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SOVEREIGNTY VS INTERNATIONAL COOPERATION: MAJOR PROBLEMS FACING EAST ASIA AT PRESENT

Miyazaki Takashi*

Abstract

World is now becoming united in which international community cannot live independently. The sovereignty of every States in the world cannot walk alone without having taken into consideration on the others States' need and sovereignty. There are important issues of state sovereignty vs. international cooperation in regard of some grave problems facing our region, East Asia and even the world beyond. Among these issues are. the island disputes, humanitarian intervention, TPP and trade and economic integration in general, including RCEP advocated by Indonesia, also global warming. All of these issues cannot be solved without international cooperation. Thus international cooperation is a must in the borderless era as we are experiencing today.

Keywords: *island disputes; humanitarian intervention; trade and economic integration; global warming*

I. INTRODUCTION

There are important issues of state sovereignty vs. international cooperation in regard of some grave problems facing our region: East Asia and even the world beyond. These issues are: 1. the island disputes, 2. humanitarian intervention, 3. TPP and trade and economic integration in general, including RCEP advocated by Indonesia, and 4. global warming. All of these issues cannot be solved without international cooperation.

II. ISLAND DISPUTES

Indonesia has had her share of territorial problems with her neighbours such as the issues over Irian Jaya, Timor and the small islands of Sipadan/Ligitan¹. Japan has had her share of territorial disputes with her neighbours: Senkaku with Taiwan and China, Takeshima with the Republic of Korea and the Southern Kuriles with Russia. It must be

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¹ See further the ICJ decision on Sipadan Ligitan Case (Editor).

noted here that a number of territorial issues across the world have been settled so far through international adjudication in accordance with the general principles of law that have developed in traditional civil law and which were handed down mainly in Europe. These principles are: effective long-standing peaceful occupation, acquiescence, dereliction or estoppels leading to acquisitive prescription. These factors constitute territorial title in international law as in municipal law.

Japan claims the Southern Kuriles — Etorofu, Kunashiri and Habo-mai/Shikotan Islands —, because they had never belonged to any other country than Japan until the Soviet Russia occupied them at the end of WWII. As for Takeshima, it is not even an island but a rock that may have territorial waters but no exclusive economic zone in accordance with UNCLOS Article 121. With regard to Senkaku, Japan took possession of the islands in 1895 near the end of the Japan-China War of 1894-95. China did not protest Japanese occupation of the isles in 1895 and afterwards and treated the islands as belonging to Japan in official letters and publications including maps. However, the publication of the CCOP(the Far East Committee for Coordination of Joint Prospecting for Mineral Resources in Asian Offshore Areas) report by ECAFE(UN Economic Commission For Asia and the Far East) in 1969 changed everything, because this report indicated that the sea area in the vicinity of Senkaku “appears to have great promise as a future oil province of the world”. Ever since Taiwanese and Chinese fishing boats, other embarkations laden with civilian protesters as well as governmental patrol vessels started invading Japanese territorial waters around the islands. Some Chinese citizens even landed on the islands and were arrested. Japanese patrol boats have withstood these intrusions without causing serious incidents leading to an armed conflict. The Philippines and Vietnam have had even more serious clashes with China and Taiwan over South China Sea islands, particularly around the Spratly and Paracel Islands, including the Scarborough Shoals. Assertive Chinese fishing, prospecting and construction activities using force have caused concern in Japan and other countries and heightened tensions in East Asia.

All these tensions may subside once the countries parties to the disputes agree to a judicial settlement as provided in UNCLOS². How-

² 1982 UNCLOS remains to be the one and only comprehensive source of the law of

ever, most parties are not ready to admit that there exist any territorial issues with respect to these isles, as it is claimed to be quite clear to the various claimant states that the isles in question belong to them. Thus, theoretically they could defend the islands or shoals at issue in self-defence even by resorting to the use of military force. This of course would mean war. Therefore the best way these disputes could be solved would be through negotiations. If negotiations failed, the parties would have to bring their disputes before an international tribunal: ITLOS, ICJ or some other arbitral court provided for in UNCLOS.

Yet, international adjudication presupposes agreement of the parties to submit to a judicial settlement, except in the WTO dispute settlement where the jurisdiction of the Dispute Settlement Body is compulsory. China invoked Article 298 UNCLOS when ratifying the Convention in 1996 by lodging a declaration which derogated the obligatory dispute settlement procedure on territorial issues as provided in Articles 286 to 296 UNCLOS. Therefore it is doubtful that the complaint the Philippines lodged in 2013 concerning the Chinese UNCLOS interpretation relative to the Chinese territorial claims in the South China Sea will actually be resolved through judicial proceedings. China claims, since the days of Nationalist China, a vast sea area in South China Sea enclosed by a nine-dotted line but neither the juridical nature of this claim nor its legal ground are not clear.

III. HUMANITARIAN INTERVENTION

Humanitarian intervention issue is a serious challenge facing humanity since the 19th century when the legality of use of force started to be questioned. By this term, humanitarian intervention, I mean the use of force to put an end to serious human rights violations in a foreign state, usually without the consent of this state. The early examples of humanitarian intervention generally quoted are: the 1827 Sea Battle of Navarino and the Crimean War that broke out in 1853 and lasted for three years. Examples are quite numerous in the following 20th century. The 1999 NATO air raids in the Kosovo conflict may have been the most talked about in recent times. In the 21st century, humanitarian

the sea in which sea is carefully managed (Editor).

intervention without Security Council authorisation threatened to occur in Syria and actually is happening in Iraq and Syria with the apparent consent of both countries.

The international community is called upon to tackle the problem of how to put a stop to humanitarian disasters that continue to erupt, particularly as a result of internal armed conflicts, which actually keep on breaking out across the globe: Rwanda, Kosovo, Chechen, the Congo, Libya, Western Africa, Kenya, South Sudan, Syria, Ukraine and so on. In Kosovo 1999, NATO intervened with air raids without a Security Council authorisation. In Western Africa, the UN approved post facto the ECOMOG interventions in Liberia(1989) and Sierra Leone(1997). The US almost intervened in Syria in 2013 when chemical weapons were used. In August and September this year, the US, UK, France and Australia started bombing rebel positions when the ISIS or Islamic State in Iraq and Syria were reported to be harassing non- Islam populations.

The 2005 UN World Summit Declaration made clear its support for the concept of responsibility to protect civilian populations in conflict states but sustained the position that humanitarian intervention using armed force is subject to Security Council authorisation. However, in human society, legitimate defence in favour of third persons in danger has been an established legal regime since antiquity. Throughout the world, it has been a right or a duty to come to the rescue of people in imminent danger, whether caused by accident or human malice. Plenty of cases of humanitarian intervention have taken place in the recent past counting more than 20 cases since 1960. The number of cases deemed to fall into the category of humanitarian intervention since the 19th century is considerable.

IV. MEGA-REGIONAL TRADE AND ECONOMIC INTEGRATION

Japan has been engaged in negotiations to bring to pass regional trade and economic integration with her neighbours since the late 1990s, notably with ASEAN nations, China and the Republic of Korea. Since 2012, Japan started talks with Pacific nations including Australia, Malaysia, Vietnam, the US and Singapore with a view to joining the TPP or Trans-Pacific Partnership. The TPP started as a minor regional FTA but

now negotiations encompass major markets such as US, Japan, Mexico, Australia and Canada. Indonesia has been advocating RCEP or regional cooperation and economic partnership without US participation. Japan has shown interest in RCEP as well. However, mega-FTAs are not easy to come by, because of basic differences between candidate nations in economic policy and natural and national conditions, particularly in the areas of agriculture, finance, state enterprise and intellectual properties. Even the smaller-scale FTA between the three nations of the North East Asia has not made much headway because of the island disputes and the anti-Japanese feeling in China and Korea lingering from the colonial past.

Mega-FTAs are by nature difficult to achieve because of serious discrepancies in national interests and natural conditions between the various negotiating nations notably because of the absolute need to safeguard their essential national interests. In the case of TPP, Japan wants to protect her agriculture, the US wants to protect its auto industry, Vietnam and Malaysia want to protect state-owned companies as well as their interests in the area of intellectual properties.

V. STALEMATE IN THE COMBAT AGAINST GLOBAL WARMING

A number of countries have opted out of the Kyoto Protocol of 1997 — first the US, then Canada, Russia and Japan in 2010. In the Kyoto Protocol a number of countries did not accept GHG reduction obligations, including major emitter developing countries such as China and India. So much so that at present the EU is the only major CO₂ emitter to accept GHG reduction obligations. The cuts in GHG emissions that countries parties to the Kyoto Protocol pledged amounted only to about 16 % of the world total emission.

Furthermore, since the 2010 Cancun COP 16, the international community seems to be heading for what I call state voluntarism in regard of emission reduction, that is, it is left to each state to try and reduce emissions. In the combat against global warming, international cooperation is in great need — it is indispensable. If state voluntarism produces good results there will be no problem. Yet global issues call for global cooperation. At a time when CO₂ emissions are certain to rise, due to the industrialisation of developing nations that depend on fossil

fuels and the continued and expanding use of individual cars throughout the world, GHG emission reduction based on voluntarism could spell disasters for future mankind—our posterity. It is a reality that the international community is based on state sovereignty.

VI. CONCLUSION

Of course, in spite of her declaration made at the time of her UNCLOS ratification, China has the option of forum prorogatum in accordance with Article 299 UNCLOS. It is hoped that China accepts the Philippines law suit.

Now is the time for the international community to legislate that humanitarian intervention without prior authorisation of the Security Council shall be condoned on condition of post-facto authorisation by the International Court of Justice or the UN General Assembly where there exists no veto. This is indispensable so as to establish its legitimacy, in cases where the Security Council is paralysed by a veto. As things stand, its legality at present is not evident; *opinio juris* of the international community approving it seems to be lacking.

The TPP talks may not be brought to a successful conclusion any time soon, despite US efforts to rebalance its world presence in favour of East Asia and to increase its exports to Asia.

It is expected that every country in the world will take on GHG reduction obligations, including massive CO₂ absorption, in a spirit of international cooperation in order to head off global warming for the sake of our future generations.