

Culture and Society in Asia

May 11, 2021

Mizuno Mitsuaki

1. Today's key words and points

The definition of sovereign territory of the state

All the sovereign states or countries have their own territories, except the government in exile. For example, so-called Tibetan government in exile in Dharamshala, India (Central Tibet Administration; CTA) claims that they have their own territory. But all the area, which CTA claims they have sovereignty to, is under the administrative control of People's Republic of China. CTA does not have their own territory in fact.

Tips

a) Latvia

U.S.-LATVIA RELATIONS

The U.S. and Latvia share a history as strategic allies and valued partners. The United States established diplomatic relations with Latvia in 1922 following its independence in the years after World War I. Latvia was annexed by the Soviet Union in 1940 during World War II. In 1991, Latvia claimed de facto independence, and international recognition followed. The United States had never recognized the forcible incorporation of Latvia into the Soviet Union, and it views the present Government of Latvia as the legal continuation of the interwar republic.

source:

U.S. Relations With Latvia, Department of States, the United States
<https://www.state.gov/u-s-relations-with-latvia/>

b) Lithuania

U.S.-LITHUANIA RELATIONS

The U.S. and Lithuania share a history as valued Allies and strong partners. The United States established diplomatic relations with Lithuania in 1922, following its declaration of independence during World War I. Lithuania was

forcibly annexed by the Soviet Union in 1940 during World War II. In 1990, Lithuania proclaimed its renewed independence and international recognition followed. The United States never recognized the forcible incorporation of Lithuania into the Soviet Union, and it views the present Government of Lithuania as the legal continuation of the interwar republic.
source:

U.S. Relations With Lithuania, Department of States, the United States
<https://www.state.gov/u-s-relations-with-lithuania/>

c) Estonia

U.S.-ESTONIA RELATIONS

The United States and Estonia are strong allies and partners. The United States established diplomatic relations with Estonia in 1922 following its declaration of independence during World War I. Estonia was annexed by the Soviet Union in 1940 during World War II. In 1991, Estonia declared full independence, and international recognition followed. The United States had never recognized the forcible incorporation of Estonia into the Soviet Union, and it views the present Government of Estonia as the legal continuation of the interwar republic.

source:

U.S. Relations With Estonia, Department of States, the United States
<https://www.state.gov/u-s-relations-with-estonia/>

What was the legal status of these three countries?

Beside the United States, how many countries refused the recognition of the Soviet annexation? How about Japan, Denmark, Finland and the United Kingdom?

The sovereign territory of the state consists of 1) territorial land or land, 2) airspace or air and 3) territorial waters

1) territorial land or land

the place where sovereign power of a country or nation exists.

2) airspace or air

The airspace consists of 1) controlled airspace and 2) uncontrolled airspace. The difference between controlled airspace and uncontrolled airspace is whether airplanes is controlled or not.

3) territorial waters

The territorial waters, often the sea, is a belt of coastal waters extending at most 12 nautical miles from the baseline of a coastal state (usually the mean low-water mark).

Foreign ships (both military and civilian) are allowed innocent passage through it.

Recently, space and cyber space are considered new elements of the territory. Space is the region beyond the earth's atmosphere or beyond the solar system. But how far from the earth's atmosphere is not defined exactly. The Fédération Aéronautique Internationale (国際航空連盟) has established the Kármán line (カーマン・ライン) at an altitude of 100 km as a working definition for the boundary between aeronautics (航空機が航行する空間) and astronautics (宇宙飛行士が活動する空間). The United States designates people who travel above an altitude of 80 km as astronauts.

Although several definitions of cyberspace can be found both in scientific literature and in official governmental sources, there is no fully agreed official definition yet.

“Cyberspace is a global and dynamic domain (subject to constant change) characterized by the combined use of electrons and electromagnetic spectrum, whose purpose is to create, store, modify, exchange, share and extract, use, eliminate information and disrupt physical resources.”

source:

The most recent analysis of the interaction of Cyberspace and International politics has been investigated in the MIT, Harvard and CFR ECIR project (Explorations in cyber International Relations).

<http://ecir.mit.edu/http://web.mit.edu/polisci/people/faculty/nazli-choucri.htm>

1

As for the territorial waters, we will discuss them more later.

領域にかんする主要用語集

sovereign territory of the state: 領域、国家の主権が及ぶ領域

land or territorial land: 領土

airspace or air: 領空

controlled airspace: 管制空域 (航空管制の実務)

uncontrolled airspace: 非管制空域 (航空管制の実務)

territorial waters or sea: 領海

nautical miles: 海里

U.S. to defend Japan from cyberattack under security pact
The Japan Times, April 20, 2019.

WASHINGTON - The foreign and defense chiefs of Japan and the United States confirmed on Friday for the first time that Article 5 of the two countries' security treaty (日米安全保障条約), which sets out Washington's obligations to defend territories under Tokyo's jurisdiction (ここでは「主権が及ぶ範囲」の意), could apply to cyberattacks against Japan.

This was clarified in a joint statement adopted at so-called two-plus-two security talks (2プラス2、外務・防衛担当閣僚協議) held among the ministers in Washington the same day.

The officials affirmed that "a cyberattack could, in certain circumstances, constitute an armed attack for the purpose of Article 5" of the security treaty, the statement said, adding that a decision as to whether a cyberattack would be covered by the article will be made "on a case-by-case basis, and through close consultations" between the two countries.

While refraining from citing specific countries, the statement implicitly expressed concerns over rapid technological progress made by China and Russia in the new fields.

"Malicious (悪意のある) cyber activity presents an increasing threat to the security and prosperity of both the United States and Japan," it said.

Japan-U.S. collaboration in cross-domain (クロス・ドメイン、領域横断的) operations involving the conventional air, ground and maritime defense fields, and the new domains, is one of the "core (核心的な) objectives" to advance the two nations' defense relationship, the statement added.

It also said the officials highlighted space, cyberspace and the electromagnetic spectrum (電磁波領域) as priority areas to better prepare the alliance for cross-domain operations.

Friday's two-plus-two meeting was the first since August 2017. Foreign

Minister Taro Kono and Defense Minister Takeshi Iwaya took part, while the U.S. side was made up of Secretary of State Mike Pompeo and Acting Defense Secretary Patrick Shanahan.

At a joint news conference after the meeting, Pompeo criticized China, which has been boosting activities in cyberspace and other fields. Pompeo said that he and Shanahan shared their concerns with Japan that “geopolitical competition and coercive (威圧的な) attempts to undermine international rules, norms and institutions - especially from China - present challenges to the alliance and to continued peace, stability and prosperity in the Indo-Pacific (インド太平洋。安全保障の領域では「アジア太平洋」と言わずに「インド太平洋」と言うことが多い。) .”

Kono said that Japan and the United States will further strengthen their alliance by enhancing bilateral cooperation, including in the new fields.

The defense cooperation guidelines that were revised in April 2015 only said that “the United States will provide appropriate support to Japan” in dealing with cyberattacks against the Asian ally.

This time, the two countries more clearly showed their intention to work together by saying that Article 5 of the security treaty could apply to cyberattacks against Japan.

Beyond the cyber domain, the two-plus-two joint statement also expressed the ministers’ “serious concern” over “unilateral coercive attempts to alter the status quo (現状)” in the East China Sea and the South China Sea - a not-so-oblique reference to China.

Tokyo and Washington also reconfirmed that the Japanese-administered Senkaku Islands in the East China Sea are covered by Article 5 of the security treaty. The islands are claimed by China and Taiwan.

The joint statement stressed a policy of supporting Southeast Asian countries in a bid to realize a free and open Indo-Pacific region.

“The Japan-U.S. alliance is now the cornerstone of peace, security and prosperity of the entire Indo-Pacific region,” Kono said. “Both Japan and the United States will conduct joint trainings and capability buildings and others with partner countries in order to jointly expand their presence in the region.”

Speaking at the same joint news conference after the meeting, Iwaya requested cooperation from the United States in investigating the crash of an F-35A fighter in the Pacific during an Air Self-Defense Force exercise earlier this month.

Despite the accident, Shanahan expressed appreciation for Japan’s continued procurement (導入、調達) of F-35s and other U.S. assets as part of efforts to promote interoperability.

The top officials welcomed diplomatic efforts by the administration of U.S. President Donald Trump “to achieve the final, fully verified denuclearization of the Korean Peninsula.”

They stressed the need to realize at an early time the relocation of U.S. Marine Corps Air Station Futenma in the densely populated (人口が密集している) city of Ginowan, Okinawa Prefecture, to the Henoko coastal district of Nago within the prefecture. The plan is “the only solution” that avoids the continued use of the Futenma base, they said in the statement.

In an apparent reference to a case in which a U.S. Navy sailor allegedly stabbed (刺す) a Japanese woman to death in the Okinawa town of Chatan earlier this month, Kono said it is necessary to reduce the burden on local residents by moving step by step to prevent accidents and other incidents involving U.S. servicemen in Okinawa and deal with issues related to the bilateral status of forces agreement.

出所：

The Japan Times, April 20, 2019.

<https://www.japantimes.co.jp/news/2019/04/20/national/politics-diplomacy/first-japan-u-s-say-security-treaty-cover-cyberattacks/#.XLtq59jgrCY>

Treaty of Mutual Cooperation and Security between the United States and Japan

日本国とアメリカ合衆国との間の相互協力及び安全保障条約

ARTICLE V

Each Party recognizes that an armed attack against either Party in the territories under the administration of Japan would be dangerous to its own peace and safety and declares that it would act to meet the common danger in accordance with its constitutional provisions and processes. Any such armed attack and all measures taken as a result thereof shall be immediately reported to the Security Council of the United Nations in accordance with the provisions of Article 51 of the Charter. Such measures shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security.

第五条

各締約国は、日本国の施政の下にある領域における、いずれか一方に対する武力攻撃が、自国の平和及び安全を危うくするものであることを認め、自国の憲法上の規定及び手続に従つて共通の危険に対処するように行動することを宣言する。

前記の武力攻撃及びその結果として執つたすべての措置は、国際連合憲章第五十一条の規定に従つて直ちに国際連合安全保障理事会に報告しなければならない。その措置は、安全保障理事会が国際の平和及び安全を回復し及び維持するために必要な措置を執つたときは、終止しなければならない。

The United Nations Charter

国際連合憲章

Article 51

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at

any time such action as it deems necessary in order to maintain or restore international peace and security.

第51条

この憲章のいかなる規定も、国際連合加盟国に対して武力攻撃が発生した場合には、安全保障理事会が国際の平和及び安全の維持に必要な措置をとるまでの間、個別的又は集団的自衛の固有の権利を害するものではない。この自衛権の行使に当って加盟国がとった措置は、直ちに安全保障理事会に報告しなければならない。また、この措置は、安全保障理事会が国際の平和及び安全の維持または回復のために必要と認める行動をいつでもこの憲章に基く権能及び責任に対しては、いかなる影響も及ぼすものではない。

Tips

The Article 51 of the United Nations Charter says 'the inherent right of individual or collective self-defence'. Is the right of collective self-defence inherent?

Culture and Society in Asia
Is the right of collective security 'inherent'?
2015 Japanese military legislation

May 25, 2021
Mizuno Mitsuaki

1)

2015 Japanese military legislation case

The controversial issue is: whether collective self defence is legal or illegal
Many experts of (Japanese) constitution say it is unconstitutional and illegal,
as the Constitution bans the right of collective self defence.

From the viewpoint of international law, the article 51 of the Charter of the
United Nations says "Nothing in the present Charter shall impair the
inherent right of individual or collective self-defence.....".

2)

The procedures of the United Nations Security Council maintaining or
restoring international peace and security

1.Determination of the existence of any threat to peace (Article 39)

2.Decision of provisional measures (Article 40)

3.Decision of measures not involving the use of armed force (Article 41)

4.Taking actions by air, sea, or land forces (Article 42)

The Members of the United Nations shall join in affording mutual assistance
in carrying out the measures decided upon by the Security Council. (Article
49)

Defence and defense are different spellings of the same word. Defense is
preferred in American English, and defence is preferred in all other main
varieties of English, including Australian, British, and Canadian English.

For references

1.

Charter of the United Nations

国際連合憲章

CHAPTER VII: ACTION WITH RESPECT TO THREATS TO THE PEACE,
BREACHES OF THE PEACE, AND ACTS OF AGGRESSION

第 7 章 平和に対する脅威、平和の破壊及び侵略行為に関する行動

Article 39

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

第 39 条

安全保障理事会は、平和に対する脅威、平和の破壊又は侵略行為の存在を決定し、並びに、国際の平和及び安全を維持し又は回復するために、勧告をし、又は第 41 条及び第 42 条に従っていかなる措置をとるかを決定する。

Article 40

In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures.

第 40 条

事態の悪化を防ぐため、第 39 条の規定により勧告をし、又は措置を決定する前に、安全保障理事会は、必要又は望ましいと認める暫定措置に従うように関係当事者に要請することができる。この暫定措置は、関係当事者の権利、請求権又は地位を害するものではない。安全保障理事会は、関係当事者がこの暫定措置に従わなかったときは、そのことに妥当な考慮を払わなければならない。

Article 41

The Security Council may decide what measures not involving the use of

armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

第 41 条

安全保障理事会は、その決定を実施するために、兵力の使用を伴わないいかなる措置を使用すべきかを決定することができ、且つ、この措置を適用するように国際連合加盟国に要請することができる。この措置は、経済関係及び鉄道、航海、航空、郵便、電信、無線通信その他の運輸通信の手段の全部又は一部の中断並びに外交関係の断絶を含むことができる。

Article 42

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

第 42 条

安全保障理事会は、第 41 条に定める措置では不十分であろうと認め、又は不十分なことが判明したと認めるときは、国際の平和及び安全の維持又は回復に必要な空軍、海軍または陸軍の行動をとることができる。この行動は、国際連合加盟国の空軍、海軍又は陸軍による示威、封鎖その他の行動を含むことができる。

Article 49

The Members of the United Nations shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council.

第 49 条

国際連合加盟国は、安全保障理事会が決定した措置を履行するに当って、共同して相互援助を与えなければならない。

Article 51

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

第 51 条

この憲章のいかなる規定も、国際連合加盟国に対して武力攻撃が発生した場合には、安全保障理事会が国際の平和及び安全の維持に必要な措置をとるまでの間、個別的又は集団的自衛の固有の権利を害するものではない。この自衛権の行使に当って加盟国がとった措置は、直ちに安全保障理事会に報告しなければならない。また、この措置は、安全保障理事会が国際の平和及び安全の維持または回復のために必要と認める行動をいつでもこの憲章に基く権能及び責任に対しては、いかなる影響も及ぼすものではない。

CHAPTER VIII: REGIONAL ARRANGEMENTS

第 8 章 地域的取極

Article 52

Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.

第 52 条

この憲章のいかなる規定も、国際の平和及び安全の維持に関する事項で地域的行動に適当なものを処理するための地域的取極又は地域的機関が存在することを妨げるものではない。但し、この取極又は機関及びその行動が国際連合の目的及び原則と一致することを条件とする。

2.

The Constitution of Japan

日本国憲法

Article 9.

Aspiring sincerely to an international peace based on justice and order, the Japanese people forever renounce war as a sovereign right of the nation and the threat or use of force as means of settling international disputes.

In order to accomplish the aim of the preceding paragraph, land, sea, and air forces, as well as other war potential, will never be maintained. The right of belligerency of the state will not be recognized.

第9条

日本国民は、正義と秩序を基調とする国際平和を誠実に希求し、国権の発動たる戦争と、武力による威嚇又は武力の行使は、国際紛争を解決する手段としては、永久にこれを放棄する。

前項の目的を達するため、陸海空軍その他の戦力は、これを保持しない。国の交戦権は、これを認めない。

Article 98.

This Constitution shall be the supreme law of the nation and no law, ordinance, imperial rescript or other act of government, or part thereof, contrary to the provisions hereof, shall have legal force or validity.

The treaties concluded by Japan and established laws of nations shall be faithfully observed.

第98条

この憲法は、国の最高法規であつて、その条規に反する法律、命令、詔勅及び国務に関するその他の行為の全部又は一部は、その効力を有しない。

日本国が締結した条約及び確立された国際法規は、これを誠実に遵守することを必要とする。

日本国憲法には、英語の公定訳（日本政府の公式訳）があります。

http://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html

難しい英語ではないので、一度読んでみるとよいでしょう。

Culture and Society in Asia

June 15, 2021
Mizuno Mitsuaki

1. Today's key words and points:

- a) The definition of territorial land or land
- b) boundary / border
- c) demarcation and delimitation
- d) peaceful or legal settlement of the border disputes by the International Court of Justice
- e) *Uti possidetis juris* and colonial rule

2. Territorial land or Land

A territory is a term for types of administrative division, usually an area that is under the jurisdiction of a nation state. It is located in land, not waters. All the countries have their own territories, even some countries face the waters, and some do not face them.

3. Boundary / Border

Sovereign states are distinguished each other by the boundary or border, even they consist of many islands such as Archipelagic states (for example, the Philippines, Indonesia, Fiji and Papua New Guinea).

4. Demarcation / Delimitation

The border line is expressed physically or by written documents.

Demarcation (実地画定)	expressed physically	pillars or stones, fences	need delimitation before demarcation
Delimitation (机上画定)	expressed literarily	maps (in many cases)	

(註)

国内法では「確定」、国際法では「画定」という漢字を用いる。

5. Border or boundary disputes

A certain territory belongs to whom or what sovereign state / country?

In case of islands, there are different approaches from that of territorial land

cases.

International Court of Justice is dealing with many border or boundary disputes by its decisions.

Article 2 of the United Nations Charter says:

All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

6. Colonial rule and *Uti possidetis juris*

Uti possidetis juris or *uti possidetis iuris* is a principle of international law which provides that newly formed sovereign states should have the same borders that their preceding dependent area had before their independence. Originally, it was applied to the border disputes in South America, and was later used to solve border disputes in Africa. *Uti possidetis juris* has been applied in modern history to such regions as South America, Africa, the Soviet Union (in Soviet case, it was only applied after the collapse of the Soviet Union), and numerous other regions where centralized governments were broken up, or where imperial rulers were overthrown. It is often applied to prevent foreign intervention by eliminating any contested *terra nullius*, or no man's land (無主地), that foreign powers could claim, or to prevent disputes that could emerge with the possibility of redrawing the borders of new states after their independence.

There are a lot of arguments whether it can be applied to border disputes in Asia and Pacific.

Can or should the colonial rule be justified legally through the *Uti possidetis juris*?

7. Aggression

Aggression and the right of self-determination

If the people in the colonized country or area hope to be independent, and for this purpose, escape there and enter the neighbored land or area, is this aggression?