

# **The Critical Implications from the Past: The Relationship between the ROK and Japan and the Effectiveness of the Policies including its Original Economic Sanctions against the DPRK**

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As well recognized, nowadays the relationship between the ROK (Republic of Korea) and Japan has been worse than it was at least in 2010, shown in Sinking of the Cheonan and the Bombardment of Yeonpyeong Island, as follows. One of the symbolic incidents to give the clear impression of changing such relations was the President of ROK, Lee Myung-bak's sudden and un-notified embankment on Dokdo (Takeshima, in Japanese), on 10 August 2012. Even before, some had been aware of such changes when the statute of girl, to remind so-called "the comfort women" was placed in front of the Japanese Embassy in ROK, on 14 December 2011<sup>1)</sup>.

This atmosphere has been continued afterwards. On 26 December 2013, the prime minister of Japan, Abe visited Yasukuni Shrine in his official roles<sup>2)</sup>. It was not surprising that the ROK strongly accused it, while it unanticipatedly gave the Japanese government a great shock that the U.S. Embassy of Japan expressed officially "Japan is a valued ally and friend. Nevertheless, the United States is disappointed that Japan's leadership has taken an action that will exacerbate tensions with Japan's neighbors<sup>3)</sup>."

Most recently, due to the great effort of President Obama, President

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<sup>1)</sup> ANN News, *available at*: <http://www.youtube.com/watch?v=q7Dv6Szw8iM>.

<sup>2)</sup> Kantei, "Statement by Prime Minister Abe - Pledge for everlasting peace -," on 26 December 2013, *available at*: [http://japan.kantei.go.jp/96\\_abe/statement/201312/1202986\\_7801.html](http://japan.kantei.go.jp/96_abe/statement/201312/1202986_7801.html).

<sup>3)</sup> The Embassy of the United States, *available at*: <http://japan.usembassy.gov/e/p/tp-20131226-01.html>.

Park and Prime Minister Abe had a special meeting on 25 March 2014 in the Nuclear Security Summit in The Hague, Netherlands. However, the meeting did not solve the historical (including territorial) problems in any means, and it was said that the relationship between the ROK and Japan have been not improved yet. In fact, as of 16 April 2014, no request of emergency assistance to the Japanese government from the ROK concerning the tragic the MV Sewol incident<sup>4)</sup>, nevertheless of Japanese government's prompt statement to be ready for dispatch of the Japan Coast Guard who are experts of sea rescue with fully equipped, and also even the SDF with 4 marine sweepers and some divers<sup>5)</sup>.

If such atmosphere between the ROK and Japan continues, it would significantly damages and erodes the security of the north-east Asian countries against the DPRK (Democratic People's Republic of Korea).

As shown in this paper, when the relationship between the ROK and Japan had been rather stable and friendly, in response to the crisis in the ROK caused by the DPRK, Japan promptly responded by strengthening its original economic sanctions set up based on the UN Resolutions. Since the DPRK has been quite a threat in these regions, especially on the point of its potential possess, development and use of nuclear weapons, frequent use of non-nuclear missiles which was launched actually or as a test to the ROK, Japan and even potentially to the west coast of US, and numerous and serious human rights problems including "abduction," the united cooperation in this region is specially needed.

In the following section, this paper shows that "PAST," before the later 2011 (statute problem) or President Lee Myung-bak's sudden and un-notified embankment on Dokdo (Takeshima, in Japanese), the relationship between the ROK and Japan was rather friendly and effectively functioned towards the security of this region.

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<sup>4)</sup> BBC, on 16 April 2014, *available at*: <http://www.bbc.com/news/world-asia-27045512>.

<sup>5)</sup> Nikkei Shinbun, on 18 April 2014, *available at*: [http://www.nikkei.com/article/DGXNASDG1801E\\_Y4A410C1CC0000/](http://www.nikkei.com/article/DGXNASDG1801E_Y4A410C1CC0000/).

Section I explores two critical incidents caused by the DPRK that the ROK had to deal with; one is Sinking of the Cheonan and the other is Bombardment of Yeonpyeong Island. And Japanese government's response for each incident is described.

Section II explains the legitimacy, effectiveness and indispensability of the Japanese government's original sanctions to the DPRK. Particularly, its legitimacy should be certainly proved based on the authorization of the UN Resolutions.

Finally, the last section refers the possibility that these Japanese government's continuous original economic sanctions is, in turn, going to somehow trigger or mobilize the UN power again. As one of such tendencies, this paper raises the recent development of response against the DPRK's human rights problem, which deeply reflects of the Japanese government concern, "abduction."

## **I Japanese reactions to the rising tension between the ROK and the DPRK near the so-called Northern Limit Line in the Yellow Sea; its leading and prompt protests against the North Korea prior to that of the International Community**

In 2010, there were two serious military clashes between the ROK and the DPRK near the Northern Limit Line in the Yellow Sea. One was sinking of the Cheonan, the ROK navy ship; the other was bombardment of Yeonpyeong Island and the ROK by the forces of the DPRK. In both cases, Japan promptly expressed its strong support for the ROK and pushed the international society to act against the DPRK's hostile activities.

### **(1) Sinking of the Cheonan and the Japanese response**

On 26 March 2010, the Cheonan sank after an unexplained explosion. Later its ruptured hull was discovered split in two on the sea bed<sup>6)</sup>. Because the

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<sup>6)</sup> Nikkei Shinbun, on 28 March 2010, *available at*: <http://news.bbc.co.uk/2/hi/8591366.stm>.

ROK was cautious to provide an explanation of the Cheonan sinking at early stages of the incident, Japan just expressed its heartfelt sympathy by sending a message from the Minister of Foreign Affairs Katsuya Okada on 27 March. On 20 May 2010, the investigation team, which included third parties such as experts from the US, UK, Australia and Sweden, reported that the sinking of the Cheonan was caused by a torpedo fired by the DPRK navy. On the basis of this report, the ROK finally condemned the DPRK for the sinking of the Cheonan and the killing of 46 sailors.

On the same day, 20 May, Japanese Prime Minister Yukio Hatoyama announced that “Japan strongly supports the ROK, and North Korea’s action cannot be condoned by any means, and Japan together with the international community strongly condemns North Korea<sup>7)</sup>.” On 28 May, Japan tightened its original economic sanctions against the DPRK, imposing a reporting obligation on money transfers to the DPRK when the amount goes over 3 million yen (until then, over 10 million yen). It also imposed reporting obligations on carrying cash to the DPRK in amounts over 100,000 yen (until then, over 300,000 yen), and it ensured synergistic effects with the ban on imports from and exports to the DPRK by not allowing trades through the third country<sup>8)</sup>

Based on the investigation report, Japan thereby promptly and officially expressed its strong support for the ROK, and took additional sanctions against the DPRK. It is quite significant that it could place some pressure on the UNSC to act on this matter.

In fact, compared to Japan’s prompt and strong response, the UNSC could not act at once and its response was rather weak. Almost one and a half months after the Japanese response, on 9 July 2010, the UNSC finally adopted

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<sup>7)</sup> Kantei, “Comment by the Japanese Prime Minister on the announcement by the Republic of Korea of the results of the investigation into the sinking of a military patrol vessel,” on 20 May 2010, *available at*: [http://www.kantei.go.jp/foreign/hatoyama/statement/201005/20comment\\_souri\\_e.html](http://www.kantei.go.jp/foreign/hatoyama/statement/201005/20comment_souri_e.html).

<sup>8)</sup> MOFA, Diplomatic blue book 2013, *available at*: [http://www.mofa.go.jp/mofaj/gaiko/bluebook/2013/pdf/pdfs/2\\_1.pdf](http://www.mofa.go.jp/mofaj/gaiko/bluebook/2013/pdf/pdfs/2_1.pdf), p.18, note 8.

the Presidential Statement (it was not a “resolution” which is legally binding under the UN Charter) and it condemned the attack which led to the sinking of the Cheonan. Since the DPRK denied its involvement, the UNSC avoided direct condemnation of the DPRK for the sinking of the Cheonan. Instead it just mentioned the report of investigation and expressed its concern, even though the investigation team clearly identified the DPRK as the cause for the sinking of Cheonan that killed 46 sailors<sup>9)</sup>

## **(2) Bombardment of Yeonpyeong Island and the Japanese response**

On 23 November 2010, Yeonpyeong Island of the ROK was bombarded with about 170 artillery shells by the forces of the DPRK. Although most of them landed in the sea or hitting a South Korean military base, the attack did not clearly distinguish between military personnel and civilians. Almost 50 shells landed directly on the island. They caused the death of 2 military personnel and 2 civilians, and they injured several other people, including civilians. The bombardment also caused a wildfire on the island that burnt houses, thereby forcing about 1600 people to evacuate<sup>10)</sup>.

Responding to the bombardment of Yeonpyeong Island, on that day the Chief Cabinet Secretary Yoshito Sengoku announced about the position of the Government of Japan as follows:

“[first,] this incident of shelling by the DPRK cannot be tolerated

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<sup>9)</sup> Security Council SC/9975, “Security Council Condemns Attack on Republic of Korea Naval Ship ‘Cheonan’, Stresses Need to Prevent Further Attacks, Other Hostilities in Region,” *available at*: <http://www.un.org/News/Press/docs/2010/sc9975.doc.htm>. For the DPRK’s involvement, the Statement refers as follows; in view of the findings of the Joint Civilian-Military Investigation Group led by the Republic of Korea with the participation of five nations, which concluded that the Democratic People’s Republic of Korea was responsible for sinking the Cheonan, the Security Council expresses its deep concern. “The Security Council takes note of the responses from other relevant parties, including from the Democratic People’s Republic of Korea, which has stated that it had nothing to do with the incident.”

<sup>10)</sup> BBC, “North Korean artillery hits South Korean island,” on 23 November 2010, *available at*: <http://www.bbc.co.uk/news/world-asia-pacific-11818005>.

and Japan strongly condemns the DPRK. [Second,] Japan extends its condolences to the government and the people of the ROK regarding the human cost of this shelling, and Japan supports the position of the government of the ROK. Third, insofar as this act of provocation by means of the shelling by the DPRK undermines the peace and security of not only the ROK but the entirety of Northeast Asia, including Japan, we demand an immediate cessation of all such acts. Fourth, in line with the instructions given by the Prime Minister at the ministerial meeting, Japan will address future developments in close coordination with the ROK, the United States, and other relevant countries. In addition, the Japanese government will work together to engage in the collection of information and we will take appropriate measures in preparation for contingencies<sup>11)</sup>.”

On 26 November 2010, the both houses of the National Diet adopted a resolution to condemn the Bombardment of Yeonpyeong Island by the DPRK as an outrageous and intolerable act of violence that caused casualties and damages not only to military personnel and bases but also to civilians and their residential areas<sup>12)</sup>. In addition, the resolution also required the Government of Japan to strongly condemn such bombardments; to support the ROK; to consider to implementing new sanctions; and to appeal to the international society to pressure on the DPRK to abandon all military acts of provocation including development of nuclear weapons<sup>13)</sup>.

As in the case of the Cheonan sinking, Japan’s official announcement concerning its position was very fast, and it preceded other

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<sup>11)</sup> Excerpt from the Press Conference of Mr. Yoshito Sengoku, Chief Cabinet Secretary, held on the afternoon of Tuesday, on 23 November 2010, “Concerning the incident of the shelling of Yeonpyeong Island, Republic of Korea by the DPRK,” *available at*: [http://www.kantei.go.jp/foreign/kan/topics/20101123\\_chief\\_cabinet\\_secretary\\_e.pdf](http://www.kantei.go.jp/foreign/kan/topics/20101123_chief_cabinet_secretary_e.pdf).

<sup>12)</sup> The House of Representatives, *available at*: [http://www.shugiin.go.jp/itdb\\_annaif.nsf/html/statics/topics/ketugi101126\(2\)-1.html](http://www.shugiin.go.jp/itdb_annaif.nsf/html/statics/topics/ketugi101126(2)-1.html)(only in Japanese). Also, House of Councillors, *available at*: [http://www.sangiin.go.jp/japanese/ugoki/h22/101126\\_2.html](http://www.sangiin.go.jp/japanese/ugoki/h22/101126_2.html) (only in Japanese).

<sup>13)</sup> *Ibid.*

statements from the international community.

Since Japan has been directly exposed to the threat of nuclear development by the neighboring DPRK, and it also has an unresolved and serious problem with abduction of Japanese by the DPRK, it could perhaps be said that from now on Japan should continuously make positive contributions to deterring the DPRK's acts of violence by using various measures, including its own economic sanctions. It should work to maintain peace and security in East Asia, eventually in other areas of the world.

## **II Strengthening the enforcement tools to ensure the effectiveness of economic sanctions against the DPRK: Enacting the “Act on Special Measures concerning Cargo Inspections etc. pursuant to UNSC Resolution 1874 etc.”**

On 4 June 2010, the “Act on Special Measures concerning Cargo Inspections etc. pursuant to UNSC Resolution 1874 etc.” was enacted, and then implemented in July. As its name shows, it was enacted to fulfill the obligation imposed under the UNSC Resolution 1874, which is only addressed to “the DPRK related items.” This includes all nuclear weapons, ballistic missiles and related materials, other WMD (weapons of mass destruction) and related materials, all arms and related materials except for small arms and light weapons (these are still allowed with prior notification), and luxury goods (Art.2 (1))<sup>14</sup>.

### **(1) Inspection: competent authorities and requirement of consent**

According to the Act, if there is information that provides reasonable grounds to believe cargo contains “the DPRK related items,”

#### **(i) In internal water, the territorial sea and the high seas (including EEZ)**

The Commandant of the Japan Coast Guard may order officials to undertake cargo inspections of a vessel located in internal water (Art.3 (1)), the

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<sup>14</sup> Japanese Law Translation, *available at*: <http://www.japaneselawtranslation.go.jp/law/detail/?vm=04&re=02&id=2060&1vm=02>.

territorial sea and on the high seas. However, in case of the territorial sea and the high seas, they need to meet the stipulated conditions below, based on the presence or absence of consent of the flag State or the captain of the vessel to be inspected.

(a) On the high seas, when there is consent of the flag State and the captain of vessel to be inspected, the official can proceed with the steps for inspection, including onboard inspection and inspection of documents (Art.3 (2), Art.8 (1)).

On the other hand, in cases where there is consent of the flag State but not consent of the captain, the official shall order the captain to direct the vessel to a designated port where the vessel is to be inspected (Art.6 (ii)). If the captain does not comply with the order, he/she is subject to the penalties (Art.14 (ii)).

(b) On the high seas, when there is no consent of the flag State of the vessel, the official cannot proceed with the steps for inspection. However, the Act provides if Japan does not give consent to the foreign authority concerning inspection of a vessel carrying the Japanese flag on the high seas, Japan shall order the vessel to navigate to a the designated ports, where the vessel is to be inspected (Art.7 (2)).

(c) In the territorial sea, there is no need for the flag State's consent, but the consent of captain of the vessel is required. If the captain of the vessel consents, the official can proceed with the steps for inspection. If the captain of the vessel does not consent, the official shall order the captain to direct the vessel to a designated port, where the vessel is to be inspected (Art.6 (ii)). If the captain does not comply with the order, he/she is subject to the penalties (Art.14 (ii)).

**(ii) At seaports/airports and in bonded areas**

The Director-General of Customs may order its officials to undertake cargo inspections of a vessel at seaports/airports and in bonded areas, if there is information that provides reasonable grounds to believe the cargo contains “the DPRK related items.”

**(2) Measures taken in inspection under the Act**



Measures taken under the Act include:

**(i) Cargo inspection**, which includes onboard inspection, inspection of documents, removal of goods for inspection and the discharge or transshipment of goods (Art.3 (1) (ii)-(iv), (2) (ii)-(iv), (3) (ii)-(iv) and (4))

**(ii) Submission of the DPRK related items**

As the result of inspection, if the existence of the DPRK related items is confirmed in internal waters, the territorial sea and on the high seas (including the EEZ), the Commandant of the Japan Coast Guard may order the captain of the vessel to submit the items (Art. 4(1)).

If confirmed at seaports/airports and in bonded areas, the Director-General of Customs may order the owner of the cargo to submit the items (Art.4 (2))

**(iii) Storage of items and termination of storage**

The DPRK related items submitted shall be stored by the Commandant of the Japan Coast Guard or the Director-General of Customs (Art.5 (1)). They may or shall terminate its storage with one of the following ways:

(a) By returning items to the owner in case where the items are no longer designated as “the DPRK related items,” or the owner request their return after taking measures to prevent the items from being exported to the DPRK (Art.5 (3)(i)(ii)).

(b) By disposal of the items if they fall under any of the categories for biological weapon and chemical weapon as defined separately by the other Acts (Art.5 (5)).

(c) By selling items in where storage may cause loss and damage to items, or the storage costs are excessive (Art.5 (6) (i) (ii)).

With the Act, it has become possible for Japanese authorities to carry out inspection on foreign vessel on the high seas, although it must be done with the flag State consent. Furthermore, it has enabled the Japanese authorities to inspect foreign vessels in the territorial sea, seaport or airport, and in bond areas, even if the vessel carries items that did not originate in or destined for Japan. And even if the captain of the vessel does not consent to be inspected, it is still possible for the authorities to order the captain to direct the

vessel to a designated port or other places where the vessel to be inspected. Then, if the captain does not comply with the order given by the authorities (including submission order of the DPRK related items and direction order of the vessel), he/she is subject to the penalties (Art.13, Art.14).

Thus, by entitling the Japanese authorities to inspect almost all cargo to and from the DPRK with strong enforcement measures (submission order, direction order and penalties for non-compliance), the Act contributes to the implementation of effective economic sanctions against the DPRK, although there is some limitations in case on the high seas.

### **III New movement towards the security of the north-east Asian region: UN initiative in human rights to be triggered by Japanese continuous efforts**

As described above, around 2010, the relationship between the ROK and Japan kept favorable condition and thus, Japan could support the ROK quite positively. At the same time, based on the UN Resolution 1874, Japan enacted the Special Act for implementing and if necessary, originally strengthened it.

After such favorable conditions between the ROK and Japan collapsed, responding to the 2012, 2013 and 2014 missile launches by the DPRK, the UN each time adopted the UNSC resolution 2087, 2094 (for 2014 missile launches, the UNSC resolution 2141<sup>15)</sup> was adopted, but remains to mandate several missions to the Panel of Experts) but apparently only those measures (including economic sanctions) taken by the UN might not be sufficient enough to make the DPRK refrain from conducting any missile test or even nuclear development. Rather, the DPRK seems to be pressured, largely due to the Japanese economic sanctions, since it could directly and deeply damage to the DPRK financial, food and luxurious markets, by enacting or amending its domestic act to implement such the UN Resolutions.

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<sup>15)</sup> UNSC, available at:

[http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_res\\_2141.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2141.pdf).

On the other hand, new movement has been occurred by the UN initiative and this could be very much expected to put unprecedented pressure on the DPRK; the adoption of Resolution A/HRC/25/L.17<sup>16)</sup> which condemns the act of the DPRK as “human rights violations, including those that may amount to crimes against humanity” and request the UNSC to take appropriate action. Thereafter, on this Resolution, the UNSC convened the informal meeting but the Russia and China was absent. In the meeting, several witness including Mr. Masumoto, Chief of abduction’s families were given chances to explain the situations.

Although at this stage, in practice, the UNSC seems to be difficult to adopt a Resolution along with the UNHCR Resolution A/HRC/25/L.17, its pressure on the DPRK is quite an apparent. The representative at UN, Ambassador So, was strongly accused and denied the content of the UNHCR Resolution<sup>17)</sup>

Probably this UN strong initiative in human rights field has been triggered by using the bases fostered by Japanese continuous economic sanctions efforts authorized by the UN Resolutions.

As recently reported, Japan convened a meeting to resolve the abduction issue with the DPRK and Japan lifted a part of its sanctions against the DPRK in return for sincere investigation of surviving abductees<sup>18)</sup>.

Since the Japanese original economic sanctions are not only important to the implementation of the UNSC Resolutions mainly targeting use of force, but also, as already described, could be an important basis of

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<sup>16)</sup> UNHRC, “Situation of human rights in the Democratic People’s Republic of Korea,” *available at*: <http://daccess-dds-ny.un.org/doc/UNDOC/LTD/G14/124/94/PDF/G1412494.pdf?OpenElement>.

<sup>17)</sup> CNN, on 18 March 2014, *available at*: <http://edition.cnn.com/2014/03/18/world/asia/north-korea-human-rights-response/>. See also, Morse H. Tan, “Finding a Forum for North Korea,” 65 *SMU L. Rev.* 765 (2012), 782-789.

<sup>18)</sup> Reuters, “Japan lifts some North Korea sanctions amid report of surviving abductees,” on 3 July 2014, *available at*: <http://uk.reuters.com/article/2014/07/03/us-japan-northkorea-idUKKBN0F70NK20140703>.

the UN strong initiative in human rights field, it should be noted that Japan has to be cautious to mitigate its sanctions against the DPRK in return<sup>19)</sup>. In this point, lifting of Japanese economic sanctions has been yet limited to the following extent: to make human traffic free between the two Countries except for the persons specially nominated in the list; to impose a more relaxed report obligation on money transfers to the DPRK when the amount goes over 30 million yen (until then, over 3 million yen) and on carrying cash to the DPRK when amounts goes over 1,000,000 yen (until then, over 100,000 yen); to permit the DPRK ship to enter to the Japanese ports only for the purpose of humanitarian aid.

The Japanese government said that such lifting of sanctions are still limited among the various measures (described in the above section II of this paper ) and Japan continues those sanctions including the traffic and entry of Mangyongbong-92, of which lifting seem to be apparently much needed by the DPRK<sup>20)</sup>. Since there are serious concerns about eroding the on-going cooperation towards the DPRK's nuclear development issue among the US, the ROK and Japan<sup>21)</sup>, it must be crucial for Japan to keep good relationships particularly with neighbor countries like the ROK even if there are other unsolved political problems among the countries such as the territorial issues. Otherwise, the "teeth" of various efforts taken by the UN, based on the several UNSC Resolutions, might be lost and the peace in this region or even in the international society as a whole might be never guaranteed, while sincere cooperation from Russia and China cannot be expected for curtailing the DPRK's development of nuclear weapons and other aggressive and non-humanitarian activities.

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<sup>19)</sup> John R. Cook, "United States Marks Improved Relations with Burma by Easing Economic Sanctions," 106 *A.J.I.L.* 858, 860-862.

<sup>20)</sup> Nikkei Shinbun, on 4 July 2014, *available at*: [http://www.nikkei.com/article/DGXNASFS0400M\\_U4A700C1MM0000/](http://www.nikkei.com/article/DGXNASFS0400M_U4A700C1MM0000/).

<sup>21)</sup> Asahi Shinbun Digital, on 4 July 2014, *available at*: <http://digital.asahi.com/articles/ASG742Q5TG74UHBI00H.html>.