

Preface

There are many unresolved territorial and boundary disputes in the world today, notably those which Japan has in its neighbouring areas – the “*Northern Territories*” with Russia, *Takeshima Island* with the Republic of Korea and the *Senkaku Islands* with China and Taiwan –, the *Paracels* and the *Spratlies* in the South China Sea, and the maritime boundaries surrounding them, to name but a few in Asia only. Besides, the increased national claims for 200-mile maritime jurisdiction in recent years have created more unresolved maritime boundaries. Logically all of these require settlement, but experience shows that they remain unsettled unless and until there emerges some urgent necessity for their solution between the parties, such as the need for exploration or exploitation of hydrocarbon resources in the disputed area.

Once the parties are agreed with a sense of urgency to settle their disputes, it is likely that they will try to reach a compromise solution in negotiating a settlement. Should they agree on the idea of resorting to arbitration or judicial settlement, then they are prepared to abide by its decision. Fortunately, from the point of view of dispute settlement, the overriding consideration in such a binding third-party procedure, at least as may be seen in recent international arbitral and judicial decisions, seems to be an equitable solution based on the consideration of the relevant circumstances in a given case.

This tendency is in accord with the growing reference to equity in recent international treaties in general. Admittedly there is persistent, generally tenable criticism of the application of equity in the legal relations of States on the ground of its subjectivity, but the fact does remain that States tend to insert equitable provisions in treaties, whether in the preamble or in the operative, and particularly dispute settlement, clauses. This would be a reflection of States’ awareness of the need for practical response to changes or new developments in international relations which may cause gaps in the existing rules of international law.

The inclusion of this study in the *International Law in Japanese Perspective* series does not imply that practical solutions for the above-mentioned Japanese territorial disputes are presented; the study is an analysis of equitable considerations in

past cases of territorial and boundary dispute settlement, with a view to seeing what role equity can play in such a process. The application of any such deductions from past experience to unresolved disputes is entirely a matter for the decision-maker. Yet, hopefully, a careful reader may discern what can perhaps be called a Japanese perspective in the manner in which the arbitrations are analysed or the theoretical aspects discussed in Chapters III and IV. Indeed, the Japanese mind, which, being conciliatory in nature, tends to prefer to see disputes settled out of the court, would not view the emphasis on equitable solution of disputes with suspicion but would even see it as advisable. Such a sense of equity or justice might be found to underlie the discussions of this study.

Faculty of Law
Aichi University

Masahiro Miyoshi

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