

## **The Politics of Competing Territorial Claims to *Tokdo***

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### **Introduction**

Territorial disputes involving competing claims of national sovereignty over several island groups in the Western Pacific have recently emerged as the foci of long-simmering regional conflicts between several countries in East Asia. These disagreements represent not only flashpoints of concern to regional powers but also threaten many broader international economic and security relationships developed in East Asia during the post-WWII era. Japan is directly involved in several of these sovereignty disputes with its closest neighbors; with Russia over the Kuriles/Northern Territories, with China (and Taiwan) over the Diaoyutai/Senkaku islands, and with Korea over the Tokdo/Takeshima islands. While in some cases these disputes date back to the late 19th century, the fading tensions of the Cold War now permit individual national interests to reassert competing sovereignty claims as regional and international relationships become increasingly fluid.

Along these lines, power transition theory posits that international conflict is most likely when the balance of power is changing (Organski and Kugler; Hughes, p. 134). Such conflict has the potential to escalate significantly when power is unbalanced but not dramatically unequal. It

may be argued that the end of the Cold War heralds not only the collapse of Soviet/Russian power in East Asia but the progressive diminution of American power as well. It is likely that increased American assertiveness as a consequence of the events of September 11, 2001 is only a temporary phenomenon. Concomitantly, the door is opened for a reassertion of the region's traditional powers such as China, Japan, and Korea. Disruptions in the global or regional distribution of power have often preceded outbursts of competition, confrontation, and/or aggression.

In this emergent environment, many East Asian governments are demonstrably more willing to pursue long-standing territorial claims motivated by competing diplomatic, economic, strategic, and political concerns. These disputes are noteworthy due to the inherent danger that if left unresolved they may eventually escalate into serious confrontations which jeopardize regional order, stability, and peace. In many of these territorial disputes the islands in question are often small, remote, inhospitable and uninhabited; however they may be strategically located and/or contain valuable natural resources such as petroleum, mineral deposits, or marine life.

The formal assertion of national sovereignty has taken on increasing urgency as East Asian coastal states begin to systematically implement and extend their rights consistent with the provisions of the 1994 U.N. Convention on the Law of the Sea (UNCLOS). Equally important, such territorial disputes represent potent political symbols of nationalism to the peoples of the countries concerned. (Sutter, pp. 1-2) As a case study illuminating these various issues, this paper will focus on the politics of competing territorial claims between the Republic of Korea and Japan to Tokdo/Takeshima (hereafter referred to simply as Tokdo) island.

Often appearing on international maps as the Liancourt Rocks, Tokdo principally appears as two rather barren volcanic outcrops located between east longitude 131 52' 22" and north latitude 37 14' 18" in Korea's East Sea (the Sea of Japan). The larger islet (*Seo-do* or West island) is 174m high with a circumference of 2.1km; the smaller islet (*Dong-do* or East island) is 99m high and 1.94km in girth. At the closest point they are approximately 175m apart. Tokdo is situated about 215km from the Korean mainland but only 92km from inhabited *Ullungdo* island which is administratively a county of Korea's *Kyungsangbukdo*

province. While Tokdo is roughly equidistant from both the Korean and Japanese mainlands, it lies over 161km northwest of Japan's *Okishima* Islands (from which Tokdo was administered during the colonial period). At present a garrison of 34 Korean maritime policemen are the islands' only full-time residents.

### **Recent Controversies**

The subject of on-going sovereignty controversy, the issue flared up in January, 1996 in part as a result of Korean newspaper warnings that Japan would claim Tokdo as sovereign territory within a 200 nautical-mile Exclusive Economic Zone (EEZ) to be established later that year in conjunction with the Diet's ratification of the UNCLOS. Ironically, the treaty is aimed at preventing such confrontations by clearly outlining which nation has jurisdiction over which areas of the ocean. In this case, however the fact that the two countries' territorial claims would in places overlap reopened an old dispute that has vexed Korea-Japan relations for many decades. It also demonstrates the complex linkages between the issue of Tokdo's sovereignty and the eventual resolution of the EEZ and fisheries issues.

In response to the speculative news reports, a flurry of Korean government statements ensued which restated Korea's sovereignty over the island including one on February 1, 1996 by the Foreign Ministry noting that "Tokdo cannot be subject to any diplomatic negotiations or review by the International Court of Justice inasmuch as it is an integral part of Korean territory historically, geographically, and legally." (Yonhap, 02/02/96) The following day the Korean Ministry of Defense added that it was reviewing "all possible military responses" to the proposed Japanese EEZ encompassing Tokdo. On February 8, Japan's Foreign Ministry asserted that Takeshima (Tokdo) was an integral part of Japan noting "The Japanese government's stance is crystal clear. It is our indigenous territory." (Kyodo, 02/10/96) That statement was in response to reports that Korea was constructing a multi-million dollar pier on Tokdo to facilitate access to the islets.

On February 9, Japanese Foreign Minister Ikeda Yukihiko lodged a verbal protest over the construction work urging Korea stop work on the pier stating that "Takeshima is Japan's proprietary territory historically and legally in

international law" and that Korean construction "infringes upon the sovereignty over our territory and cannot be neglected." (IBRU, 03/02/96) Soon angry public demonstrations demanding a retraction of Ikeda's statement occurred in Seoul during which the Japanese flag and Ikeda were burned in effigy. (Nikkei Weekly, 02/26/96)

On February 10 a spokesman for then Korean President Kim Young-Sam dismissed Japan's claim as absurd and went on to state that:

Rather than reflecting upon its past misdeeds, Japan has been making reckless remarks glorifying its past aggression and colonial rule of Korea whenever there is a chance. Once again, Japan has stirred the anger of the entire Korean people by making a preposterous claim to Tokdo, an islet in the East Sea, which rightfully belongs to the Republic of Korea historically and under international law. We, the Korean people, will firmly reject the claim and resolutely deal with any problems arising from it. (KOIS, 02/10/96)

On February 12 the Korean Defense Ministry announced that joint air and naval exercises would be held near Tokdo to "display the nation's sovereign power over the islet in the face of Japan's claim to it." (IBRU, 03/02/96) On February 13 Korea increased the size of the maritime police garrison on Tokdo from 26 to 34. On that same day, as Japanese and Korean coast guard ships shadowed one another in the area, the Japanese Foreign Ministry ruled out the use of force in resolving the matter and stated that "We just would like to hold talks in a peaceful and quiet manner." (MOFA, 02/13/96) Attempts were underway on both sides to defuse the issue before it escalated to the point where mutually beneficial relations were jeopardized.

On January 29, 1996 the Korean government deposited its instrument of ratification of the UNCLOS and stated that it would also declare a 200 nautical-mile EEZ. Korea's Foreign Minister reiterated the government's stance on the issue by noting "Tokdo is historically part of Korean territory and international law supports it. We have been exercising real territorial and jurisdictional rights over the islets and therefore, they are not subject to negotiations." (IBRU, 03/02/96) On February 17 in a step aimed at further defusing the issue, the ROK foreign minister proposed that Korea was flexible and would be prepared to separate the

EEZ negotiations from the territorial issue if Japan were to refrain from mentioning Tokdo as a base point in its EEZ delineations.

President Kim and Prime Minister Hashimoto personally discussed the conflict when they met on March 2 in Bangkok and more or less politely agreed to downplay the issue while maintaining their respective nation's formal claims. Both leaders reiterated their country's positions with President Kim stating "Our country, in its part, can't tolerate and highly regrets the Japanese claim to Tokdo", and Prime Minister Hashimoto saying that Japan's position had been "clear and consistent" over time. (Ibid) Significantly, both sides emphasized and reaffirmed their existing friendly and cooperative relations, agreed to strive to resolve the Tokdo/Takeshima controversy peacefully, and promised to expedite negotiations for determining their respective EEZ boundaries. At that time both governments cooperated to prevent the dispute from interfering in other areas of greater mutual concern and interest. In April both sides agreed to open talks for a new fisheries agreement in May independently of the territorial dispute over Tokdo.

In August the two countries opened negotiations aimed at drawing a demarcation line separating their respective 200 nautical-mile EEZs zoned in accordance with the UNCLOS provisions. But in September tempers flared again as Japan's ruling Liberal Democratic Party (LDP) in a possible electoral overture to nationalist sentiments made sovereignty claims over disputed territories such as Tokdo (as well as the *Kurile* and *Senkaku* islands) as part of their campaign platform for the October parliamentary elections. The Korean foreign ministry called this an irresponsible act and noted that the government would at no time tolerate Japan's claim. KCNA, the North Korean news agency, joined the fray denouncing Tokyo's claims as evidence that "Japanese reactionaries are persisting in their wild design for overseas expansion" and asserting that Tokdo was Korean on the basis of "discovery and prior occupation" and having been used by Korean fishermen "for more than a thousand years." (KNCA, Pyongyang, 10/12/96)

Subsequently, on October 22, the Japanese foreign ministry reiterated its claim noting "It is crystal clear that Takeshima is our territory. This position of ours has been consistent." On November 1 Japan issued a formal protest to Seoul over continued work on the pier at Tokdo. On the same

day, Seoul responded that the "government rejected the Japanese call, stressing that Tokdo is an inherent territory of the ROK both historically and under international law", adding that pier construction represented a sovereign act over its inherent territory. (Kyodo, 11/01/96) During a January 1997 summit meeting between Kim and Hashimoto in Beppu the island dispute was down- played in favor of emphases on cooperation in strategic and economic areas of common interest.

Bilateral negotiations on revising the 1965 Korea-Japan fisheries agreement (one of the main pillars of their current relations negotiated along with the 1965 Normalization Treaty) as well as the joint establishment of separate EEZs collapsed in mid-June 1997 at least in part due to the overlapping claims to Tokdo. Japan threatened to unilaterally scrap the 1965 agreement if negotiations were not completed satisfactorily by July 20, the one-year anniversary of Japan's declaration of a 200-mile EEZ. (Chosun Ilbo, 06/13/97) Japan proposed setting up a joint jurisdiction fisheries zone around Tokdo and to negotiate a fisheries agreement before dealing with the EEZ issue. Korea on the other hand insisted that the issues should be dealt with in tandem or that the drawing of the EEZ boundaries should precede revision of the fisheries treaty. At the EEZ talks Korea suggested that a provisional EEZ boundary line be established while deferring discussion of the Tokdo sovereignty issue. Japan rejected this plan because it would place Tokdo well within Korean waters. (Korea Herald, 06/14/97)

Positions hardened in early June 1997 when Japan, impatient with the slow progress of the bilateral talks, began seizing Korean boats fishing within its unilaterally declared 200-mile EEZ (unrecognized by Korea), escalating the confrontation further. This was viewed in Korea as an effort to force the government to acquiesce to Japan's demand that bilateral fishing negotiations be concluded by the July 20 deadline. (Korea Times, 07/03/97) At a joint meeting of foreign ministers, Korea's Yoo Chong-Ha demanded that Japan release the boats and their crews as well as delay the implementation of straight-baseline regulations on its new territorial limits until agreement with Korea was reached on a new fisheries accord. (Korea Herald, 07/04/97) Working-level fisheries talks were temporarily suspended by Korea as a "gesture of protest" against the seizures and "because of the national ill will triggered by

the Japanese." (KOIS, 07/04/97) Japan's ambassador to Seoul, Yamashita Shintaro, subsequently reiterated Tokyo's position that the drawing of new territorial waters is a due exercise of its sovereign rights, conforms with international law, and thus requires no prior consultations with Korea. (Korea Herald, 07/10/97)

From Korea's perspective Japan's one-sided insistence on using the straight-baseline formula for determining its territorial waters is highly problematic. The straight-baseline formula, linking projecting points of land or offshore islands, extends and enlarges the territorial seas of the coastal country considerably, often far beyond those of the traditional curved baseline formula which followed the contours of the land. Use of the straight-baseline method is permitted by the UNCLOS regime and is therefore legitimate in principle. However, UNCLOS has provisions preventing arbitrary and unilateral claims by

coastal states.

For example, when addressing the issue of EEZs, Part V, Article 56, paragraph 2 states that "the coastal state shall have due regard to the rights and duties of other states and shall act in a manner compatible with the provisions of this Convention." Article 59 states in part that conflicts "should be resolved on the basis of equity and in the light of all the relevant circumstances, taking into account the respective importance of the interests involved to the parties as well as to the international community as a whole." Part XV of the UNCLOS requires that states settle any dispute between them concerning the interpretation or application of the Convention directly and by peaceful means. The 1965 Korea-Japan fisheries treaty also mandates that all changes to its provisions receive prior consent from both concerned parties before implementation. Japan's unilateral imposition of changes as regards the EEZ and fisheries issues may thus be viewed as ignoring in a procedural sense the requirements of the international agreements in question.

In late July the ruling LDP, Social Democratic Party, and the New Party *Sakigake* (Pioneers) alliance agreed that the fisheries treaty with Korea should be nullified and further talks scrapped if agreement were not reached by the end of that month. Nullification of the pact would occur one year after official notification is made. (Daily Yomiuri, 07/22/97) In turn, on July 24 the Korean National Assembly

passed a resolution condemning Japan's actions as illegal and demanded a formal apology for seizure of Korean vessels and alleged mistreatment of Korean fishermen. It also urged that the Korean government take all necessary measures to protect Korea's interests. (KOIS Press Release, 07/24/97) On July 28 at the ASEAN conference in Kuala Lumpur the countries' respective foreign ministers, despite continuing differences on the issue, reached an agreement to resume the fisheries talks in Tokyo in August, 1997. (Chosun Ilbo, 07/28/97)

From the Korean point of view, the legal and political implications of these interconnected issues are well stated in an editorial which appeared in the Chosun Ilbo on July 30 which said in part:

Japan's claims that it will take unilateral action when and if the accord is not revised by the deadline prove that it had no intention to discuss or negotiate the matter from the beginning, *reminding us of the past ghosts of unfair treaties imposed on us during the colonization period....*As with any other international issues *but even more so the ones between our two countries* should be conducted smoothly....The straight baseline, drawn unilaterally by Japan should be redrawn in the interests of both countries and be in accordance with international law....Japan's strong stand may be connected with our weak position right at the end of the presidential term. Japan may be counting on our attention being on the elections and the current economic slump so as to concentrate its diplomatic forces knowing we might have difficulty countering them....*Japan is well aware that an unjustifiable demand from the outside will not go down well....*There are many other issues beside the fishing accord revision, including politics, diplomacy, securities, the economy, cooperation, trade and culture. *History tells us that if friction occurs in any one of three areas it will naturally adversely affect all other relations.* The revision of the fishery agreement should not be dealt with the interests of a few Japanese politicians in mind but be treated wisely, taking into account all of our relations in their entirety. (Chosun Ilbo, 07/30/97, italics added)

On August 1 it was reported that when bilateral negotiations resumed later that month the Korean government would propose that the EEZ boundary be set at the midpoint between Korea's *Ullungdo* and Japan's *Okishima* - incorporating Tokdo well within the Korean zone. (Joongang Ilbo, 08/01/97) The apparent non-negotiability of the Tokdo issue is the major sticking point inhibiting expeditious resolution of both the EEZ and fisheries disputes.

On August 4, fifteen members of the National Assembly announced that a bill would be soon submitted to ostensibly preserve Tokdo's ecosystem but according to Rep. Kim Joong-Wie "This bill was prepared to preserve the ecosystem of particular islands, but in actuality, it reiterates our declaration of sovereignty over Tokdo (against Japan's claim of its sovereignty....the bill will serve as a substantial means to preclude any further territorial disputes over the islets." (Korea Times, 08/04/97) On August 11, a Korean Foreign Ministry spokesman stated that "Japan has put forth a tentative revision of the current fishing accord including the Tokto islets in the negotiating process. However, we intend to exclude the islets from our negotiations." (Korea Herald, 08/11/97)

In November, 1997 Tokdo was again in the news when the Korean government officially dedicated the newly-completed pier, and presidential candidate Rhee In-Je made a controversial campaign visit to the islands (Korea Times, 11/17/97). In December the fishing talks between Korea and Japan broke down and in January 1998 Japan, frustrated over lack of progress in negotiations, notified the Korean government that it was unilaterally abrogating the 1965 fisheries treaty (Korea Times, 01/22/98).

Most recently, in April 2002 the Korean government protested the Japanese government's approval of high school history textbooks which refer to Tokdo as Japanese territory over which Korea is falsely claiming dominion. According to a Korean Foreign Ministry spokesman, the government "affirmed our unswerving position that Tokdo is our territory given authoritative historical evidence, geographical facts and international law." (Korea Herald, 04/09/2002) Groups in Korea have consistently criticized such textbook controversies as arising from rightist or nationalist positions resident in various areas of Japan's leadership circles. (BBC NEWS ONLINE, 04/09/2002)

### **Historical Evolution of the Issue**

While there is historical evidence that the islets were occasionally visited by Japanese fishermen harvesting abalone and sea lions, Japan's fundamental legal claim to Tokdo stems from February 22, 1905 when the government of Shimane Prefecture issued Notification Decree #40 which renamed the Liancourt Rocks as Takeshima and placed them under the administrative control of its local authorities in the *Okishima* islands. The prefecture's decree was based on the January 28, 1905 Decision of Parliament concerning the Territorial Incorporation of Liancourt Island which was claimed to be *res nullius* - uninhabited land exhibiting no evidence of being in the possession of any other country. The cabinet's authorization was prompted by a Petition for Territorial Incorporation of Liancourt Island and Lease of the Island submitted by a Japanese national, Nakai Yozaburo. That petition requested the Japanese government incorporate the island into the territory of Japan and grant a formal lease on fishing rights. In sum, the basis of Japan's most salient claim to Tokdo "corresponds to the occupation of land which is *res nullius* under international law." (Paik, p.2)

Korea's rejection of Japan's claim is based on an interpretation of international law as requiring the following three conditions be met before such preemptive occupation may be considered valid:

- 1) The area in question has to be *terra nullius*.
- 2) The country that lays claim to such land must express its intention as a state to acquire that land and must explicitly announce such an intention to the international community.
- 3) The country making such a claim must have been in effective occupation of the land in question. (Paik, pp 2-3; Park, pp 7-8)

The position of the Korean government is that "Japan's alleged incorporation of Tokdo into its sovereign territory does not meet any of the three requisite conditions...and is therefore null and void under international law." (KOIS, *Tokdo*, p.14.) First, there is a well established and verifiable historical record of Korea's claim to Tokdo including maps, surveys, and administrative reports dating back as far as the 15th century. The documentary record includes not only Korean materials but also Japanese and other foreign sources as well. (Shin, 1996.) As late as

October 1900, Yi dynasty documents such as Royal Edict No. 41 referred to Tokdo as Korean territory. (KOIS, Tokdo, op cit) While neither Korea nor Japan appear able to definitively assert effective occupation or management of Tokdo, the weight of the historical documentary evidence resides preponderately in Korea's, favor and the Japanese contention that Tokdo was *terra nullius* (land unclaimed by anyone) appears insupportable. Indeed, the historical record strongly indicates that Japanese government officials knew that Tokdo was Korean territory and orchestrated Nakai's application for incorporation as part of their country's imperial project. (Shin, 1997 pp. 145-148; Kajimura, pp. 459-460)

Second, Japan's official territorial claim to Tokdo was made not by the national government, but by a prefectural authority, and it is unusual and rather dubious that simple domestic notification of incorporation by such a local authority could be construed as sufficient public notification under the expectations of international law. For example, when Japan incorporated the *Ogasawara/Bonin* Islands in 1876 it openly negotiated the issue with the United States and Great Britain and separately notified 12 European states of its action (Hori, p. 520.).

Japan often notes that at the time Korea (and other nations) failed to contest their claim, thus indicating acquiescence to Japan's claim and/or that Tokdo was *res nullius*. However, it is important to note that by February 1904 Korea was already under Japanese military occupation as a consequence of the Russo-Japanese War and that by August of 1904 (six months before the Shimane decree) Japan had seized effective control of Korea's diplomatic affairs. The Korean government was therefore *de facto* in no position to either know about or contest the Tokdo issue - indeed Koreans were on the verge of losing entire national sovereignty and autonomy to Japan by 1910.

A close investigation of the historical record readily reveals that Tokdo was indeed perceived as Korean territory by Japanese military and civilian authorities at the time of its seizure and that its annexation was motivated by immediate military (i.e.; the construction of a naval lookout and communications post) and long-term imperial (e.g.; territorial conquest) goals. It should not be viewed as a separate event but as an integral part of the total Japanese effort to defeat Russian naval forces during the Russo-Japanese War and in the process forcibly incorporate

Korea as a whole into the Japanese empire (Shin, 1997; Kajimura, 1997; Hori, 1997). In addition to defeating tsarist Russia, Japan secured acquiescence of the major naval powers in the region to its acquisition of Korea through the 1905 renewal of the Anglo-Japanese Treaty of Alliance and the Taft-Katsura agreement with the United States in the same year. It is difficult to view these as unrelated events.

In November 1905 Korea was forced to become a protectorate of Japan, and in 1910 the country's independence was (temporarily) extinguished when it was formally annexed into the Japanese empire (Kawasaki, pp 1-5). The status of Tokdo would not resurface as an international issue until after Japan's defeat in WW II.

Third, there is scant objective evidence that Japan exercised effective state control on a continuous basis over the islets as part of its sovereign territory at any time before 1905. Most of the pre-1905 record emphasizes sporadic fishing and seal hunting activities by Japanese in the vicinity of the island, not habitation or occupation. Indeed, Korean fishermen did the same. If it were considered as Japanese territory before 1905, why was it necessary to incorporate it under *res nullius* terms by Shimane authorities in that year? Indeed, the procedure surrounding the Shimane decree itself may serve as an indication that Japan did not at the time consider Tokdo as Japanese territory.

Should the Tokdo issue be submitted for adjudication before the International Court of Justice or any other international tribunal the preponderance of the material evidence, at least as regards the manner of the 1905 incorporation, would seem to strongly support the Korean claim to the island. However, the legal/political issue is not limited to the 1905 Shimane decree alone.

With Japan's defeat in WW II Tokdo would again surface as a bone of contention with Korea. The 1943 Cairo Declaration stated that Korea would in due course become free and independent and that Japan would be stripped of "all other territories taken by violence or greed." Article 8 of the 1945 Potsdam Proclamation stated that "The terms of the Cairo Declaration shall be carried out and Japanese sovereignty shall be limited to the islands of Honshu, Hokkaido, Kyushu and such minor islands as we *determine*." (*italics added*) In the Instrument of Surrender signed in

August 1945, the Japanese government and its successors promised to "carry out the provisions of the Potsdam Declaration in good faith" (McNelly, pp.154-168). The obvious intent of these instruments was to strip Japan *en toto* of its various imperial acquisitions such as Korea, of which Tokdo should be considered a part.

In January 1946 the government section of SCAP/GHQ (McArthur's headquarters) issued a directive (SCAPIN 677) which ordered the Japanese government to "cease exercising, or attempting to exercise, governmental or administrative authority over any area outside Japan". SCAPIN 677 specified that Tokdo along with *Chejudo* and *Ullungdo* were to be excluded from Japan's administrative sphere (Cheong p.37). However, SCAPIN 677 also noted that "nothing in this directive shall be construed as an indication of Allied policy relating to the ultimate determination of the minor islands referred to in Article 8 of the Potsdam Declaration." (Ibid)

While both Korea and Japan lobbied the American government for ultimate sovereignty over Tokdo and other disputed islands, the U.S. made no explicitly definitive determination and the ownership issue was not clearly settled during the occupation period leading up to the San Francisco Peace Treaty in September 1951. However, in the text of the peace treaty it states that "Japan, recognizing the independence of Korea, renounces all right, title and claim to Korea, including the islands of Quelpart (*Chejudo*), Port Hamilton (*Komundo*), and Dagelet (*Ullungdo*)." Since specific determination of Tokdo's sovereignty was omitted, interpretations of the documentary evidence put forward by the Japanese and Korean governments conflict. Presumably, since it is allied with both contestant parties, to this day the U.S. government takes no official position on the Tokdo sovereignty issue.

The Korean position is that the islands named in the peace treaty were cited as illustration, and not as enumeration and that Tokdo should therefore be included in Japan's overall renunciation of its pre-WW II imperial territorial conquests. (Paik) Also, Korea argues that Tokdo is clearly Korean territory in that it (1) was not explicitly stipulated as Japanese territory in the 1951 peace treaty, (2) was covered as territory to be stripped of Japan by Cairo, Potsdam, and the surrender documents, (3) had been separated administratively from Japan by SCAPIN 677, and (4) was under the effective control of the ROK government

since the Republic of Korea regained formal independence in 1948. (Park, pp.19-20)

The Japanese position is that Korea had not exercised effective occupation over the island and that therefore it was *terra nullius*, eligible for incorporation under prevailing international law practices of the late 19th century. It is also argued that Tokdo's acquisition was an act separate from the annexation of Korea and should therefor not be included in territories which Japan was forced to return after WW II (Kanae, pp. 15-16).

On January 18, 1952 during the Korean War the Seoul government established the Peace Line or Rhee Line unilaterally declaring sovereignty over the seas surrounding the peninsula and Tokdo was included in the waters within the Peace Line. On January 28th, 1952 the Japanese government delivered a diplomatic note of protest (*notes verbales*), claiming title to the island it calls Takeshima. Since that date, Japan has ritually sent such an annual note of official protest to the Korean government, which has responded with its own diplomatic *notes verbales* in rebuttal. (Kanae p. 1)

In June 1953 volunteer civilian guards occupied the island to repel Japanese landings, and in August 1954 a lighthouse was installed and the Korean government gave international notification of the fact. In February 1956 Korean national police from Ullungdo were assigned to garrison the island. Korea has been in effective (if contested) occupation of the island ever since. Over time, a heliport and radar station have been built and, as mentioned earlier, a pier facilitating access has been constructed.

When the two countries normalized diplomatic relations through the Japan-Korea Treaty on Basic Relations in 1965 the dispute over Tokdo remained active and unresolved with both sides maintaining conflicting claims. However, given the realities of the Cold War containment network and the over-riding demands of alliance politics both sides demurred on pushing for a definitive and final political showdown over the territorial issue. In the Exchanged Notes Concerning Peaceful Settlement of Disputes the two sides agreed to settle any dispute by "peaceful means, through diplomatic channels, that would be agreeable to both sides" (Kim, p.69). While Japan has proposed that the dispute be settled through submission to the International Court of Justice or before a mutually acceptable and

impartial commission of conciliation, the Korean government has steadfastly rejected those proposals as unnecessary; the ROK is *already in effective possession and officially recognizes the existence of no such dispute*. The Agreement on Fisheries of June 22, 1965 side-stepped the Tokdo issue in favor of reaching a compromise by recognizing both exclusive and joint regulation zones for fisheries and mandating mutual consent in the determination of EEZ baselines. (Kim, p.64)

In 1974 Japan and Korea negotiated two agreements dealing with exploration and mining rights to areas of their common continental shelf. The northeastern terminus of this boundary lies about 74 nautical-miles from Tokdo, but neither side allowed the sovereignty issue to prevent a demarcation line being drawn through undisputed areas. (Prescott, p.242) In 1977 Japan declared a 200 nautical-mile exclusive fisheries zone around the home islands but exempted the areas west of 135 degrees east longitude in the Sea of Japan and East China Sea due to the existing territorial disputes with South Korea (Tokdo) and China (Daiyotai/Senkaku). (Japan Times 02/15/96) Having side-stepped this issue for fifty years, why has it come up again now?

In spite of the fact that the Tokdo controversy remains unresolved, both governments have found it a convenient strategy to continually shelve final resolution attempts in favor of getting on with more pressing strategic, economic, and diplomatic affairs of state. Both sides, for their own reasons, have been content to tolerate the issue's controversial *status quo* rather than risk rupture of vastly more consequential common interests in regional security, economic exchange, and alliance maintenance. But with the arrival of the post-Cold War era, there now is raised the obvious question of the degree to which that political *status quo* remains viable?

### **Contemporary Political Implications**

In the Cold War era Japan-(South) Korea relations were mediated (explicitly or implicitly) by the United States. This triangular relationship was functional and acceptable to the three parties given their common strategic interests in maintaining an effective anti-communist containment network in the region. To some, it appears as if this hegemonic relationship has been greatly disturbed by the erosion of the Cold War structure; American and Japanese

power positions in the region are under review and reconsideration, and Korea's linkages to both are in a state of increasing uncertainty. (Y.S. Kim, p.2; Okimoto et al, p.15) As the hegemon's power incrementally recedes, regional powers are more able and willing to press long-suppressed grievances, such as apparently "minor" territorial disputes like Tokdo.

The dilemma for Japan is that Korea and other countries in the region often view its assertive territorial claims to islands such as Tokdo, the Senkaku/Daiyutai, and the Kuriles as evidence of a resurgent nationalism and a signal of a potential return to an unrepentant neoimperial ambition (which many in Asia and elsewhere feel is a lesson as yet unlearned by Japan), this time manifesting itself economically rather than militarily. For some, the maintenance of an American-sponsored multi-lateral network remains "the best mechanism for defusing the nationalist rivalries which still seethe throughout East Asia. If Japan shows bad faith on the bilateral territorial issues, it will quickly become *persona non grata* to other Asian countries". (Slater, 10/05/96) The ability of Japan to exercise leadership in the region is highly problematic, for there is ample evidence that Koreans and others see precisely this spectre - of a powerfully resurgent Japan seeking to reestablish vestiges of its resented imperial legacy through pressing such territorial claims as regards Tokdo, Senkaku/Daiyutai, and the Kuriles. (Chosun Ilbo, 08/09/97)

Whether in Asia or elsewhere, territorial conflicts are precisely those most likely to generate strong (and occasionally irrational) nationalist feelings. It has been noted that the existence of state-oriented nationalism in contemporary Japan is primarily an elite phenomenon. Many within the ruling Liberal Democratic Party, the state bureaucracy, corporate interest groups, and ultranationalist organizations that have the ear of the LDP and key government ministries hold strong nationalist sentiments as well as the ability to influence foreign policy. To some observers "the question remains as to how the nationalist attitudes of those elites who hold such attitudes can be transferred to the mass in order to create a grassroots state-oriented nationalism." (Stronach, p.165) It is obviously possible that the enduring controversy over possession of Tokdo/Takeshima could eventually serve as just such a nationalist mechanism.

The collapse of left-wing parties in the 1990s has left contemporary Japanese politics dominated almost exclusively by center-right political alignments. The various *habatsu* (factions) of the weakened but resurgent LDP and the frequent and chaotic realignments of the incipient and nominally opposition parties have created an electoral landscape in which competing political leaderships may be progressively tempted to search out ever more arcane issues with appeal to "rightist" (nationalist?) constituencies. In a post-Cold War era devoid of the restraining influences of anti-nationalist left-wing political parties or social movements, a "Japan that can say no" and which seeks to become "a normal country" is one in which nationalist appeals resonant in issues concerning national patrimony and territory may well fall on increasingly receptive ears. Recent comments by Japanese Prime Minister Koizumi and his Foreign Minister concerning an increase in Japan's military capabilities may be viewed as indications of an increasing acceptance of such positions amongst the Japanese public.

There appears a certain linked symmetry in Japan's stated positions concerning its claims to Tokdo/Takeshima, the Kuriles/Northern Territories, and Senkaku/Diaoyutai islands. Concession of sovereignty on any one could be viewed as jeopardizing claims or negotiations concerning any or all of the others. One student of modern Japanese foreign Policymaking notes that its dominant characteristics can be condensed into two major streams. First, the country is able to adapt to changing circumstances remarkably steadily at home and abroad, and its ability to move quickly and flexibly when its vital interests are thought to be in jeopardy should not be underestimated. Second, although Japan often appears reasonable and understanding, it tends to stick to its own beliefs and mode of conduct when operating in an environment of uncertainty. At a time when the world is undergoing structural changes that many Japanese believe may jeopardize their nation's interests and when there is much uncertainty about the outcome of those changes, both of these characteristics are magnified (Inoguchi, pp. 134-135).

While the longevity of the current Hashimoto government is questionable, it has moved with alacrity over the course of the last two years to make resolution of the Kuriles issue the centerpiece of his second term's foreign policy. According to one source, "Hashimoto appears to be aiming not to seek the middle ground between the Russian and Japanese positions but to encourage Russian leaders to

decide in Japan's favor, offering cooperation to bolster reform efforts and in the process creating a consensus that returning the islands to Japan will benefit both countries" (Shuzo, p. 21) While it may not come to fruition, the Yeltsin-Hashimoto summit at Krasnoyarsk produced a tentative agreement to hammer out a formal WW II peace treaty (which would potentially include reversion of the Kuriles to Japan) by the year 2000 (Washington Post, 10/28/97). Tokyo clearly perceives that it possesses significant economic and technological leverage over a Russian regime weakened by economic and political disarray. If economic inducements and a dogged determination to reclaim the Northern Territories from Russia eventually prove successful, it would likely stiffen Japan's resolve to follow a similar approach toward Korea over the Tokdo issue.

In the case of the Senkaku dispute with China, Japan's position and behavior has been remarkably similar to that of Korea as concerns Tokdo; formal occupation of the islands, an unwillingness to negotiate, and rejection of the notion that a dispute even exists. Unlike its forceful responses to less powerful Southeast Asian states as concerns similar disputes over the Spratly and Paracel islands in the South China Sea, the PRC has muted its claims in the interest of maintaining the lucrative trade and investment relations created since formal diplomatic relations were restored with Japan in 1972. However, right-wing politicians, newspapers, and patriotic groups in Japan have pushed the government to adopt tougher measures in dealing with Chinese claims. An editor of the conservative Sankei Shimbun observed that "the government's position on the sovereignty of Senkaku has been simple and consistent: it is Japanese territory. Period. Moreover, on this matter there is a rare and complete unanimity among all political parties, all Japanese governments (past and present), and the Japanese public" (Komori, p.4). Again, one observes the economic leverage of Japan as well as its dogged determination to pursue its claim. One also sees the potential nationalist appeal of a territorial issue to Japanese politicians and public.

There are already indications that Japanese leaders perceive improved position and opportunity as regards negotiations with Seoul inherent in the recent economic debacle and change of government in Korea. The Daily Yomiuri cited Foreign Ministry sources as saying that "The government expects bilateral ties with Seoul to improve

despite bilateral territorial and fisheries disputes because South Korean President Kim Dae Jung is considered more pragmatic and knowledgeable about Japan than his predecessor." (02/26/98)

The Foreign Ministry officials were quoted as saying that "Tokyo believes the fundamental policies of the Kim Dae Jung administration will be markedly different from those of his predecessor....the different attitude would be apparent in the approach to such sensitive issues as the long-standing territorial dispute over the ownership of *the currently Seoul-controlled Takeshima islets*....Kim Young Sam always stuck to his principles and has caused unnecessary friction with us, while Kim Dae Jung is quite knowledgeable about Japan and *places importance on practical dialogue*." (Ibid, italics added) Keio University Professor Okonogi Masao posited that "recent remarks by Kim Dae Jung suggested that *South Korea will shift to more practical policies and try to pursue goals that will immediately benefit the nation*." (Ibid, italics added) The assumption appears to be that the recent political and economic changes in Korea provide favorable conditions for eliciting significant concessions on the Tokdo and fisheries issues.

The strong appeal of nationalism has also been long-noted in Korean popular reactions to Japan's Tokdo claims. To most Koreans Tokdo is a prominent symbol of humiliating colonial experience, recent hard-won nationhood, and overt defiance of a powerful and persistent historical nemesis. As such a potent icon of Korean nationalism it is, in my opinion, **politically** impossible for the Korean side to concede sovereignty on the Tokdo issue to Japan. It is doubtful that any democratic Korean government could even agree to submit the issue to adjudication, conciliation, or arbitration before a disinterested third-party such as the ICJ or other international body. To even admit that the question is possible in the first place and/or risk an adverse decision would simply be politically unacceptable to the majority of the Korean people and suicidal for their elected representatives.

It has been noted that disputes such as that over Tokdo may not be susceptible to the usual legal and diplomatic means of settlement pursued in other regions due to the special set of international relations obtaining between the countries in the East Asian region. The Cold War prevented the timely evolution of a stable multi-lateral regional

legal regime and instead institutionalized via a series of bilateral treaties a structured condition of muted mutual hostility and political fragmentation. One authority has noted that "[c]ountries which already have fairly volatile bilateral relations with each other do not appear to relish the opportunity to negotiate either title to island territory or disputed maritime boundary claims." (Kim, D.C. p.208) The most complicating factor in the resolution of all maritime disputes in the region is the disputed islands which inflame the dispute resolution process, "giving them a symbolic significance that almost precludes any possibility of compromise diplomacy." (Ibid, p.210)

Unlike the situation in Japan, acquiescence on the sovereignty issue is probably impossible for the Korean government because of salient internal and external factors. Domestically, the lame-duck government of President Kim Dae Jung (*Kukminhoehui-Chamindang* coalition) would be open to severe attack from opposition political parties (such as the majority *Hannaradang*) which would seek political advantage by seizing the patriotic or nationalist banner aiming to unseat the minority governing party's administration. Societal interest groups from across the broad political spectrum, such as veterans organizations and radical students, would quite likely form at least a loose united front under a patriotic/nationalist banner. Economic interests such as marine industries and fishermen's unions could also raise the issue of economic damage at a time that the country is staggering under severe financial and employment difficulties associated with the IMF bailout. There may also be regional or provincial backlash if Kim Dae Jung (who is from *Chollado*) were to allow Tokdo (which is part of *Kyungsangdo*) to be lost to Japan. Finally, in the South Korean context there is also the omnipresent (if currently unlikely) threat of military intervention in internal politics to avenge, restore and protect the national honor.

Given the current governing party's minority status and the drastically weakened prestige of President Kim's administration due to corruption scandals, concession to Tokyo on Tokdo's sovereignty is politically inconceivable. The current coalition government of President Kim Dae Jung is particularly vulnerable given its minority-party status in the National Assembly, the weakened and highly unstable nature of the nation's economy, and the delicate and dangerous four-party negotiations currently underway with North Korea. What would be the fate of any government that

negotiated away (or even risked) the nation's territorial integrity in such a volatile situation?

Externally there would be scathing and inevitable criticism from North Korea which would pillory the South's government and elites for selling out the national patrimony. This would be particularly vitriolic and damaging if the outcome is to the advantage of Japan, seen by many Koreans north and south as their nation's principal historic nemesis. Surrendering sovereignty on the Tokdo issue or even discussing it openly could represent a severe or mortal blow to the legitimacy and authority of any South Korean government and possibly (although unlikely) the viability of the state itself. It would also provide a convenient pretext for North Korean stalling on reunification talks with Seoul. No South Korean government could seriously consider such a concession at a time when negotiations are underway to diplomatically engage the DPRK and, in a larger sense, to realistically plan for the *hard or soft landing* of the that regime and potential reunification of the peninsula. A negotiated or adjudicated resolution of the Tokdo issue therefore appears impossible in the near term.

### **Conclusions**

As long as both Japan and Korea advance territorial claims to Tokdo the best that can be hoped in order to avoid ruptured relations is that both sides continue the strategy of deferring final resolution until some unspecified point in the future. Impetus to do so comes from larger common interests - cooperating on dealings with common strategic threats from the DPRK and elsewhere, working together to thwart international terrorism, and maintaining critical and mutually beneficial economic relations. There is also no reason to believe that a **legal decision** on the status of Tokdo's sovereignty in itself would solve the **political problem** posed by the controversy. This is particularly true if the decision were to go against Korea. Repeatedly in the post-WW II era greater common interests have moved Tokdo to the periphery of the overall ROK-Japan diplomatic relationship. The danger is that popular nationalist passions on either side may move the issue beyond the absolute calculation or control of foreign policy elites.

In resurrecting the Tokdo issue for national economic advantage or domestic political reasons either in response to interest group pressures or as a strategy for electoral competition, Japan's LDP risks unleashing a nationalist

genie that may overheat popular passions on both sides of the Korea Straits. Certainly, both sides appear currently more interested in jockeying for economic advantage as regards their EEZ and fisheries boundary than in escalating political conflict over Tokdo. But, in an overall atmosphere of increasingly fluid regional relationships, progressively assertive states, and the tenacious and pernicious presence of competing nationalisms this may be a more dangerous gambit than many policymakers realize.

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