

Debates Concerning the Incorporation of Peripheral Islands into the Territory of Japan*

Takai Susumu**

Abstract

Japan introduced international law when Japan ended the seclusion policy of the Edo period and started to interact with Western countries. Japan took measures to possess and establish title to peripheral islands on the basis of international law. The process by which peripheral islands in the Pacific, the Sea of Japan, the East China Sea, and the Sea of Okhotsk were incorporated into Japanese territory will be examined, and the objections of neighboring countries to some of these acquisitions will be discussed.

Introduction

Delimitation of the scope of a state's territory, as well as the acquisition and loss of territories are fundamentally made on the basis of international law. Since the country's opening to the global community in the mid-19th century, Japan has respected the principles of international law. Measures to incorporate islands near Japan into the country's territory were progressively implemented, based on the law of nations. However, disagreements over Japan's sovereignty over Takeshima, the Senkaku Islands, and the Northern Territories have been voiced by neighboring countries since the signing of the San Francisco Peace Treaty after World War II.

There are four types of territorial acquisition, according to the traditional precepts of international law. The first two are accretion and occupation, where territories are seized by a unilateral act of a state. In accretion, a state unilaterally acts to acquire territory by taking advantage of natural phenomena. A well-known example of accretion is New Nishinoshima Island, which is an island that became Japanese by appearing next to Old Nishinoshima Island in the country's territorial waters, through the natural phenomenon of an underwater volcanic eruption. In the case of islands on the high seas created by underwater eruptions, the new island becomes an unoccupied territory that belongs to no state, and can be possessed by the first state to lay claim to it.

The other type of acquisition involving unilateral acts of a state is known as occupation. Strictly speaking, there is a separate type of occupation known as prescription, but I will only explain occupation as it relates to Japanese island territories. Occupation is a unilateral act of a state whereby land categorized as *terra nullius*—meaning “nobody's land”—is incorporated into the state's territory. To be recognized under international law, the occupation must be of land that is recognized as belonging to nobody. It does not matter if the land is already inhabited. Simply discovering the territory is not recognized as an act of occupation, and effective control must be

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** Takai Susumu is a Special Research Fellow at the Sasakawa Peace Foundation.

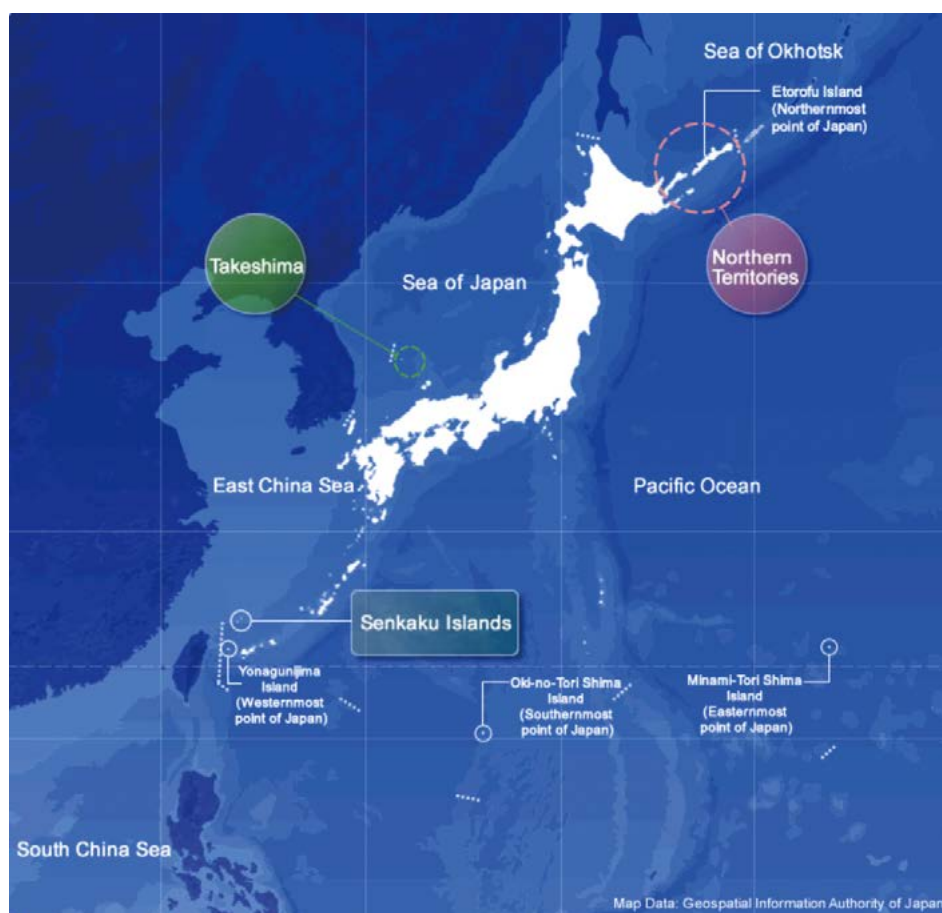
exercised over the territory so as to make clear the state's intention to take possession of it.

There are also two types of territorial acquisition that are based on a mutual agreement between states: incorporation and cession. Incorporation signifies the transfer of a territory in its entirety to a foreign state on the basis of a mutually agreed treaty. A famous example is the Japan-Korea Treaty of 1910, by which the state on the Korean peninsula was recognized as Japanese territory through a treaty that was agreed upon by the Korean and Japanese governments.

Cession is an act of territorial acquisition recognized in international law whereby part of a territory is transferred to another state, again by a mutual pact. This can be further divided into peacetime and wartime cession. Peacetime cession refers to the expansion of a state through the purchase or exchange of territory. In Japan's case, we have the 1875 Treaty of St. Petersburg by which Japan exchanged Karafuto (Sakhalin) Island for the Russian territory of the Chishima Islands (Kuril Islands).

Wartime cession refers to a mutual agreement on the transfer of territory in a peace treaty that ends a war. To legally terminate hostilities, a peace treaty that incorporates stipulations on territory must be signed. An example of this is the 1895 Treaty of Shimonoseki. As a result of the First Sino-Japanese War, the Qing territory of Taiwan was ceded to Japan and made a Japanese territory. The 1905 Treaty of Portsmouth was signed after the Russo-Japanese War, by which southern Sakhalin Island was transferred to Japan from Russia as a wartime cession of land that was valid according to international law.

The map shows the scope of Japan's territories. As Japan is surrounded by sea, the extent of its territory on land is small. However, its exclusive economic zones (EEZ) is the 11th biggest in



Scope of the Peripheral Islands Territory of Japan

(source: Ministry of Foreign Affairs of Japan, <https://www.mofa.go.jp/territory/index.html>)

the world. The existence of the Ogasawara Islands is why international law recognizes a vast EEZ for Japan. The EEZ is likely to become an economically promising area because of the wealth of underwater resources that have been discovered in the zone.

1. Acquisition of Island Territories in the Pacific by Occupation

The Ogasawara Islands

The Ogasawara Islands are island territory under the jurisdiction of Tokyo Metropolis that includes the Ogasawara Islands, the Volcano Islands, Okinotorishima Island, and Minamitorishima Island. According to the official website of Ogasawara Village, the Ogasawara Islands were so named because Ogasawara Sadayori landed on one of its islands and put up a wooden marker in 1593. He then reported what he had done to the Tokugawa Shogunate. The islands remained unoccupied and uninhabited for some time after this, but a great number of ships started coming here in the 1800s. Two Americans, a British person, an Italian, and a Dane settled here with some Kanakas from Hawaii in 1830. Commodore Matthew Perry of the U.S. Navy also landed here in 1853. It appears that many ships in distress drifted here around 1830, so that the islands became inhabited by people of different nationalities.

From the 1860s, Japanese people started colonizing and settling the islands in earnest, using the Ogasawara Islands as a waystation to the South Sea Islands. The Edo shogunate sent an inspection team to set up a provisional government office in 1862, and accepted immigrants from Hachijojima Island. Difficulties in the colonization process led all of the Japanese to be evacuated the following year. In 1876, the Japanese government enacted regulations that were to be enforced on the Ogasawara Islands, set up a government office on the islands, and notified the ambassadors of foreign countries in Tokyo that the Ogasawaras would be placed under Japanese jurisdiction.

Germany, France, the Netherlands, and Spain replied that they would abide by Japan's decision. The U.S. and Britain objected on grounds that their citizens had extraterritorial rights. Following exchanges of letters between the Japanese government and the two countries, they acknowledged the Japanese measures. The Ogasawara Islands became Japanese territory through occupation, on the basis of other countries' explicit or implicit acknowledgement of Japan's announcement that it was taking possession of the islands.

The Volcano Islands (Iwojima Island)

The Volcano Islands, also known as Iwojima Island, were known to Europeans since the 17th century and were left as an unoccupied territory possessed by no country. In 1889, Tanaka Eijiro and more than a dozen other settlers landed on the islands to fish and carry out sulfur mining. The cultivation of crops such as sugar cane, coca, and lemons later became the islands' main industry. In 1891, the Tokyo prefectural government requested the national government to make explicit its jurisdiction over the Volcano Islands to manage the Japanese who were there.

The central government named by imperial decree the three islands belonging to the Volcano Island chain Kitaiwo Island, Iwo Island, and Minamiwo Island. The islands were placed under the jurisdiction of the Ogasawara Island government of Tokyo Prefecture by a decision of the cabinet that was made public. There were no objections to the Japanese government's decision from other countries, so Japan acquired the three islands through occupation.

The number of permanent residents of the Volcano Islands subsequently rose to about 1,000. The outbreak of World War II led to the evacuation of the residents to mainland Japan in 1944. There exists a Japanese Maritime Self-Defense Force base on Iwojima Island, but none of the former residents have returned.

Okinotorishima Island

Twenty to thirty years ago, Okinotorishima Island used to be a much larger rock than it is today, but it has shrunk to become a small rock due to seawater erosion. Okinotorishima Island as identified as an islet called Parece Vela on sea charts from the 17th century, but was left as an uninhabited island in no country's possession. The Japanese government deemed Okinotorishima Island an unoccupied territory in July 1931 and placed it under the jurisdiction of Ogasawara Subprefecture by a notice from the Ministry of Home Affairs. There were no objections to the Japanese government's act from other countries, so Japan acquired Okinotorishima Island through occupation.

Seawater erosion caused Kitakojima Island and Higashikojima Island to become Okinotorishima Island's only reefs that were sticking out of the water at high tide. To prevent the submerging of the reefs, the government conducted conservation work on two occasions between 1987 and 1993.

Minamitorishima Island

Minamitorishima Island is located far from the Japanese archipelago and is Japan's easternmost island territory. In the 1860s, not only exploration ships but also whalers appeared in the waters around Minamitorishima Island, and a great number of ships recorded the existence of the uninhabited island that came to be called Minamitorishima Island.

Mizutani Shinroku, who drifted to Minamitorishima Island during a storm in 1896, saw that it was rich in resources, and so led 23 people from the Ogasawara Islands to settle on Minamitorishima Island and carry out business activities. As Mizutani made a request to lease the island from the Japanese government in 1898, the government decided to take possession of Minamitorishima Island and incorporated the island into Japanese territory by a notice from Tokyo Prefecture in July 1898. Japan took possession of Minamitorishima Island by occupation.

In 1902, Mizutani founded Mizutani Village, where about 60 Japanese settled and conducted activities such as collecting guano, carrying out taxidermy, and canning food. The island currently has no civilian residents. When Commodore Perry of the U.S. Navy came to the Ogasawara Islands, he recommended to his government that the U.S. should take possession of Minamitorishima Island. Since the U.S. government had no interest in Minamitorishima Island, it did not challenge Japan's territorial rights.

2. Acquisition of Island Territories in the Sea of Japan and the East China Sea

Takeshima

Takeshima in the Sea of Japan consists of the two islets Ojima Island and Mejima Island. Takeshima has been well known to Japanese people since the Edo period, when it was called Matsushima Island. West of Matsushima Island is Ulleungdo, which was then called Takeshima, and many records show that the Murakawa family and the Otani family of Tottori Domain made a fortune by developing the island after obtaining permits to travel there from the Edo shogunate. Matsushima Island was used as a place to disembark and rest on route to Ulleungdo.

The Korean government subsequently asked, via its Communication Envoys, the Edo shogunate to prohibit travel to Ulleungdo so that no Japanese could go there and develop the island. The shogunate was also informed of Korea's empty-island policy that kept Koreans from settling on Ulleungdo. The shogunate had adopted a seclusion policy, so it accepted the Korean request and prohibited Japanese from traveling to Ulleungdo. However, Matsushima Island was not subject to this travel ban.

A British ship "discovered" a non-existent island to the west of Ulleungdo in the latter half of the 18th century using unsophisticated surveying technology. The phantom island ended up

being marked on sea charts, leading to Western maps including three islands in the area: the non-existent island, Ulleungdo, and Matsushima Island. When Western maps were imported to Japan in the latter half of the 19th century, the non-existent island came to be called by the name of Takeshima and Ulleungdo started to be called by the name of Matsushima Island, which caused confusion.

In response to a request to lease Matsushima Island from Nakai Yozaburo in 1905, the Japanese cabinet decided in January 1905 that the Matsushima Island of the Edo period should be renamed Takeshima because Ulleungdo was called Matsushima Island by Japanese people at that time. The cabinet also decided that Takeshima should be listed in the register of state-owned land and placed under the jurisdiction of Shimane Prefecture. Nakai Yozaburo leased Takeshima from the government for 30 years and conducted activities such as gathering abalone and hunting sea otters.

With the outbreak of World War II, people stopped fishing around Takeshima. After the end of the war, in 1952, the South Korean president unilaterally proclaimed a maritime zone over which South Korea exercised sovereignty, arguing that Takeshima, or Dokdo in Korean name, was Korean territory.

The Japanese government protested the Korean moves. South Korea ignored the protest and illegally occupied Takeshima by force in 1954, and the island remains under South Korean occupation.

The Senkaku Islands

The Senkaku Islands in the East China Sea are a group of islands. Around 1885, the Japanese government ordered the navy to begin surveying the Senkaku Islands, and civilian exploration teams also landed on the Senkakus. When a man named Koga Tatsushiro asked to lease the Senkaku Islands in 1894, the government formally incorporated them into Japanese territory by occupation of *terra nullius* through a cabinet decision handed down in January 1895. This was done after it was verified that the islands were not under the control of the Qing dynasty or any other country. Koga and about 200 other people engaged in activities such as harvesting *yakogai* seashells, processing bonito, and catching albatross for their down. Following the 30-year lease period, the Senkaku Islands were sold to Koga Tatsushiro's son, Zenji, and became private land.

After World War II, the Senkaku Islands were placed under U.S. administration together with Okinawa in accordance with the San Francisco Peace Treaty. China protested against the United States action arguing that Okinawa, a part of the Japanese territories should not be administered by the United States. However, when the existence of oil deposits in the waters around the Senkaku Islands became known in 1969, China began asserting in 1970 that the islands were Chinese territory. The islands were returned to Japan in accordance with the 1972 Okinawa Reversion Agreement.

3. Acquisition of Island Territories in the Sea of Okhotsk through Mutual Consent

The Northern Territories

The status of the Islands and Sakhalin Island in the Sea of Okhotsk has been determined through the mutual agreement of Japan and Russia. Japan and Russia signed the 1855 Treaty of Commerce and Navigation, which drew up an international border between Urup Island and Iturup Island. The Russian czar believed his nation's territory extended to the southern tip of Urup Island. So the 1855 treaty had the effect of confirming an existing border rather than drawing up a new boundary.

The treaty did not draw up a border for Karafuto (Sakhalin) Island, and left the island under

joint Russo-Japanese control. The two nations later concluded the Treaty of St. Petersburg in 1875, which made the Kurils a Japanese territory and Sakhalin Island a Russian territory. Each state's territorial rights over the respective islands took shape through territorial exchanges, which were mutually agreed acts of the cessation of land in peacetime.

In 1905, the two countries concluded the Treaty of Portsmouth, which brought an end to the Russo-Japanese War. Japan acquired Sakhalin Island south of the 50th parallel through a mutually agreed act of cessation following the end of hostilities.

At around the end of World War II, about 400,000 Japanese lived on Sakhalin Island and about 17,000 on the Kuril Islands. The islanders enjoyed prosperous livelihoods. With the defeat of Japan in 1945, the Soviet Union advanced south along the islands from the Kamchatka Peninsula to Urup Island to disarm the troops stationed in the Japanese territory of the Kuril Islands. Meanwhile, troops were dispatched from Vladivostok to disarm Japanese soldiers on the Habomai Islands, Shikotan Island, Kunashir Island, and Iturup Island. Subsequently, the inhabitants of the four islands were forcefully deported to Hakodate in Hokkaido via Sakhalin Island. After the Japanese departure, Russians settled on the islands, and remain to this day.

4. Japan's Island Territories according to the San Francisco Peace Treaty

After Japan's defeat in World War II, the scope of the nation's territories was defined by the San Francisco Peace Treaty. With Japan's acceptance of the Allies' Potsdam Declaration, which stated the conditions for ending the war, World War II came to a close. The Potsdam Declaration declared that Japan's sovereignty and extent of its territories should be decided by the Allies, but at the same time, it stated that the Cairo Declaration would be upheld. The Cairo Declaration proclaimed that the Allies did not fight Japan with the aim of expanding their own territories, and that they would make Japan relinquish what it had obtained through "violence and greed." The Allies drew up the territorial clauses of the 1951 Peace Treaty on the basis of preceding texts.

The territorial clauses in Article 2 of the San Francisco Peace Treaty stipulated that Japan should recognize Korean independence and renounce all right, title, and claim to Korea; renounce all right, title, and claim to Taiwan and the Pescadores; and renounce the Kuril Islands and southern Sakhalin Island.

5. The Territorial Clauses in the San Francisco Peace Treaty and the Objections against Them

The Ogasawara Islands

The Allies' decision on the extent of Japanese claims to territorial sovereignty was made clear in the San Francisco Peace Treaty. Article 3 of the treaty stipulates that the Ogasawara Islands in the Pacific should be placed under a trusteeship, with the U.S. as the sole administrator. The Ogasawara Reversion Agreement was concluded between Japan and the U.S. in 1968, and the Islands were returned to Japan. The Ogasawaras marked the 50th anniversary of their reversion to Japan in 2018.

Takeshima

South Korea objected to how the San Francisco Peace Treaty treated Takeshima. Its argument was that Takeshima, or Dokdo in Korean name, has been a Korean territory since ancient times, and that it was part of Korean territory that was renounced by Japan in the San Francisco Peace Treaty. We should note here that South Korea was not a signatory to the treaty. It was later revealed that during the drafting of the agreement, a Korean ambassador to the U.S. had requested the United States to explicitly stipulate to include Dokdo as part of the Korean

peninsula that was to be renounced by Japan, but this request was rejected.

As part of their occupation policy, the Allies defined what came to be known as the MacArthur Line. The demarcation of the line was based on SCAPIN (Supreme Commander for the Allied Powers Instruction Note) 677 and 1033, which serve to narrow the Japanese scope of activities.

South Korea asserted that the Allies had acknowledged Takeshima as South Korean territory because it was on the South Korean side of the MacArthur Line. SCAPIN 677 and 1033 stated that the line had been temporarily set up as part of occupation policy, and specified that the line was not to be construed as being a final territorial determination, but South Korea ignored these caveats.

South Korea issued a proclamation on its maritime sovereignty in January 1952, just before the San Francisco Peace Treaty came into effect. This proclamation asserted that Dokdo, called Takeshima by Japan, was South Korean territory. The declaration drew up what was called the Syngman Rhee Line along the MacArthur Line, which was set to disappear once the occupation of Japan ended.

Japanese fishing boats started operating in the waters around Takeshima after World War II, but were seized by South Korean patrol ships one after the other. Japan strongly protested the seizures of Japanese fishing boats and asserted that Takeshima was Japanese territory, while strongly objecting to the South Korean Syngman Rhee Line. South Korean maritime police forcefully occupied Takeshima by force in 1954, and they remain to this day.

The Senkaku Islands

The Senkaku Islands were placed under U.S. trusteeship together with Okinawa in accordance with Article 3 of the San Francisco Peace Treaty, and it was returned to Japan in 1972 under the stipulations of the Okinawa Reversion Agreement. However, China asserts that the Senkaku Islands were discovered by China and so was part of Taiwan, which was renounced by Japan according to Article 2 of the San Francisco Peace Treaty.

In 2012, China announced that the Senkaku Islands are core interest. The core interests asserted by China are Chinese territories that are to be reclaimed, even if military force is required. Taiwan, Tibet, Xinjiang, and the South China Sea were identified as core interests in 2009. However, with the expansion of the core interests to include the Senkaku Islands in 2012, China set up the East China Sea Air Defense Identification Zone in the airspace above the Senkakus, announcing that all civil aircraft passing through the zone would be required to fulfill certain obligations.

The Japanese government purchased the privately owned Senkakus and made them state-owned in 2012. China strongly opposed what it perceived as a Japanese attempt to claim Chinese territory, and sent ships to patrol the waters around the islands and started to claim that they were policing fishing activities. Japan argued that it had simply bought the Senkaku Islands from private sector owners, but China continued to argue that Japan had stolen and nationalized Chinese territory. The situation remains deadlocked today.

The Northern Territories

The Soviet Union refused to sign the San Francisco Peace Treaty on grounds that the Northern Territories that were to be renounced by Japan, according to Article 2 (c) of the treaty, were not transferred to the Soviet Union. The Soviet Union's intention to acquire the Northern Territories as spoils of war through cessation did not work out. The three Allied leaders—British Prime Minister Churchill, U.S. President Roosevelt, and Soviet Premier Stalin—had signed the Yalta Agreement in February 1945. The agreement promised that the Kuril Islands would be handed over to the Soviet Union and that the USSR would regain control over Sakhalin Island after World War II. The Soviet Union asserted that the Northern Territories were a part of the Kuril Islands

and were Soviet because of the stipulations of the Yalta Agreement. The status of the Territories remains unchanged as of this day.

The Soviet Union and Japan subsequently agreed to a declaration that would end the state of war between the two states. Moscow aimed to end the war and secure the peace as quickly as possible, while Tokyo sought the swift return of Japanese soldiers interned in Siberia. The result was the Soviet-Japanese Joint Declaration of 1956. In this declaration, the Soviet Union promised to transfer the Habomai Islands and Shikotan Island to Japan as an expression of the goodwill of its people. After the conclusion of the Treaty of Mutual Cooperation and Security between the U.S. and Japan in 1960, the Soviet Union made the removal of U.S. military bases in Japan a condition for the return of Habomai Islands and Shikotan Island.

Prime Minister Shinzo Abe and President Vladimir Putin are engaged in diplomatic negotiations about the conclusion of a definitive peace treaty, taking into consideration that it is unprecedented to not have concluded such a treaty more than 70 years after the end of hostilities. Questions such as whether a peace treaty can even be concluded, whether the treaty will have clauses providing for the return of Habomai Islands and Shikotan Island, and whether the treaty will touch upon the return of Kunashir Island and Iturup Island are attracting attention.

As we have seen, Japan has come to possess island territories in accordance with international law. Japan's peripheral islands such as the Ogasawara Islands in the Pacific Ocean, the Senkaku Islands in the East China Sea, and Takeshima in the Sea of Japan have been incorporated into the country's territory after title was obtained through occupation under international law. The Northern Territories in the Sea of Okhotsk have been incorporated into Japanese territory by mutually agreed treaties. However, Russia and Japan have different interpretations of these treaties.