 200
1976 ' (Fishery Limits Act of 1976)
Rockall 200 236)
.
1978 'Notice to Mariners' .237)
1974 가
'the Continental Shelf(Designation of Additional Areas)
Order 1974' 238), 가
Rockall 5 2 .239)
200 Rockall
. Rockall
Rockall

233) C. Symmons, "The Rockall Dispute Deepens: An Analysis of Recent Danish and Icelandic Actions", *I.C.L.Q.*, vol. 35, 1986, pp.344-345(Symmons(b)).
Rockall , Naylor and Shannon, *The Geology of Off-Shore Ireland and West Britain*, 1984 .

234) Van Dyke, et al., *Op. cit.*, pp. 452-453. Rockall Plateau Rockall
Faeros Iceland

235) C. Symmons(b), *Op. cit.*, p.135.

236) Van Dyke et al, *Op. cit.*, p.453.

237) 「Notice to Mariners, No. 2611 (1976)」 ; 「Admiralty Notice to Mariners, No. 2611/76 (June 24, 1978)」 *B.Y.I.L.* 1982, pp.337-477.

238) 「S. I. No.1489/1974」 reprinted in C. Symmons(b), pp.344-345.

239) C. Symmons.(b), p.345.

가
 .240)
 Rockall 1982
 , , 1982
 Rockall , St. Kilda
 200
 , , Rockall
 1982
 가 3
 Rockall
 가
 가
 .241)
 121 3 Rockall
 가 ,
 1982
 .
 Rockall 가
 . Rockall
 .242)
 Rockall 가 가
 . rocks Rockall 200
 121 3

240) *B.Y.I.L.*, 982, pp.337-477.

121 3

241) *Ibid.*

242) C. Symmons, "The Outstanding Maritime Boundary Problems Between Ireland and the United Kingdom," *UN Convention on the Law of the Sea: Impact and Implementation*, 19 Law of the Sea Proceedings (E. D. Brown and R. R. Churchill eds., 1987, pp.240-241(Symmons(c)).

“Rockall 가 , 가가 가 ”²⁴³⁾

, 121 3 , ‘

EEZ 가 Rockall 200 ,²⁴⁴⁾
121 3 Rockall 200 ,²⁴⁵⁾

, Rockall

가

1982 74 83 가

.

, Rockall ,
()

Rockall 가
²⁴⁶⁾

(2) Rockall 가

Rockall 200

243) *Ibid.*, . “The British claims...that their fishery limits can be reckoned from Rockall as though it was part of the mainland is directly contrary to the views of the majority of the world's States as to the relevant rules of international law”.

244) *Irish Times*, May 8, 1985 reprinted in C. Symmons, “The Outstanding Maritime Boundary Problems between Ireland and the United Kingdom,” LSI Proceedings, p.237; “Explanatory Note” of the Althing (Icelandic Parliament) Resolution of Dec. 22, 1978.

245) Rockall

基點使用

246) Rockall

Scotland

. Hansard, vol. 884, col. 1467; C. Symmons(a), *Op. cit.*, p.135.

248) 「No. 320 of 1976」, para. 4 reprinted in C. Symmons, *Op. cit.*, p.235.

250) ‘

Cornish Scilly , Smalls , Scotland
 (Islay , Mingulay Barra Outer
 Hebrides) St. Kilda . C. Symmons(b),
 Op. cit., pp.236-237; Hansard (HC), vol. 27, col. 271.
 St. Kilda

St. Kilda

Rockall 200

121 3 ,251)

Rockall

Rockall

Rockall

121

3

Rockall

,252)

1974 Rockall

, 1974 1976

Rockall

,253)

1976

Faroes

200

Rockall

Faroes Rockall

200

Rockall

200

,254)

Rockall

200

Rockall

,255)

Faroes

1976

251) *Irish Times*, May 8, 1985 reprinted in C. Symmons, *Supra* note 126, p.237.

252) C. Symmons, "Legal Aspects of the Anglo-Irish Disputes over Rockall," *Northern Ireland Legal Quarterly*, vol. 26, 1975, pp.66-67; C. Symmons, *LSI Proceedings*, p.238.

253) C. Symmons(b), *Op. cit.*, p.344-346.

254) *Ibid*, p.348.

255) C. Symmons, "British Off-Shore Continental Shelf and Fishery Limit Boundaries: an Analysis of Overlapping Zones," *I.C.L.Q.*, vol. 28, 1979, p.731. (C. Symmons(d)).

(ipso jure)’
가 .256) 가 1985 5
7 Faroes
Faroes
Faroes Rockall
가 ‘ (practical need)’
.257) Rockall
Faroes
200 가
Rockall
.258)
Rockall EEZ
1985 5 7
“ 가 가
.”259)
Rockall 가 가
EEZ 1982
Rockall
.260)

256) C. Symmons(b), *Op. cit.*, p.348.

257) “Danish Press Communique of May 1985 from the Minisry of Foreign Affairs”
reprinted in C. Symmons(b), *Op. cit.*, p.349.

258) C. Symmons(b), *Op. cit.*, p.353.

259) “Danish Press Communique of May 1985 from the Minisry of Foreign Affairs”
reprinted in C. Symmons(b), *Op. cit.*, p.349. . Denmark
and others plead that uninhabited skerry cannot be granted the status of an island
in the sense of international law. ...the new UN Convention on the Law of the Sea
clearly confirms this view.

260) *The Times*, 29 Jan. 1977; Hansad (HC), vol. 27, col.271 (12 July 1982)

Rockall

Rockall

1975

200

Rockall

200

200

Rockall

,261)

Rockall

,262)

가 Rockall

200

, 1975

200

Rockall

가

Rockall

,263)

1978

(the Althing)

Rockall

가

,264)

‘explanatory note’ ,

Rockall

가 3

,265)

261) C. Symmons(b), *Op. cit.*, p.356.

262) *Ibid.*

263) C. Symmons(d), *Op. cit.*, p.729.

264) C. Symmons(b), *Op. cit.*, pp.357-358.

265) “explanatory note” attached to the Althing Resolution:

“The British Government has taken measures based on their ownership of the Rock Rockall with the object of extending authority into the sea-bed area which pertains to Iceland according to current doctrine on international law. All such measures should be resisted as would reduce the independent economic zone conferred by the rules of the LOSC draft.” reprinted in C. Symmons(b), *Op. cit.*, pp.357-358.

(3) 가
 1997 7 15 Rockall
 200 121 3
 200
 .
 Rockall ()
 150km St. Kilda ,266)
 Rockall Rockall
 , Rockall
 .

2) Aves

Aves
 (Aves)
 . Aves
 , (,)
 .
 , ,267)
 가 Aves 121 3
 EEZ ,268)269) Aves

266) D. H. Anderson, "British Accession to the United Nations Convention on the Law of the Sea", 46 *I.C.L.Q.*, 1997, pp.778-779.

267) Nweihed, EZ(uneasy) Delimitation in the Semi-enclosed Caribbean Sea, 8 *O.D.I.L.* (1980)

268) Venezuela Aves EEZ 가 가 가
 , (equidistant boundary line)
 , Aves 121 3 , Dominica 3, 150
 square miles, Montserrat 2,300 square miles Nevis 1,550 square miles

가 . L. D. M. Nelson, 'The Delimitation of Maritime Boundaries in the Caribbean,' Johnston and Saunders., eds., *Ocean Boundary Making: Regional Issues and Developments*, 1988, p. 167.

269) Venezuela가 dilemma
 Monks Islands (Los Monjes) Colombia . Monk Islnads
 Aves Aves Monk Islands
 . Venezuela가 Monk Islands EEZ
 가 . Monk
 Islands Bowett, Op. cit., pp.322-323; H. W. Jayewardene, *The Regime of Islands in International Law*, 1990, pp.452-453 .

가

가

3)

가 1976 7 31

200

,270)

(Gulf of Mexico)

,271)

가

272)

(hydrocabon)

,273)

가

,274)

Aves

270) Yucatan

California

. Mark

B. Feldman and David Colson, 'The Maritime Boundaries of the United States,' *A.J.I.L.*, vol. 75, 1981, p.744.271) Feldman and Colson, *Ibid.*, pp.740, 743-45.272) 「The Treaty on Maritime Boundaries Between the United States of America and the United Mexican States」(1978 5 4). Feldman and Colson, op. cit., pp.740,743-744; Van Dyke, *Op. cit.*, p.431.273) Feldman and Colson, *Op. cit.*, p.744.274) *Ibid.*, p.744.

)
 (the Florida Keys), (Baker, Howland, Jarvis,
 Palmyra) (Swains)
 .276)
 , rocks
 . Colson
 “ (real estate)
 , (real estate) 가
 가
 .”277)
 rocks
 EEZ
 .
 가(trade-offs)
 .
 ,
 가
 .
 가 가 Clipperton 278)

275) Aves
 實利的 利益 가 (對價)가
 Aves
 得 失 . Feldman and Colson, *Op. cit.*, p.747.

276) Van Dyke et al, *Op. cit.*, p.432-433.

277) Van Dyke et al, *Op. cit.*, p.432. . Any piece of real
 estate could fit under the definition of an island, and we made the decision based
 upon what areas had united States territorial seas drawn around them...If it had a
 territorial sea,...it was entitled to be used as a base point for drawing equidistant
 line boundaries.

278) Clipperton ,
 . Central Intelligence
 Agency, *The World Factbook 1995*, pp.91-92.

200

rocks

EEZ

가

4) 가

rocks

가

가

1995

가

가

rocks

rocks가

121 3

74

83

rocks

121 3

rocks

rocks

121 3

121 3

rocks

가

121

, 74 83

121 3 rocks EEZ
3가

, 121 3 rocks 121
3

‘
, 121 3
Brown 가
(difficult to apply)
, 1982
가 rocks
1982
. rocks
(an unavoidable side-effect)’ .279) 121 3
rocks
가 121 3 (legal sense)
, rocks
rocks EEZ
, 가

279) Kwiatkowska and Soons, *Op. cit.*, p.178.

(maritime expansionism)가

. rocks

,

가

.

.280)

.

,

,

.

.

가

,

.

. 121

3

가

가

EEZ

. 121 3

,

rocks

가

1976

가

(islands: rocks)

EEZ

.

.

280) Van Dyke and Brooks, *Op. cit.*, p.266.

5

1. 281)

가 63 9 740m² , 가 67 6 698m²
32 2 735m²
18 173m² .
< 5-1>

131 52 1 , 37 14 20 .282)
가
92km(47.4)
가 가 220km(117.3)
· , , 가 가
() 157km(84.9) ,

281) , 「
282) , 「 : , 1997, pp.104 109
」, 1981.

200km . 가 , 330m ,
 1~3m .
 가 가 .
 가 가 . ,
 .
 () 500
 가 1996 3 1997 11 .
 .
 . 2 가
 . ,
 가
 가 .
 가 .
 ,
 .
 .283)

2 .

121 3
 1998 11 21

283) () , 1996 9 21
 , 2000
 1000 , 200 1200
 . (, 1996. 10. 7)

“... 가 가 가 가
 , 가 가

.
 ,
 가 .
 가

. 가 ,
 가 가 가
 . 가
 가 가
 가

....”284)

121 3
 가 .
 121 3
 . 1996 1
 .

25

“... 200

.
 가 .
 가 .”285)

,
 .

284) , 「 (2000), p.393.
 285) , 1996 1 25 .

가 (發揚) 200
 .288)
 「
 」
 .
 “...
 가
 가
 .
 EEZ 가
 ‘ ,
 .”289)
 「
 」
 가
 .
 . 2000
 가
 . 2000 10 31
 “
 가
 가
 가
 ” .290)
 “ , ”
 “ ” .291)
 1998 11

288) , “ ”, []
 40 3 ,1999, p.109 132.
 289) 20 , 「 : 」,
 , 2000, p.287.
 290) 2000 11 6 .
 291) 2000 11 6 .

. , 2000 .

3.

1) 1 :

121 3
 , 가 .
 121 3
 가 .
 121 3
 ,
 가 .

121 3

, 292)

가 . EEZ

-

292) () 10 가 가
 가 .
 EEZ . , 가

“ 가

,

121 3 200 가
 , ” , *Op. cit.* p.118 .

가 , , - . - . 18 . 1951 8~9 가 . 1969 - , 1974 -UAE , 가 . 5 2.5 , . 1985 - . 1:3 1:8 . 가 가 . , 1974 point 35 (日御崎) point 80 , point 가 (71) 1986 (39 37.5 , 133 45

) , (船倉島), Povorotnuii
(184) , 169
가 .

2) 2 :

121 3
, 121 3
가 가
.
가
,
(293)
가
-
가
50% 75%
(294)
가
-
1978
Aves 8 , 121 3
가 200 EEZ
Guadalupe 가 . Guadalupe
가 50
(295) 1988

293) 가

,
.
가 가 가
가

294) , “ EEZ 121
3 ”, 「 J, 3 1 (1996), p.73.

295) , 「
(1997), p.85.

75% . 가 50% Gotland .
 1978 - Sicily , 1982
 - Kerkennah , 1984 -
 Seal 50% .
 < 5-2>

3)

EEZ

EEZ
가

18

가

가

가

가

가

가

가

가

가가

가

가

296)

가

296)

EEZ

獨島

隱岐島

“

” . , *Op. cit.* p.10.

, , ,
가 가 가
,297)

297) “
EEZ
‘ EEZ
가 ”. , “ 21
가?”, 「 2000 1 , p.443.

1.

- , 「*国際法の基礎*」, 有斐閣, 1988.
- 20, 「*国際法の基礎*」, 有斐閣, 1999.
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2.

- , "EEZ", 121 3, " , 3 1 , 1996.
- , "UN , , 1998.
- , , 2000. 9. 8.
- , " , 1997.
- , " , " , 40 3 , 1999.
- , " 21 가? , 2000 1 .
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