At the present time, one can see very dynamic political and economic developments in Asia, mainly due to the rise of two newly industrialised powers: China and India. These powers can be both leading countries with great economic power, and destabilising factors, with political and military force. At the same time, the current political and economic situations surrounding Asia continues to be influenced by the legacy of colonialism. Territorial and maritime disputes over the Senkaku/Diaoyudao and Takeshima/Dokdo, for instance, are among those issues that need urgent peaceful diplomatic solutions based on the principles of international law. Under these circumstances, the book under review may be welcome by those who are in need of a practical and updated analysis of the issues that have hampered stable and secure relations in Asia.

This book contains the papers presented at the 2010 International Conference called ‘The Law of the Sea, Dispute Settlement and Colonialism in International Law’ organised by the foundation for the Development of International Law in Asia (DILA), the Haesung Institute of Ethics in International Affairs, the Northeast Asian History Foundation and Inha University Law School. As the title of the book suggests, most readers will be attracted by the discussion of the relationship between Asian approaches to dispute settlement and the influence of colonialism on those approaches.
The Preface of the book notes the ‘legacy of the region’s historical experience with colonialism and current interaction in the international system’ (p. xvii) addressed in the papers. It may be said that the scope and degree of this ‘legacy’ affects international legal issues in this region differently. Thus, the countries that suffered and are still suffering from the ‘legacy’ have different perspectives in terms of how disputes should be settled from those of the countries that caused the tragedy. Readers of this book will fully enjoy ‘a unique perspective on international legal problems specific to the region in a discipline that has long been dominated by the West’ (p. xviii). Before providing an evaluation of the whole book, let me briefly summarize each chapter.

Chapter 1, titled ‘Globalization and international adjudication’, written by Judge Paik Jin-Hyun, deals with the issue of the sudden rise of international adjudication, or ‘multiplication’ (p. 1) of international judicial bodies, as a means of international dispute settlement. Judge Paik attributes the reasons for this phenomenon to ‘fundamental changes that took place in international relations, among others the end of the Cold War, globalization, and democratization and growing awareness of human rights’ (p. 3). He positively describes the trend of proliferation of international tribunals as ‘an important addition to the dispensing of international justice’ (p. 4) through competent decisions in highly specialized fields of law with wider allowance of access for private parties and international organizations, on one hand, and the overall improvement of judicial service, including the quality of judgments and procedural efficiency. Judge Paik, without overlooking the possibility or risk of inconsistency or contradiction among judicial bodies and some other possible destabilising factors, such as excessive recourse to adjudication of international disputes, gives a more positive evaluation to the growth in international tribunals, which he suggests, provides ‘a wide range of choices for States, strengthens international law and promotes the rule of law in international relations’ (p. 7). For Judge Paik, the multiplication or proliferation of judicial bodies is a consequence of, and a response to, the challenge of globalization in the international legal system, and is ‘a development in the right direction’ (p. 8).

In Chapter 2, titled ‘Procedural and evidentiary innovations in the judgment of the International Court of Justice in the Oil Platforms Case’
(November 2003)’, Judge Jamal Seifi discusses the motives of the International Court of Justice (ICJ) when it made unprecedented rulings in this case. For example, Judge Seifi discusses the juridical and procedural propriety of the res judicata effect of the ex officio finding in the judgment and whether it was made to intentionally reverse the sequence of consideration of the issues before it. By reversing the sequence, he suggests, the Court could comment on the principles of self-defence and use of force, while also considering the significance and effect of the role of the ICJ as the principal judicial organ of the United Nations (UN), when exercising its contentious jurisdiction. In this case, the ICJ was obliged to examine whether the US attack on Iranian oil platforms in the Persian Gulf constituted an act of self-defence or not, while the legal issue before it centred on the interpretation and application of the relevant bilateral treaty of amity. For Judge Seifi, the ICJ’s treatment of the issues of self-defence and use of force was ‘systematic’ and consistent with its previous rulings, as the Court had a greater concern that ‘a state can only resort to the use of force in self-defence when it possesses absolute proof, and not on the basis of suggestive or circumstantial evidence’ (p. 18). Judge Seifi appears to believe that the main motive of the ICJ to reverse the usual sequence of consideration of relevant articles in question was ‘to create an opportunity for itself to make further pronouncements on the important issue of use of force and self-defence in international law’ (p. 20). For him, the question of why the ICJ ‘knowingly and intentionally’ went further on to pronounce on the principles of self-defence and use of force should not be sought ‘within strict limits of the Court’s contentious jurisdiction but rather in the Court’s functions as the UN’s principal judicial organ’ (p. 22). Therefore, Judge Seifi seems to appreciate the ICJ’s positive role as an independent organ of the UN in fulfilling its missions under the Charter, concluding that the ICJ ‘has used technical delicacies in the procedure to exploit and discuss’ (p. 24) the rules and principles of the use of force as an important concern of the international community.

Chapter 3, titled ‘Nullity and validity: challenges to territorial and boundary judgments and awards’, written by the late Professor Kaiyan Homi Kaikobad, thoroughly examines the way in which legal criteria such as nullity and validity are relied on by states to escape or avoid obligations under territorial and boundary judgments and awards. After his lengthy and categorised discussion of the law of nullity and validity of judgments and
awards through numerous disputed or impugned decisions in the field of territory and boundary, in particular, the late Professor Kaikobad maintains that even though this law is ‘at once a highly complex and very useful system of rules of the international legal order’ (p. 60), recognition of the fact that the arbitration and adjudication of disputes is ‘neither perfect nor infallible’ has led to ‘the development of an elaborate set of rules that regulate the conditions, scope, and effect of nullity of impugned decisions, or alternatively their validity and effectiveness’ (p. 61). For him, only valid judgments and awards are binding and final, because there is no place in international law for the perpetuation of impugned decisions. However, he admits that, in practice, the allegation of ‘nullity cannot lightly be established’ (p. 62) in judicial and arbitral tribunals, for the law of nullity and the doctrine of finality of boundaries and territorial settlements ‘further strengthen the law relative to the peaceful settlement of international disputes’ (p. 63). Professor Kaikobad concludes that ‘there needs to be clarity and precision’ regarding the rules on nullity and validity of judgments and awards, and judicious interpretation and application thereof in concrete cases.

In Chapter 4, titled ‘The role of history in international territorial dispute settlement: the Pedra Branca Case (Singapore v Malaysia)’, Professor Kevin Y.L. Tan discusses the significance of the Pedra Branca Case by analysing the role history played in the ICJ’s consideration of the issues in the case, with specific reference to Malaysian responses to the decision. Despite the fact that this case was the first case in which ‘the ICJ was prepared to pronounce authoritatively on historical title’ and where ‘historical title was defeated other than by treaty’ (p. 65), as Professor Tan states, the ICJ seemed to ‘increasingly regard effectivités as an independent and sufficient ground for establishing title’ (p. 78). In his conclusion, Professor Tan summarises the significance of the case by noting the following three points: 1) the case was jointly and voluntarily brought to the ICJ by both Singapore and Malaysia, neither of which had accepted the ICJ’s compulsory jurisdiction, 2) the case was remarkable in the amount of historical material that was unearthed by both of the states involved and produced before the Court, and 3) the ICJ thought more of the argument of effectivités than of historical title.

Chapter 5, titled ‘analysis of Korea’s sovereignty claim over the Gando/Jiandao area in China under international law’, written by Professor Seok-woo
Lee, explores Korea’s claim of sovereignty over the Gando/Jiandao area by looking carefully at the applicable jurisprudence and provides ‘a comprehensive examination of the potential sovereignty claims over Gando’ (p. 84). After he examines the Korean claim of sovereignty over Gando ‘within Korean academia’ with reference to some relevant boundary and territory agreements, Professor Lee analyses the international jurisprudential challenges to Korea’s claim over Gando, in the light of China’s practice concerning territorial disputes over the islands such as the Senkaku/Diaoyu, the Spratly and the Paracel Islands. While he admits that the ‘Western practice of evaluating everything in black and white terms is not always important from the traditional Chinese perspective’ (p. 95), his analysis suggests that China’s evidence for its claims of sovereignty is compatible with general international legal principles. Professor Lee further postulates that China’s claim solely depends on whether China can prove its substantial difference ‘from the Eurocentric international law of the colonial era and the international jurisprudence reflecting this, as maintained and applied today in the name of legal stability’ (p. 96). In conclusion, he stresses the significance of the debates on the identity of the Joseon-jok living in the disputed area on Gando, and proposes a comprehensive examination regarding claims of sovereignty over Gando, as well as potential responses, with a view to adopting several alternative policy directions. One possible policy direction suggested is the eventual unification of the two Koreas, although that approach will inevitably stimulate ‘the historical criticism perspective required for the resolution’ (p. 108) of the territorial disputes over Dokdo and Gando.

Chapter 6, titled ‘Implications of the border regime between North Korea and China’, co-written by Professor Seok-Woo Lee and Chang-Hoon Shin, reviews the issue of the succession of joint development zones established around maritime boundaries, or temporary zones installed prior to the confirmation of maritime boundaries by treaty and specifically, the bilateral practices between North Korea and China. This study provides important implications for future maritime delimitations, in the relevant maritime area, between these two countries and for the potential of succession of the relevant agreements between them, if Korea is unified. The agreements considered in this chapter include ones regarding the boundary delimitation of the river water, the cooperation on the use and management of international rivers, and the joint management of fishery resources in the region’s international lake.
Their conclusion proposes further study of the agreements mentioned above, as well as their interpretation and application in light of the idea of automatic succession, under the 1978 Vienna Convention on the Succession of States in respect of Treaties.

In Chapter 7, titled ‘From the era of colonialism to globalization: making rules in the GATT/WTO’, Professor Surendra Bhandari, pointing out the defects of the rulemaking process controlled through the dominance by rich and powerful countries of international trade negotiations, discusses how GATT/WTO rules are designed to serve a mercantilist agenda that sustains the link between colonialism and international trade rules. He critically analyses the rulemaking of the GATT/WTO regimes, which, for him, is ‘friendly to the old colonial concept of marketing distortion and control’ (p. 135) and which, not on the basis of, but at the cost of, comparative advantage, legitimizes constructed advantage to hinder free trade. In his conclusion, Professor Bhandari points out that the GATT/WTO rules are ‘essentially derived from the laws and practices of the developed countries’, and suggests that problems involved in the current regime ‘need to be fixed by serious initiatives for international cooperation to formulate the existing body of WTO rules to standardize its overriding unity and concept’ (p. 137).

Chapter 8, titled ‘Responsibility to protect (‘R2P’)’, written by Mr M.C.W. Pinto, critically examines the concept of ‘R2P’. He argues that even the protection of human rights, through an initiative entitled ‘Responsibility to Protect’, should not be used in breach of the most fundamental principles of international law, such as the general prohibition of the use of force enshrined in Article 2 of the UN Charter. After he analyses the origin and features of the initiative presented in the 2001 report of the International Commission on Intervention and State Sovereignty (ICISS), which (also quoted in a General Assembly (GA) Resolution of 2005 (A/RES/60/1) titled ‘World Summit Outcome’) he criticises some flawed aspects rooted in the concept of ‘R2P’. These concepts include the vague and mostly contradicted term of ‘international community’. He states that action taken under ‘R2P’ not in conformity with the UN Charter ‘would most likely be undertaken only by the militarily powerful who consider themselves at liberty to act in accordance with the dictates of their conscience’ (p. 145). He further notes that conscience is moulded by public opinion that may be based on false information. Even
though the world today may be in a transition from the so-called Westphalian system, where state sovereignty mattered to a ‘post-Westphalian consensus’, more supportive of interventionist tendencies, Mr Pinto is of the opinion that many basic provisions prescribed under Article 2 of the UN Charter are ‘brought under pressure’ (p. 148) as a consequence of ‘R2P’. He argues that this is the case despite the existence of conventional international law, including the repeatedly adopted UN GA Resolutions which support the prohibition of unilateral intervention by force. His very suspicious view of the idea of ‘R2P’ calls for ‘vigilance on the part of international lawyers’ (p. 152) and suggests that any development of ‘R2P’ from concept to applicable rule would need to be carried out at a ‘universal’ inter-governmental conference, such as the UNGA and the International Law Commission, ‘at which its humanitarian objectives could be fully explored and implementing procedures adopted within limits set by the UN Charter’ (p. 153).

Let the reviewer of this book raise some points worth mentioning. First, each of the eight papers summarised above presents viewpoints of the international and regional issues that are currently of great importance, in terms of the settlement of disputes in international relations. Though the title of this book holds ‘Asian Approaches’ at the very beginning, the coverage and scope of the discussion and analysis conducted in the volume are not limited to the region or are not dealt with solely from a regional perspective. Therefore, one can view the approaches taken by the authors of the articles contained in the book as reflective of the Asian perspectives and experiences of the contributors to the volume. This aspect is truly valuable because Asian approaches should be duly noted and respected in the field of international law, which has historically been dominated by the Western-centric thinking. Second, ‘the Legacy of Colonialism’, that is an important theme throughout the book, is addressed through some hot issues in international law, such as territorial and maritime disputes, world economy and trade, and human rights vis-à-vis humanitarian law. The reviewer of the book wishes to learn more about the concrete substance of the ‘Legacy of Colonialism’ in each topic examined by each author of the paper, so that the readers would understand more of the relationship between the past and the present in terms of territorial and maritime disputes in this region. As is common with the compilation of this kind, the systematic
and unified approaches that are consistent and common in all the chapters are not easily grasped. Third, since overcoming the legacy of colonialism through international politics and law is still one of the most urgent goals of world politics, the book under review could have boldly suggested more positive policy directions in each field of law discussed, despite the fact that international law is certainly not a panacea. In that respect, British and Japanese writers, for example, could have been invited to contribute to the book, as their viewpoints could, for the sake of fairness, provide readers with different perspectives and a view towards reconciliation of conflicting ideas between the colonised and the colonisers, thus contributing to peaceful relations in the region. Nevertheless, the book under review is a very ambitious piece of work and will make a precursory contribution to the development of international law and politics, which have been deeply rooted in the Western-centric viewpoints.