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The Treaty of Peace with Japan and Takeshima (Revisited)*

Takashi Tsukamoto

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1. Introduction

A. Defining the Issue

Preface

This paper examines the relationship between the Treaty of Peace with Japan (San Francisco Peace Treaty) and Takeshima, one of the key issues on the dispute pertaining to the territorial sovereignty over Takeshima, based on historical materials.

I wrote on the same topic in the June 1983 issue of this journal (“Sanfuranshisuko joyaku to takeshima” [The San Francisco Peace Treaty and Takeshima], *Refarensu*, no. 389), in which I translated into Japanese five Takeshima-related documents selected from various years’ editions of *Foreign Relations of the United States*, published compilations of US diplomatic documents, to clarify that Acting Political Adviser in Japan William J. Sebald drew in November 1949 the attention of the US State Department to the fact that Takeshima is a territory of Japan, and that the United States rejected Korea’s request made in July 1951 to include in the Peace Treaty a clause stating Takeshima (known as “Dokdo” in Korea) as Korean territory.

Subsequently, in the fall of 1990, I visited the National Archives and Records Administration (NARA) of the United States to view the original documents that I translated in my previous paper as well as some other documents not included in *Foreign Relations of the United States*. This paper is an attempt to clarify further how Takeshima was dealt with in the peace treaty, using the findings of my trip to NARA.

Governmental and Administrative Separation Instruction Note

Japan’s acceptance of the Potsdam Declaration brought World War II to an end. On September 2, 1945, Japan signed a formal Instrument of Surrender, pledging to execute the Potsdam Declaration in good faith. Article 8 of the Declaration stipulates that “Japanese sovereignty shall be limited to the islands of Honshu, Hokkaido, Kyushu, Shikoku and such minor islands as we determine.” This decision by the victorious Allied Powers “we” should then have been legally confirmed by a peace treaty.

Due to the conclusion of the Instrument of Surrender, the administrative power of nation held by the Japanese Government was placed under the Supreme Commander for the Allied Powers (Paragraph 8, Instrument of Surrender). The Supreme Commander issued various instructions to the Japanese Government, which included one related to Takeshima, namely the Governmental and Administrative Separation Instruction Note.

The Instruction Note entitled “Governmental and Administrative Separation of Certain Outlying Areas from Japan” (Supreme Commander for the Allied Powers Instruction Note (SCAPIN) 677, January 29, 1946)¹ stated that “The Imperial Japanese Government is directed to cease exercising,

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¹ *Nihon kanri horei kenkyu*, no. 8, p. 21.

or attempting to exercise, governmental or administrative authority over any area outside of Japan” (Paragraph 1) and “for the purpose of this directive, Japan is defined to include [the four main islands of Japan (Hokkaido, Honshu, Kyushu and Shikoku) and...]” (Paragraph 3) and excluded “Utsuryo (Ullung) Island, Liancourt Rocks (Take Island) and Quelpart (Saishu or Cheju) Island,” as the areas removed from Japan (Paragraph 3(a)).

Taking it into consideration that Paragraph 3 of the Governmental and Administrative Separation Instruction Note mentions the Izu Island Group in (b) and the Habomai Island Group in (c), and Paragraph 4 stipulates Korea separately as one of the “further areas specifically excluded from the governmental and administrative jurisdiction of the Imperial Japanese Government,” it is doubtful that the reference to Takeshima in the note means more than it was just as part of the peripheral areas or islands. Due to this instruction note, Takeshima was in reality separated from the administration of the Japanese Government.

Meanwhile the Governmental and Administrative Separation Instruction Note did not separate Takeshima from the Japanese sovereignty (or remove it from the Japanese territory). This is clear from the realm of the authority granted to the Supreme Commander. Paragraph 6 of the Instruction Note also provides that “Nothing in this directive shall be construed as an indication of Allied policy relating to the ultimate determination of the minor islands referred to in Article 8 of the Potsdam Declaration.”

The MacArthur Line

Another instruction from the Supreme Commander to the Japanese Government relating to Takeshima was SCAPIN-1033 of June 22, 1946, entitled “Area Authorized for Japanese Fishing and Whaling,”² which expanded the marine area within which Japanese fishing boats were authorized to operate without applying to the Supreme Commander each time for permission. The limit of this area was widely called the MacArthur Line, and Takeshima was placed outside the Line which was indicated by the latitudinal and longitudinal coordinates (Paragraph 2). The note also provides that “Japanese vessels or personnel thereof will not approach closer than twelve (12) miles to Takeshima (37°15’ North Latitude, 131°53’ East Longitude) nor have any contact with said island” (Paragraph 3(b)).

It is unclear whether there was any particular reason for placing Takeshima outside the MacArthur Line. As the result of the note, Japanese citizens were left unable to engage in fishing activities at the island or in the surrounding waters.

Like SCAPIN-677, SCAPIN-1033 was also provided without prejudice to Japan’s territorial sovereignty over Takeshima, with a disclaiming clause which reads: “The present authorization is not an expression of allied policy relative to ultimate determination of national jurisdiction, international boundaries or fishing rights in the area concerned or in any other area” (Paragraph 5).

The Treaty of Peace with Japan

² *Nihon kanri horei kenkyu*, no. 12, p. 96.

The Treaty of Peace with Japan (known as the San Francisco Peace Treaty) was signed by the United States, the United Kingdom, and the other Allied Powers on September 8, 1951. Article 2 of the Treaty provides for Japan's renouncement of a certain part of its former territory. In relation to Takeshima, Article 2(a) provides that "Japan, recognizing the independence of Korea, renounces all right, title and claim to Korea, including the islands of Quelpart, Port Hamilton and Dagelet." Korea, a non-member of the Allied Power, was not called to sign the Treaty,³ but the Treaty contains an article on the benefits entitled to Korea (Article 21), providing that Korea shall enjoy the right to benefit from multiple provisions, including Article 2.

The Treaty of Peace with Japan went into force on April 28, 1952, restoring Japan's sovereignty, terminating the effects of the instruction notes issued by the Supreme Commander for the Allied Powers, including the above-mentioned Governmental and Administrative Separation Instruction Note. As for the MacArthur Line, a specific note was issued to invalidate it on April 25, 1952.⁴

An issue here is whether Takeshima's status was altered by the Treaty. There is no reference to Takeshima in the related article (Article 2(a)). Provided that Takeshima had intrinsically been part of the Japanese territory, there was no need for highlighting it from the other part. In contrast with the description of the Governmental and Administrative Separation Instruction Note (SCAPIN-677), it is reasonable to construe no reference of Takeshima in the relevant article as Takeshima was considered to remain in Japan. However, Korea emphasizes SCAPIN- 677 and the fact that Takeshima was located outside the MacArthur Line, and argues that as no clause in the Treaty contradicts this, the Treaty confirms that Takeshima is Korean territory.

Below, I will describe Korea's views and examine them in the light of US and British records on the treaty drafting process.

B. South Korean Views on the Relationship between the Treaty of Peace with Japan and Takeshima

View on February 12, 1952

On January 18, 1952, ahead of the entry into force of the Treaty of Peace with Japan, the Korean president issued a 'declaration concerning maritime sovereignty,' drawing a boundary of such "sovereignty" in the high seas (called the Peace Line in Korea, while the Syngman Rhee Line in Japan named after the Korean president at the time) in a way to include Takeshima on Korea's side. The Japanese Government protested on January 28, and the Korean Government responded on February 12, claiming that SCAPIN-677 dated January 29, 1946 (aforementioned the Governmental and Administrative Separation Instruction Note) and the MacArthur Line supported Korea's territorial sovereignty over Takeshima⁵.

³ For the background behind which Korea made request to sign the treaty and it was not accepted, see Takashi Tsukamoto, "Kankoku no tainichi heiwa joyaku shomei mondai" [South Korea and the issue of signing the Treaty of Peace with Japan], *Refarensu* [Reference], no. 494 (March 1992).

⁴ Kenzo Kawakami, *Sengo no kokusai gyogyo seido* [The post-war international fisheries regime] (Japan Fisheries Association, 1972), pt. 1, chap. 1, sec. 1.

⁵ A complete Japanese translation is available in *Refarensu*, no. 33 (November 1953), p. 8.

As discussed below, in July 1951, Korea asked the United States to include a clause to determine the affiliation of “Dokdo” (Takeshima) to Korea in the Peace Treaty. However, the exchange of claims between the Korean and Japanese Governments over the sovereignty of the island occurred for the first time as in the previous paragraph.

View on September 9, 1953

In response to the view expressed by the Korean Government on February 12, 1952, the Japanese Government counterargued provisionally on April 25, which was followed by a note “The Japanese Government’s Views concerning Takeshima”⁶ dated July 13, 1953, sent to Korea for thorough explanation of the historical and international legal grounds for Japan’s territorial sovereignty over Takeshima. In the document, it was clarified that SCAPIN-677 did not exclude Takeshima from the Japanese territory, as stated in the Instruction Note that it did not represent the ultimate determination by the Allied Powers. The same was true to the MacArthur Line, which had been annulled prior to the entry into force of the Treaty of Peace with Japan. Article 2(a) of the Treaty was not stipulated to concede to Korea the land belonging to Japan prior to Japan’s annexation of Korea, but rather specified the islands of Quelpart, Port Hamilton, and Dagelet to be part of Korea. For these reasons, Japan stated that there was no room for doubt that Takeshima constituted a part of the Japanese territory.

The Korean Government responded to the above view by issuing a note on September 9, 1953 entitled “The Korean Government’s Refutation of the Japanese Government’s Views concerning Dokdo (Takeshima) dated July 13, 1953,”⁷ in which it asserted Korea’s historic titles while arguing in relation to the Peace Treaty as follows:

...In connection with Japan’s arguments on the effect of this Note [SCAPIN-677], the Government of the Republic of Korea cannot help asserting that Japan is holding a superficial view on the Allied Powers’ fundamental policy regarding the postwar disposition of territories of the former enemy countries. The Korean Government again wishes to remind the Japanese Government that the said SCAPIN 677 explicitly excluded the islets from the territorial possession of Japan and that the Peace Treaty with Japan did not provide any article contradictory to the articles of this SCAPIN so far as the issue on the Japanese territory was concerned. Bearing this point in mind, the Peace Treaty can be understood in a way to recognize the SCAP’s measures on this matter without any substantial change at all. . . . With regard to Article 2a of Chapter II of the said treaty, the Japanese Government argues that the article does not specify Dokto as part of the Korean territory, unlike Quelpart, Port Hamilton and Dagelet. However, the enumeration of these three islands is by no means intended to exclude other hundreds of islands of the Korean coasts from Korea’s possession.

View on September 25, 1954

The Japanese Government responded to the Korean Government’s view on September 9, 1953 by sending a note of refutation dated February 10, 1954.⁸ In addition to counterarguing to

⁶ Republic of Korea’s Ministry of Foreign Affairs, Political Affairs Bureau, *Oegyo munje chongseo II ho* [Diplomatic Issues Library No. 11]: *Dogdo munje gaelon* [Introduction to Dokdo Issue] (1955), English Appendix, p. 26.

⁷ *Ibid.*, English Appendix, p. 36. A complete Japanese translation is available in *Dong-a Sinmun* (September 26, 1953). The original document was written in English. I translated the outline of the document into Japanese, referring to the Korean document shown in Note 6 material.(No.11, p117).

⁸ *Ibid.*, original English Appendix, p. 50.; and the source of full-text document is in *Kaigai Chousa Geppo* [Monthly Report of Overseas Research] (December, 1954).

Korea's claim on historic titles, the Japanese Government argued that, pertaining to Korea's assertion that the territorial clauses in the Peace Treaty had recognized SCAPIN-677 with no substantial change, some of those islands over which SCAPIN-677 had suspended Japan's administrative powers, that is, a part of the Nansei Islands and all of the Amami Islands, had been restored to Japan's jurisdiction; that Japan had been recognized to hold residual sovereignty over the rest of the Nansei Islands as well as the Nanpo Islands and others; that the US plenipotentiary had made clear that the Habomai Islands were not part of the Kurile Islands that Japan was required to renounce; and that, for these reasons, SCAPIN-677 had no effect on the Peace Treaty.

In response to the above counterargument, the Korean Government again issued a lengthy note of refutation, dated September 25, 1954. This was entitled "The Korean Government's View Refuting the Japanese Government's View on the Territorial Claim of Dokdo (Takeshima) in the Note Verbale No. 15/A2 of the Japanese Ministry of Foreign Affairs Dated February 10, 1954."⁹ In the note, the Korean Government claimed in short:

. . . those islands which have been restored to Japan's jurisdiction as mentioned in the Japanese Government's note are only those which were put under the trusteeship of the United Nations with the United States designated as the sole administering authority.

Having pointed out to the Japanese Government in the previous notes, neither SCAPIN No. 677 nor the Peace Treaty provides any clause contradictory to the Korean Government's claim upon the territoriality of Dokdo. Accordingly, with regard to Article 2a of Chapter I of the said Treaty, the Korean Government takes the view that the enumeration of three major islands is by no means intended to exclude Dokdo from the Korean territory. The Treaty can also be construed to confirm that Dokdo as an attached island of Ulneungdo (Dagelet) be affiliated to Korea along with Ulneungdo.

View on January 7, 1959

On September 20, 1956, the Japanese Government sent a note for further refutation to the above Korean Government's note dated September 25, 1954.¹⁰ In the note, the Japanese Government repeated for reference the entire exchange between the two governments since 1952, and stated that it was not true that the islands restored to Japan's administrative jurisdiction had been under the trusteeship of the United Nations, as mentioned in Korea's note in 1954; and that it was impossible to construe the text of the Peace Treaty in a way that Takeshima was regarded as an island attached to Dagelet and affiliated to Korea along with Dagelet.

The Korean Government responded to this note of refutation by issuing another note dated January 7, 1959.¹¹ The note, titled "The Korean Government's Views Refuting the Japanese Government's Version of the ownership of Dokdo Dated September 20, 1956" largely stated:

...Lastly, a reference is to be made as to the Allied Powers' post-war policy and its basic spirit on the disposition of the Japanese territory, which serves as a key to the settlement of the Dokto issue . . .

Furthermore, Dokto was clearly distinguished by SCAPIN No.677 as a non-adjacent

⁹ Ibid., both Korean p.157. and original English Appendix, p. 86. A complete Japanese translation is available in *Hanyang Sinmun* (October 9, 1954), and *Chosen Kenkyu* [The Korean Research](September 1978) p.182.

¹⁰ Republic of Korea's Ministry of Foreign Affairs, *Dogdo gwanlyeon jalyojib (I)* [Compilation of Materials on Dokdo (I)], In-house document 77-134 (North One) (1977), p. 139. Both Japanese and original English versions.

¹¹ Ibid., p. 188. Both Korean and original English versions.

island from other islets of Japan and, in accordance with the fundamental post-war policy of the Allied Powers toward Japan on June 19, 1947, the Japanese territory was restricted to Japan proper and its adjacent islands, and thus the separation of Dokto from Japan was clearly established once and for all. Accordingly, since no positive provision to incorporate Dokto into Japan is found in the Peace Treaty, there could be no change whatsoever on the status of Dokto, the separation of which from the Japanese territory was confirmed. . . . It is to be recalled in this connection that, prior to the signing of the Peace Treaty with Japan, the Republic of Korea resumed its control and administration over Dokto since it had attained independence on August 15, 1948, and that Korea as such was accorded formal recognition by the signatories of the Japanese Peace Treaty. . . .

Dokto was never regarded as any one of the adjacent islands administered by the Supreme Commander for the Allied Powers, nor was it a part of the areas reserved for the United States of America to exercise its legislative and judicial authority after the independence of Korea....

The Japanese Government, in response to the above, counter-argued again on July 13, 1962,¹² that the postwar disposition of the Japanese territory was determined by the Treaty of Peace with Japan in the first place; the Basic Post-Surrender Policy for Japan (1947) was a general statement; and in SCAPIN-677, Takeshima was mentioned with in a paragraph different from that regarding Korea, and the fact that, of those islands separated from Japan's administration under SCAPIN-677, Utsuryo Island (Ulleungdo or Dagelet), Saishu Island (Chejudo or Quelpart), and Takeshima, the two, Utsuryo-to (Ulleungdo or Dagelet) and Saishu-to (Chejudo or Quelpart), were stipulated in the Peace Treaty as the areas that Japan renounced, but Takeshima was not mentioned indicated that Takeshima was not included in the Korea that Japan renounced in the Treaty.

Japan and Korea subsequently continued their demarche and protests over Takeshima each other, but there was no further exchange of notes attached with detailed "views" on the grounds for their assertions of territorial sovereignty.

Academic debate

Books, papers, and magazine articles that have been written by Koreans in relation to Takeshima since 1948 amount to one hundred and some dozens in catalogues.¹³ Although I have not read all of these, as per the Treaty of Peace with Japan, views in the private sector are alike the governmental views above. I introduce several of the writings of Korean authors.

In *Korea's Territory* (1969),¹⁴ Lee Han-key notes that because the Potsdam Declaration does not clarify the attribution of "Dokdo", the matter should be determined by examining the policies of the Allied Powers on territorial disposition in the time of their administration over Japan. In this regard, he refers to SCAPIN-677, by which "Dokdo" was separated from the Japanese territory, arguing that unless there is any positive decision to include "Dokdo" in the Japanese territory by the Allied Powers, it is safe to say that "Dokdo" was definitely separated from the Japanese

¹² Ibid., p. 236. Both Japanese and original English versions.

¹³ For example, see Republic of Korea's National Unification Board, *Daehanmingug guggyeong gwangye munheon moglog* [List of Documents Related to Republic of Korea Borders] (1976); Yang Tae-jin, *Dogdo gwangye munheon moglog* [List of Documents Concerning Dokdo] (1978); and Appendix (II) to Note 18 material. These include papers on the historical background, papers about maps, and field survey reports, with not all referring to the Treaty of Peace with Japan.

¹⁴ Seoul National University Press, pp. 264-270.

territory, and that there is no positive provision anywhere in the Treaty of Peace with Japan that places “Dokdo” in the Japanese territory. Park Kwan-sook’s “A Study on the Legal Status of Dokdo” (1968)¹⁵ also takes the similar view.

Based on the premise that “Dokdo” was originally in the Korean territory, Lee Byung-joe’s “Legal Status of Dokdo” (1963)¹⁶ argues that Korea’s sovereignty over the island was restored when the country became independent, and the fact that “Dokdo” is not mentioned in Article 2(a) of the Treaty of Peace with Japan (in which Japan renounces its claims to Korea) cannot be interpreted as placing the island outside the Korean territory.

Kim Jeong-gyun’s “Thoughts on the Dokdo Issue from an International Legal Perspective” (1980)¹⁷ creates a table of the measures taken by the Allied Powers, aligning them in four periods. The first period, “Principles,” includes the Cairo Declaration, the Potsdam Declaration, and the Japanese Instrument of Surrender, and the second period, “Policies on ‘Such Minor Islands as We Determine,’” includes the Initial Post-Surrender Policy for Japan; the third period, “Standard Measures,” SCAPIN-677; and the fourth period, “Confirmation,” the Treaty of Peace with Japan.

Kim Myung-ki’s “*Dokdo and International Law* (1991)¹⁸ suggests that SCAPIN-677 concerns “*imperium*”, not “*dominium*”, while also claiming that “Dokdo” was removed from Japan’s *imperium* by the measures taken by the Allied Powers, and that because no new provision was included in the Treaty of Peace with Japan, “Dokdo” was removed from Japan’s *dominium* by the Treaty.

Summary

After the War, Japan’s acceptance of the Potsdam Declaration restricted its territory to Honshu, Hokkaido, Kyushu, Shikoku, and such minor islands as the Allied Powers determine. The territories retained to and separated from Japan were supposed to be legally determined by the Treaty of Peace with Japan. In the period between the Potsdam Declaration and the Treaty of Peace with Japan, the Supreme Commander for the Allied Powers directed that Japan cease exercising its administrative authority over the certain outlying areas (SCAPIN-677). SCAPIN-677 contained a provision that includes “Utsuryo-to (Ulleungdo or Dagelet), Takeshima and Saishu-to (Chejudo or Quelpart)” in the regions where Japan should cease exercising the administration.

The September 1951 Treaty of Peace with Japan provides that Japan shall recognize Korea’s independence and renounce its claims to “Korea, including the islands of Quelpart, Port Hamilton and Dagelet.” The argument has been made in South Korea that unless there was any provision in the Treaty of Peace with Japan that contradicts SCAPIN-677, Takeshima was separated from Japan by the measures taken by the Allied Powers, and this was confirmed by the Treaty of Peace with Japan (in addition to the argument that “Dokdo” or Takeshima was historically in the Korean territory).

¹⁵ Yonsei University, Graduate School of Law, dissertation, pp. 69–73. I was directed to this study by Yoshio Morita.

¹⁶ *The Korean Journal of International Law*, vol. 8, no. 2, pp. 409–411.

¹⁷ *The Korean Journal of International Law*, vol. 25, nos. 1 and 2, pp. 41–44.

¹⁸ Seoul: Hwahaksa, pp. 89–97.

2. US State Department Provisional Drafts of the Treaty of Peace with Japan

A. US State Department Provisional Drafts Including Takeshima as Part of Korea

March 1947 Draft

The US State Department drew up a number of drafts (tentative ones) of the Treaty of Peace with Japan from 1947 onward. All the drafts made until November 1949 put Takeshima outside the territory to be retained by Japan and dealt with the island in the provision on Japan's renunciation of claims to Korea.

In the first preliminary draft, dated March 1947,¹⁹ Article 1 in Chapter I, Territorial Clauses, stipulated the territory to be retained by Japan as follows:

The Territorial limits of Japan shall be those existing on January 1, 1894, subject to the modifications set forth in Articles 2, 3. . . . As such these limits shall include the four principal islands of Honshu, Kyushu, Shikoku and Hokkaido and all minor offshore islands, excluding the Kurile Islands, but including the Ryukyu Islands forming part of Kagoshima Prefecture, the Izu Islands southward to Sofu Gan, the islands of the Inland Sea, Rebun, Riishiri, Okujiri, Sado, Oki, Tsushima, Iki and the Goto Archipelago.

These territorial limits are traced on the maps attached to the present treaty.

Article 4, Chapter I of this draft, which deals with Japan's renunciation of its claims to Korea, read:

Japan hereby renounces all rights and titles to Korea and all minor offshore Korean islands, including Quelpart Island, Port Hamilton, Dagelet (Utsuryo) Island and Liancourt Rocks (Takeshima).

August 5, 1947 Draft

In the next preliminary draft, dated August 5, 1947,²⁰ all the provisions became more detailed, and there were also major changes from the March draft in relation to the Northern Territories, etc.,²¹ but the exclusion of Takeshima remained the same. Article 1 in Chapter I, Territorial Clauses, read as follows:

1. The territorial limits of Japan shall comprise the four principal islands of Honshu, Kyushu, Shikoku and Hokkaido and all minor islands, including the islands of the Inland Sea (Seto Naikai), the Habomai Islands, Shikotan, Kunashiri and Etofu, the Goto Archipelago, the Ryukyu Islands, and the Izu Islands southward to and including Sofu Gan (Lot's Wife). As such, the territorial limits of Japan shall include all islands with their territorial waters within a line beginning at a point in 45°45' N. latitude, 140° E. longitude; proceeding due east through La Perouse Strait (Soya Kaikyo) to 149° 10' E. longitude; thence due south through Etorofu Strait to 37° N. latitude; thence in a southwesterly direction to a point in 23°

¹⁹ NARA: RG59, Decimal File 1945-49, Box 3153, 740.0011 PW (PEACE)/3-2047.

²⁰ Ibid., 740.0011 PW (PEACE)/8-647.

²¹ On the relationship between the Northern Territories and the Treaty of Peace with Japan, see Takashi Tsukamoto, "Bei kokumusho no tainichi heiwa joyaku soan to hoppo ryodo mondai" [US State Department's provisional drafts of the Treaty of Peace with Japan and the Northern Territories issue], *Refarensu*, no. 482 (March 1991); and Tsukamoto, "Nihon to ryodo mondai" [Japan and territorial issues], *Refarensu*, no. 504 (January 1993) and no. 505 (February 1993).

30° N. latitude, 134° E. longitude; thence due west to 122° 30' E. longitude; thence due north to 26° N. latitude; thence in a northeasterly direction to a point in 30° N. latitude, 127° E. longitude; thence due north to 33° N. latitude; thence in a northeasterly direction to a point in 40° N. latitude, 136° E. longitude; thence in a direction to the east of north to the point of beginning.

2. These territorial limits are indicated on Map No.1 attached to the present Treaty.

Article 4, Chapter I of the draft subsequently stipulated Japan's renunciation of claims to Korea as follows:

Japan hereby renounces all rights and titles to Korea (Chosen) and all offshore Korean islands,

including Quelpart (Saishu To);

the Nan How group (San To, or Komun Do) which forms Port Hamilton (Tonaikai);

Dagelet Island (Utsuryo To, or Matsu Shima);

Liancourt Rocks (Takeshima);

and all other islands and islets to which Japan had acquired title lying outside the line described in Article 1 and to the east of the meridian 124°15' E. longitude, north of the parallel 33° N. latitude, and west of a line from the seaward terminus of the boundary at the mouth of the Tumen River to a point in 37°30' N. latitude, 132°40' E. longitude.

This line is indicated on the Map No.1 attached to the present Treaty.

January 1948 Draft

The next preliminary draft²² was created between December 1947 and January 1948, with "Re-draft 2 January" handwritten in the margin of the Chapter I Territorial Clauses section. The description on Takeshima remained the same as in the previous two drafts. Articles 1 and 4 read as follows:

Article 1

1. The Territorial limits of Japan shall comprise the four principal Japanese islands of Honshu, Kyushu, Shikoku and Hokkaido and all adjacent minor islands, including the islands of the Inland Sea (Seto Naikai), Sado, Oki Retto, Tsushima, the Goto Archipelago, the Ryukyu Islands north of 29° N. latitude, and the Izu Islands southward to and including Sofu Gan (Lot's Wife). . . .²³

2. These territorial limits are indicated on Map No.1 attached to the present Treaty.

Article 4

Japan hereby renounces in favor of the Korean people all rights and titles to Korea (Chosen) and offshore Korean islands,

including Quelpart (Saishu To);

the Nan How group (San To, or Komun Do) which forms Port Hamilton (Tonaikai);

Dagelet Island (Utsuryo To, or Matsu Shima);

Liancourt Rocks (Takeshima);

and all other islands and islets to which Japan had acquired title lying outside the line described in Article 1 . . . [thereafter, the same as in the August 5, 1947 draft].

²² NARA: RG59, Bureau of Far Eastern Affairs, Lot 56 D527, Records of the Office of Northeast Asian Affairs Relating to the Treaty of Peace with Japan, Box 3, Peace Treaty.

²³ Three notes appear in this part. Note 1 indicates that the retention by Japan of all or some of the southernmost Kurils (Kunashiri and Etorofu), the Habomais and Shikotan is still being studied, Note 2 that a firm U.S. position on the disposition of the Ryukyus has not yet been reached, and Note 3, after decisions have been reached concerning the disposition of the islands mentioned in Note 1 and Note 2 above, there should be inserted in Article 1 a clause to define the territorial limits of Japan in terms of latitude and longitude.

October 13, 1949 Draft

The next provisional draft was dated October 13, 1949,²⁴ which was substantially the same as the January 1948 draft, with minor difference in that in Article 1 of Chapter I, Territorial Clauses, the Northern Territories was restored to the list of islands to be retained by Japan, and that in Article 4 the expression was changed to “renounces in favor of Korea” in response to the establishment of the Republic of Korea.

November 2, 1949 Draft

The November 2, 1949 draft²⁵ differed from that of the previous month only in that chapter and article numbers were changed, that the Northern Territories were dropped from the list of islands to be retained by Japan in the Territorial Clause, Article 3, Chapter II (former Article 1, Chapter I) while the indication with latitude and longitude were revived; and that description became detailed in Article 6 (former Article 4). Otherwise, the draft remained the same with the previous one, with Takeshima still included in Korea. Article 6 read:

1. Japan hereby renounces in favor of Korea all rights and titles to the Korean mainland territory and all offshore Korean islands, including Quelpart (Saishu To), the Nan How Group (San To, or Kumon Do) which forms Port Hamilton (Tonaikai), Dagelet Island (Utsuryo To, or Matsu Shima), Liancourt Rocks (Takeshima), and all other islands and islets to which Japan has acquired title lying outside the line described in Article 3 and to the east of the meridian 124°15' E. longitude, north of the parallel 33° N. latitude, and west of a line from the seaward terminus of the boundary approximately three nautical miles from the mouth of the Tsumen River to a point in 37°30' N. latitude, 132°40' E. longitude.
2. This line is indicated on the Map attached to the present Treaty.

B. Comments by the Acting Political Adviser in Japan and Revision of the Related Provisions

Summary Comment on the November 2, 1949 Draft (Telegram)

The abovementioned November 2, 1949 provisional draft of the Treaty of Peace with Japan was also sent to the United States' Acting Political Adviser in Japan, William J. Sebald in Tokyo. In Japan, losing its independence at the time, there was no US ambassador, but the Acting Political Adviser instead, effectively functioning as the US mission to Japan.

Sebald sent a telegram to Assistant Secretary of State for Far Eastern Affairs, William Walton Butterworth (officially addressed to the Secretary of State) on November 14, 1949,²⁶ to share his view on the provisional draft as the Acting Political Adviser in Japan. He said in the telegram that while further details would be sent in writing, “The following are our preliminary comments

²⁴ NARA: RG59, Decimal File 1945-49, Box 3515, 740.0011 PW PEACE/10-1449.

²⁵ Ibid., 740.0011 PW (PEACE)/11-249.

²⁶ Ibid., 740.0011 PW (PEACE)/11-1449; and *Foreign Relations of the United States 1949*, vol. 7, p. 898 (abbreviated below to *FR 1949*, etc.).

concerning those provisions which we consider of high importance,” referring to 15 articles in the text. As with Article 6 (renouncing Korea Clause), he commented:

Recommend reconsideration Liancourt Rocks (Takeshima). Japan’s claim to these islands is old and appears valid. Security considerations might conceivably envisage weather and radar stations thereon.

Detailed Comment on the November 2, 1949 Draft (Letter)

The detailed comment, as in the above telegram, was sent to the Secretary of State on November 19, 1949, in the form of letter and its attachment.²⁷ The attached document entitled “Detailed Comment on November 2 Draft Treaty” noted the following in relation to Article 3 (Clause on the territorial limits of Japan):

It is admitted that this Article offers a practical and convenient manner of describing the territories which Japan gives up and those which Japan retains. It is believed, however, that the method of delineation employed in this Article has serious psychological disadvantages. If possible, it is recommended that another method of description be employed which avoids circumscribing Japan with a line even if it is necessary to enumerate a large number of territories in an annex. We suggest that the practicability be explored of defining Japan territorially in positive terms, altering Article 3 approximately as follows: retain the first six lines of the draft of paragraph 1; name further islands as necessary off the coasts of Japan; continue with the words “and all other islands nearer therefrom to the home islands of Japan”; and conclude Article 3 with the statement that “all islands within the area described, with a three-mile belt of territorial waters, shall belong to Japan.”

In any event, the omission of paragraph 2 and of the map is recommended. . . .

Sebald continued to make proposals on the whole Territorial Clauses section (e.g. only renunciation be stipulated and affiliation be decided by the parties except Japan) and on how to deal with Taiwan and the Northern Territories, which was followed by Takeshima:

With regard to the disposition of islands formerly possessed by Japan in the direction of Korea it is suggested that Liancourt Rocks (Takeshima) be specified in our proposed Article 3 as belonging to Japan. Japan’s claim to these islands is old and appears valid, and it is difficult to regard them as islands off the shore of Korea. Security considerations might also conceivably render the provision of weather and radar stations on these islands a matter of interest to the United States.

December 29, 1949 Draft

In response to Sebald’s view that Takeshima be in the Japanese territory, the Department of State revised the relevant articles next month in its draft of December 29, 1949.²⁸ Takeshima was added in the enumeration of islands to be retained by Japan in Article 3, Chapter II, Territorial Clauses. The revised article read as follows:

1. The Territory of Japan shall comprise the four principal Japanese islands of Honshu, Kyushu, Shikoku and Hokkaido and all adjacent minor islands, including the islands of the Inland Sea (Seto Naikai); Tsushima, Takeshima (Liancourt Rocks), Oki Retto, Sado, Okujiri, Rebun, Riishiri and all other islands in the Japan Sea (Nippon Kai) within a line connecting the farther shores of Tsushima, Takeshima and Rebun; the Goto archipelago, the Ryukyu

²⁷ Ibid., 740.0011 PW (PEACE)/11-1949.

²⁸ NARA: RG59, Lot 54 D423, JAPANESE PEACE TREATY FILES OF JOHN FOSTER DULLES, Box 12, Treaty Drafts 1949–March 1951. This file contains the revised version of February 1950, but the cover letter makes it clear that the section related to Takeshima had not been changed from the original version.

Islands north of 29° N. latitude, and all other islands of the East China Sea east of longitude 127° east of Greenwich and north of 29° N. latitude; the Izu Islands southward to end including Sofu Gan (Lot's Wife) and all other islands of the Philippine Sea nearer to the four principal islands than the islands named; and the Habomai group and Shikotan lying to the east and south of a line extending from All of the islands identified above, with a three-mile belt of territorial waters, shall belong to Japan.

2. All of the islands mentioned above are shown on the map attached to the present Treaty.

Takeshima was then dropped from Article 6 on the renunciation of Japan's claims to Korea. The new article read as follows:

Japan hereby renounces in favor of Korea all rights and titles to the Korean mainland territory and all offshore Korean islands, including Quelpart (Saishu To), the Nan How group (San To, or Komun Do) which forms Port Hamilton (Tonaikai), Dagelet Island (Utsuryo To, or Matsu Shima), and all other offshore Korean islands and islets to which Japan had acquired title.

Summary

In reference to the US State Department's provisional draft of the Treaty of Peace with Japan dated November 2, 1949, which included Takeshima in Korea, the United States' Acting Political Adviser in Japan, William J. Sebald, suggested by telegram and letter that this would be false. As a result, a new draft was drawn up the following month on December 29, 1949, adding Takeshima to those islands to be retained by Japan and excluding it from the clause on the renunciation of Japan's claims to Korea.

3. Drafts of the Treaty of Peace with Japan in and after 1950

A. US-UK Coordination on the Draft Peace Treaty

State Department Commentary

The abovementioned December 29, 1949 draft was used within the US Government until the summer of 1950, with partial amendments. With the drafts dated October 13, 1949 and later, the State Department had made a commentary on the draft treaty, and updated them along with the change of the draft (for internal use in the US Government). The "Commentary on Draft Treaty of Peace with Japan,"²⁹ as in July 1950, explained Article 3 (the clause on the territories to be retained by Japan) in the December 29, 1949 draft in relation to Takeshima in this way:

Takeshima (Liancourt Rocks) – The two uninhabited islets of Takeshima, almost equidistant from Japan and Korea in the Japan Sea, were formally claimed by Japan in 1905, apparently without protest by Korea, and placed under the jurisdiction of the Oki Islands Branch Office of Shimane Prefecture. They are a breeding ground for sea lions, and records show that for a long time Japanese fishermen migrated there during certain seasons. Unlike Dagelet Island a short distance to the west, Takeshima has no Korean name and does not appear ever to have been claimed by Korea. The islands have been used by U.S. forces during the occupation as a bombing range and have possible value as a weather or radar station site.

²⁹ NARA: RG59, Decimal File 1950-54, Box 3006, 694.001/7-1850.

“a simple Treaty”

On April 19, 1950, John Foster Dulles was appointed as consultant to the Secretary of State, and on May 18, assumed another capacity of drafting the Peace Treaty.³⁰ In fall 1950, the treaty drafting process entered a new phase for coordination with the concerned countries. The first draft that Dulles made in cooperation with State Department officials in charge was one dated August 7, 1950. Dulles called it “a simple Treaty . . . as a possible alternative to the long form previously circulated,”³¹ more concise than the previous State Department drafts, without enlisting islands to be retained by Japan and attaching an annex of map.

In Chapter IV (“Territory”) of the August 7, 1950 draft, the text of the Korean clause (Article 4) became “Japan recognizes the independence of Korea and will base its relation with Korea on the resolutions adopted by the United Nations Assembly on December __, 1948.” In this clause, the reference to the islands of Quelpart, Port Hamilton, and Dagelet was erased.

The August 7 draft was subsequently amended on September 11, 1950,³² with Article 4 on Korea now reading:

Japan recognizes the independence of Korea and will base its relation with Korea on the resolutions of the United Nations General Assembly and Security Council with respect to Korea.

A paper that summarized the September 11, 1950 draft into seven points was created on the same day.³³ The third point in the paper dealt with territory, stating in relation to Korea simply that Japan would “recognize the independence of Korea.”

The seven-point summary was presented to the concerned countries in and after fall 1950. It was also released to the press by the State Department on November 24, 1950, and became generally known as the “Seven Points on the Treaty of Peace with Japan.”

US’s Answer to Questions by the Australian Government

As noted above, the short draft no longer listed the islands to be retained by Japan, with Takeshima dropped from the draft. However, this did not change the intention of leaving Takeshima in Japan’s territory. For example, in response to the clarification on the third point of the Seven Points by the Australian government, requesting “more precise information concerning the disposition of former Japanese territories,” the United States answered:³⁴

It is thought that the islands of the Inland Sea, Oki Retto, Sado, Okujiri, Rebun, Riishiri, Tsushima, Takeshima, the Goto Archipelago, the northernmost Ryukyus, and the Izus, all long recognized as Japanese, would be retained by Japan. . . . [The rest of the response, which deals with trusteeship over the Ryukyus, etc., has been omitted.]

US Draft

³⁰ *FR 1950*, vol. 6, pp. 1160–1161.

³¹ *Ibid.*, p. 1267 -.

³² *Ibid.*, p. 1297 -.

³³ *Ibid.*, p. 1296 -; and *Department of State Bulletin*, Dec. 4, 1950, p.881

³⁴ NARA: RG59, Decimal File 1950-54, Box 3007, 694.001/10-2650; and *FR 1950*, vol. 6, p. 1327 -.

After exchanging views with major Allied Powers and informal hearings with Japan, the US Government produced a draft of the Treaty dated March 23, 1951,³⁵ Article 3 of which was “Japan renounces all rights, titles and claims to Korea, Formosa and the Pescadores” (going on to deal with trusteeship, etc.).

UK Draft

In the meantime, the United Kingdom had been preparing its own drafts apart from the United States. Following the first draft dated February 1951³⁶ and the second dated March 1951,³⁷ a draft of the Treaty was completed on April 7, 1951. The “UK Draft”³⁸ adopted the method used in the abovementioned US drafts of November 2, 1949 and before, that is, circumscribing Japan with a line indicated by latitude and longitude and recognizing Japan’s continued sovereignty over the islands inside that line. In the UK Draft, Takeshima was placed outside the line. Article 1 of Part I: Territorial Clauses read:

Japanese sovereignty shall continue over all the islands and adjacent islets and rocks lying within an area bounded by a line from latitude 30° N., in a north-westerly direction to approximately latitude 33° N. 128° E., then northward between the islands of Quelpart, Fukue-Shima bearing north-easterly between Korea and the island of Tsushima, continuing in this direction with the islands of Oki-Retto to the south-east and Take Shima to the north-west curving with the coast of Honshu . . . The line above described is plotted on the map attached to the present treaty (Annex I). In the case of a discrepancy between the map and the textual description of the line, the latter shall prevail.

It is not clear why the UK draft removed Takeshima from Japan’s territory, but the United Kingdom might have been influenced by SCAPIN-677 mentioned in the first section of this paper. The UK draft also included a clause regarding the renunciation of claims to Korea in Article 2, as follows:

Japan hereby renounces any claim to sovereignty over, and all right, title and interest in Korea, and undertakes to recognize and respect all such arrangements as may be made by or under the auspices of the United Nations regarding the sovereignty and independence of Korea.

Creation of a Joint US-UK Draft

With both the United States and the United Kingdom having produced their treaty drafts, consultations were held in Washington in May 1951 between the diplomatic authorities of the two states, resulting in “the Joint United States-United Kingdom Draft Peace Treaty” of May 3, 1951.³⁹ The method used in the UK draft, which used latitude and longitude to specify the islands to be retained by Japan (and which the US draft of December 29, 1949 dropped) was no longer held. The clause of the renunciation of Japan’s claims to Korea appeared in Article 2 in a way that merged the US and UK drafts (for the United States, back to the language of the December

³⁵ *FR 1951*, vol. 6, pt. 1, p. 944 -.

³⁶ Records of the United Kingdom’s Foreign Office at the Public Record Office (PRO): FO371/92532, FJ1022/97, p.58 -.

³⁷ PRO: FO371/92535, FJ1022/171, p.70 -.

³⁸ PRO: FO371/92538, FJ1022/222, p.14 -. The map was referenced from The US National Archives. NARA: RG59, Lot 54 D423, JAPANESE PEACE TREATY FILES OF JOHN FOSTER DULLES, Box 12, Treaty Drafts –May 3, 1951.

³⁹ *FR 1951*, vol. 6, pt. 1, p. 1024 -.

29, 1949 draft), stating that “Japan renounces all rights, titles and claims to Korea (including Quelpart, Port Hamilton and Dagelet).”

In relation to the background in this period, the Commentary on the draft treaty by the US State Department on June 1, 1951⁴⁰ depicts that in response to the following comment of the New Zealand Government:

In view of the need to ensure that none of the islands near Japan is left in disputed sovereignty, the New Zealand Government favours the precise delimitation by latitude and longitude of the territory to be retained by Japan as suggested in Article 1 of the United Kingdom’s draft. The adoption of this device could for example make it clear that the Habomai Islands and Shikotan at present under Russian occupation will remain with Japan.

The United States answered:

In the discussions at Washington the British agreed to drop this proposal when the U.S. pointed to the psychological disadvantages of seeming to fence Japan in by a continuous line around Japan. The Japanese had objected to the British proposal when it was discussed with them in Tokyo. U.S. willingness to specify in the treaty that Korean territory included Quelpart, Port Hamilton and Dagelet also helped to persuade the British. As regards the Habomais and Shikotan, it has seemed more realistic, with the USSR in occupation of the islands, not specifically to stipulate their return to Japan.

The British record of the Washington consultations (Summary Record of Seventh Meeting held at 10.30 a.m. on the 2nd May, in Washington)⁴¹ contains the following:

UNITED STATES CHAPTER III

Both Delegations agreed that it would be preferable to specify only the territory over which Japan was renouncing sovereignty. In this connection, United States Article 3 would require the insertion of the three islands Quelpart, Port Hamilton and Dagelet. It was left undecided whether the sentence in British Article 2 requiring Japan to recognize whatever settlement the United Nations might make in Korea should be maintained or not. . . .

The “psychological disadvantages” above in the US commentary relates to the point raised by the United States’ Acting Political Adviser in Japan, William Sebald, as mentioned in the preceding chapter. The wording, “Korean territory included Quelpart, Port Hamilton and Dagelet,” corresponds to that of the clause on Japan’s renunciation of claims to Korea in the December 29, 1949 draft (in which Takeshima came to be retained by Japan), which was drafted in response to Sebald’s recommendation. Also in the British record, only three islands are named as territory to be retained by Korea, without reference to Takeshima, which the British draft placed outside the territory to be retained by Japan. Hence it is safe to construe that the US-UK Joint Draft dropped not only the formula of circumscribing Japan used in the UK draft, but also the idea of placing Takeshima outside the line surrounding Japan (namely Takeshima was to be retained by Japan).

The United States and the United Kingdom had a consultation in London in June 1951 during a visit by Dulles, ending with “the Revised United States-United Kingdom Draft of a Japanese Peace Treaty”, dated June 14, 1951.⁴² The clause of the renunciation to Korea, in Article 2(a) of

⁴⁰ Ibid., p. 1055 -.

⁴¹ Anglo-American Meetings on Japanese Peace Treaty. Summary Records of Seventh Meeting. PRO: FO371/92547, FJ1022/376, p. 66.

⁴² *FR 1951*, vol. 6, pt. 1, p. 1119 -.

this draft, held that in the joint draft of May, which read “Japan, recognizing the independence of Korea, renounces all right, title and claim to Korea, including the islands of Quelpart, Port Hamilton and Dagelet.” This language remained unchanged until the final text was signed on September 8, 1951.

B. Korean Government’s Call for Amendments and US Refusal

Korean Government Memorandum

The US draft of March 1951 was also delivered to the Republic of Korea.⁴³ The Korean Government requested 11 items, including Korea’s signing to the treaty as a victor, the “return” of Tsushima, participation in the Pacific security system, and seizure of the Japanese assets in Korea.⁴⁴ At this moment, no mention was made of the territorial sovereignty of Takeshima.

The Korean Government then responded to the revised US-UK draft of June 1951 (more precisely, to the revised draft as on July 3), again submitting requests dated July 19, 1951. The official note from the Korean Ambassador to the United States, Yang You-chan to the US Secretary of State read:⁴⁵

I have the honor to present to Your Excellency, at the instruction of my Government, the following requests for the consideration of the Department of State with regard to the recent revised draft of the Japanese Peace Treaty.

1. My Government requests that the word “renounces” in Paragraph a, Article Number 2, should be replaced by “confirms that it renounced on August 9, 1945, all right, title and claim to Korea and the islands which were part of Korea prior to its annexation by Japan, including the islands Quelpart, Port Hamilton, Dagelet, Dokdo and Parangdo.”
2. [Approval of the seizure and transfer of Japanese properties in Korea] . . .
3. [Continuation of the MacArthur Line] . . .

Please accept, Excellency, the renewed assurance of my highest consideration.

Meeting between the Korean Ambassador to the US and Dulles

The above note by the Korean Government was handed to the US side at the meeting between Ambassador Yang You-chan and Dulles on July 19, 1951. They were also accompanied by First Secretary Han Pyo-wook on the Korean side, and Arthur B. Emmons III, an officer in charge of Korean Affairs of the State Department, on the US side. The relevant part of the discussion, according to Emmons’ record, was as follows:⁴⁶

The Korean Ambassador called upon Mr. Dulles at 2 o’clock this afternoon by prior appointment. In opening the conversation Dr. Yang presented Mr. Dulles with a note addressed to the Secretary (copy attached) raising certain points which the Korean Government wished to have considered for incorporation in the Japanese peace treaty.

⁴³ Ibid. See Note 1, p. 944.

⁴⁴ Comments on Korean Note Regarding U.S. Treaty Draft. NARA: RG59, Lot 54 D423, JAPANESE PEACE TREATY FILES OF JOHN FOSTER DULLES, Box 8, Korea; and Note 2 to *FR 1951*, vol. 6, pt. 1, p. 1183. See also the article indicated in Note 3 to this paper.

⁴⁵ NARA: RG59, Lot 54 D423, JAPANESE PEACE TREATY FILES OF JOHN FOSTER DULLES, Box 8, Korea; and *FR 1951*, vol. 6, pt. 1, p. 1206.

⁴⁶ Ibid.; and *FR 1951*, vol. 6, pt. 1, p. 1202 -.

After reading the Ambassador's communication, Mr. Dulles discussed the three points contained therein. With regard to the first point, Mr. Dulles was in doubt that the formula confirming Japan's renunciation of certain territorial claims to Korea could be included in the treaty in the form suggested by the ROK. He explained that the terms of the Japanese surrender instrument of August 9, 1945 did not, of themselves, technically constitute a formal and final determination of this question. He added, however, that the Department would consider including in the treaty a clause giving retroactive effect to the Japanese renunciation of territorial claims to August 9, 1945. The Korean Ambassador replied that if this were done he believed that the point raised by his Government would be met satisfactorily.

Mr. Dulles noted that paragraph 1 of the Korean Ambassador's communication made no reference to the Island of Tsushima and the Korean Ambassador agreed that this had been omitted. Mr. Dulles then inquired as to the location of the two islands, Dokdo and Parangdo. Mr. Han stated that these were two small islands lying in the Sea of Japan, he believed in the general vicinity of Ullungdo. Mr. Dulles asked whether these islands had been Korean before the Japanese annexation, to which the Ambassador replied in the affirmative. If that were the case, Mr. Dulles saw no particular problem in including these islands in the pertinent part of the treaty which related to the renunciation of Japanese territorial claims to Korean territory.

In regard to paragraph 2 of the Ambassador's communication, Mr. Dulles . . . [Dulles goes on to tell Korea that he could not foresee that Korea's demand in the second paragraph of the communication would involve any particular difficulty, but that with reference to the third paragraph, he could say right off that it would be impossible, etc.]

US Response to Korea's Note

In response to the Korean Government's request to amend the treaty draft in a way to include "Dokdo"/Takeshima in the Korean territory, Assistant Secretary of State for Far Eastern Affairs, Dean Rusk carried the United States' final response by a diplomatic note⁴⁷ dated August 10, 1951 to the Korean ambassador. The relevant part in that note was as follows:

Excellency: I have the honor to acknowledge the receipt of your notes of July 19 and August 2, 1951⁴⁸ presenting certain requests for the consideration of the Government of the United States with regard to the draft treaty of peace with Japan.

With respect to request of the Korean Government that Article 2(a) of the draft be revised to provide that Japan "confirms that it renounced on August 9, 1945, all right, title and claim to Korea and the islands which were part of Korea prior to its annexation by Japan, including the islands Quelpart, Port Hamilton, Dagelet, Dokdo and Parangdo," the United States Government regrets that it is unable to concur in this proposed amendment. The United States Government does not feel that the Treaty should adopt the theory that Japan's acceptance of the Potsdam Declaration on August 9, 1945 constituted a formal or final renunciation of sovereignty by Japan over the areas dealt with in the Declaration. As regards the island of Dokdo, otherwise known as Takeshima or Liancourt Rocks, this normally uninhabited rock formation was according to our information never treated as part of Korea and, since about 1905, has been under the jurisdiction of the Oki Islands Branch Office of Shimane Prefecture of Japan. The island does not appear ever before to have been claimed by Korea. It is understood that the Korean Government's request that "Parangdo" be

⁴⁷ Ibid.; and Note 3 to *FR 1951*, vol. 6, pt. 1, p. 1203.

⁴⁸ On August 2, Korea again requested the inclusion of (1) Japan's renunciation of all Japanese property in Korea, (2) continuation of the MacArthur Line, and (3) Korea's entitlement to the benefits of Article 15(a) (return of the property of each Allied Power within Japan). NARA: RG59, Lot 54 D423, JAPANESE PEACE TREATY FILES OF JOHN FOSTER DULLES, Box 8, Korea.

included among the islands named in the treaty as having been renounced by Japan has been withdrawn.

The United States Government agrees that the terms of paragraph (a) of Article 4 of the draft treaty . . .

Accept, Excellency, the renewed assurances of my highest consideration.
For the Secretary of State:
Dean Rusk

In relation to Parangdo, in my previous paper (see Preface of this paper), I wrote “it might be ‘波浪島’ in Chinese characters, but is not known in detail”. Later I learned from Yoshio Morita, well-known as the author of *Chosen shusen no kiroku* [Records of the End of the War in Korea],⁴⁹ that there was a reference to Parangdo in the recollections of Yu Chin-o⁵⁰, who was involved in drafting the Korean Government’s requests. The gist of that reference is as follows.

I [Yu Chin-o] encountered and began examining the US’s provisional draft Treaty of Peace with Japan at the end of March or the beginning of April 1951, finding problematic in Article 4(a) on attributed property (i.e., Japanese property located in Korea) and Article 2 on territory. Thinking that the Korean Government must submit a comment on these issues, I immediately began preparing the document. First, I visited [historian] Choe Nam-seon to ask which islands Korea could claim as Korean territory in historic terms. I was persuaded of Choe’s explanation on the history of Dokdo. I learned that there were no grounds for Tsushima being Korean territory, but I gained new knowledge instead. There was Parangdo around in the center of the triangle of Mokpo, Nagasaki, and Shanghai, appearing intermittently between waves. He suggested that it be better to take advantage of this opportunity to confirm its affiliation as Korean territory. If the name of Parangdo were to be mentioned in the treaty, Korea’s territory would stretch farther in southwest of Chejudo (Quelpart); so I was overjoyed at Choe’s words. . . . I wasn’t confident very much about the island, but I thought that there would be no harm in including it in the comment even if it didn’t actually exist, so I asked that it be added to Article 2 of the peace treaty along with Dokdo. . . . An on-site survey was conducted in the summer of 1951, but we couldn’t find Parangdo.⁵¹

An office memorandum dated August 3, 1951 in the State Department record describes that although they “tried all resources in Washington,” they could not identify “Dokdo” and Parangdo. When they asked the Korean embassy, an embassy officer answered that he “believed Dokdo was near Ullungdo, or Takeshima Rock, and suspected that Parangdo was too.”⁵²

Summary

From the summer of 1950 onward, the United States made treaty drafts in a simple form, abandoning the formula of listing the islands to be retained by Japan. However, there was no change in the intention of keeping Takeshima in Japan’s territory. The draft of the Peace Treaty was finalized in coordination with the British draft.

⁴⁹ Tokyo: Gannando-shoten, 1964 - four volumes including appendices.

⁵⁰ Yu Chin-o, “Toward the Commencement of Korea-Japan Talks, Part 1,” *Sasang-gye* (February 1966).

⁵¹ According to Yang Tae-jin, *Hanguk byeonbang yeogsa yeongu* [Study on the History of Korean Borderland] (Seoul: Popkyong Publishing, 1989), page 235, Parangdo was discovered in a 1984 survey and was turned out to be Socotra Rock. However, if it is Socotra Rock, because this is marked on sea charts as lying five meters below the surface, it is doubtful as to whether a sunken rock in the high sea could be claimed as territory in terms of international law.

⁵² Office Memorandum from Fearey to Allison, NARA: RG59, Lot 54 D423, JAPANESE PEACE TREATY FILES OF JOHN FOSTER DULLES, Box 8, Korea.

In the diplomatic note dated July 19, 1951 to the US Secretary of State, the Korean Government requested that Takeshima (“Dokdo”) be exemplified as an island belonging to Korea in Article 2(a) of the draft treaty, which dealt with Japan’s renunciation of claims to Korea. In a diplomatic note dated August 10, 1951, the United States refused the request for amendment of the treaty text on the grounds that the island had never been treated as part of Korea according to US information. After hearing the views from scholars, the Korean side requested that Takeshima (“Dokdo”) and “Parangdo” be clarified in the draft treaty, but apparently without sufficient preparation.

4. Conclusion

The Treaty of Peace with Japan was signed in San Francisco on September 8, 1951, fixing the text of the clause on the renunciation of territorial claims to Korea (Article 2(a)) as in the Revised United States-United Kingdom Draft of June 1951. Thus, it is not true that the San Francisco Peace Treaty confirmed that Takeshima was separated from Japan, nor did it approve that Takeshima belonged to Korea as part of Utsuryo-to (Ulleungdo or Dagelet), as claimed by Korea. Instead the Treaty confirmed that Takeshima shall be held by Japan.

The abovementioned recollections by Yu Chin-o observe that although it is not understandable that the Treaty does not directly refer to “Dokdo” despite the Korean Government’s request, this cannot be interpreted in a way that the United States considered “Dokdo” to be Japanese territory, but should be construed that such a small rock attached to Ulleungdo was not worth specifying in the Treaty. Kim Dong-jo, Director of the Political Affairs Bureau within the Korean Ministry of Foreign Affairs in 1951, notes in the book of his memoirs, whose Japanese translation was recently published,⁵⁴ that although the Korean side asked the United States to clarify that “Dokdo” be as part of the Korean territory in the treaty draft as of July 1951, the United States rejected; however, the United States flatly removed “Dokdo” from the area of Japanese territory, and clarified that “Dokdo” was not only outside the Japanese territory but inside the Korean territory through all the measures taken by the General Headquarters; and that this meant that the United States had definitely removed the island from Japan’s territory and tacitly acknowledged that “Dokdo” was part of the Korean territory. These views are not true also, running against historic fact.

In the afterword of my previous paper, I wrote that if the entry into force of the United Nations Convention on the Law of the Sea (UNCLOS) made it necessary to demarcate the exclusive economic zones (so-called the 200-mile zones) between Japan and Korea, the Takeshima issue would draw public attention again for urgent solution. More than a decade has passed since then, and the disagreement between the United States and developing countries on a system for developing deep seabed mineral resources has, for better or for worse, continued to delay the

⁵³ P. 98 in the work referenced in Note 50.

⁵⁴ Kim Dong-jo, *Kan-nichi no wakai* [Korea-Japan Reconciliation], trans. Takehiko Hayashi (Simul Press, 1993). Original published in 1986. Quote from p. 97 of the Japanese translation.

Convention's entry into force. Nevertheless, with the number of member states now reaching the threshold, the Convention is scheduled to become effective in November 1994.⁵⁵

Meanwhile, the Soviet Union's 1977 declaration of its 200-mile zone prompted Japan to formulate and put into force the Act on Temporary Measures Concerning Fishery Waters (Act No. 31 of 1977), but as the fisheries issues with South Korea were considered to have been settled amicably under the 1965 agreement, Japan did not set up its fishing zone in the direction of Korea, and excluded the South Korean nationals from the regulatory scope of the new fishing zone (Enforcement Order for Act No. 31). However, aggressive fishing operations by Korean fishing boats in the Japanese coastal waters have been causing serious damage to Japan's fishing industry, spurring a call in the industry for all-out implementation of the 200-mile regulation.⁵⁶

If both Japan and Korea establish their 200-nautical-mile zones (whether fishing zones or UNCLOS exclusive economic zones), border demarcation in the Sea of Japan would raise an issue on which side Takeshima should belong to.⁵⁷

In the Takeshima territorial dispute lie several contentious aspects; not only one on the relations with the Treaty of Peace with Japan examined in this paper, but others on such as historic titles, and measures taken by the two countries during the Meiji period.⁵⁸ The relations with the Treaty of Peace with Japan has now become clear. The other aspects also need to be closely studied for better readiness, taking into consideration the future development of the 200-mile zone issue.

Takashi Tsukamoto

Foreign Affairs and National Defense Division [Research and Legislative Reference Bureau, The National Diet Library]

(Map)

⁵⁵ According to UNCLOS provisions, the treaty enters into force one year from the time that 60 countries have ratified or acceded to. On November 16, 1993, Guyana became the 60th country to deposit its ratification.

⁵⁶ Tsutomu Matsuura, "Kankoku gyosen sogyo no genjo to kadai" [Korean fishing boat operations: Current status and issues], *Suisankai* (September 1993); and Matsuura, "200 kairi kakuritsu zenkoku gyomin taikai" [National fishermen's conference on establishment of a 200-mile zone], *Suisankai* (December 1993).

⁵⁷ Regarding the East China Sea, the problem is that when a median line was adopted in demarcating the two countries' waters, all of the area designated as a Joint Development Zone under the 1974 Agreement between Japan and the Republic of Korea concerning Joint Development of the Southern Part of the Continental Shelf adjacent to the Two Countries (Agreement of the Southern Part) would fall within 200 nautical miles of Japan. Because the EEZ system under United Nations Convention on the Law of the Sea dictates that sovereign rights apply not only to fishing resources in the waters but also to mineral resources below the seabed, establishment of an EEZ would create coordination issues with the continental shelf agreement noted above.

⁵⁸ For the Takeshima issue as a whole, see Kenzo Kawakami, *Takeshima no rekishi chirigaku teki kenkyu* [Historical-geographical study of Takeshima] (Tokyo: Kokon Shoin, 1966). For a view claiming that Takeshima is not Japanese territory, see Kazuo Hori, "1905 nen nihon no takeshima ryodo hennyu" [Japan's 1905 incorporation of Takeshima], *Chosenshi kenkyukai ronbunshu*, no. 24 (March 1987).

