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AD HOC INTERNATIONAL ARBITRATION IS THE KEY TO IMPROVING RUSSIAN-JAPANESE RELATIONS

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The subject. The article discusses the international legal positions of Russia and Japan that prevent the conclusion of a peace treaty between them and impede a radical improvement in relations, which is perceived as an urgent need for both sides.

The purpose of the article is to show the fundamental differences in the official positions of the governments of Russia and Japan and suggest a fundamentally new diplomatic and legal solution to the long-standing territorial dispute among the states, which will result in finally breaking the deadlock.

Methodology. The research is based on the methods such as historical research, formal logic, including analysis, synthesis, and modeling, as well as systematic, comparative and interpretation. Materials include national and international laws and scholarly articles, books relating to Russian-Japanese relations, as well as its international legal aspects.

The main results, scope of application. The authors note that the end of the Cold War transformed Europe. Since that time there have been a reformatting of military alliances, the unification of Germany, reconciliation of the nations warring since ancient times. All these are based on the recognition of the inviolability of the outcome of the Second World War and established territorial structure. In comparison with Europe, it had smaller consequences in Asia. All previous dividing lines and lines of conflicts are preserved. Nothing was done to reunite the divided nations. Reconciliation by and large also did not happen. One of the burning problems has remained the territorial claims of Japan to Russia on the four islands of the Southern Kuril and the unresolved long-standing dispute over affiliation of the islands. The international legal position of Russia is that the legal status of the islands was determined by the results of the Second World War. Japan proceeds from the premise that the Islands historically belonged to it and the actual sovereignty of Russia over them does not change the case. Since the international legal positions of the sides do not have any common ground, it is pointless to argue about them or try to change them.

Conclusions. In this situation the only possible wise and fair solution is to bring the dispute beyond the framework of bilateral relations for quite a long time, which will need to be used for their radical improvement. In the article the authors explain in detail how it can be done. In particular, it is proposed to establish a special Russian-Japanese international court ad hoc. The study explains and justifies its possible mandate, the procedure of formation and the role of the agreement establishing such a Court in the conclusion of a peace treaty between the sides. It is shown how and under what circumstances the activities of the Court can be successful and bring the desired results.

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1. Introduction

Building mutually beneficial balanced relations with all the leading countries of the region to which the state or part of it belongs is the alpha and omega of an foreign policy that is reasonable, prudent and looks to the future.

For example, over the past few years, relations between Russia and China have experienced an impressive surge. Their volume has grown significantly[1]. They have acquired strategic depth. The parties continue to link the Silk Road Economic Belt with the activities of the Eurasian Economic Union, paving the way for a Comprehensive Greater Eurasian Partnership. Or take the relations between Russia and India. The summit of the leaders of the two countries (December 6, 2021) showed that the strategic partnership between Russia and India is also on the rise and, despite some "rough edges", retains its viability[2].

However, this is not yet the case between Russia and Japan. In the 21st century alone, Vladimir Putin met with the head of the Japanese government about 30 times, and relations between our states, it would seem, should develop dynamically, but aren't. They seem to be flatlining, and despite numerous summits and initiatives, frankly, there is no further progress. Divergences between Moscow and Tokyo in international legal approaches to solving a number of fundamental issues on the global, regional and bilateral agenda prevent a breakthrough (not to mention Japan's accession to sanctions triggered by the events in Ukraine and the Crimea[3]), but the main thing is the long-term absence of a solution to the main stumbling block in the development of their relations – disagreements about the ownership of the South Kuril Islands and, as a result, the signing of a peace treaty. It can be stated that since the end of the 1950s, the parties have not come close to solving this problem, and the latter has long acquired a routine, long-standing character [1: 3].

There is an extremely diverse palette of opinions regarding the ownership of these islands, both among Russian [2; 3; 4; 5; 6; 7; 8; 9 and others] and Japanese and Western scientists [10; 11; 12; 13; 14; 15; 16; 17 et al.] who specialize in law, political science, and historical sciences. However, this issue is relevant not only in scientific circles. This even encouraged J. Stefan to claim that "The Kuril Islands have not one, but many "stories", each of which reflects a special (usually national) point of view" [15:5].

Nevertheless, at the interstate level, two mutually exclusive positions can be distinguished on this issue, the main arguments of the representatives of which are as follows.

Thus, according to the Japanese side, at the end of World War II, the Soviet Union, in violation of a number of international legal documents (including the Neutrality Pact of April 13, 1941 г.[4]), attacked Japan, and then, proceeded to occupy the islands of Kunashir, Iturup, Shikotan and the Habomai Island group, which (both the USSR itself, and Russia as its successor) refused to return under Japanese sovereignty. That these islands, as part of the Kuril Islands, were transferred to the USSR under the terms of the Yalta Conference, with Japan itself not taking part in it, and the Potsdam

[1] The trade turnover between Russia and China in 2021 reached a record $146.88 billion. TASS January 14, 2022. URL: https://tass.ru/ekonomika/13424783 (accessed 17.01. 2022).

[2] Zakharov A. Russia-India Summit: Is the strategic partnership still afloat? Russian International Affairs Council (INF). December 13, 2021. URL: https://russiancouncil.ru/analytics-and-comments/-analytics/sammit-rossiya-indiya-strategi-cheskoe-partnerstvo-eshche-na-plavu (accessed 17.01.2022); Ivanov S. What Russia and India agreed on and what it means for China and the USA. Arguments of the week. December 12, 2021. URL: https://argumenti.ru/opinion/2021/12/750751 (accessed 17.01. 2022).

[3] See.: Lavrov: relations between Russia and Japan have become complicated due to the sanctions imposed by Tokyo TASS 21.01.2015. URL: http://tass.ru/politika/1711383 (accessed 17.01.2022)..

[4] The Neutrality Pact between the Union of Soviet Socialist Republics and Japan, concluded in Moscow on April 13, 1941. Foreign Policy of the USSR: a collection of documents. Vol. IV (1935 - June 1941). M., 1946. p. 550.

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Declaration of 1945 (which demanded Japan's unconditional surrender in World War II on the terms proposed by the Allied powers), as well as the terms of its surrender, do not contain references to the Yalta Agreements. In addition, all these islands do not belong to the "territories which she [Japan] has taken by violence and greed" mentioned in the Cairo Declaration of 1943, and Shikotan and Habomai do not belong to the Kuril Islands at all, but are part of the island system of Hokkaido[5]. Japan did indeed renounce the rights to the Kuriles in accordance with the San Francisco Peace Treaty, but it does not specify in favor of whom it renounced these rights, and the contractual provisions formulated in Article 25 of this international legal act do not allow the USSR to be considered as such (since it did not sign this peace treaty[6]). And, in their opinion, before concluding a peace treaty, it is necessary to settle historical justice and resolve the problem of territorial demarcation between the two countries on the basis of returning all these islands under Japanese sovereignty.

In turn, Russia believes that the Non-Aggression Pact was terminated four months prior to the USSR, fulfilling its ally obligations, entering the war with Japan, and considers Japan's territorial claims groundless. It regards the matter primarily as responsibility for aggression[7]. The unconditional surrender of Japan means not only the recognition of military defeat, but also the obligation to indisputably implement any decisions of the victorious allied powers, in the adoption of which the States that signed such a surrender need not participate. This also applies to the issues of ownership of specific territories. Hence, the “unconditional” part. The mentioned Kuril Islands became part of the USSR in pursuance of the decisions of the Yalta Conference of 1945[8] and is a fundamental outcome of the Second World War, meaning Japan's demands regarding the South Kuril Ridge are nothing more than an attempt to rewrite these outcomes. The international legal justification of the Japanese claims does not take into account the Yalta Conference, the surrender and the legal formalization of the results of the Second World War, including the verdict of the Tokyo Tribunal. According to the San Francisco Peace Treaty of 1951 Tokyo was deprived of all rights, legal grounds and claims to the Kuril Islands and Sakhalin, and the documents of the Yalta Conference do not allow determining any other owner of the Kuril Islands, except the USSR[9]. In addition, approaches to territorial demarcation were defined in the Joint Declaration of 1956 (ratified by Japan and the USSR), according to which the islands of Kunashir and Iturup were generally excluded from the subject of territorial disputes, and the fate of Shikotan Island and the Habomai Island group was to be decided after the signing and ratification of a peace treaty between these states. A treaty that failed to be signed at the time because of Japan.

There is also a certain dead-end, in our opinion, branch of the discussion.

People sometimes talk about the indisputability of Russia's sovereignty, not only because of the results of the Second World War, but also stemming from the principle of acquisitive prescription, which famously is based on long-term de facto and continuous possession of territory, including one that used to be owned by another state [7; 18: 39-48; 19: 107-119; 20: 332, 334-335; 21: 103, 337-338, 339]. Such ownership should be open, peaceful and unhindered [21: 106; 22: 322; 20: 340].

A whole other matter is that international law does not (and likely, never will) establish a specific time that must pass before a country acquires the acquisitive prescription right to claim a territory. However, Hugo Grotius believed that, as a rule, such dates "obviously do not equal a century

[5] It should be recognized that Habomai, most likely, really belong to it.

[6] The San Francisco Peace Treaty (1951). Collection of documents and materials on Japan (1951-1954). - Moscow: DPO MFA of the USSR, 1954. pp. 89-104.

[7] Today, no one disputes the fact that international law considers legitimate territorial changes of the aggressor State after its defeat as one of the forms of it assuming responsibility for committing aggression, as well as a measure to prevent new aggression.

[8] For more information about the validity of the Yalta Agreement of 1945, see: [2: 525-528].

[9] See: The history of the Russian-Japanese territorial dispute. Dossier. TASS. 14.12.2016. Access mode: https://tass.ru-/info/3873269 (accessed: 17.01.2022).

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exactly, although the number ends up around that value anyway" [23: 233]. J.K. McGibbon believed that in this matter everything depends on "the intensity with which the demand is manifested; on the publicity surrounding its announcement or execution; on the nature of the claimed right; depending on the situation and condition of the affected territory; and so on" [24:164-165].

It would seem that everything is exactly as we've described and all these conditions seem to be there: Sovereignty over the South Kuril Islands has been openly, peacefully and unhindered exercised by our State for many decades. But there is one essential detail here: it is crucial that the state under whose sovereignty this territory used to be, did not protest or express its disagreement with this territorial occupation in any other way (see details: [7; 21:106; 22: 322]). And the first Japanese official protests (albeit at the regional level) took place as soon as 1946 (see more details: [15: 198; 16:27]), and have continued on behalf of the entire state to the present time.

2. Refusal of reconciliation as Japan's centerpiece in the issue of ownership of the South Kuril Islands

Post-war "pacification" in Europe was different from the same process in Asia. In Europe, the powers managed to solve the difficult task of reconciling long-time warring nations, the conflict between which had claimed so many lives. Reconciliation became a reality in relations between European states despite numerous facts of outright genocide perpetrated by Germany against the Slavic peoples and Jews, a myriad of violations of the laws and customs of wars, including when the country occupied foreign state territory, as well as the ferocity of the military clashes that took place there. At the same time, it should be emphasized that all these results were achieved without any change in the post-war borders and territorial exchanges, moreover, in conditions when all states in Europe (both winners and losers) unanimously agreed (and even insisted) on the inviolability of the European borders formed following the Second World War, and the inadmissibility of challenging them. Everyone understood the disastrous consequences such a review and challenge could lead to. As a result, the political, economic and social development of the region followed a fundamentally different track.

There was no such reconciliation in Asia. The memory of the monstrous crimes of Japanese militarism is firmly imprinted in the minds of the Chinese, Korean and other affected peoples. As a result, the very configuration of international conflict situations has largely remained the same. The faults run along the old lines of tension (some of which arose even before the Second World War) in relations between India and China (although there has been significant progress here), Japan and China, Japan and Russia, etc. This sector was "supplemented" with even more tensions, related, for example, to questions regarding the ownership of islands in the South China Sea (and adjacent areas) and the systemic confrontation between South and North Korea. Not to mention the not exactly smooth relations several countries of the region have with the US.

Against this background, former Japanese Prime Minister Nakasone Yasuhiro in 2011-2012 took the initiative to study to what extent the European experience of reconciliation can be applied to relations between Russia and Japan. This fact was never particularly advertised and information about the meetings that took place (in which one of us took part), about the work that was carried out and the statements made by Y. Nakasone did not become public. And this outstanding leader of the political class of Japan spoke quite directly. For example, he said that great nations should look to the future, not to the past. The rubble of former times should not be nurtured, but raked away. The absence of normal relations is an anachronism, it hangs like weights on the hands and feet of our peoples, hinders their development and hinders the restructuring of the entire region. All interested States should work together to resolve the situation. If reconciliation were possible, and it is not only possible, but also necessary, any unrealistic projects so far would become a little more feasible. Of course, there was no talk about the Berlin–Moscow–Tokyo axis, but he undoubtedly implied a larger trans-regional cooperation. However, this initiative has not been picked up on nor were the correct and vital words of the Prime Minister.

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So, while, in its relations with France, Poland, the USSR and all other states, Germany fully and definitively recognized the outcomes of the Second World War and, in particular, the territorial structure of Europe, which was established at the relevant meetings of the leaders of the victorious powers and enshrined in multilateral international treaties[10], things turned out quite differently with Japan, with Tokyo continuing to persistently challenge Russia's ownership of the four islands of the Southern Kuriles. Disputes have been going on for many decades, but no arguments provided by the parties are able to convince their opponent. The peace treaty between Russia and Japan has not yet been signed. The proposal to sign a peace treaty with Japan without preconditions, made by Russian President Vladimir Putin in September 2018, was rejected by the Japanese leadership[11]. Admittedly, the situation has basically reached a dead end.

Its settlement (if there is good will) could technically be helped by the United States, which, under the San Francisco Peace Treaty of 1951, received special rights in relation to Japan and assumed special obligations towards it. But they still failed to ensure the organic, conflict-free integration of Japan into the system of post-war international relations and, pursuing their own interests, in the conditions of the unfolding cold war, frankly speaking, they chose to let Japan go ahead with its territorial claims. And later on, they have done nothing for a just and lasting settlement of territorial problems that poison Tokyo's relations with Beijing and Moscow. Moreover, the United States has done everything possible to prevent such a settlement from taking place. For example, they did everything in their power to prevent the signing of the Joint Soviet-Japanese Declaration of 1956[12] (which, as you recall, was supposed to serve as the basis for concluding a peace treaty between these two neighboring states) [15:219], and when the Declaration was despite all this still signed, they initiated the signing with Japan of a deliberately unfriendly Agreement on mutual cooperation and security guarantees (January 1960)[13]. With this in mind, on January 27, 1960, the USSR Government was forced to declare that it refused to consider the transfer of the islands, and the conclusion of a peace treaty was postponed for many years[14].

The purpose of such a policy is clear. Having made Japan completely dependent on its security guarantees, the United States has firmly tied it to its own foreign policy course.

Nevertheless, this Declaration was a significant step to normalizing the relations between Japan and the USSR. Despite its name, it should, of course, be recognized as an international treaty. In addition to the subject composition and the

[10] On these grounds, Germany was included in the system of international relations and has never questioned them.

[11] See: Kazarnovsky P., Basisini A. The Japanese authorities do not support Putin's idea of a peace treaty without conditions [Electronic resource]. RBC. 12.09.2018. Access mode: https://www.rbc.ru/-politics/12/09/2018/5b98efd39a-794724b0f74365 (accessed: 02/17/2022).

[12] Joint Declaration of the Union of Soviet Socialist Republics and Japan of October 19, 1956. Vedomosti of the Supreme Soviet of the USSR, 1956, No. 24, article 525.

[13] This treaty confirmed the right of the United States to establish and use military bases on the territory of Japan and imposed on the latter the duty to protect them in the event of an attack. Thus, nothing in theory would prevent the United States from creating such bases on the islands transferred to the USSR and located in its "underbelly".

[14] On January 27, 1960, Moscow sent a memorandum to Tokyo, which noted: "By agreeing to the transfer of these islands to Japan after the conclusion of a peace treaty, the Soviet government met the wishes of Japan, took into account the national interests of the Japanese state and the peace-loving intentions expressed at that time by the Japanese government during the Soviet-Japanese negotiations. But the Soviet Government, considering that the new military treaty signed by the Government of Japan is directed against the Soviet Union, as well as against the People's Republic of China, cannot contribute to the fact that the transfer of these islands to Japan would expand the territory used by foreign troops. In view of this, the Soviet Government considers it necessary to declare that only on condition of the withdrawal of all foreign troops from the territory of Japan and the signing of a peace treaty between the USSR and Japan, the Habomai and Shikotan islands will be transferred to Japan as stipulated by the Joint Declaration of the USSR and Japan of October 19, 1956." See: News (gazeta Izvestiya) of January 29, 1960.

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intention of the parties to assume international legal obligations under it, this is confirmed by the need for its ratification[15], indicating the entry into force and equal force of its copies. This historic document ended the state of war between these two States and restored diplomatic relations between them.

Paragraph 9 of the Declaration explicitly stated: "The Union of Soviet Socialist Republics and Japan agree to continue, after the restoration of normal diplomatic relations between the Union of Soviet Socialist Republics and Japan, negotiations for the conclusion of a Peace Treaty. In this connection, the Union of Soviet Socialist Republics, desiring to meet the wishes of Japan and taking into consideration the interests of the Japanese State, agrees to transfer to Japan the Habomai Islands and the island of Shikotan, the actual transfer of these islands to Japan to take place after the conclusion of a Peace Treaty between the Union of Soviet Socialist Republics and Japan", and from the point of view of the issue we are investigating, this is the commitment requires an explanation.

First of all, this is merely the parties both expressing the intention to conclude a Peace treaty in the future - nothing is said here about the specific content of such a treaty, nor about the obligation to include provisions on the transfer of islands in its text. Second, the phrase "after the conclusion of a peace treaty" can be considered as an indication of a clear sequence of actions: first, a peace treaty must be concluded, and only after will the issue of the transfer of the islands be resolved[16]. At the same time, there is no indication regarding the terms of such a transfer, "after" can mean literally any time, even if there already is a Peace treaty that has entered into force. In other words, paragraph 9 of the 1956 Declaration is a blank and insufficiently specified intention of the parties, the essence of which boils down more to the desire to continue negotiations on this issue. As it is customary to say in the Russian Foreign Ministry today, this is nothing more than "the parties agreeing to negotiate further."

It is important to note here that the Declaration does not mention the recognition of any legal title of Japan over the transferred islands. Moreover, it emphasizes that the transfer of the islands does not equal their **return** (which for some could serve as ground to claim the illegality of the long–existing effective control over these territories by the Soviet state), but rather the transfer, i. e. no more than an act of goodwill on its part.

3. Some factors influencing Russia's inflexibility on the issue of ownership of the South Kuril Islands.

The transfer of the islands to Japan as an act of recognition of its alleged entitlement to these territories could inevitably cast doubt on the inviolability of the results of the Second World War. And as the tragic consequences of the unilateral declaration of independence of Kosovo show, any incident or excuse may be enough for kindred, close and even only barely similar situations to be solved in a similar matter, regardless of whether anyone recognizes it as just or not. Remove a single supporting element from the general construct of the post-war architecture - the transition of the Kuril Islands under the sovereignty of Russia, and the legitimacy of all borders in Europe will suffer as a result. Including other borders of Russia, and the borders of Belarus, Poland, Germany, etc.

The change of State sovereignty over such territories is possible, but only on the basis of an international treaty that is legitimate from the point of view of modern international law, in which the mutual voluntary will of the States participating in it would be expressed, and not the unilateral demand of the "offended" State. Thus, we believe that a concession in the question of the ownership of the islands of the so–called "Lesser Kuril Chain" - the islands of Shikotan and the Habomai island group is possible in principle (as shown by the conclusion of the 1956 Declaration), but, as we recall, solely as an act of goodwill, and not as an act of recognition of someone's legal claims[17].

[15] This Declaration was ratified by the Presidium of the USSR Armed Forces and the Government of Japan on the same day - December 8, 1956.

[16] The text doesn't stipulate whether such a transfer should take place on the basis of a separate agreement or on the basis of the very fact of concluding a Peace treaty.

[17] Otherwise, we repeat, it would be an obvious act of

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The uncompromising position of our state in relation to the islands of Iturup and Kunashir is primarily explained by the fact that these islands (like all other islands of the Kuril Ridge) have a special strategic importance for our country: If necessary, they will serve as a shield, the first line of defense of the continental part of the territory of Russia from the Pacific Ocean, since they quite effectively cover access to the Okhotsk and partially Barents Seas. We don't need any gaps in this shield. Additionally, the straits between the South Kuril Islands are of crucial importance for the passage of Russian strategic missile submarines from the Sea of Okhotsk and back - the basis of Russia's naval power. In other words, we are talking about indefinite strategic interests in the field of military security of our state, and there can be no deviations in this matter. It would be good for Japan to understand this[18].

We'd also like to note one more point that is constantly invisibly present in this issue. Japan is not going to make concessions with respect to the islands that Tokyo considers its own, not least because making claims to them has already become a kind of tradition for this state, an element of political culture, one of the mandatory political slogans. More than one generation of Japanese people grew up on them[19]. Any Prime Minister of Japan who would secure (all!) the South Kuril Islands would forever be immortalized as a national hero of his people. But likewise any president of Russia (as well as the parties that support him) that would allow such a transfer (hypothetically) occur would inevitably see their rating plummet, but also lose the trust of Russians, due to the fact that the absolute majority of Russian citizens are strictly against this, because they perceive the acquisition of the isles precisely as the result of the real implementation of Japan's international legal responsibility for acts committed during the Second the World War, to end which hundreds of thousands of Soviet soldiers gave their lives. Moreover, in our opinion, the transfer of these islands in modern conditions cannot bring our country any special benefits in economic and political terms (besides the normalization of relations with its neighbor), and the very fact of the transfer of the required islands to Japan, despite the grounds for such a transfer, will only serve to give part of the Japanese society the idea that their demands are just, and therefore more of the latter will soon follow.

4. Possible options for the parties

A number of proposals were made in scientific works and international diplomatic practice aimed at resolving the situation between Russia and Japan over the South Kuril Islands. Let 's briefly cover the main ones[20].

Satisfy all Japan's claims and transfer all the South Kuril Islands under its control. We believe that this option is utopian, since it creates disproportionate problems for our state in the political, military, economic and reputational spheres, and also calls into question the ban on reviewing the results of the Second World War[21]. It is no coincidence that even the former Prime

rewriting the history of the Second World War (to which all layers of society in Russia, from radical nationalists to ultra-liberal circles and the non-systemic opposition, treat as a sacred shrine), a rejection of the real implementation of Japan's international legal responsibility for aggression during the Second World War, confirmed, in particular, by the verdict of the Tokyo Military Tribunal.

[18] Let's be realistic. It is hardly possible to influence Japan's close allied relations with the United States, which means that Japan's assurances that the US military will not be allowed to the Kuril Islands will never receive proper guarantees and can be disavowed at any time at the earliest suitable (in the opinion of Japan and/or the United States) opportunity.

[19] The very legitimacy of the claims to the islands is most intensively asserted in the public consciousness, as is the fact that in the Joint Declaration of 1956, Moscow promised to betray two islands adjacent to its territory to Japan.

[20] In the early 1990s, there was a lot of talk about the possible sale of the islands to Japan for fabulous sums [12:109], but we could not find any documentary evidence of this version.

[21] Article 107 of the UN Charter states: Nothing in the present Charter shall invalidate or preclude action, in relation to any state which during the Second World War has been an enemy of any signatory to the present Charter, taken or authorized as a result of that war by the Governments having responsibility for such action. See: UN Charter. URL: https://www.un.org/ru/about-us/un-charter/full-text (accessed 17.01.2022).

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Minister of Japan, E. Mori, called supporters of this approach "fossils of Russian-Japanese relations" (see more details: [12: 108]).

To base the territorial demarcation on the position of the Joint Declaration between the USSR and Japan in 1956. This option was at one time proposed by the leadership of Russia as a basic one, but after Japan's unilateral attempts (and even with the help of the United States) to initiate discussions regarding the ownership of the islands in the UN General Assembly, and later – its accession to sanctions against our state in connection with the well-known events in Ukraine and the Crimea, these proposals have disappeared from domestic diplomatic practices. Due to the many challenges that Russia has faced in recent years, today even such a resolution of the existing situation seems doubtful, especially since such a compromise does not meet the expectations of either of the parties, which means, unfortunately, reputational losses are inevitable for the actually ruling parties in Japan and Russia, and, of course, for their leaders.

To turn the islands into a "free economic zone" for its joint development by Russia and Japan (with different variations of economic activity carried out on this territory and with the inclusion or non-inclusion of Sakhalin Island and part of Hokkaido Island) (see for example: [25: 247;]). More recently, numerous ideas about the joint economic use of four islands, their lease for a certain or indefinite period, granting them a special national or international regime or status were widely debated in the expert community [26: 182-218]. Well, palliative solutions are also necessary. They can contribute to the main negotiations, creating a more favorable atmosphere for them.

But this approach preserves the sovereignty of Russia over the islands, and therefore is considered unacceptable by Japan. Additionally, it should be recognized that these proposals were interpreted by the Japanese side as a sign of weakness and as an indirect recognition by the Russian side of Japan's claims to these islands [27:230-231], which did not entail any serious development of economic cooperation, but did significantly "inflame" Japanese appetites.

Instead of a peace treaty, the conclusion of a friendship and cooperation accord. According to the authors of this approach, this would contribute to the development of Russian-Japanese (primarily economic) relations without linking these processes to the territorial problem [14: 41; 8: 7; 4: 75, 82-83]. We believe that this option is not a solution to the problem (especially since the state of war between the USSR and Japan was terminated by the Declaration of 1956), but an attempt to get away from it, and in a way that would favor Russia. And the conclusion of such an agreement is also hardly possible without the settlement of the territorial issue.

A multi-step plan to solve the problem. This is one of the options for solving the issue proposed back in the Yeltsin era. The first stage was for Russia to admit the existence of a territorial issue, then establish of a free economic zone on the islands (with the active participation of Japan), followed by a conclusion of a peace treaty, etc. and only after that, would the country consider of the possibility of transferring the required islands to the Japanese side (see details: [5 : 6 – 7]). One of these versions even suggested just immediately transfer Shikotan and Habomai to Japan, and then negotiate over only the islands of Kunashir and Iturup [27 : 179, 228-229; 12 : 133]. Naturally, Japan has not adopted such a plan in any of its varieties [16 : 42].

Various models of a kind of condominium, i.e. joint management of these islands. These models were offered mainly by foreigners [28 : 106-107; 12 : 84-85; 29], but neither Japan nor Russia showed any interest in them.

A peculiar variant of this approach was the proposal of the Minister of Foreign Affairs of Japan A. Taro, made in 2006: to calculate the area of these islands and divide it in half between the states [17 : 151]. The proposal was not taken seriously in view of the complexity of dividing not only the land territory, but also the exclusive economic zone and the continental shelf.

Appeal to the International Court of Justice

of the United Nations. Neither Japan nor Russia tried to appeal to the International Court of Justice[22], apparently assessing all the possible risks such a scenario would involve. In addition, Japan, of course, is well aware of the United States' conduct both during the evaluation and after, reacting to the verdict of the International Court of Justice of the United Nations on June 27, 1986. decisions in the case "On Military and Paramilitary Activities in Nicaragua and against Nicaragua (Nicaragua vs. the United States of America)", when the United States simply withdrew from the proceedings, and the subsequent non-execution of this decision was directly blocked by the US veto in the UN Security Council [30: 128].

5. Proposal to establish a Russian-Japanese international Arbitration ad hoc

States should strive to settle the territorial dispute through peaceful means of resolving international disputes, most of which are directly enshrined in Part 1 of Article 33 of the UN Charter[23]. These tools are well known and do not need to be analyzed in detail here, especially since there is much scientific literature already devoted to them (see for example: [31 : 174-175; 32; 33; 20: 341-342]).

It would seem that all these means (both diplomatic and legal) have already been exhausted by Russia and Japan: negotiations and consultations do not yield results, good offices and mediation aren't suitable either, international investigative and conciliation procedures are useless, since all the facts have long been established, and the states differ radically in their assessments and are not going to change them, individual attempts to resolve the issue in the UN cannot be considered successful, and an appeal to the International Court of Justice in this case actually provides unilateral advantages to one of the parties.

In our opinion, it is pointless to look for solutions on the ways of pushing through one's international legal position or relying on international legal argumentation. A fresh, unbiased view of the situation is needed. Such a view could be to take the claims to the islands beyond the current bilateral relations for a sufficiently long period of time. Here we should agree with the authors of the practical manual "Delimitation and Demarcation of State Borders: topical issues and ways to solve them", developed by the Department for Border Security and Border Management of the Department for Countering Transnational Threats of the OSCE Secretariat[24], that if "there is political will, even if the negotiating positions are incompatible, there should always be hope that some third party will help solve this insurmountable task"[25].

Let's take a closer look at the peaceful means of resolving international disputes enshrined in international law. International law itself "suggests" to us another similar method, which has not yet been used, - arbitration.

We believe that the role of this third party may be played by the Russian-Japanese ad hoc international arbitration created on the basis of a bilateral agreement[26], i.e. such a well–known peaceful means of resolving international disputes, which is formed by the parties to resolve a specific dispute, in our case, the ownership of part of the South Kuril Islands (the so-called "little Kuril Ridge"), i.e. the islands of Shikotan and the islands of the Habomai group. The issue of sovereignty over the islands of the Kuril Ridge itself (including Iturup and Kunashir), in our opinion, should be excluded from the agenda of negotiations between Japan and Russia altogether. In these territories, only broad

[22] Although Japan has made attempts to bring the question of the ownership of the islands to the discussion of the UN General Assembly [15: 202].

[23] It states: "The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice". See: UN Charter.

[24] Delimitation and demarcation of state borders: current issues and ways to solve them. Practical guide / Department for Border Security and Border Management of the Department for Countering Transnational Threats of the OSCE Secretariat (154 p). URL: https://www.osce.org/files/f/documents/2/8/363471.pdf (accessed 17.01.2022)..

[25] Ibid. P. 50.

[26] The consent to submit the dispute to arbitration is provided for in a special compromise agreement.

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economic cooperation of the interested parties is possible on the basis of international agreements between them, but they must remain under the exclusive sovereignty of the Russian Federation.

The decision to bring in such an arbitration mechanism will be of a third-party and independent nature, and therefore its creation will significantly reduce political risks for the leaders of states and parties supporting them, which, of course, will allow them to actually implement the relevant decisions. We believe that in today's conditions, when one side demands the "return" of all the Southern Kuriles to it, and the other in response refuses to consider the transfer of even part of the required territories, such an approach can reduce the intensity of the confrontation, allowing us to look at the current situation from a more realistic standpoint.

Arbitration does not provide services, but rather delivers justice, so it would be important to ensrhine something like the following in this Agreement: "The High Contracting Parties attach binding force in advance to the future decision of the Russian-Japanese International Arbitration they are creating. They agree to comply with all provisions of its future decision in good faith and within a reasonable timeframe, regardless of their content and the legal reasoning that will be used by this arbitration[27]. The High Contracting Parties establish that this Treaty puts the matter of the ownership of the islands to rest. They recognize this decision as legally terminating any disputes between them on the issue of sovereignty over the Kuril Islands. The Contract establishes responsibility for any attempts in any form to declare the Contract itself or its individual provisions illegitimate. The High Contracting Parties recognize this Treaty as an integral part of the Treaty on Peace, Friendship and Cooperation between the Peoples of Russia and Japan concluded simultaneously with it."

We believe that the Agreement we are proposing, within the framework of defining the mechanism for creating the said Russian-Japanese International Arbitration ad hoc, should mention that internationally-recognized judges that are entirely professional, impartial and objective and are not official representatives of any state should be elected to it (with both Parties approving each candidacy). At the same time, their nationality or citizenship alone cannot serve as a basis for refusing election if the candidacy has been approved by both States. Such a formation procedure will inevitably provide additional authority to arbitration and the parties with firm guarantees that all elements of a future international arbitration decision will be fully conscientious, thoughtful and thoroughly studied[28].

However, the question may arise here whether our proposal does not contradict Part 2-1 of Article 67 of the Constitution of Russia, which states that actions "(with the exception of delimitation, demarcation, redemarkation of the state border of the Russian Federation with neighboring states) aimed at alienating part of the territory of the Russian Federation, as well as calls for such actions"[29] are not allowed?

We believe not. Delimitation and then demarcation of borders is carried out according to an international treaty, and arbitration, fulfilling its task on the basis of a mandate received from States, only obliges them to conclude it on certain conditions. At the same time, the arbitration itself does not call anyone to anything, it only makes its decision. There are no appeals or actions specifically for the alienation of the territory of the Russian Federation, because the decision of the arbitration court carries corresponding risks for each of the parties involved in the process. And for the States participating in the proceedings in this case, we are talking about international obligations, not rights.

It is difficult to say how long it will take the Russian-Japanese international arbitration to fulfill the mandate that Moscow and Tokyo will provide it

[27] After all, "international arbitration is the hearing of a separate dispute carried out by a third party (arbitrator), whose decisions are binding on the disputing parties." See: Delimitation and demarcation of State borders... p. 50.

[28] In the doctrine, it is generally recognized that there are two main advantages of arbitration over judicial proceedings: (1) arbitration court is less formal and (2) the parties enjoy considerable freedom in choosing the judges.

[29] The Constitution of the Russian Federation (with amendments approved during the all-Russian vote on July 1, 2020). Rossiyskaya Gazeta. July 4, 2020 Federal Issue No. 144(8198).

with. But no matter how long it will take, it is important that before its end, the good relations between Russia and Japan, the establishment of which the parties will try to enforce under these conditions, acquire (let's be idealists for a little while) an all-encompassing character and become irreversible. To do this, it is necessary to ensure at least the following: to provide potential investors in each other's economy with such a legal regime for making investments that would consolidate a special system of benefits and preferences[30]. We believe that the negotiations themselves between economic entities and government agencies of Russia and Japan on the implementation of large economic, financial, technological and infrastructure projects and support for small and medium-sized enterprises should be launched simultaneously with the start of negotiations on a peace treaty. This is necessary, bearing in mind the concerns and wariness that entrepreneurs in Russia and Japan have. They were fueled by decades of legal uncertainty and nationalist sentiment. Meaning they aren't exactly willing to dive into this right away, but if the discussion of the agreement on Russian-Japanese international arbitration starts ahead of schedule, then such a movement will begin in parallel with it. The signing of a large package of specific economic contracts worth tens of trillions of yen and rubles could facilitate the ratification of this agreement, however, of course, this prospect isn't too realistic[31].

6. Conclusions

There are still no prospects for solving the key problem of territorial demarcation for Japanese-Russian relations. Russian public opinion strongly opposes making any territorial concessions to Japan[32], with Japan not being ready to give up its claims either. Today, more than ever, the situation is most likely to develop according to the worst possible scenario, where the parties, despite mutual economic and (in some ways) strategic interests may simply put an end to the idea of rapprochement and push each other to a blatantly negative political confrontation. It seems that this is being realized both in Moscow and Tokyo, but neither side seems to be willing to give in. We need a fresh approach so that both states, while avoiding losing face, can change their course and look for common ground, instead of more reasons incessantly squabbling.

The voluntary contractual transfer of territory in response to the pronounced claims alone almost always indicates the weakness of the government and deals a powerful blow to the self-esteem, self-consciousness of the people of such a state. The transfer of territory by the decision of an arbitration body (especially an international one, in the creation of which the state itself took part), usually does not entail such "collateral". Therefore, in our opinion, only the removal of the issue of the islands' ownership from the current bilateral relations and its transfer to the Russian-Japanese International Arbitration ad hoc, created on the basis of the Russian-Japanese bilateral Agreement to resolve a single issue – the determination of the owner of the island of Shikotan and the islands of the Habomai group "Little Kuril ridges". We believe that such an approach will serve not only the interests of Russia and Japan, but also the entire greater Asian super-region as a whole, and will make a significant contribution to the piggy bank of building a Comprehensive Large Eurasian Partnership capable of bringing peace and prosperity to it.

[30] In a market economy, purely administrative measures will not make any progress on these issues.

[31] The motivation of the investment policy is still not so much political as it is economic in nature, and in the current conditions of the sanctions policy against our state (including on part of Tokyo), one can hardly expect a significant increase in Japanese investment in our economy. Moreover, even if they follow, there are fears that Tokyo will demand preferences for investments that will leave only the ghost of Russia's sovereignty over the South Kuril Islands. Nevertheless, we believe that it is not a sin to work here for the future.

[32] Residents of the South Kuril Islands themselves are particularly strongly opposed to the transfer of sovereignty by Russia (96% of respondents in 2019 were against their transfer to Japan) See: Residents of the Southern Kuriles oppose the transfer of the islands to Japan. RIA Novosti. February 19, 2019. URL: https://ria.ru/20190219/1551053278.html (accessed 17.01.2022).

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