Discussion
Process of Authoritative Decision Making

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I'd like to talk about what I have felt from the presentations comprehensively from the perspective of an international law scholar. I think it would be easier to understand Naming dispute between Korea and Japan if we see **that issue** through the peaceful settlement regime as well as through **the meaning of process in international law.**

Traditionally, peaceful settlement of international disputes has been a fundamental principle of international law. It is formulated as such in the UN Charter (Article 2.3), and developed in UNGA Resolution 2625 (XXV) on **"Principles of International Law concerning Friendly Relations and Co-operation among States".** The origins of this principle can be traced back to the first Hague Peace Conference in 1899, which produced a **Convention for the Pacific Settlement of International Disputes**. The second Hague Peace Conference, in 1907, yielded another Convention for the Pacific Settlement of International Disputes.

Within the League of Nations' Covenant, this commitment to peaceful dispute settlement was reinforced by a moratorium on the use of force. The states' obligation to resolve their differences by pacific methods gained all its significance when the prohibition of the use of force was eventually formulated in article 2.4 of the United Nations Charter(Article 2.3; Article 33).

On the basis of this principle, Article 33 of the UN Charter presents a non-exhaustive list of pacific methods for dispute settlement, including **negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, and resort to regional arrangements**. As established in the UN Charter, Article 37.1, if the parties' efforts to solve their dispute should fail, they fall under the obligation to refer it to the Security Council.

Within the field of peaceful settlement of disputes, less attention has been devoted to diplomatic means of settlement. Nevertheless, international lawyers have acknowledged that nonbinding dispute settlement methods such as diplomatic means are worth being examined as a source of interstate practice. Actually, diplomatic means of dispute settlement are growing increasingly relevant at the present moment.

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It can be said that peaceful and diplomatic settlement of the naming dispute between Korea and Japan could not be more desirable than any other means of dispute settlement.

It is worthwhile noting that in this session a process was emphasized in the context of "Materializing Ideas, Powers, and Politics". Actually concept of process has been one of the most controversial factors/issues in the field of international law since WWII.

For example, since then law has been regarded as a process of decision making in the social community from the perspective of l**egal process theory** or **policy oriented jurisprudence approach**. According to that approach, international law, as all law, is a **continuing process of authoritative and controlling decision** through which the common interests of the members of the world community are clarified and secured. Thus, law is not simply a system of rules to regulate state behavior, but rather it is part and parcel of **international policy making processes.** It means that international lawyers should pay more attention to the value or policy of state behavior than to a lex scripta, written law or positive law.

Therefore, it is important to understand not only the legal implications of the naming issue but also political aspects and analysis thereof between the relevant parties.

In that context, I think admiral Lutz FELT's presentation was a good example which illustrates the relationship between international law and geopolitics in the maritime issues. Specifically, his reference to four different dimensions: the sea as a habitat, as a resource, as a highway for transport and as a vector for power projection was very interesting and insightful. To the several questions he asked in his paper, I'd like to provide my own answers. Firstly, as regards the establishment of artificial islands and its possibility of cause for new names, I think the answer is negative. It is because artificial islands do not have the status of islands which could otherwise have its own territorial sea or the EEZ in accordance to the UNCLOS. Secondly, for the same reason, it is not likely that the international seabed authority will be used as a political tool for naming procedures. Thirdly, there is no current international regulations on the damage to or attacks on the submarine cables. It remains to be seen if international society will take relevant measures.

The other three presentations also are useful as well as insightful as they represent good policy implications for Korea. Of course, **as** the conflict between the US and Canada or the situation in Europe is different from the dispute between Korea and Japan, it would be very difficult to apply that kind of settlement/compromises directly to the Sea Name dispute between Korea and Japan. But I think it could provide a good opportunity or inspiration for Korea and Japan to solve long lasted naming issue.