

**THE BROOKINGS INSTITUTION**  
**CENTER FOR NORTHEAST ASIAN POLICY STUDIES**

**THE JAPAN-RUSSIA BORDER AND STABILITY IN  
NORTHEAST ASIA:  
TOWARD A PRAGMATIC APPROACH TO  
TERRITORIAL DISPUTES**

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February 2011

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<sup>1</sup> The views in this paper are those of the author, and do not represent the views of the Government of Japan or the Ministry of Foreign Affairs.

## 1. Introduction

Territorial disputes often become highly sensitive political issues. For example, whereas Japan takes the position that no territorial dispute exists regarding to Senkaku Islands, the world observed in September 2010 that an incident related to territorial sovereignty can easily turn into an extremely political issue which deeply affects the overall relationship between countries involved. On Japan's northern frontier, Russian President Dmitry Medvedev's visit in November 2010 to one of four islands—Etorofu, Kunashiri, Shikotan, and Habomai—that are disputed between Japan and Russia added another example, reviving the flames of controversy in both countries.

In order to achieve the peaceful solution of a territorial dispute, leaders must first reduce tension in their own countries, because any solution through negotiation is based on compromises. Leaders and negotiators have to convince their domestic audience that the compromising solution best serves their national interests. Usually, this is far from easy.

Russia and China settled their often-contentious 4,300 km border in 2004. Several conditions pushed the two governments toward the agreement, as will be demonstrated below. But the success of the settlement was due to the effective approaches to create mutual trust that were taken by the negotiators on both sides. Negotiators would not have been able to make the politically sensitive deal without it.

This paper will hold the Sino-Russian border demarcation as a successful example of efforts to create mutual trust and examine the role of cross-border cooperation in its context. What does the Sino-Russian case suggest on the Japan-Russian territorial problem? Can Japan and Russia apply similar approaches to their dispute over the four islands?<sup>2</sup>

The U.S. has played and likely will continue to play a significant role with regard to the Japan-Russia territorial problem. This paper will also explore how the U.S. can contribute to the solution of this issue and how it will serve U.S. interests in the Northeast Asia.

Finally, the paper will focus on the fight against cross-border crime as an opportunity to create trust between Japan and Russia. Among a variety of fields in which to create mutual trust, combating cross-border crime can be a useful agenda. Disputed borders are often conducive to cross-border crime, and illicit economies find room to make profits out of such situations since the authority of law imposed by the controlling state is frail in light of the other country's (or countries') claims. All sides usually have an interest in abating criminal activity. A focus on this common interest in fighting crime may reconcile conflicting interests of the countries involved in a given territorial disputes. Preventing crime is a very practical task, directly linked to people's daily life, which can avoid political arguments in most cases.

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<sup>2</sup> Russia claims that these four islands, Etorofu, Kunashiri, Shikotan, and Habomai, are part of the Kurile Islands, but Japan argues that they are not included in this group.

## 2. Sino-Russian Borders

### a) Impact of 1991

The collapse of the Soviet Union in December 1991 created drastic changes for Russia's borders. The newly born Russian Federation had to establish control along its borderlines with former Soviet countries. In Soviet times, these lines were mere administrative lines inside a state, but after 1991 they suddenly had a different meaning.<sup>3</sup> They became state boundaries, which must be effectively controlled. These "new" lines appeared on the European front and the Central Asian front of Russia; the latter were more problematic. Central Asian countries, such as Kazakhstan, Kyrgyzstan, and Tajikistan, did not possess their own border guards in 1991 as previously their boundaries with the outer world had been protected by Soviet border troops and they lacked the resources to quickly set up their own border agencies. Therefore, Russia had to take responsibility for control of these countries' borders with China for several years after these countries' independence. Russia and these Central Asian countries established joint negotiation groups to redefine borders with China. The prime aim was stabilization of the relationship with China. This joint work later developed into "Shanghai five," which further evolved into the Shanghai Cooperation Organization (SCO).

Russia itself succeeded in its border demarcation negotiations with China, which had been started by Mikhail Gorbachev. Gorbachev needed to substantially reduce Soviet troops on the border with China so that he could allocate national resources to a more urgent priority of the Soviet Union, its economy. Against this background, in May 1991 the USSR signed a boundary agreement with China for the eastern sector of their border. Boris Yeltsin followed the path begun by Gorbachev: the agreement of 1991 was ratified in March 1992 and the joint border demarcation commission continued to work.<sup>4</sup> The whole border line of 4,300 km was finally established in 2004.

On China's side, the negotiations were affected by the Tiananmen incident in 1989 and Deng Xiaoping's reform policy: the high priority placed on these internal tasks enhanced Chinese willingness to settle territorial disputes with Russia. Uprisings in Xinjiang in the 1990s also pushed China to settlement with Kazakhstan, Kyrgyzstan, and Tajikistan on borders facing that province. Chinese leaders were eager to gain support from the Kazakh, Kyrgyz, and Tajik governments to prevent separatism and the spread strengthening of pan-Islamic and pan-Turkic groups in Xinjiang.<sup>5</sup>

In the process of Sino-Russian border demarcation, cooperation to solve illegal Chinese migration to the Russian Far East played a significant role in enhancing trust and cooperation. Also, the Russian and Chinese governments applied pragmatic approaches

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<sup>3</sup> Dmitri Trenin, *The End of Eurasia: Russia on the Border between Geopolitics and Globalization*, Carnegie Endowment for International Peace, Washington DC, 2002, pp.104 -113

<sup>4</sup> For details, see Genrikh Kireyev, "Demarcation of the Border with China," *International Affairs*, Moscow, 1999.

<sup>5</sup> M.Taylor Fravel, *Strong Borders, Secure Nation: Cooperation and Conflict in China's Territorial Disputes*, Princeton University Press, 2008, Chapter Three.

to negotiation, placing emphasis on international law, and many observers expect this cross-border cooperation to develop further in the future.

#### b) The illegal migration issue

Cross-border crime had a significant influence on the Sino-Russian negotiations. In the late 1990s, illegal Chinese immigrants to Russia's Far East became a highly political issue. Political leaders of the Russian regions along the border with China utilized this issue as a political tool to challenge the central authority and it became an issue in the ongoing power struggle between the center and the regions.<sup>6</sup> Local press carried numerous exaggerated reports on this problem, which created an overly negative perception toward Chinese immigrants in the local societies. However, it was really a Russian problem. Poor law enforcement during the confusion of the 1990s allowed the spread of all sorts of crime, including illegal acts by migrants, such as trafficking. Despite the severely deteriorated situation, Yeltsin managed to force regional leaders follow Moscow's policy in favor of a border settlement with China. After his successor, Vladimir Putin, reestablished central power over the regions and strengthened law enforcement within the country, the tension began to ease and the situation normalized. In the course of the re-establishment of order, Moscow and Beijing coordinated effectively. To start with, Russia had to terminate visa free scheme for the Chinese, which had become a source of confusion. Then the two governments produced a series of practical agreements establishing a scheme for Chinese visitors to Russia's Far East. This allowed Chinese to visit the border areas by simplified procedures, while Russian authorities could maintain the public order.<sup>7</sup> In 2002, they also signed an agreement on the transfer of convicted criminals. The Sino-Russian border demarcation would not have been realized if the two sides had failed to effectively address the illegal migration issue.

#### c) Approaches to negotiation

As noted above, both the Russian and Chinese governments took a pragmatic – not politicized – approach to these negotiations. They began with the “low-hanging fruit” – those issues on which it would be easiest to work and which held the greatest promise for success. The initial 1991 agreement left the most sensitive parts for a later stage. The joint demarcation commission proceeded based on the terms stipulated in the 1991 agreement, and moved forward with a special emphasis on the technical aspects of hydrographic measurement and topography. They also created practical solutions to address cross-border problems, such as several agreements on visiting schemes for the two countries' nationals to border areas, and joint economic use of parts of territories in Chita oblast'.<sup>8</sup> Finally, they also took an incremental approach, making commitments stage by stage. There were three major agreements on different portions of the border; the agreement of 1991 for the eastern sector, the agreement of 1994 for the western sector,

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<sup>6</sup> Alexander Lukin, *The Bear Watches the Dragon: Russia's Perceptions of China and the Evolution of Russian-Chinese Relations Since the Eighteenth Century*, M.E. Sharpe, 2003, Chapter 3.

<sup>7</sup> *Sbornik Rossisko-Kitaiskix Dokumentov 1999-2007*, Moscow, OLMA Media Grupp, 2007.

<sup>8</sup> Akihiro Iwashita, “An Inquiry for New Thinking on the Border Dispute: Backgrounds of ‘Historic Success’ for the Sino-Russian Negotiations,” *Slavic Eurasian Studies*, 2004.

and the final agreement of 2004 for the rest, which settled the question of the most disputed three islands.

The Treaty on Good Neighborly Friendship and Cooperation,<sup>9</sup> signed on July 16, 2001, also positively contributed to the negotiation process. It laid the basis for the Sino-Russian “Strategic Partnership.” Some Russian experts even argue that this treaty created a new type of alliance, characteristic to the post-bipolar world.<sup>10</sup> Although we should not ignore the anxiety over China’s rapidly growing power which is currently lingering among Russian policy makers,<sup>11</sup> it would be fair to say that the 2001 treaty greatly contributed to the positive atmosphere between the two countries and smoothed the negotiation process. Along with these legal instruments, public statements by the leaders of both sides and their mutual visits also helped much to foster the constructive mood.

Importantly, the Russian and Chinese governments shared a basic idea of the final outcome of their negotiations since 1991. As the negotiations were based on the 1991 Treaty, they had largely common expectation on the outcome. Therefore, they could design a common roadmap for how to reach the goal by joint incremental efforts. They could orchestrate a series of actions based on pragmatism. The prime example is the joint border demarcation commission. Pragmatism was the key to avoiding politicization of the sensitive issues. It was also pragmatism that enabled them to bring the chaotic situation of the illegal migrants back under control. In the course of their joint efforts, the two governments’ officials developed a sufficient level of mutual trust, which further helped the process move forward. Without mutual trust, they would have concentrated on defending their own positions and never would have found a compromise solution for sensitive issues.

#### d) Emphasis on international law

In addition to the technicality of the demarcation, the Russian government placed a special emphasis on international law in explaining the agreement with China to its domestic audience. It had to prove that the border settlement did not introduce changes to Russia’s territory, which is prohibited by Russia’s constitution. Whereas the opposition to the agreement attacked on this point, the Russian government rebuffed it on the basis of principles of international law. It also insisted the agreed demarcation line is in compliance with international law. The Russian negotiation chief at the time, Genrikh Kireyev, writes, “The border settlement with China is based...on the existing treaties on borders with China and generally accepted rules of international law, principles of

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<sup>9</sup> Treaty of Good-Neighborliness and Friendly Cooperation Between the People’s Republic of China and the Russian Federation, Ministry of Foreign Affairs of the People’s Republic of China, July 24, 2001, <http://www.fmprc.gov.cn/eng/wjdt/2649/t15771.htm>.

<sup>10</sup> Alexei D. Voskressenski, “The Rise of China and Russo-Chinese Relations in the New Global Politics of Eastern Asia,” *Eager Eyes Fixed on Eurasia*, Akihiro Iwashita, ed., 21<sup>st</sup> Century Slavic Eurasia Studies COE, Slavic Research Center, Hokkaido University, 2007.

<sup>11</sup> Erica Downs, Fiona Hill, and Igor Danchenko, “One Step Forward, Two Steps Back? The Realities of a Rising China and Implications for Russia’s Energy Ambitions,” The Brookings Institution, *Foreign Policy Paper Series*, No. 22 (August 2010), [http://www.brookings.edu/papers/2010/08\\_china\\_russia\\_energy\\_downs\\_hill.aspx](http://www.brookings.edu/papers/2010/08_china_russia_energy_downs_hill.aspx).

equality, mutual understanding and mutual concessions. .... From the point of view of international law, if a border line had not been determined before concluding a treaty, the treaty cannot change something that did not exist. ... In other words, there were no changes in Russia's border and territory from the legal point of view."<sup>12</sup>

Russia in fact made political compromises on contentious issues. As Akihiro Iwashita points out, many of the disputed islands along the river border had been under Russia's control, but in the border settlement Russia handed over several hundred islands to China.<sup>13</sup> It was only by legalistic arguments such as the one recounted above that the Russian government could pass the agreement with China for ratification.

#### e) Future prospects of cooperation to fight cross-border crime

Sino-Russian cooperation on fighting cross-border crime became even more necessary after the completion of their border demarcation. Drug and arms trafficking from Afghanistan through Russia and Central Asia to China is a serious threat not only for the two countries, but also for the entire international society. The SCO has repeatedly announced that it would strengthen efforts to fight against narcotics, but so far we have seen no tangible results. Russia, China, and other relevant countries should take more concrete measures in this area.

In the coming decade, China and Russia will face further increasing reasons for cross-border cooperation. Demographic and economic imbalances between Russia's Far East and China's Northeast create a huge necessity for regional cooperation in order to maintain stability in the border area.<sup>14</sup> It is simply natural for Russia and China to develop a complementary relationship in energy, labor force issues, and investment. In fact, the two governments have already agreed upon a list of projects for regional cooperation between Northeast China and the Russian Far East Area and Eastern Siberia.<sup>15</sup> Their regional cooperation will serve the stability and prosperity of Northeast Asia. As this regional cooperation deepens, the two countries will feel more needs for cooperation to prevent cross-border crime. Having previously neutralized the contentious issues in their border region, Russia and China have substantially increased their ability to cooperate.

### 3. Comparing the Sino-Russian case and the Japan-Russian case

#### a) Impact of 1991

Unlike most of former Soviet borders, Japan-Russia border area did not experience fundamental changes after the collapse of the Soviet Union, though the border dispute over the Northern Territories, which dated to 1945, remained. Preoccupied with other border regions, Russian leaders could simply set aside the territorial problem with Japan

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<sup>12</sup> Kireyev, "Demarcation of the Border with China," p. 101.

<sup>13</sup> Iwashita, "An Inquiry for New Thinking," pp. 99-100.

<sup>14</sup> Trenin, *The End of Eurasia*, pp. 211-213.

<sup>15</sup> *China Daily*, October 13, 2009.

for a while. Moscow was desperate to receive foreign assistance to overcome its struggles during economic reforms in the late 1990s, and Tokyo tried to catch the momentum for peace treaty negotiations by hinting at possible full-fledged economic aid after the solution of the territorial problem. The Russian leadership, however, did not have sufficient political resources at home to follow through on a “Grand Bargain” with Japan. The political opposition would have strongly attacked such a deal. Although Yeltsin himself seemed to have a political commitment to departing from the remnants of Stalinism, Russia as a whole had no substantial motivations to concede anything to Japan. The dispute over the islands did not pose concerns from a politico-military perspective, and in fact the area is thought of as a “defense line” for Russia. Furthermore, its rich fishery resources make it an important region for commercial interests.

Similarly, Japan also did not face new internal or external concerns related to its borders with Russia after the Cold War, although the Northern Territories issue has always been one of the most important agenda items for its foreign policy. Although the potential security threat from the Soviet Union was substantially reduced, the collapse of the USSR did not affect the basic conditions in the border area. As noted above, Japan tried to bargain with Russia, offering economic assistance in exchange for the four islands, but the situation did not develop and Japan was never pushed to think of more flexible negotiating positions.

#### b) Factual differences

In addition to the different meanings of 1991, there are several essential differences of facts between Sino-Russian and Japan-Russian cases. We can find important differences in the size of disputed lands, the length of borderlines and their historical and legal backgrounds. These differences change nature of negotiations accordingly.

- China and Russia split about 1,000 square kilometers of disputed territory in the eastern sector almost evenly. The dispute between Japan and Russia encompasses four islands: Etorofu Island (3,184 square kilometers), Kunashiri Island (1,499 square kilometers), Shikotan Island (253 square kilometers), and the Habomai Islands (100 square kilometers). In total they constitute 5,032 square kilometers, five times larger than the Sino-Russian case, so from that perspective there is much more at stake.<sup>16</sup>
- China and Russia settled 4,300 km of land borders. Japan and Russia must draw a far shorter border line on the sea, so there is no need for tedious joint work by Japan and Russia to mark borderlines.
- Prior to the recent agreements, China and Russia had not officially demarcated their borderlines by instruments of international law. Their borders were based on treaties of 1689, 1858 and 1860, but none of these divided the waters of the

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<sup>16</sup> The Japan-Soviet Joint Declaration of 1956 provides that the Soviet Union hands over Habomai and Shikotan to Japan after signing a peace treaty. The two islands consists only 7% of the total size of the four islands.

navigable rivers of Amur and Ussuri, and the ownership of the islands in those rivers was never established legally.<sup>17</sup> Japan and Russia peacefully settled their borders by the treaty of 1855 and later agreed to change them in 1875 and 1905. All of the agreements were done by bilateral instruments, even though there is no bilateral legal instrument on the border after World War II. The Soviet Union did not sign the San Francisco Peace Treaty in 1951, which might have provided an opportunity to address this issue. Also, we must pay attention to emotional elements arising from the Soviet attack in 1945 in breach of the Japan-Soviet Neutrality Pact, occupation of these islands after Japan's surrender, the forced labor of 600,000 Japanese in Siberia, and other factors.

While there are differences between the China-Russia and Japan-Russia border disputes, there are also aspects of the China-Russia border demarcation which are applicable to Japan-Russia territorial negotiations.

c) Incremental approach

Since Japan and Russia have not enacted previous agreements, such as a peace treaty, that can build trust and confidence, they should explore formulas for incremental approaches on the four islands. This approach requires a sufficient level of mutual trust. Back in 1978, the Soviet Union proposed a draft Soviet-Japan Treaty on Good Neighborliness and Friendship, which was, naturally, rejected by Japan. Given the total lack of mutual trust at the time, the Japanese side took the proposal as a mere attempt to avoid a solution of the territorial problem. Even today, two decades after the end of Cold War, Japan and Russia still lacks basic mutual trust, which enables incremental approach. They need serious and continuous efforts to build trust. If the two governments really would like to find a mutually acceptable solution, they must facilitate a more positive environment for joint works. In this context, it is noteworthy that an eminent Russian opinion leader, Vyacheslav Nikonov, proposed in an August 2010 article to conclude a "Treaty on Peace, Friendship and Security" or "Treaty on Good Neighborliness and Cooperation" between Japan and Russia, which would provide baselines and principles for the bilateral relationship.<sup>18</sup> Given Nikonov's close ties to political leaders in Moscow, it is very possible that the Russian side was sending a signal to Japan.

To refer again to the Sino-Russian case, the Russia-China relationship was far from friendly and neighborly, as is evidenced by their military clash in 1969. It was intentional efforts by the two sides that produced and gradually solidified the grounds for negotiation. As discussed above, the main vehicle for confidence-building was the joint border demarcation commission, and statements by leaders and practical cooperation on countering cross-border crime effectively supplemented it. Based on the growing sense of mutual trust and the common goal, Russia and China made legally binding commitments step by step. Each step forward enhanced their mutual trust, which enabled more challenging next steps.

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<sup>17</sup> Kireyev, "Demarcation of the Border with China," p. 99.

<sup>18</sup> Vyacheslav Nikonov, "Tikhookeanskaya Strategiya (Pacific Ocean Strategy)," *Glavnaya Tema Rossiya i Aziatsko-Tikhookeanskii Region*, August 2010.



an incremental approach of this kind should be applicable to many other politically sensitive issues, including the Japan-Russian territorial problem. One of the practical early steps for creating mutual trust between neighboring countries is the fight against cross-border crime, and Japan and Russia have a reasonable chance to develop their joint work in this field.

#### d) Emphasis on International Law

As noted above, the Russian government relied on international law to avoid politicization of at home of its border demarcation with China. This strategy also seems related to the Russian government's views on the role of law. Putin and Medvedev quite often refer to the rule of law; indeed, Putin once called for a "dictatorship of law," a notion that likely would be substantially different from the western version of rule of law. In Russia, the law is generally perceived as a tool for a ruler to govern the country, not as a means for citizens to protect their rights. In their strategic thinking, Russians wish to restrain what many there see as hegemonic U.S. power by norms of international law. In negotiations with Russians, their adherence to international law could help us to find terms of reference. At home, Russian negotiators might be able to find logic to make case on a compromising agreement. While many outsiders do not appreciate this approach to the law, even it would provide people – either citizens or international partners – with a certain degree of predictability.

In this connection, it is worth noting that Genrikh Kireyev, who headed the Russian delegation in negotiations with China, has written, "The establishment of unilateral control does not constitute the basis for a border which, as we know, is a bilateral entity and should be regulated with bilateral instruments."<sup>19</sup> Since the Japan-Russian border is not regulated yet with bilateral instruments, Japanese negotiators should apply the same legal argument when they seek an agreement on border demarcation with Russia. Legal arguments like this should be understandable to the Russians.

More recently, Russia emphasized international law in its maritime boundary demarcation treaty with Norway, signed on September 15, 2010. Russia had previously insisted on a sector approach to divide the Arctic area, but in the end it accepted agreement based on a median line approach, as applied in many judgments of the International Court of Justice. Russia tries to urge other countries to follow its lead in the use of international law. In a joint op-ed in a Canadian newspaper – it was intended as a message to Canada – Russian Foreign Minister Sergei Lavrov and Norwegian Foreign Minister Jonas Gahr Støre reiterated the indispensable role of the United Nations Convention on the Law of the Sea<sup>20</sup> in the success of their negotiations. Although this case is mainly related to the exploitation of natural resources in the Baltic Sea and Arctic Sea, Russia's attitude toward international law has attracted Japan's attention.

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<sup>19</sup> Kireyev, "Demarcation of the Border with China."

<sup>20</sup> Sergei Lavrov and Jonas Gahr Støre, "Canada, take note: Here's how to resolve maritime boundary disputes," *The Globe and Mail*, September 21, 2010.

In the 1990s, Japan emphasized the negative legacy of Stalinism to promote Russian support for solution of the territorial problem; the dispute over the four islands is a remnant of Stalin's expansionist policy. That logic worked to certain extent with regard to Yeltsin, whose father was sentenced forced labor in a gulag for three years under Stalin. Today, however, it is more debatable in Russia how to define the historical role of Stalin. The Kremlin wants to highlight Russia's victory in World War II to unite the nation, and the four islands symbolize Russia's victory on the Eastern front. Ideological denial of Stalinism would not be persuasive enough for Russia's constituency to accept compromise over the islands. Today's Russia is more pragmatic, and the legal argument has a better chance to provide Russian leaders with compelling grounds to their constituency.

e) Cross-border crime

Historically, the major source cross-border crime between Japan and Russia has been illegal fishing activities. The sea off Japan's northeast coast is one of the three richest fishing areas in the world. Sea urchins and crabs from the area are highly priced products in Japan's market, so the issue has resonance in Japan. It is so important to Japan that in the 1970s, several Japanese groups were actively engaged in the operation of so-called "report ships."<sup>21</sup> These were Japanese fishing boats which provided the Russian coast guard with information about Japan – including its economy, and the deployment of its Self-Defense Forces and police agencies – in return for informal assurances of safe fishing off the four islands that were claimed by Russia and patrolled by its coast guard.

In an evolution of this practice, in the 1980s some Japanese fishermen introduced so-called "special attack ships."<sup>22</sup> These small fishing boats had powerful engines and could outrun both the Russian and Japanese coast guards. The sale price of their products reached more than 120 million USD in the 1980s, a substantial share of the local economy.

After the collapse of the Soviet Union, Russia reorganized its coast guard, and introduced fast vessels able to catch the "special attack ships." As a result, a series of shooting incidents by Russian ships happened, and sometimes led to serious human injury. This caused a strong emotional reaction in Japan, deteriorating an already weak bilateral relationship.

Against this background, Japan and Russia worked together to change the situations and in 1998 they concluded a framework agreement on fishing activities in the area adjacent to the four islands. The agreement was reached based on a pragmatic approach, without touching on the sovereignty of the four islands. It was called "an agreement based on trust and reconciliation."

After the agreement came into force, the Japan Coast Guard and the Russian Border Guards began to develop steady cooperation. For the past decade, regular high-level

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<sup>21</sup> Ryoichi Honda, "Mitsuryo no Umide," Gaifusha, 2004, Chapter 2.

<sup>22</sup> Ibid., Chapter 6.

meetings and joint training activities have been taking place based on the “Memorandum on Bases for Development of Cooperation between the Japan Coast Guard and the Border Guard Service of the Russian Federation” which was signed in September 2000.<sup>23</sup>

Improvement of this inter-agency relationship has clearly brought positive effects: in the 1990s, for example, when a Japanese fishing boat was detained by the Russian Coast Guard, the Japanese embassy in Moscow often had to wait until the next day before the Ministry of Foreign Affairs responded to the embassy’s inquiry and offered an explanation. Today, the Japan Coast Guard attaché can simply dial the number of the appropriate person in the Russian Coast Guard, who usually promptly returns a detailed explanation. Direct human connection with an agency, based on mutual trust, makes an amazing difference in Russia. This kind of effort to build and enhance mutual trust is much needed in various fields between Japan and Russia.

The Russian government has recently proposed to Japan to conclude an agreement to cooperate on the prevention of illegal fishing. Illegal fishing along the coast of the four disputed islands remains a serious problem, and it is conducted mainly by Russian groups who are supported partially by Japanese importers. The economy of maritime northern Japan was founded on the rich maritime resources in the area, and if crabs caught illegally in the area disappear from markets in Japan, it will severely affect the local economy. As it is, local Japanese fishermen have experienced a hard time since they lost safe access to the sea near the four islands following the Russian Border Guards’ introduction of fast patrol vessels and the strengthening of control over the fishing grounds. Locals feel that the sea was theirs and that it still should belong to them, although it is controlled now by Russia. And now, many will lose the basis for living if they lose the import of crabs. There are many reasons for sympathy, but illegal acts should be stopped. Allowing crime will not lead to any positive results, and it will allow roots for organized crime to grow. Sooner or later, stricter measures to eliminate illegal fishing will have to be taken.

#### f) Non-applicable elements

Besides the factual differences noted above, other elements of the China-Russia border demarcation experience are not applicable to the Japan-Russian case. Most important is Japan’s democracy, freedom of speech, and well-developed civil society. It would be practically impossible for the Japanese government to keep a process negotiation with Russia a secret. The Japanese government has to show a reasonable level of accountability. In this light, China and today’s Russia have totally different settings from Japan. It is far easier for them to control information in relation to society. They do have to contend with local public opinion on the results of negotiations, but do not have to conduct such sensitive and patient contacts with local residents as Japan would need.

The government’s relationship with legislative bodies also makes contrast between Japan and these two countries. Although the Russian government under Yeltsin struggled to handle the Duma, today’s Kremlin does not have to worry much about ratification of an

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<sup>23</sup> Press-release by the Japan Coast Guard on the visit of Mr. Suzuki, the Head of JCG, to Russia, July 30, 2010.

agreement, if it has clear consent of Putin. There is no need to mention to China. In Japan, legal arguments based on or emphasizing a technicality would never be sufficient for approval by the Diet. The Japanese government would really have to make a convincing case to win support for agreement. This implies that Russia will have to be more flexible and agree to a deal that can be approved by the Japanese Diet.

Therefore, the Japan-Russian case faces many higher hurdles than the Sino-Russian border demarcation. In such a difficult situation, cooperative steps in practical fields such as fighting cross-border crime will be an ideal start.

g) Merits of cooperation

Whereas the two countries at the moment lack a driving force toward a compromise solution of the territorial dispute, practical problems like cross-border crime have to be solved. When relevant law-enforcement agencies develop human contacts, mutual trust will gradually be generated. And practical cooperation will enable them to find common language, without politicizing the issues. Fortunately, potential for Japan-Russia cooperation to prevent cross-border crime is growing. Since Russia has evolved from the socialist USSR, the exchange of goods and people across the border area has been developing. Russia's Far East is rich in natural resources. Sakhalin 1 and 2, the major oil and gas projects for which Japanese companies participated in the investment consortium, have begun operating. As cross-border contacts develop, the two governments will inevitably face problems such as narcotics, other smuggling, cyber-crime and violations of intellectual property rights. These are important items for the joint efforts.

As noted in the case of the Sino-Russian border demarcation, pragmatism is the key to a final settlement. As Putin recovered the governance of the country in his presidency, the so-called "Power Ministries" also regained influence in the Russian politics; Japan and other countries must take into account the views of the former KGB and other agencies in Russia's foreign policy decision making process. The settlement of a territorial problem is surely in the area of high attention of these agencies, and they will have a strong say in shaping Russia's positions on this kind of matter.

It is not easy to develop contacts with former KGB agencies, as they are generally cautious about interaction with foreign agents. The Russian Coast Guard is rather an exception. This agency has become very active in international cooperation since its former chief, General Andrey Nikolaev, launched reforms in 1993.<sup>24</sup> Other agencies such as the Foreign Intelligence Service (SVR) and Federal Security Service (FSB), are still difficult to communicate with, even though they also have regular contacts with their counterparts. But they have no reasons to decline concrete programs that improve their abilities to do their jobs. Cooperation for practical purposes thus establishes stable contacts with them, which builds confidence between related agencies.

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<sup>24</sup> Trenin, *The End of Eurasia*, pp. 115–119.

#### 4. The role of the U.S.

##### a) A part of the world that Dulles and Yoshida built

The U.S. was the main architect of the San Francisco Peace Treaty of 1951. As the Japanese Prime Minister Yoshida stated at the Peace Conference, “it is not a treaty of vengeance, but an instrument of reconciliation” which is “fair and generous.” Nonetheless, the treaty required Japan to renounce a substantial number of territories which it owned before the war. In article 2(c), Japan renounced all right, title and claim to the Kurile Islands, but the meaning of Kurile Islands is not defined. The drafter of the treaty left the definition unclear, although several comments were made at the conference on the necessity of a clear definition. At the Peace Conference, not only the Japanese delegation, but also the US delegate John Dulles referred to the question and said, “Some question has been raised as to whether the geographical name ‘Kurile Islands’ mentioned in article 2 (c) includes the Habomai Islands. It is the view of the United States that it does not.”<sup>25</sup>

The dispute over the four islands was consolidated during the Cold War period. Neither Japan nor Russia had reason to seek the middle-ground when they belonged to opposite camps, except for a period in 1956 when Khrushchev hoped to split Japan from the U.S. by making concessions on the territory. In the course of the negotiations, he made reference to Okinawa several times, which indicates that he was acutely aware of his rivalry with the U.S. (Okinawa was then under U.S. administration), and he might have aimed to gain points in the internal politics by achieving positive results in his foreign policies. Regardless of Khrushchev’s wishful expectations, Japan and the U.S. renewed their security treaty in 1960. Afterward, the Soviet Union unilaterally declared that the situation made it impossible for the Moscow to fulfill its promises to return the islands of Habomai and Shikotan to Japan.

Japan constantly espoused stern rhetoric about the four islands throughout the Cold War period, and this rhetoric contributed to a public mood strongly against compromise on the issue. Many viewed the discussion of sovereignty issues as a betrayal to the nation. Furthermore, upholding a solid position against the Soviet Union made sense in the context of the Cold War. The Japanese government could enjoy strong support from public opinion for being tough on this issue, without having to undertake any complex strategic thinking. The U.S. always supported Japan’s position, and made this support clear through public and private statements.

In the post-Cold War period, Japan tried to formulate a new negotiation position, stating that it would seek to solve “the question of attribution of the four islands.” While the U.S. continued to support Japan’s position, the question of a strategy for negotiations was naturally left for Japan to answer. It is important, however, to note that the final solution of this territorial dispute requires involvement of the U.S., which was the architect of the

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<sup>25</sup> “Record of Proceedings of Conference for the Conclusion and Signature of the Treaty of Peace with Japan,” U.S. Department of State, 1951, p. 78. As noted above, Japan also argues that the islands of Etorofu, Kunashiri, Shikotan, and Habomai are not included in the Kurile Islands.

post-World War II structure and remains its guarantor. Today, Russia views the Japan-U.S. alliance as a positive element in the Asia-Pacific region. The former argument by the Russian security community that the four islands constitute a safe ballistic submarine bastion is not convincing any more, so security considerations are not as central as they were during the Cold War. But still, there will be security questions to be clarified in light of the Japan-U.S. alliance.

b) The Japan-U.S. alliance in a broader context

The U.S. could – and should – play an important role in resolving this territorial dispute, both within the context of the Japan-U.S. alliance and for the sake of strengthening the alliance. With the rise of China, Asia will face fundamental changes to its regional order and countries around the region will have to shape new policies to ensure their stability and prosperity while accommodating China's growing power. The U.S. must lead this process, coordinating with other key players like Japan, the Republic of Korea, Russia, India, and ASEAN. Japan, which shares common values and interests with the U.S., will be crucial to this effort. By helping Japan to solve the problems of the past, the U.S. can strengthen support of the Japanese people for the alliance. When Japan is released from constraints of the past, including its territorial dispute with Russia, it will have greater freedom of action and chances for regional stability will be stabilized and improved.<sup>26</sup>

c) U.S. approaches to possible Japan-Russia negotiations

Adapting an analytical framework developed by Richard Bush, director of the Center for Northeast Asian Policy Studies (CNAPS) at Brookings, there are different hypothetical approaches that the United States might take toward its involvement in attempts to resolve the status of the four islands: opting out, context creation, several types of intermediation, and deterrence. Deterrence does not fit in the context of the Japan-Russian border, since threat of military attack over this issue does not exist. Therefore, I would further examine other hypothetical approaches.

If it decides to opt out, the U.S. would keep itself removed from the issue and leave all aspects of negotiations totally up to Japan and Russia.

The U.S. may also seek to create the context for Japan-Russia negotiations by shaping the environment in which the two sides can de-emphasize conflicts and interact more positively. Direct U.S. involvement in negotiations would not be necessary if the U.S. pursued this strategy. Over the past two decades, Washington's attitude toward this territorial dispute seemed basically to be based on an opting out approach, although there was some attempt at context creation under the Clinton administration in the late 1990s.

The third possible approach, intermediation, would involve some level of U.S. activity in negotiations., such as playing the role of go-between, in order to encourage solution of

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<sup>26</sup> See Akihiro Iwashita, "New Geopolitics and Rediscovery of the U.S.-Japan Alliance: Reshaping 'Northeast Asia' Beyond the Border," CNAPS Visiting Fellow Working Paper, The Brookings Institution, September 2010, pp. 17-18; [http://www.brookings.edu/papers/2010/09\\_northeast\\_asia\\_iwashita.aspx](http://www.brookings.edu/papers/2010/09_northeast_asia_iwashita.aspx).

the problem. Intermediation could take several forms: 1) the simple role of messenger; 2) intellectual facilitation, in which a mediator offers its analysis; 3) process facilitation, in which a mediator provides a venue for talks; and 4) mediation on the substance. These four forms are mutually exclusive, but a fifth form, as guarantor for a settlement concluded by the relevant parties, can supplement them.<sup>27</sup> Today, Japan and Russia can talk directly over highly sensitive issues and can understand each other's intention well enough. So the first three forms are not relevant here.

A fourth possible approach for the U.S. is mediation on the substance; this approach would require a careful examination of its pros and cons. In connection with this dispute, the U.S. would not face domestic political constraints on possible solutions, while it has strong interest to promote Northeast Asian stability. Therefore, it might be in a better position than Japan or Russia to formulate a balanced solution for both sides. However, we can foresee several problems. Even if the U.S.-Russian relationship maintains positive development following the "reset," Moscow would be unlikely to trust Washington as an honest broker on this matter, feeling that it would be natural for the U.S. to take Japan's side, as it has been doing so far. The U.S. therefore would not be seen as a neutral mediator, but as a supporter of Japan's interests and Russia would be very reluctant to accept U.S. mediation. If both parties (not to mention the United States itself) did accept U.S. mediation, the U.S. certain risks. For example, this problem causes strong emotional reactions in both Japan and Russia, and the U.S. would become associated with any unsatisfactory results. If negotiations failed and both sides were dissatisfied, Washington's relations with both countries could be damaged. In total, disadvantages of U.S. mediation on the substance would seem to outweigh its advantages.

However, a fifth possible U.S. approach to the resolution of this dispute, guaranteeing a settlement after it is reached by Japan and Russia, could be extremely effective. The U.S. might be able to encourage both countries to approve an agreed deal through their respective political procedures, which as noted above could be especially challenging for Japanese negotiators, by welcoming the agreement from the viewpoint of Northeast Asian stability.

Weighing the pros and cons of each of these five possible approaches for the United States, it appears that context creation by the U.S. should be more seriously considered. The U.S. has the influence, historical background, and positive interests in a solution to be engaged in this problem. Besides that, the U.S. could be an effective guarantor of a future deal, since it bears major responsibility for enhancing stability of this region.

## **5. U.S. – Russian cooperation on law-enforcement**

The United States has been conducting insightful and effective programs with Russian law enforcement organs, of the kind that are needed between Japan and Russia to begin building trust. The State Department's Bureau of International Narcotics and Law Enforcement Affairs (INL), for example, conducts a variety of practical programs in

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<sup>27</sup> Richard C. Bush, *Untying the Knot: Making Peace in the Taiwan Strait*, Brookings Institution Press, 2005, p. 297.

Russia.<sup>28</sup> Their programs are aimed at improvements in both the capacity of the Russian criminal justice organizations and in Russia's willingness to work with the U.S. and other international partners in combating transnational crime; namely, IPR violations, cyber crime, child pornography, trafficking in person, organized crime, and drugs.

This kind of practical cooperation has a lot of merits, and this is the appropriate time to develop joint Japan-Russia projects in this field. At the least, Japan would be able to develop contacts with Russia's "Power Ministries," which as noted above have recovered their influential power inside the Russian government under Putin and Medvedev. Furthermore, Medvedev, with his background as a lawyer, attaches great importance to the rule of law and law-enforcement. A second stage benefit is the mutual enlightenment and internationalization of domestic law-enforcement organizations, which are traditionally hesitant to international cooperation. Of course it is not an easy task at all to coordinate these organs, especially in the beginning, but gradual changes in attitudes toward the outside world is worth the effort as these agencies will be actively engaged with further development of international cooperation. A third benefit, of this kind of cooperation is the development of more effective tools to prevent and resolve transnational crime. Thanks to U.S. assistance, for example, Russia's prosecutors have enhanced their skills of presentation in front of juries, law enforcement agencies have improved criminal procedures, and have gained better knowledge on how to protect intellectual property rights and how to fight with cybercrime, child pornography, and credit card crime. This improvement contributes much to U.S.-Russia relations, as well as to international society. A fourth benefit of bilateral cooperation between law enforcement agencies is that it is highly technical, not political at all.

Russia has signaled a strong interest in law enforcement cooperation with Japan. This is a highly-promising chance for Japan to try a cooperative, practical approach to its neighbor. If the U.S. and Japan can cooperate in this area and Japan could start practical joint programs with Russia, it would become a building block for confidence-building process in the future. This would make it easier to build cooperation on issues heavily infused with politics and emotions, such as the Japan-Russia dispute over the four islands.

## **6. Conclusion**

In 2001-2003, following an impetus to settle the issue, Japan had the most serious public discussions over its negotiation approach to territorial problem with Russia since 1956. Several aspects of the problem were debated: Should Japan explore a step by step approach? Can Russia's return of Habomai and Shikotan as proposed in 1956 serve as the basis for a solution? Or, is this unacceptable because Russia would likely see the issue as settled after the two islands' return, and further negotiations would not be possible? The discussion ended up in confusion, without any consensus.

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<sup>28</sup> "Counternarcotics and Law Enforcement Country Program: Russia," Fact sheet of the Bureau of International Narcotics and Law Enforcement Affairs, U.S. Department of State, January 20, 2009, <http://www.state.gov/p/inl/rls/fs/113061.htm>.



But the issue remains important, and Japan and Russia will have to find an answer in the future for the sake of the region's stability and prosperity. The analysis above illustrates several lessons which may be applied to future efforts to resolve this dispute:

- Fundamental changes in political conditions may provide motivations to make deals on territories. The changes may be either external or domestic.
- To find a solution to a complex territorial problem, it is worth exploring an incremental approach. Such an approach cannot be sustained without a sufficient level of mutual trust.
- Legal arguments could provide Russian negotiators with grounds to explain the outcome of negotiations to the Russian public and possibly to governmental agencies.
- Pragmatism is key to avoiding politicization and building confidence. In this context, cross-border crime is an ideal point from which to begin laying the groundwork for a resolution to the territorial dispute.

In addition to these lessons, the following additional points should be taken into account:

- Law enforcement is a top priority for Russia today. Russia also attaches great importance to international law.
- More active U.S. engagement is desirable to promote a solution to the Japan-Russia territorial problem. Context creation is the best approach for the U.S to try. The U.S. also could play the role of guarantor of a settlement, once it is reached by Japan and Russia.
- U.S.-Russia cooperation on law enforcement makes sense and has paid dividends. Japan should join in this effort or develop its own joint programs with Russia.

With the rise of China, Asia will experience fundamental changes in the coming years. It is unclear exactly what those changes will be, and therefore countries in the region must broaden their range of options. Japan and Russia should eliminate the remnants of the past to broaden their prospects for bilateral cooperation and eventually to resolve their dispute over the islands of Etorofu, Kunashiri, Shikotan, and Habomai. Afterward, Japan's increased capability in foreign policy will help the U.S. in reshaping the Northeast Asian order. A more active Japan will help maintain and enhance democracy and open economies in Asia. The long journey toward this grand vision can begin with a small but practical step.