Literature

BOOK REVIEW

Seokwoo Lee and Hee Eun Lee (eds), *Dokdo: Historical Appraisal and International Justice* • The Hague: Martinus Nijhoff, 2011 • ISBN 978-90-04-19338-3 • 252 + xiv pp

The contentious Dokdo/Takeshima territorial dispute between Korea and Japan is examined under the lens of international law, international relations, and history in this recent book edited by Professor Seokwoo Lee of Inha University School of Law (Incheon, Korea) and Professor Hee Eun Lee of Handong International Law School (Pohang, Korea).

Situated about 87.4 km southeast of Korea's Ulleungdo Island and 216.8 km from the Korean coastline, and about 157.5 km northwest of Oki Island of Japan's Shimane Prefecture, Dokdo is located roughly in the middle of the East Sea / Sea of Japan, and squarely at the center of Korea-Japan tensions. Although Korea currently has physical possession of the island, both countries claim ownership.

Japan's position is that Dokdo was *terra nullis* at the time it was incorporated into its Shimane Prefecture in 1905. Korea, however, argues that historical documents prove its ownership of the island prior to Japan's alleged incorporation. (For readers unfamiliar with the dispute, a convenient place to start is with the official claims of the two countries, which are provided on government websites.)¹ The dispute has become increasingly heated in the last decade. In March 2005, for example, many Koreans responded with bitter demonstrations when Japan's Shimane Prefecture declared a "Takeshima Day."

Published in 2011, this volume is one of the latest (no. 67) in the Publications on Ocean Development series published by Brill. It is comprised of selected papers from two international conferences held in Seoul, Korea. The contributors come from various countries: Korea, U.S., China, Japan, Iran, and Nigeria. Although most are leading scholars of international law, others have backgrounds in political science, international relations, and history.

1 See, e.g., MINISTRY OF FOREIGN AFFAIRS OF JAPAN, JAPANESE TERRITORY, <http://www.mofa.go.jp/region/asia-paci/takeshima>; MINISTRY OF FOREIGN AFFAIRS, DOKDO, <http://dokdo.mofa.go.kr/eng>.

Unlike other publications on this dispute, this book is not a simple “for/against” or “Korean/Japan” treatment of the issue. Divided into eleven chapters, some (especially chapters III and VII) directly address the question of ownership, but most attempt to formulate a broad framework for better appreciating not only the Dokdo, but also other territorial disputes in the region, in particular the Diaoyudao/Sekaku and Kurile/Northern Islands disputes.

Chapter I serves as a general introduction to the book by the editors. But they do more than simply summarize subsequent chapters. The editors identify four main approaches proposed in recent years for resolving the dispute: (1) detaching the issue of territorial sovereignty from maritime delimitation and related issues; (2) examining other territorial issues involving Japan for comparisons and insights; (3) highlighting the role of the U.S. in resolving the issue; and (4) analyzing the history of Japanese expansionism and colonialism in relation to the dispute. The editors point out that the book focuses on the first three approaches; the fourth is not fully discussed. However, they helpfully provide a summary of discussions based on the historical approach and other chapters examine aspects of it.

In the second chapter, Harry N. Scheiber of the University of California, Berkeley, School of Law, presents a moral and historical perspective on the Dokdo dispute, drawing not only on international law but also aspects of Japan’s colonization of Korea. Professor Scheiber first analyzes the historical context of Japan’s alleged incorporation of Dokdo. He then examines the 1951 San Francisco Peace Treaty, critiquing Japan’s narrow and literal interpretation of the document. The chapter concludes with an attractive, if perhaps “utopian,” proposal: Japan can make amends for the past by withdrawing its claim to Dokdo, and in return Korea can limit its claims with regards to maritime delimitation and resource issues between the two.

Chapter III directly addresses the question of Dokdo’s ownership and is written by the late Jon M. Van Dyke of the University of Hawai‘i at Mānoa, School of Law. Professor Van Dyke applies rules derived from international tribunals to argue that Korea’s claim to Dokdo is more persuasive than Japan’s. His conclusion is based on Korea’s effectivities on the island prior to 1905 and from the 1950s onwards, as well as Japan’s acknowledgment that it lacked possession or ownership of Dokdo prior to 1905. He warns however that even if Dokdo belongs to Korea, it will likely have minimal influence in maritime delimitation as the island is likely only a “rock”

under international law,² and even assuming it is an “island,” judicial decisions suggest that islands as small as Dokdo exert little influence on maritime boundaries.

The fourth chapter is written by Seokwoo Lee of Inha University School of Law, one of the editors of this volume. Professor Lee examines the effects of the 1951 San Francisco Peace Treaty on territorial disputes in East Asia, observing that these disputes are largely caused by ambiguities in the territorial clauses, which reflected the geo-political and strategic concerns of the Allied Powers rather than the interests of East Asian countries. He also examines the earlier drafts of the Treaty. He observes gaps, a lack of specific definitions, and even indications of reluctance to make territorial dispositions. With regards to Dokdo, Professor Lee concludes that while the Treaty could ostensibly assign the island to Japan, a close study of the earlier drafts indicates that Dokdo can be considered as part of the “Korea” renounced by Japan under the Treaty.

In the following chapter, Atsuko Kanehara of Sophia University reviews the history of maritime conflicts and cooperation between Japan and Korea, and calls for a practical solution for the Dokdo/Takeshima dispute from the perspective of the law of the sea. Professor Kanehara observes that both countries have resolved maritime boundary issues in the past by applying UNCLOS, and have cooperated in marine scientific research, joint development of seabed resources, and fishery resources, while avoiding a final delimitation of their EEZs – remarkable evidence of cooperation considering that Dokdo can be regarded as a critical point for delimitation. In her view, if such issues can be successfully managed without touching upon the matter of Dokdo’s ownership, insisting on ownership is in neither country’s interest.

Written by Dakas C.J. Dakas of the University of Jos, chapter VI examines the 2002 ICJ case between Cameroon and Nigeria regarding sovereignty over the Bakassi Peninsula (hereinafter Bakassi case) and its implications for the Dokdo dispute. Professor Dakas observes that in Baskassi, the Court awarded the Peninsula to Cameroon primarily on the basis of treaties between Great Britain, Germany, and France, while largely ignoring the unequivocal terms of an earlier 1884 treaty between Great Britain and the old Calabar Kingdom, under which Nigeria should

2 Under UNCLOS article 121, “rocks” unlike “islands” do not generate an exclusive economic zone.

have sovereignty – this, he says, is the legacy of colonialism in today's Eurocentric international law. He draws several lessons from this for the Dokdo dispute, and opines that Korea is justified in its reluctance to use the Court to adjudicate disputes with Japan given decisions like *Bakassi* where the Court failed to critically engage in the matter of colonialism.

In the following chapter, the late Kaiyan Homi Kaikobad of Brunel University examines in great detail the roles of geographical contiguity, adjacency, proximity, and distance, when determining the ownership of Dokdo. He argues that the rules relating to natural unity of islands and comparative proximity are the most applicable to the dispute. Analyzing the evidence – both “sub-surface” (i.e., geomorphology, geology, and bathymetry) as well as “surface unity” (i.e., historical, political, economic, etc. links to the island) – Professor Kaikobad concludes that the principle of contiguity favors Korea in the dispute.

The eighth chapter presents an American assessment of the policy options available to Korea. Larry Niksch, senior advisor with Political Risk Services (PRS), cautions that while Korea may have a stronger historical claim to Dokdo, resolving the dispute in its favor remains a difficult task due to the United States' neutrality. As a result, he believes Korea has three options: (1) continue to strengthen its physical presence on Dokdo, anticipating that other states will eventually support its claim; (2) submit the dispute to adjudication; and (3) negotiate a settlement with Japan. However, Larry Niksch observes that many Koreans view disputes with Japan as a “zero sum game,” and he warns that Korea must choose between settlement-reaching diplomacy and continued “Japan bashing.”

The remaining chapters examine Japan's other territorial disputes with China and Russia to shed light on the Dokdo issue. In chapter IX, Ji Guoxing of Shanghai Jiaotong University compares and contrasts the Diaoyudao/Senkaku and the Dokdo/Takeshima disputes, observing for instance that Japan claims that both islands were *terra nullis* prior to their alleged discovery and subsequent occupation during periods of Japanese military expansionism and colonialism. He also examines how ownership over these islands affect delimitation issues, and provides a legal analysis of the territorial disputes, concluding that in both instances Japan's claim to ownership by prescription is unsupportable.

The next chapter, written by Leszek Buszynski of the International University of Japan, focuses on Japan's territorial dispute with Russia.

Professor Buszynski proposes classifying territorial issues into disputes over “homeland” and “peripheral” territories. Although most “peripheral” disputes can be settled by negotiation, he observes that sometimes they can transform into non-negotiable ones. Professor Buszynski explains that Japan’s territorial disputes are linked: if it concedes one, it risks losing the others, and as a result cannot make concessions regardless of the territory’s “peripheral” nature. Seeing that for Japan, the Northern Islands are more important than Dokdo, he advises Korea to craft a regional approach that addresses the Northern Islands issue. This he believes may ultimately speed the resolution of the Dokdo dispute.

In the eleventh and final chapter, Jean-Marc Blanchard of San Francisco State University considers how economic factors may affect the resolution of territorial disputes. Examining Japan’s disputes with its neighbors over the East China Sea, Diaoyu Islands, and the Northern Territories, he observes that economic interdependence and economic incentives do not appear to significantly aid in resolving such issues. Politics, rather than economics, he concludes is the key to finding meaningful solutions. With regards to Dokdo, this means that negotiators must pay careful attention to the other side’s level of stateness in determining when to hold discussions and what to propose.

The scholarly value of this book has several attributes. First, as mentioned above, this book goes beyond the “black/white” or “for/against” paradigm in which the Dokdo dispute is often framed. Several chapters discuss the issue of ownership, but others approach the dispute from broader perspectives. Second, the book embraces a multi-layered, interdisciplinary approach that looks to international law, international relations, and history. Chapters VIII, X, and XI approach Dokdo from the perspective of international relations, and chapters I, II, and III discuss at some length aspects of the Japanese militarism and colonialism in relation to Korea. Third, there is significant comparative analysis with other current and past territorial disputes. For example, chapters IX, X, and XI compare Japan’s other territorial disputes in the region for insights into the Dokdo issue, while chapter IV draws lessons for Dokdo from the dispute between Cameroon and Nigeria over the Bakassi Peninsula.

It should be pointed out that nearly all the contributors in this book are generally supportive of Korea’s position. While this reviewer does not dispute that the arguments presented are balanced and well-supported,

it is difficult to ignore this aspect. The book perhaps could have benefited from contributions from more Japanese scholars, or included views reflecting Japan's position.

In the end, however, these criticisms are minor. The academic value of this volume outweighs any real or perceived shortcomings. The arguments presented in this volume are balanced, well-reasoned, and even compelling. Legal scholars, historians, policymakers, and students of international law, international relations, and history will find this multilayered book an indispensable addition to the literature on the Dokdo dispute, as well as territorial disputes in general. The editors have stated that one of the goals of this book is to move beyond the "Korea/Japan" paradigm and create a broad, regional, interdisciplinary framework for approaching the issue, and to a large extent they have succeeded.

JEONG WOO KIM