



KMI, COLP, and NILOS Conference on Globalization and the Law of the Sea

Panel III: Islands and Rocks:

How Much Can a Rock Get? A Reflection from the Okinotorishima Rocks

1-3 December 2010
Marriot Metro Center, Washington, DC

Guifang (Julia) Xue
Institute for the Law of the Sea
Ocean University of China (Qingdao)



Agenda

1. Regime of Islands and its Implications

2. Oknotorishima Rocks and Japan's Islandisation Efforts

3. Concluding Remarks



Islands are important!

- ▶ Pearls of the ocean:
 - to generate large areas of waters under sovereignty, sovereign rights and jurisdiction
- ▶ Unsinkable aircraft carrier:
 - to support national security
- ▶ Natural resources reservoir: living & non-living: fish, oil & gas:
 - to sustain national economic development



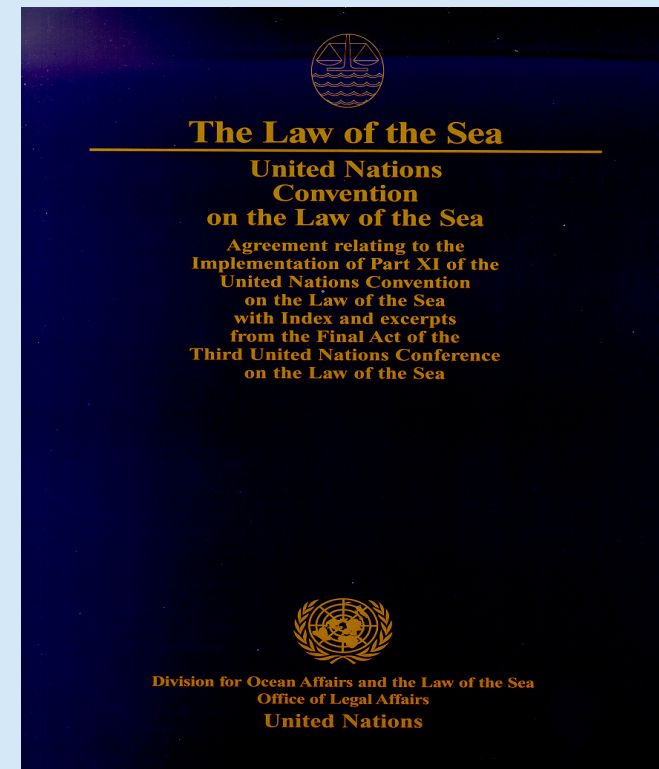
Regime of Islands--Article 121, Part VIII, UNCLOS

1. An **island** is a **naturally formed** area of **land**, **surrounded by water**, which is **above water at high tide**.
2. Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory.
3. ***Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.***



Implications of Island Regime

- Primary Criteria: an island must be
 - a natural feature
 - an area of land
 - surrounded by water
 - above water at high tide
- Relatively uncontroversial
 - Artificial islands disqualified
 - Distinction between islands and low-tide elevations
 - Implications of sea level rise
- Islands are important, but not all islands are created equal!



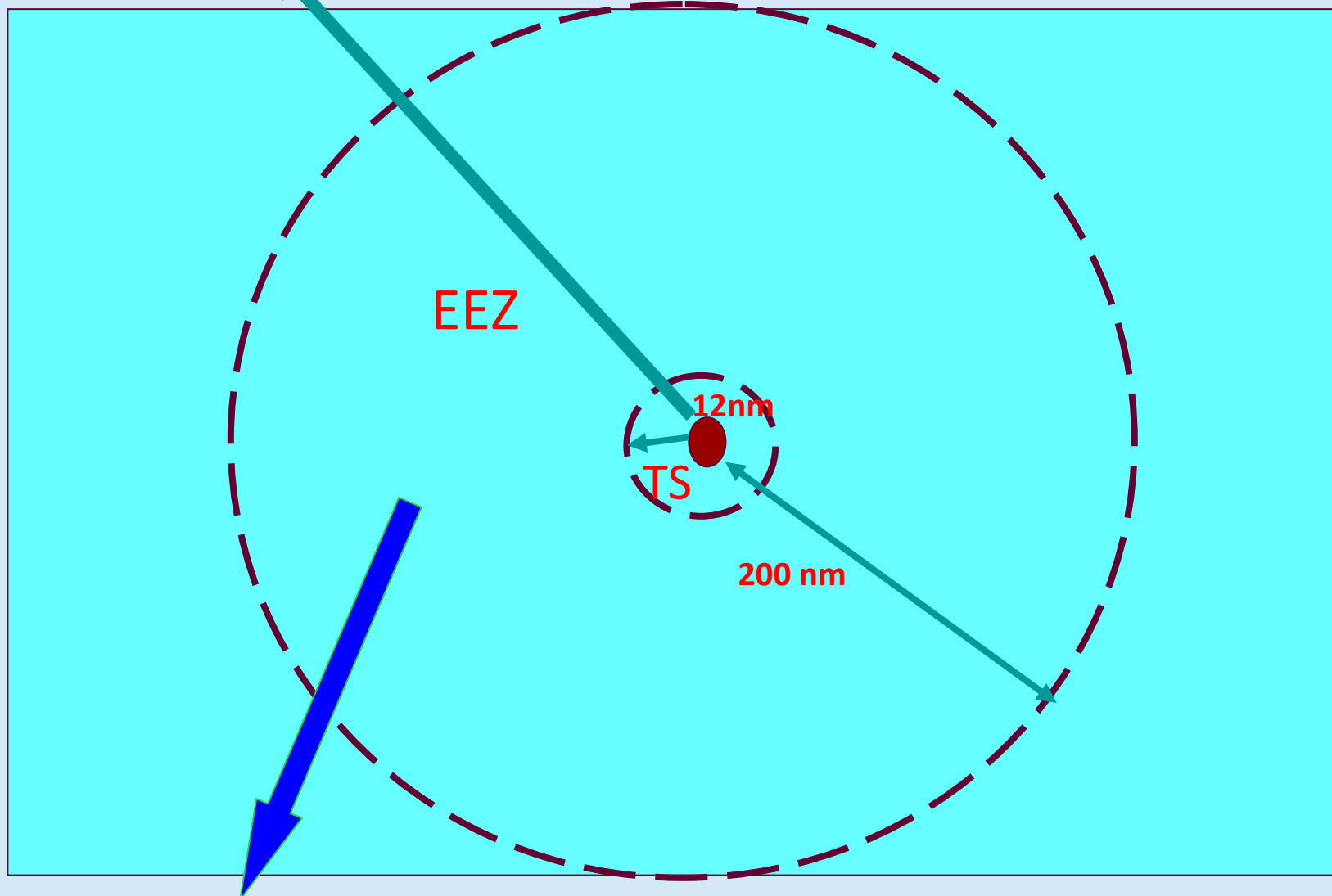


Implications of Island Regime

- Under the UNCLOS, islands play great roles in expanding substantial jurisdictional waters of coastal states. Yet,
- No objective standard established to distinguish **Article 121.1 islands (islands)** from **Article 121.3 rocks (rocks)**.
- No consensus reached on the interpretation and application of the article
 - regarding the **entitlement** of rocks used as baselines to generate EEZ, continental shelf, and extended continental shelf (ECS).
 - regarding the weight of islands in the **delimitation of maritime boundaries**



$$S = 3.14 \times (12 \times 1.85)^2 = 1500 \text{ sq km}$$



$$S = 3.14 \times (200 \times 1.85)^2 = 430,000 \text{ sq km}$$

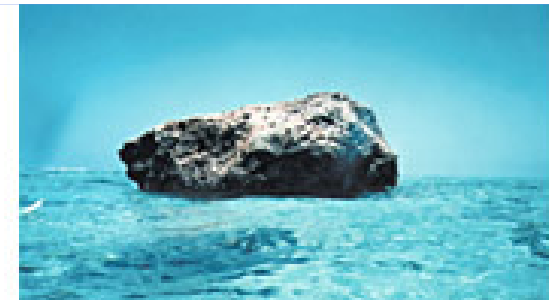


Japanese Effort on Okinotorishima Islandisation

1. 5 atoll reefs originally called “Parece Vela” by a Spanish sailor in 1565.
2. Later called “Douglas Reef” after a British navigator William Douglas in 1789.
3. No official mention about the Okinotorishima prior to 1888 by Japan.
4. In 1922 and 1925, Japan investigated the area and confirmed in 1931 that no other countries had claims and thus declared the reefs its territory.



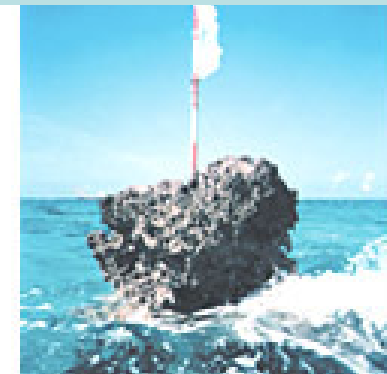
“Shima” means “island” in Japanese



Kitakojima ("Northern Islet")



Higashikojima ("Eastern Islet")



Location of Okinotorishima: latitude: 20 degree 25' north
longitude: 136 degree 04' east



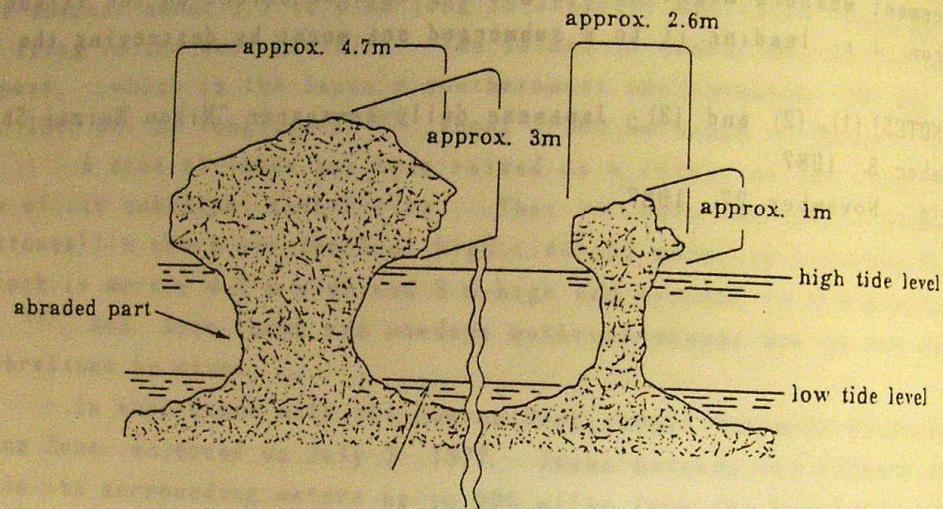
Japanese Effort on Okinotorishima Islandisation

- Not much attention were given to those islets before 1970s:
 - The construction of a naval base in 1939 was interrupted by the WWII.
 - Later, the base has been referred to as “a lighthouse and a meteorological observation site.
- On July 1, 1977, Japan extended its fishery jurisdiction up to 200 nm by enforcing the Law on Provisional Measures Relating to Fishing Zone.

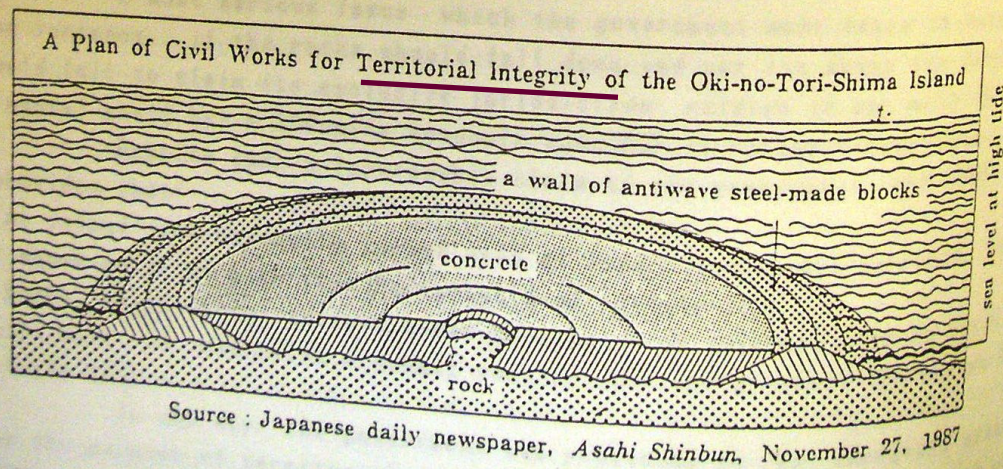


Figure : Oki-no-Tori-Shima Island and Protection Measures

Section of Two Mushroom-shaped
Rocks of Oki-no-Tori-Shima



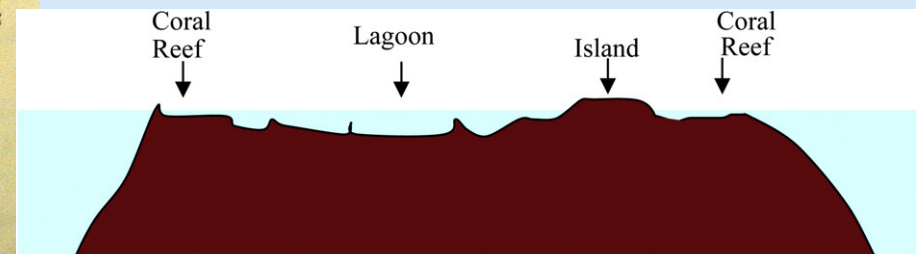
Source : Japanese daily newspaper, *Nihon Keizai Shinbun*,
September 3, 1987



Source : Japanese daily newspaper, *Asahi Shinbun*, November 27, 1987

Okinotorishima Islandisation

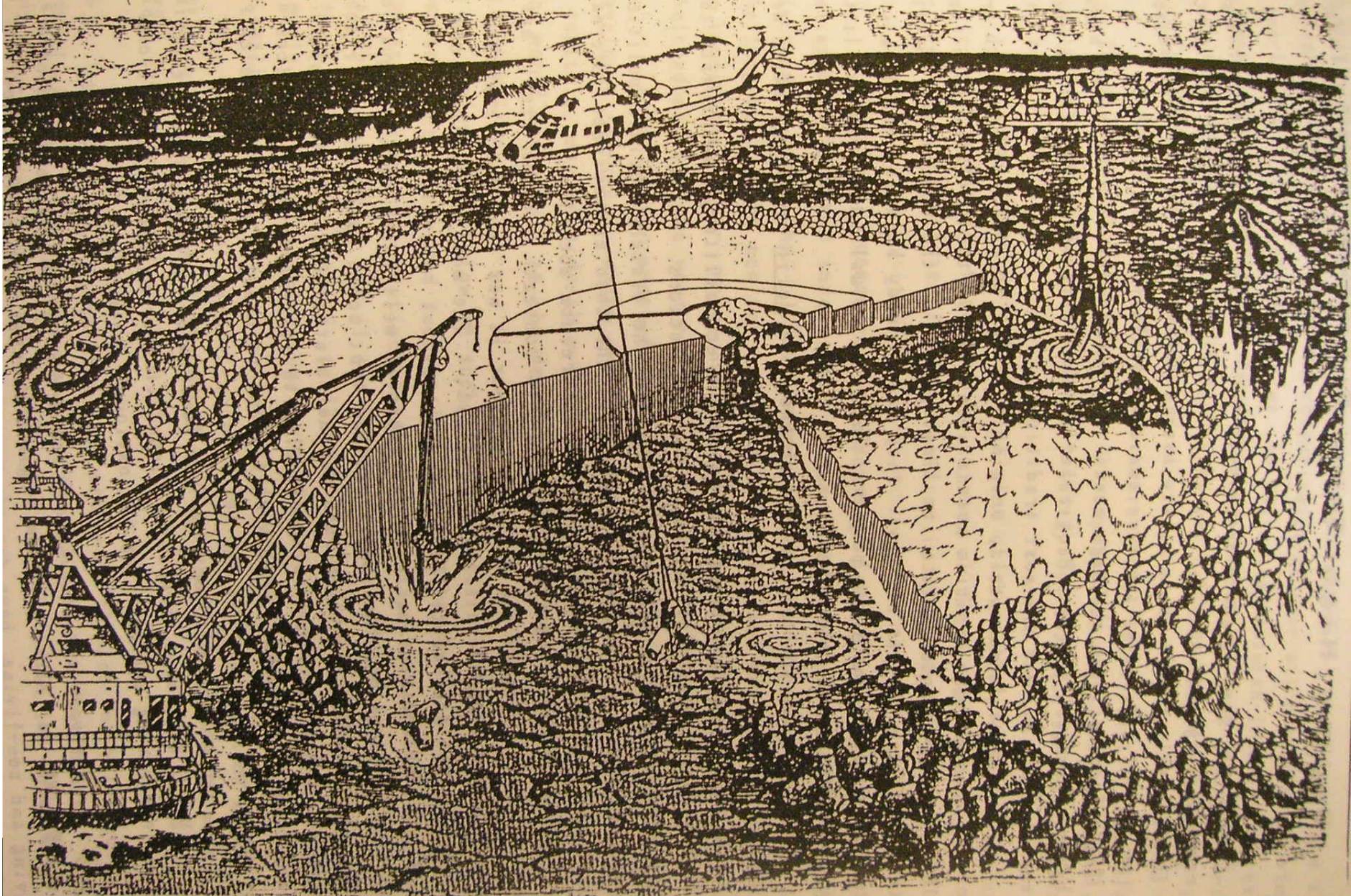
- In 1980s, the sea level rise theory was employed and evidenced, and a proposal was raised to build constructions to keep the rocks above water.
- In 1987, the Japanese government launched an embankment building project.

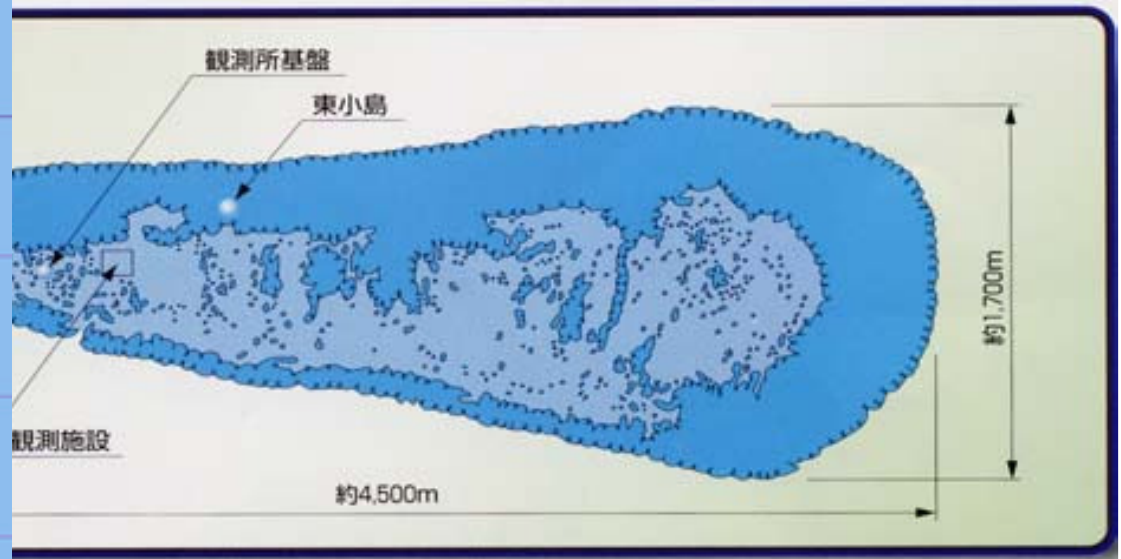
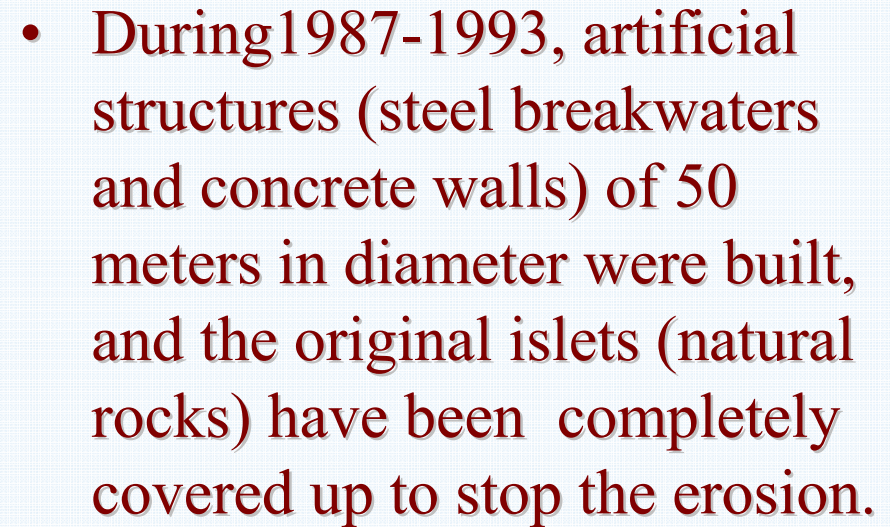


The construction started in 1988

1988年(昭和63年)6月3日 金曜日

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Japanese Effort on Okinotorishima Islandisation



Station: 8 m

Supporting
structure: 13 m



Japanese Effort on Okinotorishima Islandisation



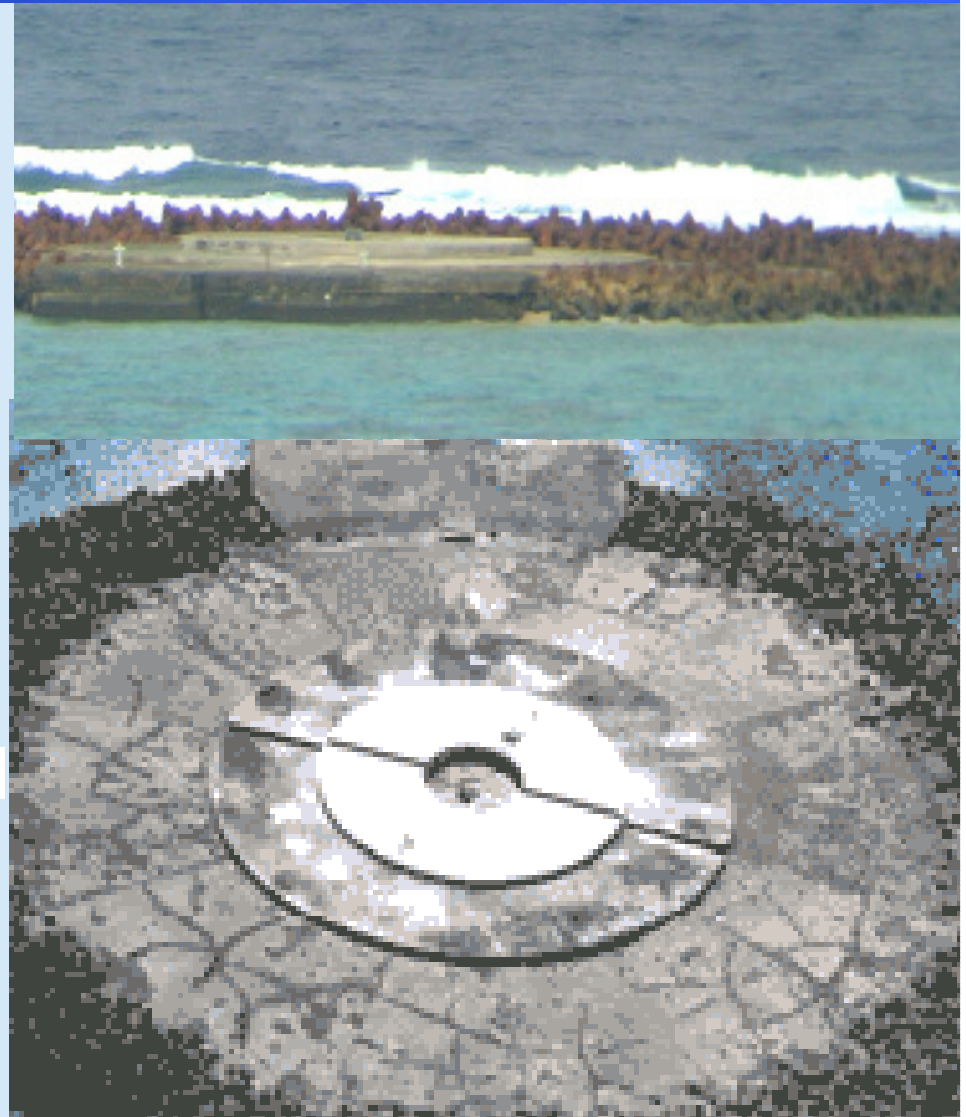
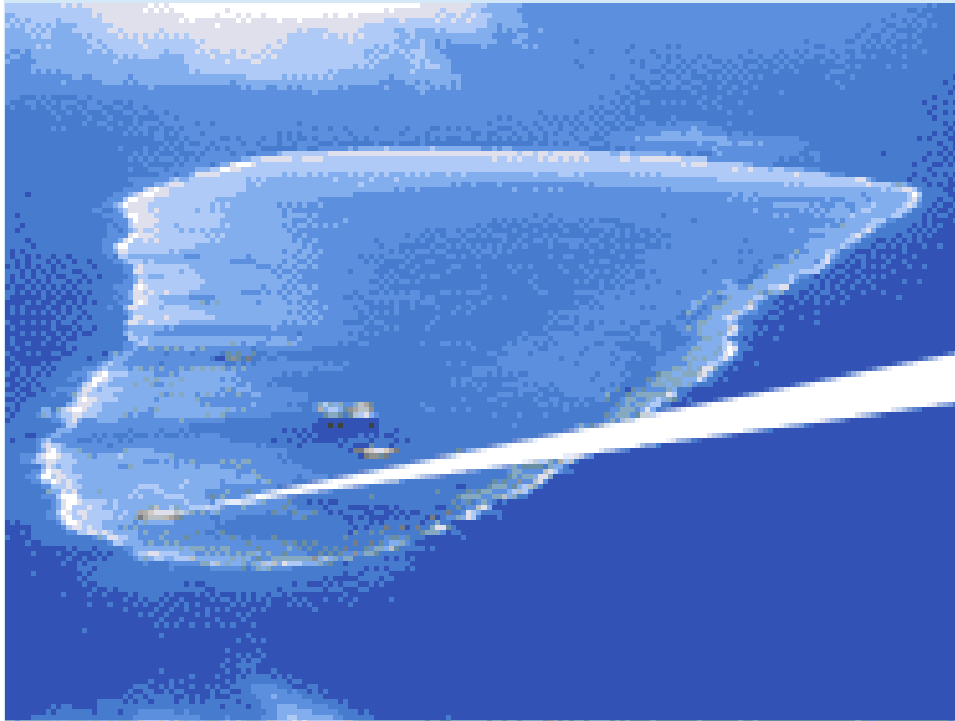
- In 1999, the central government took over the administration and protection tasks according to its amended Coast Act.
- In 2004, the Nippon Foundation dispatched a mission to investigate how to make Okinotorishima and the surrounding EEZ utilized: to breed coral reef, build lighthouse, social infrastructure (port and houses) for human habitation, marine studies, and development, to promote sightseeing, and to build an ocean-thermal energy conservation power plant.
- In 2005, the Nippon Foundation dispatched another mission to focus on feasibility studies in the most promising fields of marine engineering, power generation etc.

Hmm..I think there might be something naturally formed around there. Ah, here it is [Okinotorishima...island?](http://www.japanprobe.com/2007/04/10/okinotorishimaisland/)

<http://www.japanprobe.com/2007/04/10/okinotorishimaisland/>



Japanese Effort on Okinotorishima Islandisation



Japanese Effort on Okinotorishima Islandisation



Tokyo Governor
Shintaro Ishihara

The 8-billion-Yen cover

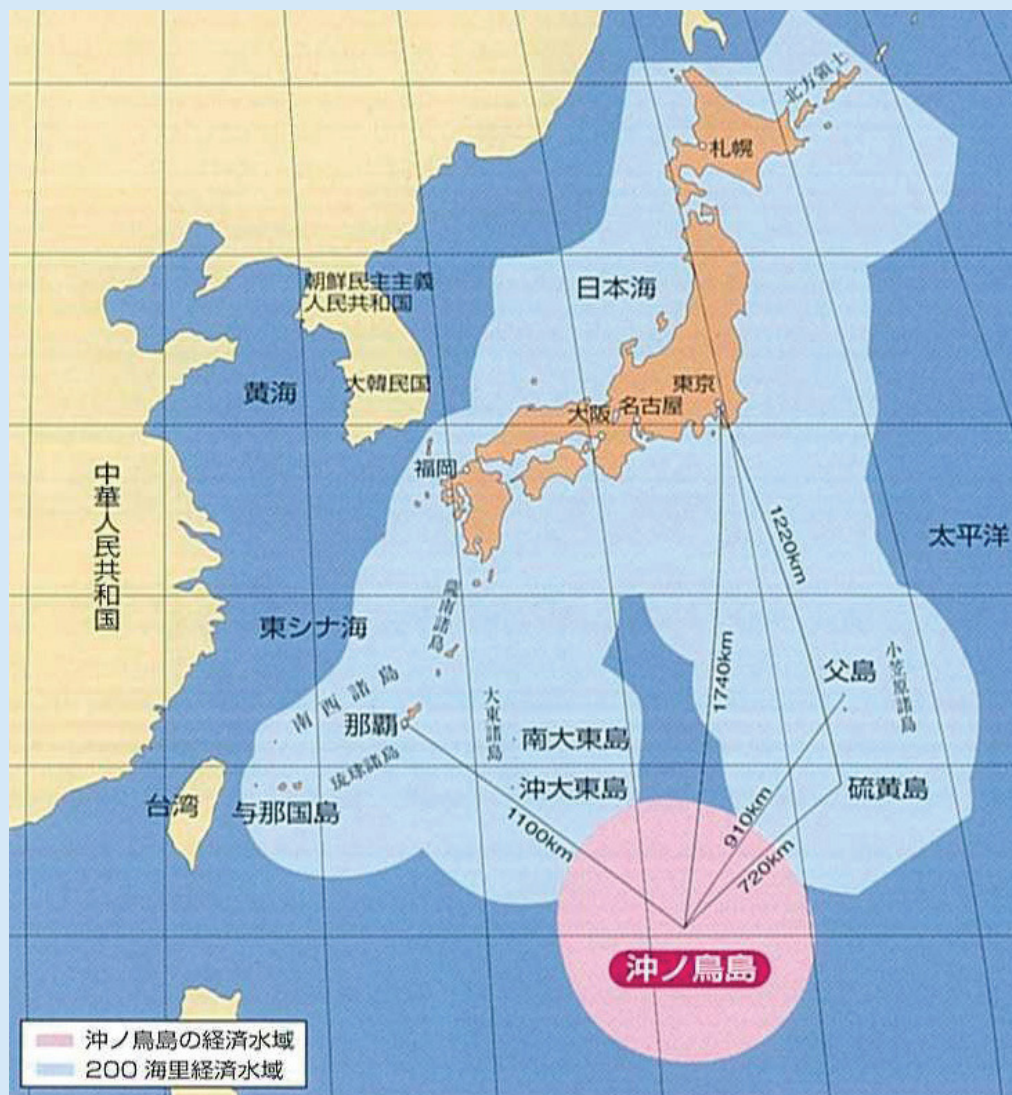


1 × 1.5 meter





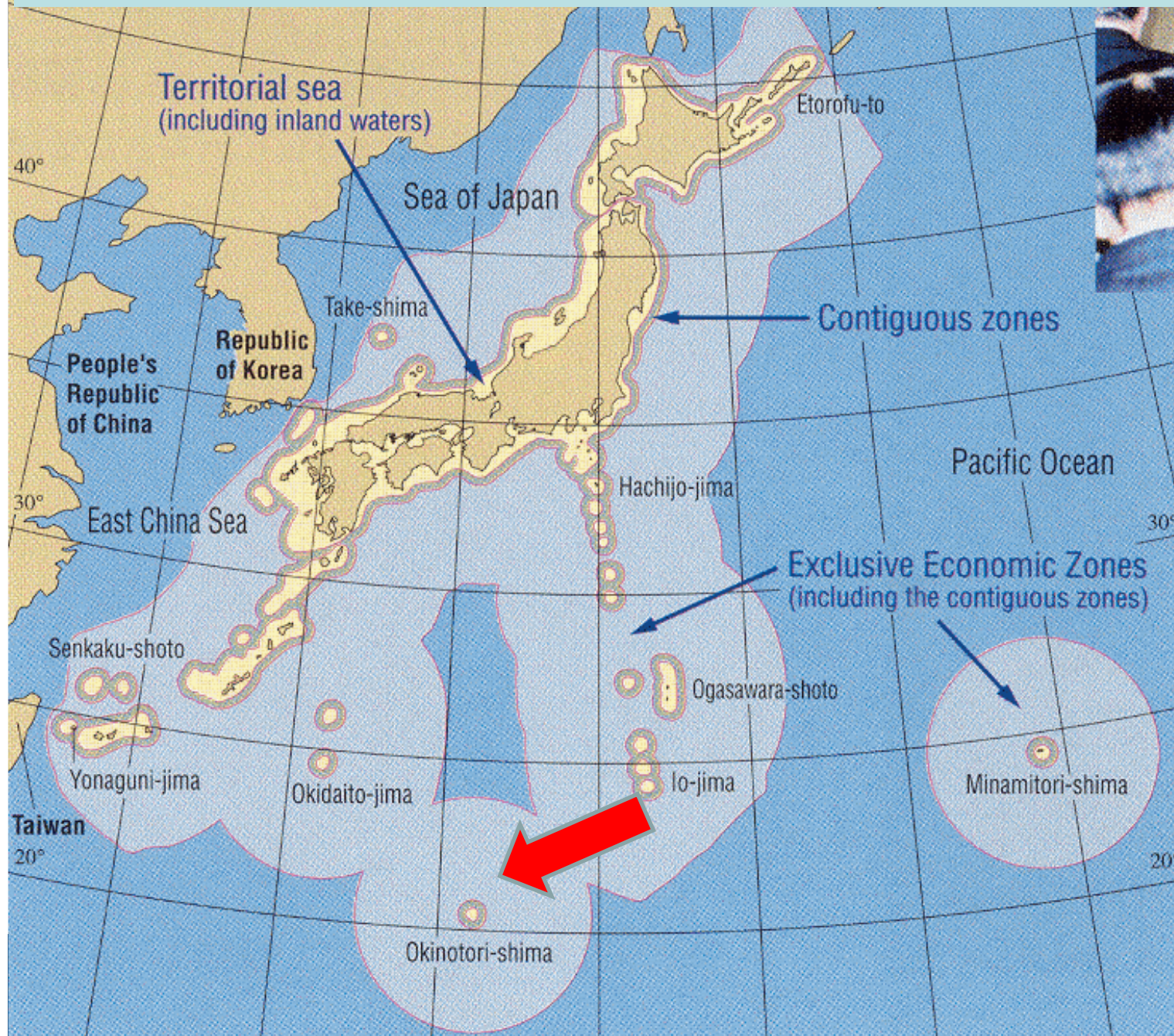
Japanese Effort on Okinotorishima Islandisation



- 2004, the OPRF organized the first conference in protecting the rocks, and later on set up regular forums to examine related issues.
- In 2005, the central government installed a Radar system (¥ 330 million), repaired a heliport, and placed an official address plaque.
- In 2007, the Japan Coast Guard installed a light beacon for surveillance.

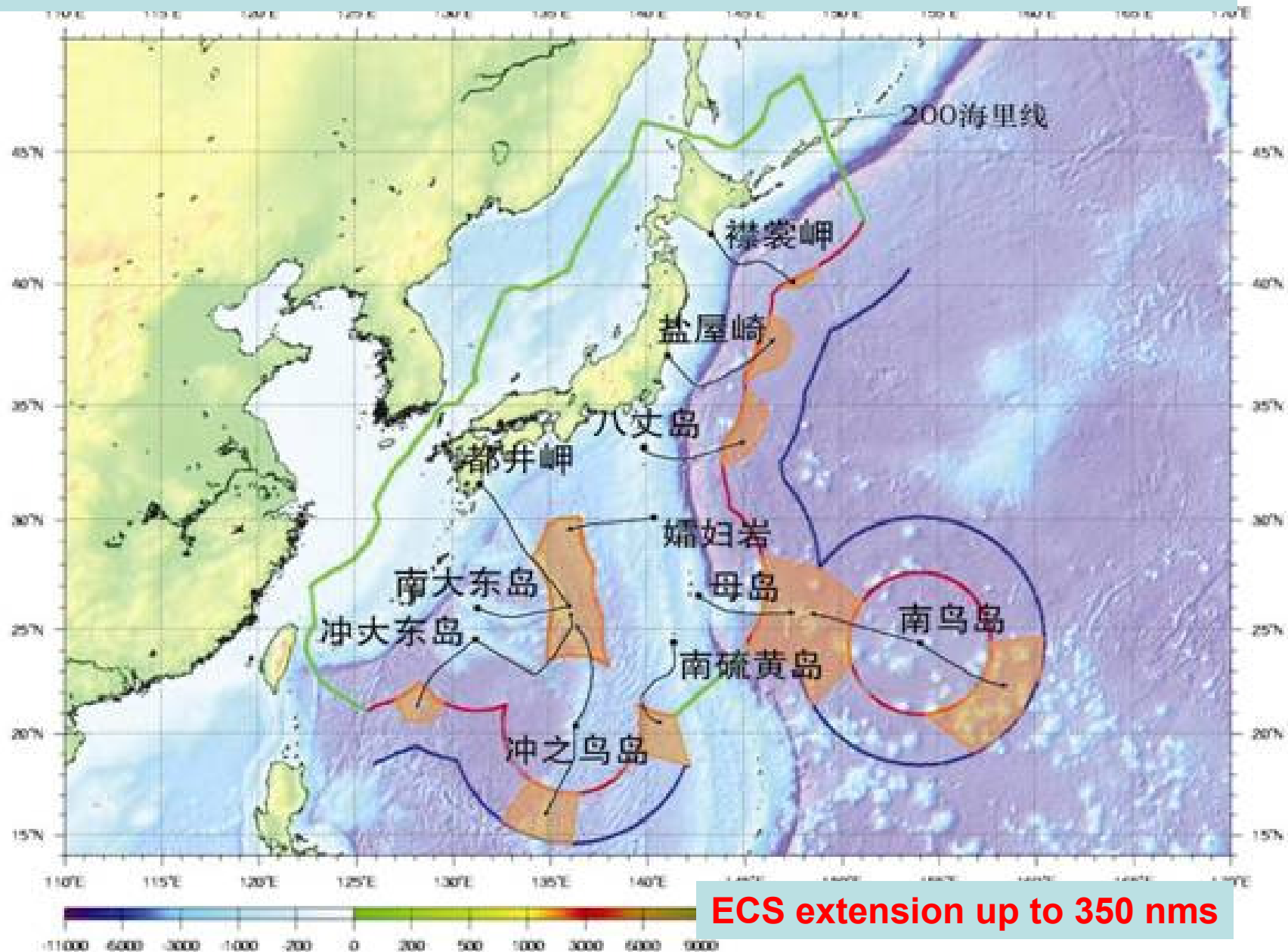
Japan has spent over \$600 million fortifying the rocks to prevent them from being washed away and to meet the minimum criteria for being regarded as a legal island!

EEZ and CS based on Oknotorishima Rocks



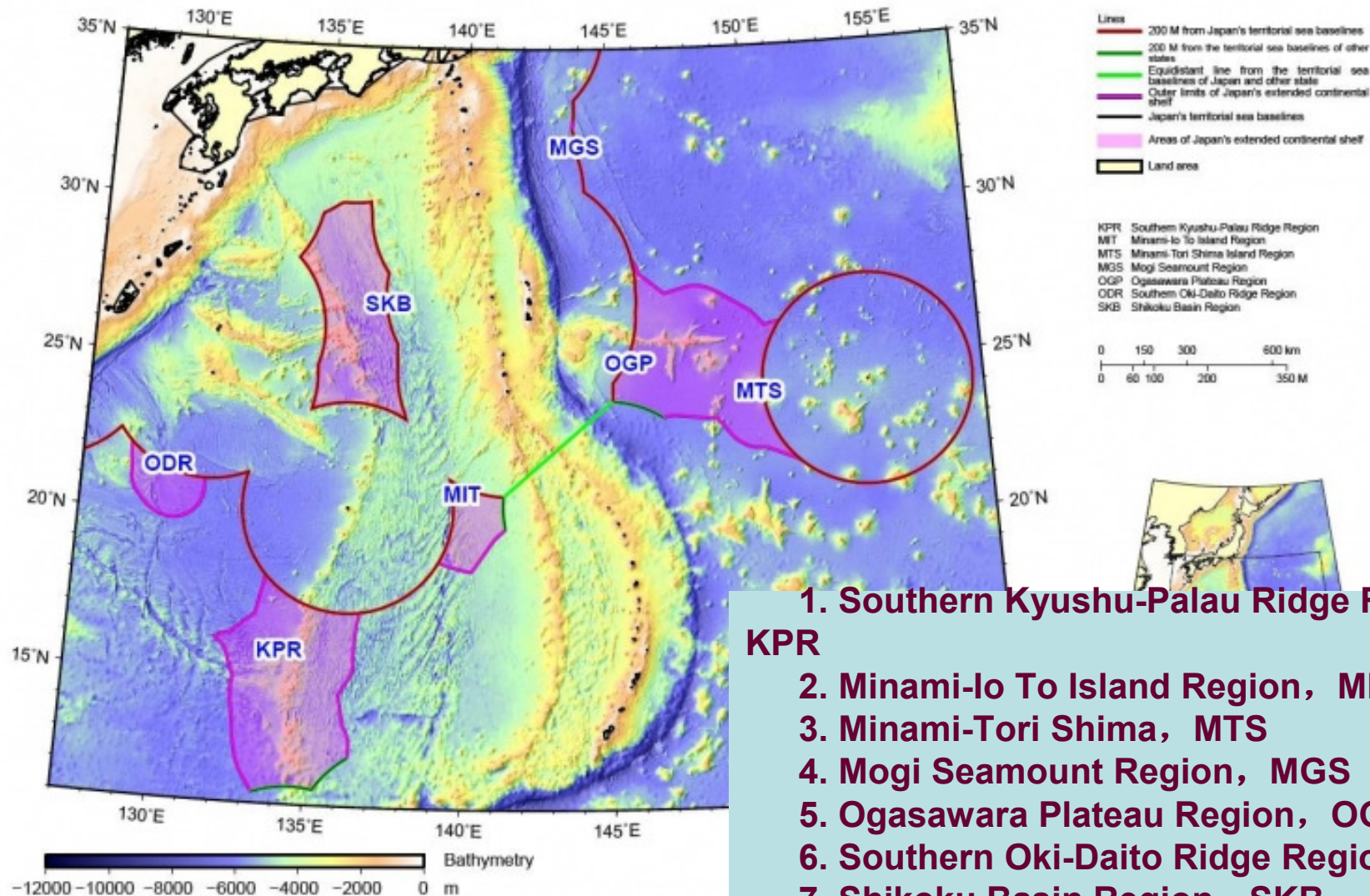
Without the Oknotorishima rocks, the TS of Japan will retreat to its south most tip of Minami-Io To-shima, and suffer a loss of 1550 sq km TS and 430,000 sq km EEZ.

Proposed Map of ECS Submission in 2005





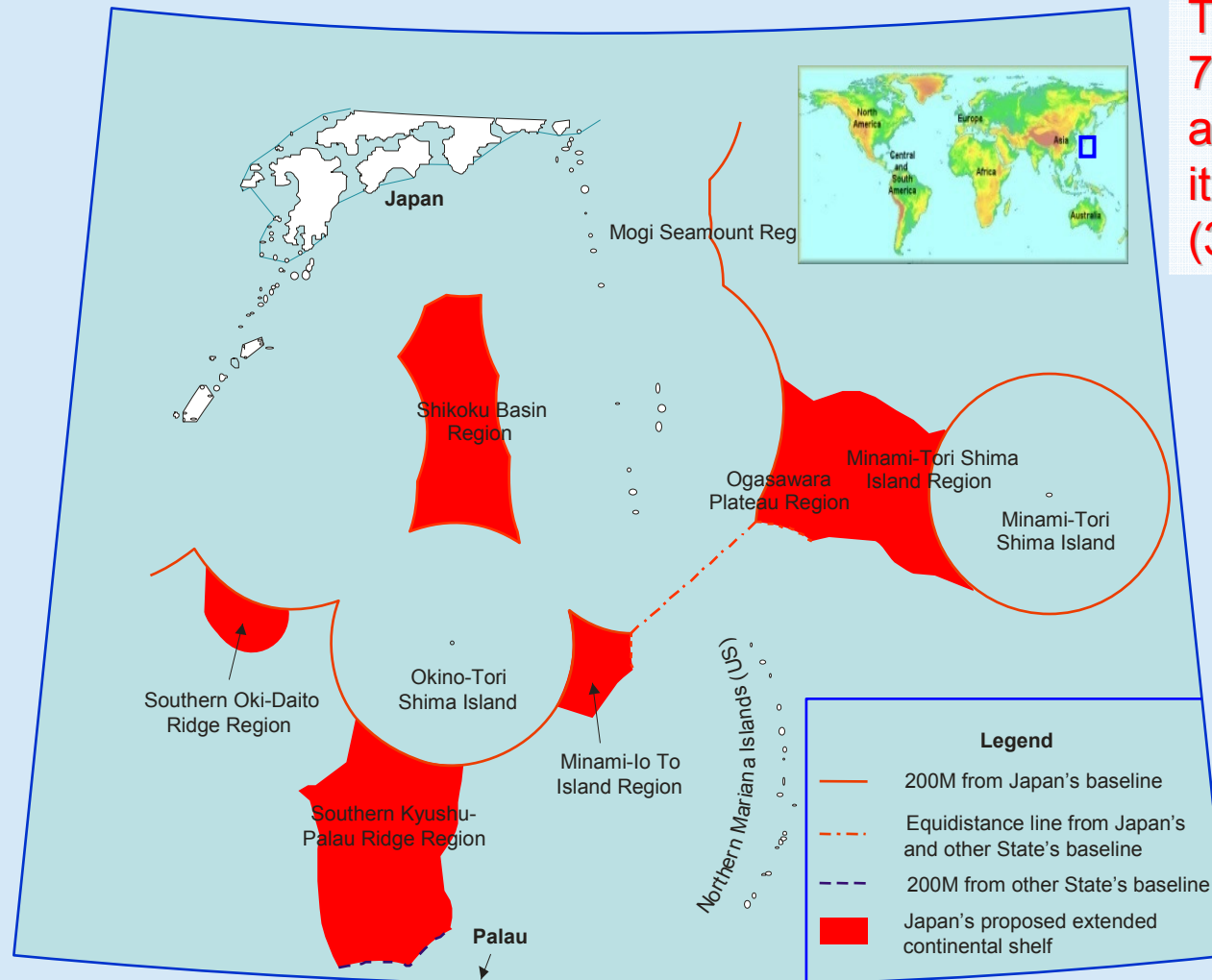
ECS Generated from Oknotorishima Rocks



Japan' ECS submission on 12 Nov. 2008



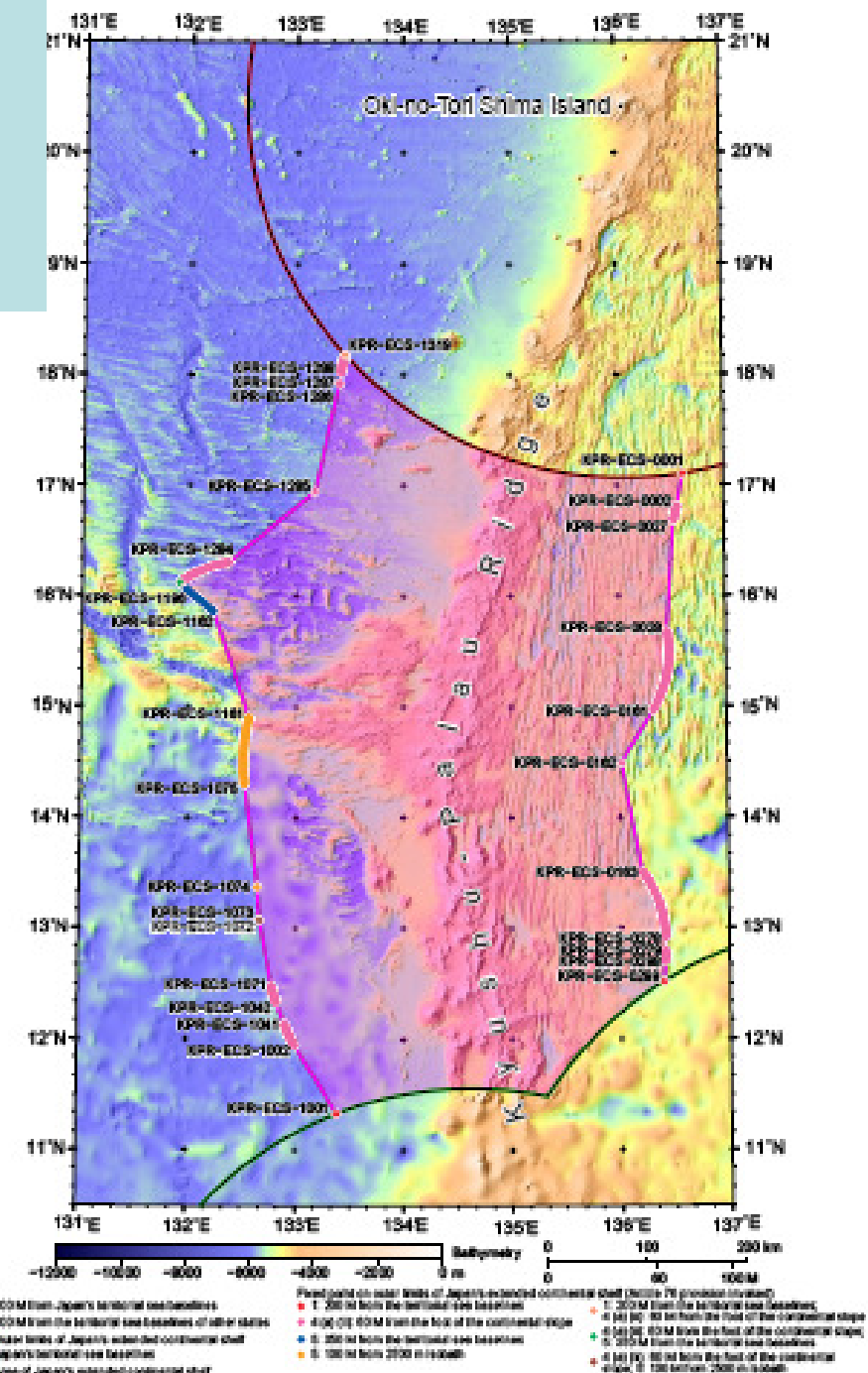
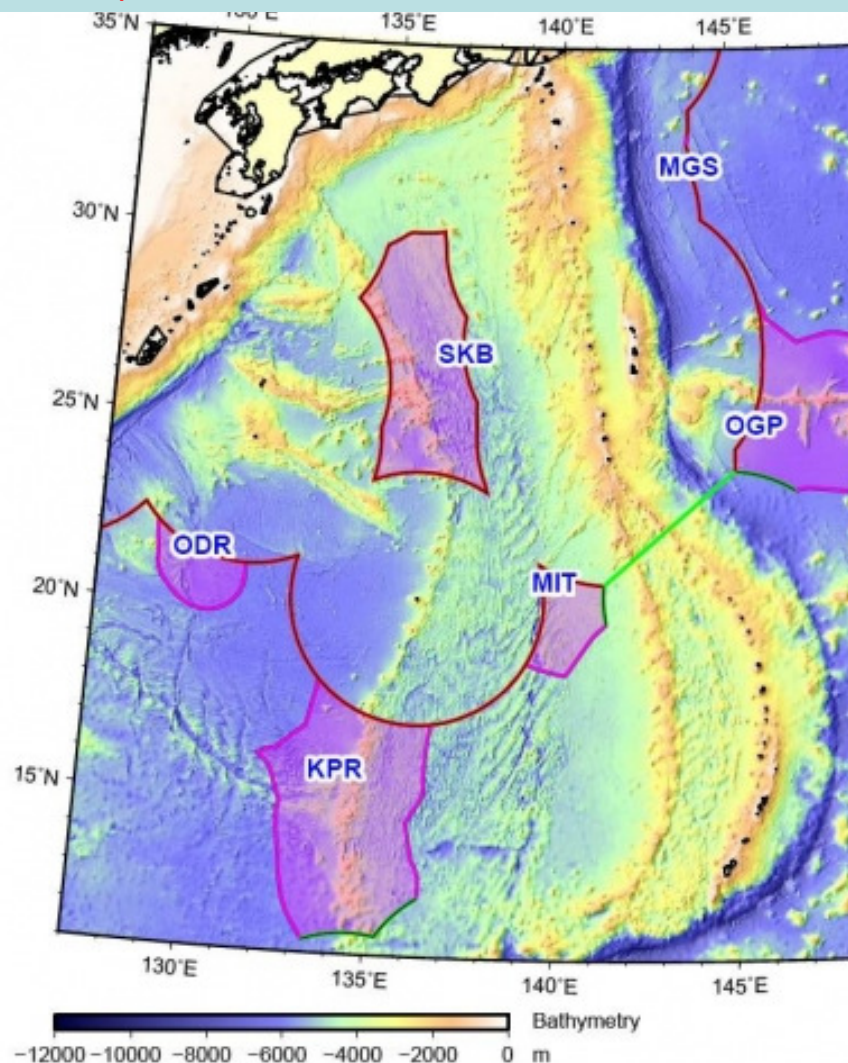
ECS Generated from Oknotorishima Rocks



The ECS is 740,000 sq km, about 2 times of its land territory (378,000).

ECS extension up to 550 nms!!!

• Para. 2 of Section 6.1 of the Executive Summary of the Japanese Submission: it is suggested that the ridge forms part of the natural prolongation of Japan's land mass represented by Okinotorishima Island (so called!).





Concluding Remarks

- Maritime features could be accorded to maritime zones, but not all features are entitled to EEZ and beyond.
- The vagueness of UNCLOS island regime has resulted in:
 - Enduring complexities of maritime claims
 - Excessive baseline claims
 - Sovereignty disputes over Islands
 - Disputes over weight accorded to insular features
- Increasing assertiveness on maritime disputes
- Aggressive extended continental shelf submissions



Concluding Remarks

- Should interpretation and implementation of international laws be guided by general obligation of a State with good faith?
- As States move forward with excessive claims and islandsation initiatives, is there a potential **danger of undermining international laws** and **encroachment of the common heritage of mankind**?
- Who should defend the interests of international community, and how?



THANK YOU FOR YOUR ATTENTION!

Guifang (Julia) Xue
Law of the Sea Institute Ocean
University of China
238 Songling Road, Qingdao
266103, PR China
Tel: 0532-66782330
Fax: 0532-66781851
Email: julioxue@ouc.edu.cn