Chapter VII

Some Legal Aspects of Territorial Disputes over Islands

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I. Introduction

This paper discusses a continuing dispute between Korea and Japan. As I am a Japanese, I would like to begin with a sincere apology to the Koreans for the Japanese colonial rule. On the 50th anniversary of the war’s end on August 15, 1995, Japanese Prime Minister Murayama stated:

The world has seen fifty years elapse since the war came to an end. Now, when I remember the many people both at home and abroad who fell victim to war, my heart is overwhelmed by a flood of emotions. . . . During a certain period in the not too distant past, Japan, following a mistaken national policy, advanced along the road to war, only to ensnare the Japanese people in a fateful crisis, and, through its colonial rule and aggression, caused tremendous damage and suffering to the people of many countries, particularly to those of Asian nations. In the hope that no such mistake be made in the future, I regard, in a spirit of humanity, these irrefutable facts of history, and express here once again my feelings of deep remorse and state my heartfelt apology. Allow me also to express my feelings of profound mourning for all victims, both at home and abroad, of that history.

On the 60th anniversary of the end of the war, Prime Minister Koizumi affirmed Murayama’s Statement.1 Facing the facts of history, I hold the same feelings of deep remorse and heartfelt apology with former Japanese Prime Ministers Murayama and Koizumi.

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1 “On the 60th anniversary of the end of the war, Prime Minister Koizumi reaffirmed his determination that Japan must never again take the path to war, reflecting that the peace and prosperity we enjoy today are founded on the ultimate sacrifices of those who lost their lives for the war against their will.” He stated as follows: “In the past, Japan, through its colonial rule and aggression, caused tremendous damage and suffering to the people of many countries, particularly to those Asian nations. Sincerely facing these facts of history, I once again express my feelings of deep remorse and heartfelt apology, and also express the feelings of mourning for all victims, both at home and abroad, in the war. I am determined not to allow the lessons of that horrible war to erode, and to contribute to the peace and prosperity of the world without ever again waging a war.”
II. Definition of “Dispute”

First of all, a “dispute” must be defined. In the *Case of the Mavrommatis Palestine Concessions*, the Permanent Court of International Justice (P.C.I.J.) stated as follows: “[a] dispute is a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons. The present suit between Great Britain and Greece certainly possesses these characteristics.”

In the *Mavrommatis Palestine Concessions* case, the Greek government asserted its own rights by claiming an indemnity from the British government on the grounds that M. Mavrommatis, one of its subjects, had been treated by the Palestine or British authorities in a manner incompatible with certain international obligations which they were bound to observe. Indeed, the dispute started initially between a private person and a State; between M. Mavrommatis and Great Britain. Subsequently, the Greek Government took over the case. The dispute then entered a new phase under the domain of international law, and developed into a dispute between two States.

Judge Waldock, in his separate opinion in the *Fisheries Jurisdiction Case*, stated that a “dispute,” as has frequently been said both by the P.C.I.J. and by this Court, “is a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons.”

III. Does a “Dispute” Exist Between Japan and Korea?

Immediately after President Lee issued the Proclamation of the President of the Republic of Korea of January 18, 1952 claiming sovereignty over the shelf and seas adjacent to Korean territory, the Japanese Government sent a Note Verbal of January 28, 1952, considering that the contents of the Proclamation “are entirely incompatible with the long internationally established principles of the high seas.” In the same Note Verbal, the Japanese Government said: “[f]urthermore, in the proclamation the Republic of Korea appears to assume territorial rights over the islets in the Japan Sea known as Takeshima (otherwise known as Liancourt Rocks). The Japanese Government does not recognize any such assumption or claim by the Republic of Korea concerning these islets which are without question Japanese territory.”

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