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Drivers, Instruments, Ways Forward***

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Session III: Mixed Drivers

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Who are the drivers of the three territorial issues? Seen from a Japanese perspective

Introduction

In the post-WWII North East Asia there are three territorial issues which Japan is involved: Northern territories with Russia, Takeshima with Korea and Senkaku islands with China.¹ In the contemporary territorial disputes, there is invariably a legal factor. The key question is who is right in owing that particular piece of land, and however imperfect or primitive as it was, international law can provide only basis for common ground of judgment. All four governments in advancing their claim have legal claim in their front seat. In other words each government has its own legal basis for its claim. As for the settlement of the dispute, the legal aspect could be negotiated and agreed among the contending parties, but its ultimate solution could well be judicial, implying for instance a judgment by the international court of justice. Past documents, especially all legal documents pertaining to the islands in disputes become essential to bring in a solution from this perspective.

But on the other hand, international law and legal argument does not give any real picture that motivates that territorial dispute. So this paper intends to look at very quickly the major structure of territorial problem from the perspective of international law, and then it takes an analytical position that there are three fundamental drivers in advancing claim on these islands.

The first driver is geopolitical factor. What is the geopolitical strategic interest in obtaining these islands? A map becomes essential in gauging the value of these islands from security and strategic point of view. Since this perspective could be seen from the point of view of power, one may attribute this view from realist perspective of international relations theory.

Another question which might be posed with equal importance is what kind of advantage would it entail from gaining these islands from economic, resource, energy point of view? All analysis on these islands by scientists and researchers, past

¹ Current official position of the Government of Japan is that there are only two territorial issues and that there does not exist a territorial dispute with China. But this paper is written from the position of international law that there is a dispute when one state actor is filing a claim against another. Senkaku islands are officially claimed by Taiwan and China in 1971 against Japan, so it is equipped with sufficient conditions that there is a territorial dispute. Japanese government's position should be understood as "the position taken by the Government of Japan is so strong legally and in reality so strong and China's claim so weak that it does not tantamount even to a dispute.

economic activities conducted on these islands and the material benefit which these islands may produce become essential for this second driver. Since this perspective could be seen from the point of view of distributable interests and gain, one may attribute this view from liberal perspective of international relations theory.

The third driver could be considered from the point of view of history, national honor and identity. All historical circumstances, particularly the circumstances in which these islands came to be owned by one country and not by another one have paramount importance. Historical documents, records of negotiations, maps showing which side owned what in which circumstance relevant. Since the key issue becomes honor and identity, the constructivist theory on the formation of identity becomes critical to understand that driver's position from international relations theory.

When one analyses the three territorial issues in North East Asia from liberal, realist and constructivist points of view with an eclectic approach, one is struck by the sharp differing driver each government is advancing on respective territorial issue. I am going to analyze the three territorial issues in the order of Northern territories/ Kuriles, Takeshima/ Dokdo and Senkaku/ Diaoyutai and compare the role of respective driver in the conclusion at the end.

Northern Territories

The discovery and first entry on these islands date back to the 17th century or so but little can be doubted that the frontier between Tokugawa Shogunate Japan and Tsarist Russia was demarcated in 1855 by the Treaty of Japan Russia Trade and Amity between Urup Island and Etorofu Island. After 90 years since then of uncontested ownership by Japan, at its' defeat at WWII in August-September 1945 the four islands in contention were occupied by the Soviets and since then remain under Russian control. There are perhaps two legal documents that are worth recollecting around the time Russia occupied these four islands: first 1945 Yalta Agreement in which the Soviet Union gained the right for the Kurile Islands in exchange for joining war against Japan after Germany's surrender; and second the San Francisco Peace Treaty of 1951 where Japan "renounced all right, title and claim to the Kurile Islands."

In the course of bilateral negotiations that started from 1955, the Russian side maintained that the four islands are a part of the Kurile islands, therefore they have the legal right on these islands based on the Yalta Agreement and Japan precisely lost their right because they have actually renounced their right in San Francisco. The Japanese side argued that the four islands are not a part of the Kurile Islands, therefore the Soviets have not gained anything at Yalta in addition to the fact that

Japan is not bound by Yalta. As for the San Francisco Peace Treaty, during the 1955-56 negotiations, Japanese and US governments, two major signatories of this treaty, began ascertaining that four islands were not relinquished at San Francisco and the Soviets have no legal authority to interpret this treaty. Thus resolving the contention through legal settlement, either by negotiations or by international jurisprudence does not seem to be its main driver or its solution.

If simple legal justice is not the ultimate driver for either party, then what is the main driver? We have to see the Japanese side first, because it is Japan which is seeking the change of status quo. Here overwhelming records show that it is the question of historical justice and heal the wound that was infringed at the time the pre-war Japan was falling apart. Betrayal of the neutrality pact that was still in force, atrocities committed to the civilians and soldiers after the surrender and the territorial greed against shared principle of having “no thought of territorial expansion”, as was agreed in the Atlantic Charter and Cairo Declaration to which the Soviet Union abided itself (Togo, 2011, p. 124; Togo, 2013-c, p. 30). There is a conspicuous lack in the Japanese side to consider the territorial disputes from the point of view of gaining material benefits such as fishery or energy or whatever. It is almost exclusively the constructivist notion of identity, pride and historical memory that has fuelled Japanese energy for territorial negotiation.

Compare to the Japanese position, driving factors on the Russian side is more complex. The first and main factor is power and realism. Russian main assertion that “post-war reality cannot be changed”, is very much inclined to the realist view of the world that power is predominant. The Soviet Union won the war, so what is wrong in taking the territory from a defeated country? Also in the course of long years discussing the issue of the Kurile Islands, some military strategists argued from security point of view that the strait between Urup and Etorofu and between Etorofu and Kunashiri serve Russian fleets’ free passage in winter when a part of the sea of Okhotsk is frozen. Thus one may acknowledge that the major driver in Russia comes from realist camp that Russia does not need to return these islands because they are the gain from Russian victory at WWII and have also certain strategic security advantage.

It does not mean however that an identity related argument of justice and honor does not exist in the Russian side. Stalin’s well known national message that the Soviet Union has waited for long the occasion to redeem the humiliation that it suffered at Portsmouth is a well-known positioning in driving the vehicle with identity nationalist factor. But it seems that this factor is secondary in Russian positioning.

Japan’s insistence for change of status quo from constructivist approach and Russian approach from realist position are left first unresolved but eventually got its

first rapprochement and international agreement of Joint Declaration of 1956, where the transfer of Habomai and Shikotan was agreed to be made after the conclusion of a peace treaty without any agreement on Kunashiri and Etorofu. It was followed by three joint communiqués after the end of the Cold War (1991, 1993 and 2001) and now a new situation, where the two sides agreed to resolve this issue, based on the principle of “no winner and no loser” is sought for.

Takeshima

Historical documents concerning the discovery, first entry and first activities on the islands, Korean position and Japanese position differ. The first decisive action which swept this ambiguity away took place in September 1905 when the Meiji Government allowed Shimane Prefecture to put Takeshima under its jurisdiction. So in 1910 when Japan annexed Korea, the annexation did not cover Takeshima, since it was already a part of Japan. The legal contention on Takeshima began immediately after Japan’s surrender in August 1945 by both sides. With a view that the formal extent of Japanese territory would be decided upon signing a peace treaty, both the Japanese and the Koreans supplied information to the US government that Takeshima belonged to its own ownership. US position waivered but ultimately it left certain ambiguity in the way the treaty language was formulated that “Japan renounces all right, title and claim to Korea, including the islands of Quelpart, port Hamilton and Dagelet.” But the interpretation by the US then on Takeshima favored as was shown in a letter sent by Rusk to the Korean Ambassador to the United States. So in 1952 President Rhee Syng-man established an exclusive fishery zone in which Takeshima was demarcated on the Korean side, followed by military occupation accomplished in 1952.

The position taken by the Koreans in the seven years since Japan’s defeat in 1952 and all subsequent arguments are a mirror image of Japan’s claim over the Northern territories. For Korean government and people, Dokdo issue was an issue of paramount importance pertaining to its betrayed justice, honor and identity. Since Takeshima became formerly under Japan’s legal and substantial control in 1905 and Japanese annexation of Korea took place in 1910, Dokdo’s ownership is seen as a precursor of Japanese annexation of Korea, which no Koreans can give any approval. Furthermore roughly sometimes when Takeshima/Dokdo came under Korean military occupation in 1954, it seems that there immersed a national psychology of “Dokdo adorationism” that fuelled national emotion to these islands (Hosaka and Togo, 2012, pp. 84-86; Togo, 2013-a, pp. 55-56). Legal international judiciary’s judgment in no way can even come into consideration for solution, because Dokdo’s ownership is so deeply rooted in Korean identity that no one dares to leave the solution in the hands of

a third party, judicial or political. Dokdo is now considered as a real defense objective but in no way that does not seem to be based on security-realist perspective but exclusively linked with a genuine fear that Japan might come back sometime to retrieve it, a notion that can only be understood by Korean fixation and negation of colonial Japan.

Japan's approach to Takeshima might arguably be analyzed as an equivalent image of Russian approach to Northern Territories. The most revealing position by the Japanese government on Takeshima is that Japan's immediate response was to take this issue to the International Court of Justice. This first of all shows prevalence in the Japanese approach of seeing this dispute as fundamentally a legal dispute where an accepted application of international law can prevail. It consequently means that in Japan there is no single or combined driver that outweighs possible legal consequence from a judiciary judgment. The only clear driver seen in the drivers' seat in Japan so far is liberal interest on fishery gain of Shimane Prefecture fishermen.

The contrast is very sharp between Japan and Korea. Against the powerful, emotional and almost exclusive and monolithic claim based on identity and infringed national pride advanced by the Korean side, the Japanese position so far has been almost benign, taking into consideration some liberal values concerning fishery interests. There have been, though, a period of roughly 30 years from 1965 till the first half of the 1990's when Korean approach was less constraint by narrowly oriented constructivist identity and more inclined to realist oriented balancing of national interests. Roh Daniel's "The Takeshima Secret Pact" outlines the existence of a secret agreement which precisely met this shared objective of non-emotional and pragmatic balancing of interest (Daniel, 2008, p. 208), though at this point in time, both governments deny the existence of this secret agreement.

The Takeshima/ Dokdo issue is at a critical threshold. President Lee Myung-bak's visit to Takeshima in August 2012, whatever his real reasons might be, stirred for the first time in the whole Takeshima history a feeling on the Japanese side that enough is enough in bullying Japan and that feeling rapidly expanded by President's inadvertent statement on the Emperor's visit. The author strongly hopes and considers distinctly possible that the two sides go back to a pragmatic realist approach to diminish the existing discrepancies between Korean fixation on identity based nationalist emotion and Japan's liberal fishery oriented approach. The greatest fear, although that possibility might not be high, is that Japanese sentiment on this issue turns up into an identity and justice based emotion. If that takes place Japan-Korea relations would be caught by insolvable tension which is of no one's interests.

Senkaku Islands

Among the three territorial issues that Japan faces there is no other issue that driver of the vehicle changed so fundamentally than the territorial issues regarding the Senkaku Islands. The date to be remembered on historical records is January 14 1895 when amidst the Sino-Japanese war Japan took measures to make Senkaku a territory of Japan. The Shimonoseki Treaty signed on April 17 1895 annexed Taiwan which is located at very vicinity to the Senkaku Islands toward the mainland China. The issue of Senkaku ownership has not appeared in the form of a dispute between Japan and China and Taiwan since then, when Japan lost war in the Pacific, occupied by the Allied Forces, and Senkaku became under the control of the occupation forces just as other parts of Japan. In 1951 it was moved to the administrative control by the United Sates together with Okinawa under Article 3 of the San Francisco peace Treaty.

But in 1971 claim against Japanese ownership was filed in June by Taiwan and in December by China. The claim was made after three years' time when the ECAFE filed a report in 1968 that there may be an oil reservoir under Senkaku islands. In responding to these claims the Japanese government declared in March 1972 its official position that Senkaku belongs to Japan. By then Senkaku had already been included within Okinawa boundary whose administrative right was returned to Japan under the Okinawa Reversion Treaty signed in June 1971 shown in coordinates prescribed in Agreed Minutes attached to that Treaty. The Treaty went into force in May 1972 and the US administration then took the position that although the administrative right is returned to Japan the US takes a neutral position regarding the sovereignty of the islands.

By then all legal issues which constitute this dispute were present. But in dealing with these legal issues, two governments took rather extra-ordinary approaches. The Chinese government first in September 1972 and then in August 1978 took a position of “not talking now” and “leave to the next generation” by Zhou Enlai and Deng Xiaoping respectively. The Japanese government by way of not contradicting the Chinese positions “tacitly acknowledged” the Chinese position (Hosaka and Togo, 2012, pp. 131-133). That Chinese position began to change as China’s state power began to rise. Several turning points can be earmarked in this change:

- In 1992 it formerly included these islands within the Chinese territorial waters (The GOJ expressed serious concern and from 96 began to take its official position that “there does not exist territorial problem between Japan and China that requires a resolution.”) Still in reality China’s restraint continued for another 15 years to keep the tacit understanding of the 1970’s somehow in existence.

- But in December 2008, China's Coast Guard vessel navigated for nine hours within Senkaku's territorial waters and an official spokesman of the Coast Guard stated that in order to show China's claim it is going to realize effective control within its jurisdiction." This was an unambiguous and complete departure from Deng's restraint policy.
- In September 2010 after the collision between Chinese fishing boat and Japanese coastal guard vessel China's mounting pressure indicated very clearly that any attempt by Japan to change the past status quo shall be met with severe reaction, even in a situation where China itself has completely broken the status quo as existed from 1972 for twenty years.
- 2012 became the final blow. Utilizing a well-intended but inadvertent purchase of the Senkaku islands by Noda government China changed completely its policy toward Senkaku as seen in the Senkaku White Paper as finalized on September 25, posted in all home page of Chinese Embassy. China also began open intrusion to the territorial waters of Senkaku that by the end of May 2013, Chinese coastal guard vessels entered 47 days after the GOJ purchased these islands in September 2012.

What are the factors which motivated China from 1971 in filing its claim against Japan's ownership? The first driver was economic profits clearly coming from ECAFE's oil report in 1968. The linkage of oil and Senkaku claim was made by Zhou Enlai very clearly. Deng hinted joint exploitation of oil in his October 1998 visit to Japan. All these indicate that primary concern by China on Senkaku in the first twenty years of claim was economic profits oriented liberalism. That position of profits oriented realism is now completely changed.

In September 2012, China invited a completely different driver into the main seat of its vehicle. The main narrative is now that Japan grabbed these islands in a situation where falling Qing's dynasty was at the weakest and when the Imperial Japan was in its aggression toward the Chinese continent. Senkaku is directly linked with the past history of Japan's aggression to China. The author had written in his book published February 2012 about this potential danger of "historization" of Senkaku (Hosaka and Togo, 2012, pp.141-143). This constructivist driver is firmly supported now by realist driver which sees China's new geopolitical maritime strategy and sees paramount importance for China's dominance in the first islands chain. Both from this constructivist approach and realist approach, Senkaku has gained a huge position in China's strategic thinking close to its core interest.

Japan's driver is very much a reactive driver to Chinese positioning. But in retrospect, whatever its national calculation, Japan failed to resolve this issue

amicably with China as an issue of profits, oil and liberal values. But in the new face from 2012, China’s new declared policy to intrude to the territorial waters of Senkaku by their coastal guard compels Japan to rethink fundamentally the security geopolitics of these islands. China’s new declared policy is close to the violation of UN Charter and at least a manifestation of hegemonism which China itself solemnly denied in Japan-China Treaty of Peace and Friendship of 1978. In fact this reconsideration of security geopolitics would go far deeper than mere reconsideration of islands but toward the fundamentals of Japanese realist strategic politics after the end of WWII. The strategy that the author has suggested is the policy of “Deterrence and Dialogue” (Togo, 2013-b, pp.41-49). But at the time of writing of this paper, it is hard to give any prediction on future course of events.

Conclusion

Above-mentioned drivers’ analysis could be summarized in the following matrix. The underline shows the primary drive.

	To Japan	To Russia	To Korea	To China
Japan’s policy	X	<u>Justice & pride</u>	Fishery’s interest (Possible change?)	I No response <u>II Security Politics</u> Justice & pride
Russia’s policy	Realists’ politics (Justice & pride)	X	X	X
Korea’s policy	<u>Justice & pride</u>	X	X	X
China’s policy	I Energy Interest <u>II Justice & Pride</u> + Security politics	X	X	X

Lastly, translating this positivist analysis to normative principles, the author proposed at the Shanghai Forum in May 2012 the following three principles, which are later published in KSU Journal:

1. Those which challenges status quo do not use forces and do it peacefully.
2. Those who have actual control shall be opened to any kind of talks required.
3. Two sides should create a mechanism to avoid collision.

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