Japan-Korea Relations: A Litigious Time of the Year

David Kang, University of Southern California
Jiun Bang, University of Southern California

The overarching theme for the end of the year was litigation. The trial of Kato Tatsuya (former Seoul bureau chief for Sankei Shimbun) led to his acquittal for criminal libel. The trial of Park Yu-ha, a professor at Sejong University charged with defamation for her 2013 book Comfort Women of the Empire began in December, the General Association of Korean Residents in Japan (Chongryon) and its affiliates faced three separate lawsuits in Japan and South Korea, and a Korean was arrested and later indicted for his role in placing a bomb at Yasukuni Shrine. There were also competing interpretations of the international status of North Korean refugees in the case of contingencies. The much-awaited November Park-Abe summit was quickly tested by incidents that could easily strain relations. To the credit of Seoul and Tokyo, neither government let a single issue damage the relationship. In fact, the two ended up reaching an accord on “comfort women/sex slaves” at yearend. Despite immediate praise from the US, there was considerable frustration from both publics over the agreement.

Sticky lawsuits

Recall that the first mention of Sankei Shimbun’s former Seoul bureau chief, Kato Tatsuya, was back in the summer of 2014, when he was facing a defamation suit for an article that mentioned rumors of President Park Geun-hye engaging in a clandestine meeting during the seven-hour period in which she was unaccounted for on the day of the tragic sinking of the Sewol ferry in April 2014. In October, Korean prosecutors argued for an 18-month jail term for Kato. Then, the court delayed sentencing from Nov. 26 to Dec. 17, when the Seoul Central District Court acquitted Kato of libel, which is a criminal offense in South Korea. The decision came after the South Korean Foreign Ministry sent a note to the Justice Ministry asking that the verdict take into consideration its consequences for Korea’s broader relations with Japan. So while we wait to see if the prosecution appeals the verdict, we are left with questions of freedom of the press, ethical journalism, and inter-agency politics and the interplay of domestic and foreign policy.

There was another bilateral incident that demanded legal remedies when an explosion occurred in the public restroom at the Yasukuni Shrine in Tokyo on Nov. 23, implicating a 27-year-old South Korean man as being behind the blast. There were no fatalities, yet the incident had all the appeal for heavy media coverage: mystery, as the motive was unknown and the suspect retracted his confession the day after; conspiracy, as it was unclear why the suspect flew back to Japan

after returning to Korea, prompting some to theorize that the Korean government had a hand in encouraging his return to suppress bilateral tensions (but then the suspect’s Gimpo-Haneda ticket would most likely have been a one-way ticket rather than roundtrip), and; controversy, as the Japanese police found a box containing feces in the parking lot of the South Korean Consulate in Yokohama on Dec. 12 with a hand-written note declaring the “package” was retaliation for the Yasukuni blast. Moreover, there was controversy surrounding the media coverage of the incident in Japan with the Korean government lodging a protest through official channels about the release of the suspect’s identity (name, photograph, etc). Meanwhile, The Japan Times reported that Chief Cabinet Secretary Suga Yoshihide had stated during a news conference that he was unaware of Seoul’s protests and that “there is no way that police would provide (the media) with a photo of the face (of a suspect).” On Dec. 10, the day after the suspect was arrested by police in Tokyo, Yonhap News had a story that included interviews with the suspect’s uncle, an official at the air force unit where the suspect had previously served, and the convenience store clerk in the area where the suspect had lived.

A less “sensational” issue that deserves mention is airport security. The police in Japan have not found any evidence that the suspect purchased the items used to create the bomb during his stay in Japan (and they have presumably found the remains of batteries with Korean lettering at the blast site), while sources have reported finding some granular substance resembling gunpowder and a timer in the suspect’s possessions upon being arrested on his return to Japan. If it turns out that the items used for the blast were purchased in Korea and then transported successfully to Japan, at least some blame will fall on the security screenings at Gimpo airport. (Gimpo airport officials have denied the suspect was carrying an explosive substance.)

The incident has implications for bilateral relations, especially considering that Yonhap News had reported in late October a record number of Korean tourists to Japan have taken advantage of a weakened yen. According to the Korea Tourism Organization, a total of 2.86 million Koreans visited Japan from January to September 2015, a surge of 43.1 percent from the same period in 2014. If the outlook is for a continued trend in Korean tourists to Japan, the blast at Yasukuni Shrine presents multiple tasks for Tokyo-Seoul relations beyond coordinating on the investigation of the suspect or managing any second-order anti-Korean backlash in Japan as a result of the blast.

There were other unresolved legal issues complicating Japan-South Korea relations. One debate started after the bilateral meeting in Seoul on Oct. 20 between Japanese Defense Minister Nakatani Gen and South Korean counterpart Han Min-koo. The interpretation of what was said varied by media source; Reuters said Nakatani reinforced Japan’s commitment to an exclusively defense-oriented security policy despite the new security laws that would expand the role of the Japanese Self-Defense Forces (JSDF) abroad; The Korea Times reported that Nakatani maintained that while Japan will not be involved in any military operation in South Korea without Seoul’s consent, he remained “noncommittal” about the need to seek consent before entering North Korean territory. The Nikkei framed Nakatani’s comments as implying that the JSDF “could act unilaterally in North Korea in an emergency,” while an editorial in Yonhap News went so far as to claim that Japan did not acknowledge the necessity of Korea’s consent to enter North Korea in the case of a contingency:
[Nakatani’s remarks] can be interpreted in two ways and both are troublesome. One is that it is already considering North Korea as part of its theater of operations, a point that shows its history-proven, psychological inclination to use the peninsula as a stepping stone for its expansion toward the continent into China. By extension, it shows that Tokyo is not only uninterested in seeing the unification of the two Koreas but also rules out such an eventuality, obviously, because it fears a united Korea will become more powerful and tip the balance of power in the favor of China over Japan.

The editorial was a hasty, oversimplified, and extremely one-dimensional perspective, but it does raise the critical issue of international law surrounding North Korea, particularly in the event of a contingency. In theory, South Korea claims the northern part of the peninsula to be part of its territory, and there are provisions that solidify this idea (i.e., North Korean defectors are treated as South Korean citizens by law, and are not counted toward South Korean statistics on “refugees”). In practice, the domestic legal mechanism in South Korea is pulled in different directions – pro-North Korean propaganda is illegal under the 1948 National Security Law/Act, as is anything that could be construed as being “pro-North Korea” (derisively called jong-buk). As a result, South Korea is extremely cautious about weeding out influences from the North, and yet it must claim the North to be part of one unified territory. The dilemma is only one piece of the larger puzzle of Korean reunification. But it will help South Korea’s position vis-à-vis Japan if it is able to first reconcile its own internal debates (and insecurities) about the desirability of and actual preparedness for reunification.

Domesticide?

Prime Minister Abe Shinzo and President Park met on Nov. 2 in Seoul on the sidelines of a South Korea-Japan-China trilateral summit involving Chinese Premier Li Keqiang. It was a much-anticipated event, not so much for the likelihood of any substantive agreement (in fact, there was no post-summit joint statement or press conference and the media was quick to note that the two leaders did not even have lunch together), but because so much effort went into just holding the meeting. So, it was no surprise that the meeting was anticlimactic. In hindsight, the timing was not optimal as South Koreans were engrossed in the Park administration’s decision announced a few weeks earlier to replace history textbooks for middle and high school students with government-issued textbooks beginning in 2017. This became a fiercely debated issue for South Koreans, and one that eclipsed any foreign policy agenda involving Japan (and hence, death of the foreign by the domestic, or domesticide).

The Japanese media kept a close eye on the ensuing nationwide antigovernment rallies and demonstrations in Korea – after all, there are obvious connections to Japan. As an article in The Nikkei phrased it, “If Park finds her own government accused of softness toward the Japanese [against this background of “historical revisionism”], she may feel forced to take a harder line against Tokyo to defend herself.” But there was another ‘textbook’ issue (with more direct bilateral implications) that was buried in the domestic unrest. In the “letters to the editor” section of the December issue of Perspectives on History, 50 scholars (48 of whom are affiliated with an institution in Japan) released a statement that demanded corrections to the McGraw-Hill textbook on contents regarding the description of the “comfort women/sex slaves.” Excerpts from the letter state that “Writers of fiction have license to create alternative realities using their imaginations, but history textbooks written by serious scholars should contain nothing but
demonstrable truths,” and continued on to claim that “we have to say that the credibility of the McGraw-Hill textbook as a whole should be seriously questioned as 8 errors of fact in only 26 lines, mentioned earlier, on the comfort women were found in the textbook…. This is a problem that affects the prestige of American historians as a whole.” While acknowledging that the government was aware of the latest letter, South Korea’s Foreign Ministry spokesperson cautioned that denial on the part of Japan will invite backlash from the international community.

The developments were unfortunate, as the two countries had agreed at the Abe-Park summit to accelerate negotiations to resolve the “comfort women/sex slaves” issue. Amidst working-level talks on the topic in November and December, there was speculation about a movement toward a joint China-South Korea effort to have “comfort women/sex slaves” documents registered with UNESCO’s Memory of the World Register, after China’s sole application for endorsement was turned down at the 12th International Advisory Committee’s (IAC) meeting in Abu Dhabi on Oct. 4-6, 2015. The IAC is the 14-member body that is tasked with advising UNESCO on the planning and implementation of the project (its meeting documents can be accessed here). Nevertheless, the Park administration kept a relatively low-key stance by deferring (or deflecting) the decision to the Women’s Humans Rights Commission of Korea (WHRCK), a Seoul-based group that is supported by the Ministry of Gender Equality and Family. The WHRCK has a specific team dedicated to assisting the victims of sexual enslavement by the Japanese military.

There are also legal matters to consider as the Japanese government views the 1965 treaty with Korea to have resolved all wartime compensation, thereby applying a “humanitarian” veneer to the “comfort women/sex slaves” issue. The Korean government does not see Japan as having exonerated from all legal responsibility by the 1965 treaty. In fact, academia and law collided on this very issue with the indictment of Park Yu-ha, a professor at Sejong University, who went on trial on Dec. 14. Park was indicted on charges of defamation, for her 2013 book, Comfort Women of the Empire, which stirred controversy for its portrayal of the Korean women as “prostitutes” who served the Japanese empire rather than conscripted victims, and the active involvement of Koreans in recruiting the women to the service. An article in the New York Times contained some interesting comments made by Park during an interview: “Whether the women volunteered or not, whether they did prostitution or not, our society needed them to remain pure, innocent girls ... if not, people think they cannot hold Japan responsible.” While Park’s book is divisive, it is hard to deny her claim that the former victims have become mostly “symbols,” relegated to some means (to greater leverage in political negotiations with Japan) rather than an end (receiving greater financial and psychological assistance and care).

The absence in the “agency” of such victims became clear with the landmark accord between Seoul and Tokyo on Dec. 28, wherein Japan made an apology and promised an $8.3 million payment that would go into a fund to provide assistance for the victims. It is too early to analyze the ramifications of the deal (we will do that in the next edition), especially as there are conflicting reports about each party’s understanding of the details of the settlement. For instance, is the removal of the statue located in front of the Japanese Embassy in Seoul a precondition for Japan’s implementation of the settlement? The immediate reception in both countries was mixed, foreshadowing a bumpy few weeks, especially for the Korean government, which is already facing domestic criticism that it sold out the victims to political expediency.
In the end, it may be fortuitous that the latest letter by the 50 scholars on the McGraw-Hill textbook did not pick up as much steam in the media and was partly eclipsed by Korea’s own textbook concerns. Nevertheless, to witness parallel movements – the aforementioned letter signed by 50 scholars, alongside a statement supported by 154 (Korean and foreign) scholars protesting moves to nationalize history textbooks in South Korea – should give us pause about what it means for the politicization of academia. Especially if it has side-effects, such as perpetuating a sense of US-centricity and the notion that somehow Korea’s road to the world runs through the US. For instance, the letter signed by the 50 scholars includes a paragraph about how “The efforts of American historians will determine whether or not future generations of Americans will have the correct historical view, which will be extremely important for the United States as well as for the rest of the world.” Of course, this may just be rhetoric and simply a way to demonstrate generalizability for a cause that is deemed worthy. But targeting a private actor (McGraw-Hill) that is obviously not the “mouthpiece” of a government only solidifies a hierarchical vision of scholarship that places the US at its core.

The statement issued by the 154 scholars highlights a more salient point: it argues that “The [South Korean] government’s plan to mandate its own Korean history textbooks not only tarnishes Korea’s international standing as a democratic country, it also weakens Korea’s moral standing in the regional dispute over Japanese government historical revisionism.” It ends by claiming that “Many outside Korea are monitoring the ongoing textbook controversy, and it is our sincerest hope that the Korean government will act in a way befitting Korea’s global stature in the twenty-first century.” So the focus remains on Korea and the self-defeating nature of its actions for its foreign policy. The critique was magnified as the latter half of 2015 was a particularly poignant period for civil liberties, with the “migrant crisis” being condensed into one tragic photo of a dead refugee baby (most likely from Syria) that washed ashore on a Turkish beach. Not long after publication of the photo, an editorial in the Sept. 15 USA Today reported on the abysmal figures regarding asylum seekers and their lack of success in South Korea and Japan: in 2014, South Korea granted refugee status to 94 people (out of 2,900 applicants) while the record for Japan was even worse at 11 out of 5,000 asylum seekers; the US reportedly accepted more than 70,000 refugees in 2014.

More rulings and the surge of “ghost ships”

In a strange twist where the legal system meets North Korea, Reuters reported on Dec. 2 that North Korea’s leader Kim Jong Un’s aunt and her husband – who defected to the US in 1998 – filed a defamation suit in Seoul against three defectors for 60 million won ($51,612).

Specific to the Pyongyang-Tokyo relationship, the North figured into the overarching theme of outstanding legalities in three particularly interesting ways. First, The Asahi Shimbun reported in early November on the ruling by the Japanese Supreme Court to uphold a lower court’s ruling to approve the purchase of the Tokyo headquarters of the General Association of Korean Residents in Japan (Chongryon). The court rejected the complaint filed by Chongryon in May to approve the sale of the property to Shikoku-based Marunaka Holdings, thereby prompting the group to vacate the premises. Second, Chongryon made headlines again in South Korea after the Daejeon District Court on Dec. 2 sentenced a 42-year-old man to three years imprisonment based on the
National Security Law/Act. The man had purportedly been lured into the Chongryon during his studies in Japan and was charged with collaborating with the pro-North Korean organization. Third, Jiji Press announced that the Kyoto District Court had sentenced the second son of Ho Jong-man, head of Chongryon, to 20 months in prison for illegally importing matsutake mushrooms from North Korea to Japan. The court also sentenced the president of the Chongryon-affiliated Tokyo trading company to two years imprisonment and a fine of ¥2 million (roughly $16,533). This last bit of news was picked up by the Korean Central News Agency (KCNA) on Dec. 12, stating that “The recent judgment [by the Kyoto District Court] will bring serious consequences to the DPRK-Japan relations and the judge who made the unprecedented mistake in history of the Japanese judiciary being subservient to power will never be free from remorse for his crimes.”

Nevertheless, the Pyongyang-Tokyo relationship was subsumed by the abduction issue. It was mostly a continuation of the status quo despite Japan’s efforts to make progress. There was some internal reshuffling of personnel in October, with Kanai Masaaki becoming the director of the Northeast Asia Division in Japan’s Ministry of Foreign Affairs (MOFA), replacing Ono Keiichi, who became director of the Management and Coordination Division. Moreover, Ishikane Kimihiro became the director general of the Asian and Oceanian Affairs Bureau, replacing Ihara Junichi, who became the head of Japan’s permanent mission to international organizations in Geneva. Worth noting was the apparent open line of communication between the two states. Kyodo News reported on Dec. 12 that the two countries held at least two informal working-level meetings in China in November on the abduction issue, and that the North had revealed the findings of a new burial site on the outskirts of Pyongyang.

The clandestine nature of the meetings may have been prompted to some extent by persistent pressures from both the domestic and foreign audience. There was a mass public gathering held in Niigata in November called the “Never Forget the Abductees Assembly,” led by parents of Yokota Megumi – the Japanese woman who was abducted by North Korean agents in 1977 and who has come to symbolize the intractable nature of the abduction issue. There was also news of a North Korean internal document most likely dating back to the 1990s, with contents about abducting foreign targets. Apparently, the 356-page “manual” was used as part of the intelligence curriculum at the Kim Jong Il Political-Military University and represents the first physical evidence of such a program by the North.

Meanwhile, North Korea was facing its own pressure at the UN with the General Assembly (UNGA) resolution in November to refer the country to the International Criminal Court (ICC) for its human rights abuses, and a Security Council (UNSC) meeting on its human rights violations in December. The accusations really gained attention when the media started to capitalize on the story of “ghost ships” containing headless skeletons or rotting corpses originating from North Korea and drifting into Japan’s waters. As pointed out by CNN, it is not so much the actual discovery of such ships, which has been happening for years, but the sheer number of boats found in the short amount of time. The Japanese Coast Guard found 12 boats within just five weeks (and a total of 283 boats in five years from 2011). Speculation was that the victims were most likely those in the fishing industry, especially given the push by Kim Jong Un for increased output.
So while keeping the bilateral channel open, Japan for the greater part of the September-December period sought influence vis-à-vis Pyongyang through indirect diplomacy. For instance, Prime Minister Abe made a stopover in Mongolia (for five hours) as part of his Central Asia tour in October, a relatively last-minute scheduling decision that some speculate as being important for sustaining Mongolia’s continued cooperation on resolving the abduction issue with North Korea (and on Mongolia’s part, a good chance to leverage its ties to North Korea to reinforce economic ties with Japan). A similar thing could be said regarding India. In November, Hiramatsu Kenji, the former head of MOFA’s Foreign Policy Bureau, was appointed as Japan’s ambassador to India and rushed into office in time for Abe’s three-day visit for talks with India’s Narendra Modi starting Dec. 11. Among other achievements, the joint statement from the talks shared concerns about North Korea’s nuclear program and urged the North to “address at the earliest the abductions issue.”

Early 2016: the months ahead

Barring unforeseen circumstances, Korea-Japan relations in the first third of 2016 will probably be dominated by discussion and debate about the landmark “comfort women/sex slaves” agreement reached late in 2015. As we noted, it is not at all clear what the agreement actually entails. It will be particularly interesting to see whether both governments can constrain civil society. The agreement states that it will put the issue to rest “finally and irreversibly.” Whether either side can refrain from bringing up the issue again will be particularly interesting, especially in two democratic societies where civil groups have far more leeway to raise the issue. Prime Minister Abe has long courted rightist groups that may see the agreement as going too far, while President Park faces groups in Korea that may view the agreement as not going far enough. Only time will tell how much this agreement has lowered tensions between the two countries.

Chronology of Japan-Korea Relations
September – December 2015

**Sept. 13, 2015:** Second trilateral Agricultural Ministers Meeting is held in Tokyo bringing together South Korean Agricultural Minister Lee Dong-phil, Chinese Vice Agriculture Minister Chen Xiaohua, and Japanese Agriculture and Fisheries Minister Hayashi Yoshimasa.

**Sept. 24-25, 2015:** Eighth round of negotiations (Chief Delegates Meetings) on a Free Trade Agreement (FTA) among Japan, China, and South Korea is held in Beijing.

**Sept. 27, 2015:** Prime Minister Abe Shinzo and President Park Geun-hye meet briefly at the United Nations (UN) on the sidelines of the 70th session of the UN General Assembly.

**Sept. 28, 2015:** World Trade Organization’s (WTO) Dispute Settlement Body (DSB) establishes a panel after Japan reiterates its concerns that South Korea has adopted and maintains Sanitary and PhytoSanitary (SPS) measures (import bans) that are inconsistent with provisions of the SPS Agreement. For a summary of the dispute to date, see here.

**Sept. 30, 2015:** Japan’s Foreign Minister Kishida Fumio meets South Korean counterpart Yun Byung-Se in New York.
Sept. 29-30, 2015: Yamatani Eriko, Japanese minister in charge of the abduction issue, emphasizes the abduction of Japanese nationals by North Korea at the 10th ASEAN Ministerial Meeting on Transnational Crime (AMMTC), which takes place in Kuala Lumpur, Malaysia.

Oct. 7-9, 2015: Komeito Chief Representative Yamaguchi Natsuo visits Seoul and meets President Park to deliver a personal letter from Prime Minister Abe expressing his interest in a bilateral summit on the sidelines of the trilateral meeting involving China.

Oct. 8, 2015: China, Japan, and South Korea hold 15th Trilateral Finance Ministers in Lima, Peru, on the sidelines of the G20, International Monetary Fund (IMF) and World Bank meetings.


Oct. 18, 2015: Justice Minister Iwaki Mitsuhide and Internal Affairs and Communications Minister Takaichi Sanae pay respects at the Yasukuni Shrine, a day after Prime Minister Abe sends his offering, inviting protest from South Korea.

Oct. 20-22, 2015: Defense Minister Nakatani Gen visits South Korea and meets Defense Minister Han Min-Koo.


October 30, 2015: Tenth Trilateral (China-Japan-ROK) Economic and Trade Ministers Meeting is held in Seoul; all sides agree to cooperate in establishing a free trade agreement (FTA) and promoting the Regional Comprehensive Economic Partnership (RCEP).

Nov. 2, 2015: Prime Minister Abe and President Park meet for the first time since May 2012 in Seoul, on the sidelines of a South Korea-Japan-China summit.

Nov. 4, 2015: Japan’s Supreme Court upholds a lower court ruling to approve the purchase of the Tokyo headquarters of the General Association of Korean Residents in Japan (Chongryon).

Nov. 11, 2015: Ishikane Kimihiro, director general of the Asian and Oceanian Affairs Bureau at Japan’s Ministry of Foreign Affairs, meets South Korean counterpart Lee Sang-duk in Seoul.

Nov. 11, 2015: Tokyo Shimbun announces that it has acquired a 356-page secret manual that instructs North Korean agents about carrying out abductions abroad and evading capture.

Nov. 15, 2015: Mass gathering in Niigata, the “Never Forget the Abductees Assembly,” is led by parents of Yokota Megumi.

Nov. 19, 2015: UN General Assembly passes a resolution calling for North Korea to be referred to the International Criminal Court (ICC) for its human rights violations.
Nov. 26, 2015: Nukaga Fukushiro, a senior lawmaker in the Liberal Democratic Party (LDP), attends as Japan’s special representative the state funeral for former South Korean President Kim Young-sam, who died on Nov. 22.

Nov. 28, 2015: Yonhap News reports a failed DPRK submarine-launched ballistic missile test.

Dec. 2, 2015: CNN reports that at least 12 boats with 22 decaying bodies aboard have been found shipwrecked on Japan’s coasts over the past two months; speculated to be from North Korea.

Dec. 5, 2015: A “sex slaves” history museum opens in Daegu, the fourth such museum in South Korea.

Dec. 8, 2015: South Korean man is arrested by Japanese police in connection to a bombing in a public restroom at Yasukuni Shrine.

Dec. 7, 2015: Busan Cultural Foundation announces plans to submit a joint application to register records related to the Joseon Tongsinsa (diplomatic goodwill missions to Japan that took place during the Joseon era) on UNESCO’s Memory of the World Register by March 2016.

Dec. 10, 2015: Despite protests from China and Russia, a UN Security Council (UNSC) meeting is held on North Korea’s human rights violations.

Dec. 10, 2015: Kyoto District Court sentences Masamichi Kyo to 20 months in prison and suspension for four years, on grounds of violating Japan’s foreign exchange law for illegally importing matsutake mushrooms from North Korea.

Dec. 12, 2015: Kyodo News reports that Japan and North Korea secretly met in China several times to discuss the abduction issue.

Dec. 12, 2015: Japanese police finds a box containing feces in the parking lot of the South Korean Consulate in Yokohama, accompanied by a hand-written note declaring the package to be retaliation against the Yasukuni blast that occurred in late November.


Dec. 15, 2015: The 11th session of talks on “comfort women/sex slaves” is held in Tokyo.

Dec. 17, 2015: Kato Tatsuya, former Seoul bureau chief for Sankei Shimbun is acquitted on criminal libel and the prosecution announces that it will not appeal the court’s decision.


Dec. 28, 2015: Foreign Minister Kishida meets South Korea counterpart Yun Byung-Se in Seoul for talks on “comfort women/sex slaves.” The meeting culminates in a deal to resolve the issue.