

Japan's Senkaku Exit Strategy by Jeffrey W. Hornung

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Having just spent two weeks in Japan talking to officials, one thing is clear regarding the current spat with China over the Senkaku Islands (Diaoyu in Chinese). Despite a widespread desire in government to de-escalate tensions, there is no clear exit strategy. So let me offer one. Although Prime Minister Noda Yoshihiko appears hesitant to do so, Japan should take its case to the International Court of Justice (ICJ).

Although many may not believe it, Noda's decision to nationalize the Senkaku Islands was a *defensive* strategy. In April, Tokyo Metropolitan Gov. Ishihara Shintaro announced he wanted to purchase the islands from their private owner to protect them from Chinese encroachment. Once he owned them, Ishihara would end the order imposed by Japan's central government that prohibits landing on the territory. To demonstrate control, he wanted to build structures. Ishihara's actions put the central government in a pinch. Although there was no serious consideration underway to purchase the islands, Noda nationalized the islands (making a counter offer to the owners) to block Ishihara as the governor's moves were certain to escalate tensions. While nationalization heightened tensions, it could have been much worse.

Although nationalization does not change the status of Japan's administrative control of the territories (it was a transfer of ownership from private to government hands), it does alter the status quo. Like two tracks of a railroad running side by side, for years the two countries' relations regarding the islands had a predictable normalcy. Both sides claimed them, but they shelved the issue and avoided any provocation that could escalate tensions. Even when relations plummeted in 2010 with the collision of a Chinese fishing trawler and Japanese Coast Guard vessels in disputed waters, bilateral relations got tense and carried economic consequences, but the status quo over the islands wasn't altered.

This time, the status quo was derailed. The Chinese consider Noda's act provocative and a dramatic change from the status quo that has governed relations. The Chinese government and people reacted strongly. Violent protests erupted across China targeting Japanese factories and businesses. Worse, individuals have been targeted, both Japanese nationals and owners of Japanese products. Appallingly, Beijing officials have at times defended these actions, arguing that Japan should bear the consequences for its act. Additionally, Japanese websites have been targeted by cyber attacks, apparently from China. And not only has China's defense minister reserved the right to take "further

actions" in the dispute, Chinese vessels have continued to enter waters around the islands, prompting Japan's Coast Guard to increase its presence, giving way to a maritime cat and mouse game that has the potential for a serious accident or unintended escalation.

Like the laws of physics, Noda's unprecedented action caused a similarly unprecedented reaction. Both sides have a responsibility to de-escalate the tensions. Yet, apart from retracting Japan's nationalization, it is unclear what exit strategy China seeks. As Japan is responsible for the change in the status quo, it should make two bold moves to seek a permanent resolution of the issue.

First, Tokyo should acknowledge that a territorial dispute exists. The government's official stance is that the territories are Japanese, so therefore there is no dispute. This does not reflect reality. Not only does China claim the territories, but so too does Taiwan. Japan claims these positions are without merit. If true, then Japan should not hesitate to push forward with the second move, which is to bring the issue before the International Court of Justice (ICJ).

Unlike the territorial disputes that Japan has with South Korea and Russia, Japan has administrative control over the Senkakus. Because a case cannot be heard at the ICJ unless all parties agree, if Japan were to submit to the case, it would demonstrate its strong will to resolve the issue and put the onus on China to accept Japan's proposal. At the same time, it would represent an unprecedented act of statesmanship in the region by opening up its own claim to scrutiny for the sake of settling a lingering dispute.

Importantly, it would bring rationality to Japan's current hypocritical positions on the Senkakus and its dispute with South Korea (Dokdo in Korea, Takeshima in Japanese). In this case, Tokyo claims a territorial dispute exists while Seoul denies there is a dispute and has proposed the case be submitted to the ICJ. If Japan were to take these two moves, it could bring international pressure on South Korea to follow its lead and seek resolution through ICJ mediation instead of denying the existence of a dispute.

Territorial disputes are a constant source of tension in the region but there has been no concerted effort to try to resolve them. Although both China and Japan have maintained an unspoken status quo until recently, it was never a resolution. Nor was nationalization. Noda's decision to raise territorial issues in his UN General Assembly speech is a good first step, but it is not sufficient.

If Noda is serious about settling Japan's territorial dispute with China in accordance with international law, the dispute needs to be acknowledged and brought to the ICJ (China, for its part, would need to abide by the ruling even if it goes against its interests). Yes, there is a danger Japan could lose.

Yet, unless Japan is willing to retract its nationalization, is the current situation favorable to a permanent resolution? The violence in China shows how dangerous these disputes can be for individuals and businesses while the maritime standoff demonstrates the potential for escalation. An exit strategy is needed. If the Japanese government is certain that its case is solid, it needs to trust in international law.

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