Peace in Northeast Asia: Resolving Japan’s Territorial and Maritime Disputes with China, Korea and the Russian Federation


Taisaku IKESHIMA

Japan has territorial disputes with its three closest neighbours, China, Korea, and the Russian Federation, concerning the attribution of sovereignty over small islands. The dispute with China mainly involves territorial sovereignty over the Senkaku Islands, and has a side effect on the maritime delimitation in the East China Sea (ECS). The dispute with Korea centres on territorial sovereignty over Takeshima (Dokdo), which is also the origin of the dispute over the maritime delimitation in the Sea of Japan. The dispute with Russia involves the so-called Northern Territories.

This book is the product of three contributors, i.e., Reinhard Drifte, Michael Hahn, and Thomas J. Schoenbaum (the editor of this volume). The editor has also written a concise and stimulating book on the relationship between international law and international relations, as indicated by its title, International Relations: The Path Not Taken, Using International Law to Promote World Peace and Security (Cambridge University Press, 2006). The book under review reflects the same spirit of idealism, in the true sense of the word, that Schoenbaum demonstrated in the aforementioned work. The theme of Schoenbaum’s book was the notorious American unilateralism that George W. Bush, Jr.,
had introduced after 9/11. His basic attitude towards the international society is a deep and sincere trust in the concept of the Rule of Law, i.e., international law. This is another reason why Schoenbaum also stresses this approach in the settlement of territorial disputes that apparently involve some issues that the most difficult to resolve, such as sovereignty in bilateral negotiation between the two concerned states. However, it appears that the co-authors of the book under review have tried their best to propose more practical and dynamic future plans in a more calm manner than that of regular political and/or social scientists.

As shown below, the book comprises eight chapters.

According to the Introduction by Schoenbaum, the two purposes of this book are ‘to set out the history and basis of all three disputes and to suggest concrete ways they may be resolved’, and ‘to demonstrate how international law and international institutions can provide the basis for peaceful and harmonious settlement of sometimes dangerous international disputes’ (p. 2). He denies the application of realism to the solution of these territorial disputes. Of the three guiding principles for the settlement of the three disputes, i.e., peaceful resolution, just and fair settlement, and international cooperation, Schoenbaum prefers the use of international law and institutions to overcome the difficulties arising from the disputes. The book’s ‘key recommendation’ is ‘to propose that the three disputes in question be resolved through the conclusion of three separate negotiated agreements between Japan and each of its neighbours, whereby three separate Zones of Cooperation and Environment Protection will be established in Northeast Asia’ (p. 5).

The second chapter of this book, by Professor Drifte, deals with the political circumstances of the disputes in the ECS. Drifte’s analysis is that the political conditions and economic interests of both countries in this dispute will lead both states to compromise and to focus on defining a joint development area. Owing to Japan’s geographical remoteness, China has a greater advantage in terms of economic and logistical aspects with regard to the development of oil and gas reserves in the East
China Sea. According to Drifte, ‘Japan’s ostrich approach’ (p. 19) to the ECS issue has intensified China’s unilateral attitude towards the development of natural resources in this region. In this sense, the former Koizumi government is to blame because the former Prime Minister did not anticipate the effects of Hu Jintao’s leadership. Necessary compromise has not been made between the two countries owing to political confrontation and economic competition over the last decade. This chapter does not cover recent developments such as the tentative agreement of June 2008 under the Fukuda Administration since Drifte concludes the chapter after only presenting his expectations from the former government.

Chapter 3, written by the Editor of this book, is titled ‘The legal aspects of Japan’s territorial and maritime disputes with neighboring states’. This chapter proposes the utility of international analysis and dispute settlement as ‘tools’ (p. 25) to understand and resolve these disputes. Schoenbaum even maintains that Kofi Annan, the now retired Secretary General of the United Nations (UN), would be an excellent mediator for amicable solutions in each case of these territorial and maritime disputes. After a profound analysis of the facts and legal arguments concerning the disputes, he concludes that the legal position of Japan is relatively strong in the disputes over the Senkaku Islands and the Northern Territories, with China and Russia respectively, and that Japan’s claim is weaker than Korea’s with respect to the dispute over Takeshima. His unique argument for the necessity of establishing closer regional cooperation in East Asia is likely to emphasize the possibility of completing the Joint Declaration and the administration of Cooperative Zones of Economic Development and Environmental Protection as a part of the solution. Regardless of whether his proposal and legal arguments are acceptable to the concerned parties in these disputes, it is noteworthy that he consistently supports the idea of solving the problems peacefully and in accord with accepted principles of international law.
In Chapter 4, Michael Hahn analyses the procedural aspects of the settlement of the territorial and maritime disputes in question with special reference to the necessity and significance of seeking a solution ‘in good faith’, and to the engagement in meaningful efforts to amicably resolve the disputes. He surveys the utility and characteristics of the dispute settlement mechanisms prescribed under international law, such as the UN Charter and the UN Convention on the Law of the Sea (UNCLOS). His conclusion is that while there are various types of third-party settlement options, Japan and its neighbours should be ‘motivated by the recognition that there is no alternative to a negotiated solution’ (p. 76).

The editor of this volume has written the following three chapters, which separately deal with the respective features of the three territorial and maritime disputes in question.

Chapter 5 discusses three individual disputes in the major territorial and maritime disputes between Japan and China: one concerning sovereignty over the Senkaku/Diaoyu Islands; one with respect to overlapping claims to the resources of ECS; and one on the legal status of Okinotorishima (an uninhabited Pacific Ocean island). In light of the geographical and physical factors, he proposes that the first two should be solved simultaneously, while the third should be considered to be independent of the first two. The solution to the first two that is proposed here contains the following points: (1) Japan’s stronger claims grant its territorial sovereignty over the disputed islands; (2) following the Libya/Malta case (1985), a maritime boundary should be drawn in favour of China, such that it is east of the equidistant line; (3) the area of the territorial sea belonging to the islands in dispute should be only 12 nm; (4) joint development zones should be established for the cooperative operation and management of oil, gas, and other mineral resources on the Continental Shelf of ECS; and (5) both countries should finally negotiate and adopt a Comprehensive Plan for the Protection and Development of ECS for the overall administration and governance of the area concerned. The solution to the third dispute proposes the follow-
ing points: (1) Japanese sovereignty over Okinotorishima justifies its 200-nm Exclusive Economic Zone (EEZ); and (2) both countries should undertake and implement a plan for cooperative marine research in the EEZ.

In Chapter 6, a solution is sought with respect to the Takeshima/Dokdo dispute between Japan and South Korea. After considering the claims made by both countries, and applying precedence related to a dispute over the sovereignty of an island, despite the absence of a rigid and decisive examination of the documentation regarding the factual claims of both sides, Schoenbaum concedes that Korea seems to have stronger evidentiary facts, particularly those concerning governmental acts as well as other additional legal arguments. Since there seems to be no possibility that the dispute will be presented before any judicial settlement body such as the International Court of Justice (ICJ) or any international arbitral tribunal, or that the continuing bilateral talks over the matter will end in agreement in the near future, he dares to propose a bold solution: the establishment of a maritime boundary in the Sea of Japan/East Sea. His proposal, which is based on the three guiding principles of the maintenance of peace, justice, and international cooperation, comprises the following four points: (1) South Korea has sovereignty over the disputed islands. (2) The islands should not be given any effect in terms of drawing the maritime boundary between the two states; this will also affect North Korea and the Russian Federation, with whom Japan and South Korea share the Sea of Japan/East Sea. (3) Japan and South Korea will make an agreement for future joint exploration and development of oil and gas resources, fishing, and pollution control in the concerned area. (4) Finally, Japan and South Korea should agree to establish a Joint Management Authority that will govern the issues arising from any future disputes.

Chapter 7 considers the Northern Territories problem and proposes a solution in order to establish peace in East Asia. Schoenbaum supports Japan’s claim because it has stronger legal arguments. He does
not admit the legality of the Soviet occupation and annexation of the Kurils, the legal effect of the Yalta Agreement upon Japan, who is a third-party, or the applicability of the San Francisco Peace Treaty, which the Soviet Union did not sign. Putin’s realistic foreign policy, unlike Yeltsin’s, does not provide a favourable perspective to this dispute partly because Russia is rising as a new energy power and is in lesser need of economic aid from Japan than it was earlier. Since Japan and the Russian Federation have not had a positive relationship, let alone a peace treaty, after the end of the Second World War, and even after the conclusion of the 1956 Joint Declaration, Schoenbaum proposes a ‘realistic’ plan that satisfies both sides, as follows. First, Japan should be content with only the two sets of smaller islands, Habomai and Shikotan, while Russia should gain sovereignty over Etorofu and Kunashiri, which will be designated as part of an internationally specially protected area, a World Heritage Park, but which will also be allowed privileged access by the Japanese people. At the same time, both should sign a peace treaty and create a bilateral boundary commission to cooperatively deal with future issues after they establish the maritime boundary for fishery management and environmental protection in accordance with the principle of equidistance.

The last chapter of the book, Chapter 8, discusses the issue concerning security and cooperation in Northeast Asia. He advocates that positive peace must be established in this area through ‘ongoing institutions of cooperation and dispute settlement’ and that there should be two new multilateral groupings, i.e., the Northeast Asia Forum for Security and Development (for security and development issues) and the Asian Economic Community (for trade and investment issues) (p. 129). Since the focal point of this book is the peaceful and fair settlement of disputes by international law under the appropriate function of relevant international organizations (IOs), Schoenbaum concludes that ‘[i]t is time for Asia to create regional IOs capable of dealing with common problems and achieving common goals for this region’ (p. 135).
The reviewer of this book had the privilege of giving a series of lectures on exactly the same theme as that of this book at the Sciences Po in Paris from February to March 2009. What was striking throughout the lectures was not the enthusiastic attitude of the French audience towards the territorial disputes in question, but the general indifference of the younger Japanese generation towards the actual disputes that they have currently been facing. This may be one of the main reasons why the Japanese side does not seem to exhibit any fundamental driving force to put an end to these disputes in a more dynamic and constructive way. While there have been some articles that separately discuss each territorial question but do not dare to present a larger and more attractive picture of the future, no Japanese international lawyer has hitherto taken pains to write such a monograph on the issue. In addition, the domestic political environment in Japan has aggravated the situation over the last few decades or so.

As indicated by the title, the book under review is, in sum, a very bold, though comprehensive, proposal to create and maintain positive peace in Northeast Asia. The approach that the writers take therein is based on the guiding principles of international law, namely, the rule of law, peaceful settlement of international disputes, and fair and equitable results for a dispute. Even though they do not neglect the reality of world politics and economic needs, their special focus on the rather idealistic, if not naïve, plan to tackle the long-standing territorial disputes among the powerful countries in this region and their consistent and passionate perspective of the major role of international law and IOs are noteworthy. No Japanese scholar, except for the editor, who is based in Japan as a professor of international law and international relations, could have attempted to present such a brave but well-balanced proposal to establish a peaceful environment in the region in question. The crucial progress of the joint development of the natural gas fields between Japan and China and the bilateral talks between the leaders of Japan and Russia, which are not mentioned in the book, have already been witnessed since the time of the writing of this book. The future
now heavily depends on whether or not a political breakthrough will be made in each country in the region.