Chapter VI

Intertemporal Law, Recent Judgments and Territorial Disputes in Asia

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I. General Overview of the Territorial Disputes in Asia

Asian colonialism¹ has produced many unresolved conflicts that have divided parts of the region since the end of World War II. Japan continues to claim sovereignty over the Southern Kurile Islands/Northern Territories (Kurile Islands)² against Russia (formerly part of the Soviet Union); over the Pinnacle Islands/Senkaku Islands/Diao-yu-tai (or Tiao-yu-tai)³ against the People’s Republic of China (China) and the Republic of China (Taiwan);⁴ and over Liancourt Rocks/Dokdo (Takeshima)

¹ Asia is the world’s largest and most populous continent. It covers 8.6% of the Earth’s total surface area (and 29.4% of its land area) and contains more than 60% of the world’s current human population, http://en.wikipedia.org/wiki/Asia (last visited Mar. 1, 2007).
² For further information on this dispute, see Seokwoo Lee, Towards a Framework for the Resolution of the Territorial Dispute over the Kurile Islands, 3:6 Boundary and Territory Briefing (IBRU 2001).
³ For further information on this dispute, see Seokwoo Lee, Territorial Disputes among Japan, China, and Taiwan concerning the Senkaku Islands, 3:7 Boundary and Territory Briefing (IBRU 2002).
⁴ This paper treats China and Taiwan as separate entities, without prejudice to their respective claims.
against Korea. Resolutions to these territorial disputes are impeded by the deep-rooted historical bitterness between Japan and its neighbors.

In addition to the territorial disputes over the aforementioned islands, competing claims over the Spratly Islands (by China, Malaysia, Philippines, Taiwan, Vietnam, and Brunei), Paracel Islands (by China, Vietnam, and Taiwan), New Moore/South Talpatty/Purbasha Island in the Bay of Bengal (by Bangladesh and India), Kashmir (by China (Aksai Chin), India (by Jammu and Kashmir), and Pakistan (by Azad Kashmir and Northern Areas)) still impact international relationships in these regions. Other key issues deserving attention include the division of Korea into two ideologically opposed States as well as the so-called Taiwan Straits issue, which influences the bilateral relations between China and Taiwan.

Almost all Asian countries are involved in territorial and boundary disputes with their neighboring countries. Regional stability in Asia is still heavily influenced by the legacy of colonialism and is partly dependent on the outcome of ongoing territorial disputes in which former colonising countries take part as disputants.

5 For further information on this dispute, see Seokwoo Lee, The Resolution of the Territorial Disputes between Korea and Japan over the Liancourt Rocks, 3:8 Boundary and Territory Briefing (IBRU 2002).
6 For further information on this dispute, see generally M. Chemillier-Gendreau, Sovereignty over the Paracel and Spratly Islands (2000).
7 Id.
8 For further information on this dispute, see generally Border and Territorial Disputes (J. Allcock et al. eds., 1992).
9 Id.
11 The final disposition of territories in East Asia at the end of World War II was effected by the San Francisco Peace Treaty of 1951, 136 U.N.T.S. 45, 3 U.S.T. 3169 (1951), entered into force Apr. 28, 1952 [hereafter cited as SF Peace Treaty]. The San Francisco Peace Treaty failed to define the “Kurile Islands,” and to specify the entity in whose favor Japan had renounced sovereignty over the disputed islands. Furthermore the Senkaku Islands and the Liancourt Rocks were not specifically mentioned in the territorial clauses of the San Francisco Peace Treaty. Accordingly, there is a need to examine carefully how a series of drafts of the Treaty defined the terms regarding these disputed islands in East Asia. The territorial clause of the San Francisco Peace Treaty regarding the Kurile Islands can be interpreted as follows: (1) the Soviet Union is the only recipient of the Kurile Islands envisaged by the Allied Powers; (2) there were no agreed definition of the “Kurile Islands” among the Allied Powers; and (3) there are strong indications that the Allied Powers preferred not to resolve the matter of the ultimate disposition of the Kurile Islands in the San Francisco Peace