

# A Territorial Dispute over Takeshima: Points at Issue\*

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## Introduction

Since 1952, there has been an ongoing dispute between Japan and the Republic of Korea (ROK) over the sovereignty of Takeshima, an isolated island in the Sea of Japan. In January of that year, the ROK declared the so-called Syngman Rhee Line, bringing Takeshima within Korean waters, to which Japan protested. This was the starting point for the territorial dispute between the governments of the two countries.<sup>1</sup> As the basis for the ROK's territorial claim, the order issued by the General Headquarters, Supreme Commander for the Allied Powers (GHQ; see section 4. below) was initially cited.<sup>2</sup> Subsequently, however, there were claims made that Usan Island (Usando), which can be seen in old Korean literature, was actually Takeshima and therefore historically Korean territory, and that Takeshima was taken in the process of Korea's annexation, referring to Japan's incorporation of Takeshima into its territory in 1905.<sup>3</sup>

Territorial issues lead to bottlenecks when they are linked to nationalism. As the Japanese government has proposed, the best way to resolve the Takeshima territorial dispute would be

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<sup>1</sup> The timing of the outbreak of the dispute is important in relation to the date of admissibility of evidence, known as the critical date in international law (anything new or done to strengthen one's position after a dispute between governments has arisen does not represent evidence of effective control). January 18, 1952, when the ROK established the Syngman Rhee Line in the Proclamation of Sovereignty over Adjacent Seas and included Takeshima within the line, or January 28, 1952, when the Japanese government protested against the ROK's illegal delineation on the high seas and stated that the ROK's apparent territorial claim to Takeshima was not recognized, could be thought of as being the date when a territorial dispute over Takeshima arose between the Japanese and ROK governments.

<sup>2</sup> Views of the ROK government, dated February 12, 1952.

<sup>3</sup> Between 1953 and 1962, the two governments exchanged diplomatic documents several times detailing their positions regarding their grounds for territorial rights over the island. The current views of the ROK government are detailed in the publicity materials *Dokdo, Beautiful Island of Korea* on the site operated by the Ministry of Foreign Affairs and Trade of the ROK (<http://dokdo.mofat.go.kr/upload/japanese.pdf>; most recent access date: 14 August 2013).

through a judicial settlement (referral to the International Court of Justice).<sup>4</sup> The first step toward this would be for both governments and citizens to be aware of each other's arguments, particularly those that differ from their own. From this perspective, this report attempts to broadly classify the points at issue in the Takeshima territorial dispute into four categories, confirming the facts of each and providing a brief analysis for each issue, which are: (1) Whether Usan Island, described in ancient Korean documents and maps is present-day Takeshima or not; (2) whether the Japan-Korea negotiations over fishing in Ulleungdo in the 1690s resulted in the confirmation of present-day Takeshima as Korean territory or not; (3) whether the incorporation of present-day Takeshima by Japan in 1905 should be considered as a part of the annexation of Korea or not; and (4) whether the legal status of present-day Takeshima was changed by the measures taken by Allied Powers after World War II or not.

### 1. Is Usan Island, described in ancient Korean documents and maps, Takeshima?

In the ancient Korean document *Sejong Sillok Jiriji* (Geography Section of the Annals of King Sejong's Reign) (15th century) it is written that, "Usan, Mureung. The two islands are situated in the sea due east of [Uljin] prefecture. They are not far apart, and on clear and windy days, they are visible. During the Silla period this was called Usan-guk (Usan State). It is also called Ulleungdo." (于山武陵二島在縣正東海中 二島相去不遠風日清明則可望見 新羅時稱于山國 一云鬱陵島).<sup>5</sup> Similarly, in the *Sinjeung Dongguk Yeoji Seungnam* (Revised and Augmented Edition of the Survey of Geography of Korea) (16th century) it is written that, "Usando/Ulleungdo: also called Mureung or Ureung, the two islands are located in the middle of the sea due east of the prefecture. On a clear and windy day, the trees on the mountain peaks and the shores at the foot of the mountains can be clearly seen.... Some people say that Usan and Ulleung are the same one island." (于山島 鬱陵島 一云武陵一云羽陵 二島在縣正東海中 …風日清明則峯頭樹木及山根沙渚歷歷可見 …一說于山鬱陵本一島).<sup>6</sup> There is ongoing debate about whether this Usan (Usando) is actually Takeshima and therefore it was historically Korean territory.

The *Paldo-chongdo* (Map of the Eight Provinces of Korea) in the *Sinjeung Dongguk Yeoji Seungnam* depicts Usando as lying between the Korean Peninsula and Ulleungdo, but there is no island in such a position. Also, in the *Daejong Sillok* (Annals of King Daejong's Reign) (15th century) it is recorded that an envoy Kim Rin-u (a person's name) in February 1417 returned from Usando and presented to the king such local products as giant bamboo...bringing with him three residents of the island, which had a population of about 15 households and 86 people (按撫使金麟雨還自于

<sup>4</sup> To date the Japanese government has, at various junctures, raised the issue of referring the Takeshima territorial dispute to the ICJ. The first was the note verbale of September 25, 1954, following the stationing of armed personnel on Takeshima by the ROK (a Japanese patrol boat was shot at from the island). The next proposal came in March 1962, following the inauguration of the Park Chung-hee administration (Park having been appointed as Chairman of the Supreme Council for National Reconstruction in July 1961), on the occasion of the Japan-ROK foreign ministers' meeting, and at a time when there were signs of progress in negotiations towards the normalization of Japan-ROK diplomatic relations. The most recent such proposal was made in August 2012, precipitated by President Lee Myung-Bak's visit to Takeshima, in the process of which he became the first ROK President to set foot on the island.

<sup>5</sup> *Sejong Sillok Jiriji*, vol. 153, folio 11. National Institute of Korean History, *Joseon Wangjo Sillok* (Annals of the Joseon Dynasty), vol. 5 (Seoul: Tongguk Munhwasa, 1956), p. 680.

<sup>6</sup> *Sinjeung Dongguk Yeoji Seungnam*, Vol. 45, Folio 26. Facsimile edition (Seoul: Tongguk Munhwasa, 1958), p. 814. Detailed analysis relating to Usan as covered in this section can be found in Kawakami Kenzo, *Takeshima no Rekishi Chirigaku Teki Kenkyu* (Historical and geographical study of Takeshima) (Kokon Shoin, 1966), pp. 94-120.

山島 獻土產大竹水牛皮生苧綿子撿撲木等物 且率居人三名以來 其島戶凡十五口男女并八十六),<sup>7</sup> but Takeshima is a rocky island where no trees can grow. In *Samguk Sagi* (History of the Three Kingdoms) (12th century) in the Silla Hongi (History of Silla), Part 4, Year 13 of the reign of King Jijeung, it says, “Usan-guk (Usan State) is on an island in the sea to the east of Myeongju, another name is Ulleungdo.” (于山國在溟州東海島 或名鬱陵島).<sup>8</sup> From these documents, Usan (Usando) described in the *Sejong Sillok Jiriji* and others was originally another name of Ulleungdo (=Usan-guk), but was later believed as if there is an island called Usan that is separate from Ulleungdo. Usan is not Takeshima.

Based on the reference in the abovementioned *Sejong Sillok Jiriji* that, “the two islands are not far apart, and on clear and windy days, they are visible,” some people read this as meaning that Usan and Mureung were visible to each other, and use these to press an argument based on the fact that Takeshima can be seen from Ulleungdo. In addition to the fact that whether the islands can be seen or not is unrelated to territorial rights, the records in the *Sejong Sillok Jiriji* should be interpreted as indicating that Usan/Mureung (Ulleungdo) could be seen from Uljin Prefecture.<sup>9</sup>

## 2. Did the Japan-Korea negotiations over fishing in Ulleungdo in the 1690s result in the confirmation of present-day Takeshima as Korean territory?

According to the *Samguk Sagi* mentioned above, Usan-guk, which was in Ulleungdo, surrendered to Silla. However, the Joseon dynasty adopted an “empty island” policy and by 1438 the island had become uninhabited.<sup>10</sup> In Japan, Ulleungdo was called “Takeshima” during the Edo period (1603-1868), and in the seventeenth century, the OYA and MURAKAWA families of Yonago, Hoki Province, took turns traveling to the island each year to cut bamboo and trees, gather abalone, and hunt sea lions, among other activities, with formal shogunal government approval. Takeshima, which is currently the subject of a territorial dispute between Japan and the ROK, was called “Matsushima” in the Edo period and was used as a crossing point to Ulleungdo (then “Takeshima”). According to the OYA family documents, from around 1661, fishing was also conducted on Matsushima with the

<sup>7</sup> *Daejong Sillok*, Vol. 33, Folio 8. National Institute of Korean History, *Joseon Wangjo Sillok*, vol. 2 (Seoul: Tongguk Munhwasa, 1955), p. 146.

<sup>8</sup> For the record on Usan-guk in *Samguk Sagi*, see for example page 32 of the facsimile edition published by the Research Institute for Oriental Cultures, Gakushuin University (1986).

<sup>9</sup> Shimojo Masao, *Takeshima wa Nikkan Dochira no Mono ka* (Is Takeshima Japanese or Korean?) (Tokyo: Bungeishunju, 2004) (Bunshun Shinsho 377), pp. 162-166. According to Prof. Shimojo, under *kishiki* (*kyusik*; a set of rules for the compilation of geographic documents), as islands were recorded in terms of their distance from the mainland, the reference that “on clear and windy days, they are visible” refers to the distance of the “two islands” from the mainland. *Kishiki* have been passed down to the present recorded in books such as *Gyeongsangdo Jiriji* (Compilation of Geography of Gyeongsangdo Province) and *Gyeongsangdo Sokchan Jiriji* (Renewed Compilation of Geography of Gyeongsangdo Province). *Kishiki* is quoted in the preface of the latter book, which reads: “the description of oceanic islands shall include their location, meaning the direction from the principal city of the prefecture and distance along the sailing route; their area, including their circumference; and the area of their fields, population, and other factors.” (在本邑某方 水路幾里 自陸地 去本邑幾里 四面周回相距幾里 田畝幾結 民家有無) (Reprinted by the Government General of Korea, *Keishodo Chirishi / Keishodo Zokusen Chirishi*) (1938).

<sup>10</sup> Kawakami Kenzo, op. cit. (see note 6), p. 67.

permission of the government.<sup>11</sup> Fishing in Ulleungdo continued until 1692, when Korean people were encountered on the island, and the same occurred also in 1693. This was why, in 1693, the boat captain decided to take two Koreans back with him as proof as to why they had been unable to conduct fishing. After staying some time with the OYA family in Yonago, on the instructions of the shogunate the Koreans were returned to Korea via Tsushima. This incident triggered diplomatic negotiations between Japan and Korea over fishing in Ulleungdo, with the result that on January 28, 1696 (March 1 under the Gregorian calendar), the shogunate issued an order to Tottori domain, banning travel to Ulleungdo by the OYA and MURAKAWA families.

Prior to this decision the shogunate (council of elders) inquired with Tottori domain when “Takeshima” (Ulleungdo) became a part of Inaba and Hoki provinces, and if any islands other than “Takeshima” belonged to the two provinces. In response to this inquiry, Tottori domain responded that “Takeshima” did not belong to either Inaba or Hoki provinces and that neither “Takeshima,” “Matsushima” or any other island belonged to the two provinces.<sup>12</sup> Today in the ROK, based on this response from the Tottori Clan, it is argued that Dokdo (the ROK name for Takeshima) was confirmed as Korean territory through negotiations between Japan and Korea at the end of the 17th century. However, at that time there is no record of today’s Takeshima (then known as Matsushima) being the subject of negotiations on either side. Neither did Korea make any mention of this island. Subsequently in 1836 in Japan there was an incident in which Hachiemon of Iwami, a ship merchant, was arrested and executed because he traveled to “Takeshima” (Ulleungdo) to cut down trees and bring them back to Japan. The judicial record of this case found that “he went to Takeshima under the pretext of travelling to Matsushima.”<sup>13</sup> Following the incident, a shogunal proclamation was issued nationwide banning the passage to Ulleungdo and the sailing far out in the ocean, but even in this no mention is made of Matsushima (modern-day Takeshima). This demonstrates there is no evidence to suggest that today’s Takeshima (Matsushima in the past) was confirmed as Korean territory through negotiations at the end of the 17th century.

An Yong-bok, one of the Koreans who had been brought to Japan in 1693, appeared in Oki Islands in 1696. In the interrogation in Oki, An stated that Takeshima is called Ulleungdo and is an island in the province of Gangwon-do and that Matsushima is Jasando, also in Gangwon-do.<sup>14</sup> An reached Hoki province where he tried to make an appeal to the Japanese government. With respect to the subjects of the appeal in Hoki province, according to his statement at the interrogation by the Korean government after returning to Korea, he had accused Japanese people on Ulleungdo of crossing

<sup>11</sup> Kawakami Kenzo, *ibid.*, pp. 73-83. Also, see Tsukamoto Takashi, “Genroku Takeshima Ikken o Megutte: Tsuketari, Meiji Junen Dajokan Shirei” (The Late-Seventeenth-Century ‘Takeshima’ Dispute, with Reference to the Dajokan Order of 1877), *Tosho Kenkyu Janaru* (Review of Island Studies), Vol. 2, No. 2 (May 2013), pp. 34–55. [English translation: <https://www.spf.org/islandstudies/research/a00012.html>]

<sup>12</sup> See Tsukamoto Takashi, “Takeshima Kankei Kyu Tottori Han Bunsho Oyobi Ezu (jo)” (Takeshima-related Documents and Maps of the Former Tottori Domain, Part 1), *The Reference*, No. 411 (April 1985), pp. 75–90.

<sup>13</sup> A copy of the judicial record is in *Mushuku Karikomi Ikken* (Arrest of Wanderers), Vol. 1, in the documents carried on from the old shogunate in the National Diet Library collection.

<sup>14</sup> Old documents of the Murakami family, “Genroku 9 Heishi-nen Chosen-bune Chakugan Ikkan no Oboegaki” (One-Volume Memorandum Concerning the Korean Boat that Came Ashore in the Ninth Year of Genroku), (edited reprint by Hino Toshiharu and Uchida Fumie), *Takeshima Mondai ni Kansuru Chosa Kenkyu: Chukan Hokokusho* (Interim Report of the Research Study on the Takeshima Issue), (Takeshima Mondai Kenkyukai of Shimane Prefecture (First Period), May 2006). ([http://www.pref.shimane.lg.jp/soumu/webtakeshima/takeshima04/takeshima04\\_00/index.data/oboekaidoku.pdf](http://www.pref.shimane.lg.jp/soumu/webtakeshima/takeshima04/takeshima04_00/index.data/oboekaidoku.pdf))

the border, saying that Matsushima was Jasando and part of Korea.<sup>15</sup> If Jasando is considered to be equivalent to Usando, it is thought that the information about Takeshima and Matsushima obtained during his stay in Japan in 1693 was then applied to the traditional knowledge in Korea that there were two islands, Ulleungdo and Usando. In Korea it is argued that An protected the islands' waters, which subsequently gave rise to statements in various publications, such as the *Dongguk Munheon Bigo* (Reference Compilation of Documents on Korea) (18th century) and *Man'gi Yoram* (Manual of State Affairs for the Monarch) (19th century), that "Ulleung (Ulleungdo) and Usan are both territories of Usan-guk (Usan State), and Usan is what Japan refers to as Matsushima." (鬱陵于山皆于山國地 于山則倭所謂松島也). However, the official position of the Korean government was set out in a letter sent to the lord of Tsushima Domain from Yi Seon-bak, Deputy Vice-Minister for Protocol, which stated that, "In regard to the person who drifted ashore last year, people living on the shore make a living from boats and if they encounter a powerful wind, they will be washed by the waves across the border to land in your country.... That the man presented a letter means he is guilty of fabrication." (昨年漂氓事 濱海之人 率以舟楫為業 颿風焱忽易及飄盪以至冒越重溟轉入貴國...若其呈書誠有妄作之罪).<sup>16</sup> An's words and actions were thus repudiated by the Korean government, and cannot therefore be used as a basis for asserting territorial sovereignty over present-day Takeshima.

After these incidents at the end of the 17th Century, Korea began sending officials to Ulleungdo every few years to patrol the island. As a result, their geographical knowledge of the island increased. From this knowledge, maps depicting Usan (Usando) on the east side of Ulleungdo were also made, which were different from the type of maps in the *Sinjeung Dongguk Yeoji Seungnam*, in which Usando was depicted between the Korean Peninsula and Ulleungdo. However, since there is a reference to bamboo growing on Usando (所謂于山島 海長竹田), and since Usando is shown as being extremely close to Ulleungdo according to the distance markings on the four sides of the map,<sup>17</sup> it can be understood that this "Usando" is actually the small island that lies 2 km offshore of Ulleungdo (known by its present day Korean name of "Jukdo"). In other words, the officials who traveled to Ulleungdo sought after Usando which should have been there according to the traditional Korean knowledge and gave the name to the small island off the coast of Ulleungdo. Again, this Usando is not Japan's Takeshima, which lies approximately 90 km from Ulleungdo.

### **3. Should the incorporation of present-day Takeshima by Japan in 1905 be considered as a part of the annexation of Korea?**

In the autumn of 1904, an entrepreneur (Yozaburo NAKAI) residing in Oki, and who since 1903 had been engaging in sea lion hunting on present-day Takeshima, submitted a "Petition to

<sup>15</sup> *Sukjong Sillok* (Annals of King Sukjong's Reign), Vol. 30, Foliates 53-54, *Joseon Wangjo Sillok*, vol. 39 (Seoul: Tongguk Munhwasa, 1957), pp. 432-433.

<sup>16</sup> *Isotakeshima Jiryaku Kon* (edited reprint by Uchida Fumie), p. 22, and *Takeshima Kiji Vol. 5* (edited reprint by Uchida Fumie, Iida Namiko, Nozu Kaoru, and Matsumoto Miwako), p. 213, are contained in *Takeshima Mondai ni Kansuru Chosa Kenkyu: Saishu Hokokusho, Shiryō-hen* (Final Report of the Research Study on the Takeshima Issue, Document part) (Takeshima Mondai Kenkyukai of Shimane Prefecture (First Period) 2007). ([http://www.pref.shimane.lg.jp/soumu/web-takeshima/takeshima04/takeshima04\\_01/takeshima04c.html](http://www.pref.shimane.lg.jp/soumu/web-takeshima/takeshima04/takeshima04_01/takeshima04c.html))

<sup>17</sup> See "Takeshima Ryoyuken Kankoku Shucho Kutsugaesu Kochizu Seoul-dai Syozo Bei-kenkyusya San-mai Syokai" (Old Maps Against Korea's Territorial Claims to Takeshima Housed in Seoul University, Three of which Were Introduced by a US Researcher), *San'in Chuo Shimpo* (February 22, 2007), p. 22. This article is about the maps related to surveys by Mr. Gerry Bevers.



incorporate Ryanko Island into Japan and lease it” (Ryanko was the name that NAKAI used to refer to Takeshima) to the Home Ministry, the Foreign Ministry, and the Ministry of Agriculture and Commerce. Following this request, on January 28, 1905, the government stipulated, through a Cabinet decision, that the island would be incorporated into Japanese territory and come under the jurisdiction of Shimane Prefecture. On February 22, 1905, Shimane Prefecture announced the island’s name to be Takeshima and the municipality under which jurisdiction it fell.<sup>18</sup> According to the record of the Cabinet decision, the territory was acquired by the title of occupation, which is one of the modes of territorial acquisition under international law—the effective occupation by a state of land that is not the territory of any state with the intention of possessing it. With regard to this measure, the following arguments have been made. Namely, (1) the subject of occupation is *terra nullius*, but as Takeshima was historically Korean territory it cannot be acquired by occupation; (2) In 1877, when Shimane Prefecture inquired whether “Takeshima and another island” in the Sea of Japan could be registered as a part of the prefecture’s lands, the Dajokan (Grand Council of State) of Japan responded, as proposed by the Ministry of Home Affairs, that “Takeshima and another island should be considered as being of no concern to our country” (伺之趣竹島外一島之儀本邦關係無之儀ト可相心得事); (3) Korean Imperial Ordinance No. 41 of October 1900, which was named as “the matter of renaming Ulleungdo as Uldo and upgrading the office of the head to *gunsu* (county magistrate),” provided in its Article 2 that “the location of the county office is designated as Daehadong, and its jurisdiction shall be over the whole of Ulleungdo, Jukdo and Seokdo,” with Seokdo being Takeshima; (4) In 1906, the Uldo county magistrate (Sim Heung-Taek), upon hearing from an official of Shimane Prefecture who was visiting Ulleungdo that Takeshima had been incorporated into Japanese territory, sent a report to the governor of Gangwon Province, which stated, “Dokdo, which belongs to our county, is located in the sea approximately 100 ri from this county,” and so on. The government of the Empire of Korea responded that there was absolutely no basis to the claim concerning the territory of Dokdo and ordered the Province to study and report the status of the island and what the Japanese were doing there; and (5) According to a document written by Yozaburo NAKAI (“Jigyō Keiei Gaiyō” (Outline of Business Management)), he traveled to Tokyo to appeal to the resident-general Office because he perceived Takeshima to be Korean territory. In 1905, the year of the incorporation of Takeshima, the Russo-Japanese War was still ongoing, and therefore the Japanese government took advantage of this civilian’s application to seize Takeshima for military purposes, including the construction of a watchtower.

With regard to (1), Takeshima has never historically been Korean territory. Usan (Usando) as seen in ancient Korean books and maps is not Takeshima (as noted above in sections 1. and 2.), neither are there any records in Korea of people traveling to Takeshima. As for (2), considering from explanatory materials attached to the inquiry by Shimane Prefecture, it is possible that Shimane Prefecture considered “Takeshima” and “another island (Matsushima)” as Ulleungdo and present-day Takeshima, respectively. However, it is also possible that the Ministry of Home Affairs and Dajokan thought differently and the response by Dajokan did not refer to present-day Takeshima because the Ministry of Home Affairs, as the grounds of its proposal, only referred to the records of the Japan-Korean negotiations at the end of the 17th century and the subsequent prohibition of travel to Ulleungdo, and also because, in the late shogunate and early Meiji period (1850s-1870s),

<sup>18</sup> Kawakami Kenzo, op. cit. (see note (6)), p. 206 and thereafter. Documents related to the Cabinet decision are in *Kobunruiju*, Part 29, Vol. 1, Political Administrative Areas. Available at the website of the Japan Center for Asian Historical Records; JACAR Ref. A01200222600 (National Archives of Japan).

the influence of western cartography had led Ulleungdo to be called Matsushima.<sup>19</sup> In other words, both “Takeshima” and “another island (Matsushima)” could end up referring to the same island; Ulleungdo. Even if the Dajokan’s intent was to include present-day Takeshima, as long as it was not the territory of another country, it is possible for Japan to make it its own territory by effectively occupying it at a later date with the intention of possessing it. With regard to (3), there is little proof to determine that Seokdo is present-day Takeshima. The report on the survey of Ulleungdo carried out in 1882 by an official (Yi Gyu-won) who traveled to the island in preparation for establishing Uldo county, refers to “Usan” as being the small island situated close to Ulleungdo, or refers to “Usan” as an alternative name for Ulleungdo (松竹于山等島 僑寓諸人 皆以傍近小島當之…清明之日登高遠眺 則千里可窮 而更無一拳石一撮土 則于山之稱鬱陵 即如耽羅之稱濟州是白如乎). Also, in the survey conducted in 1899 by another official (U Yong-jeong), and in the proposal for the ordinance submitted by the Minister of the Interior, the target area is clearly stated in the form of length and width and Japan’s Takeshima was out of scope.<sup>20</sup> If it were to be the case that “Seokdo” as it appears in the ordinance were in fact Takeshima, while effective possession (so-called effective control) is necessary for the establishment of territorial rights, there are no such examples of Korea exercising administrative authority over Takeshima before or after the ordinance. In other words, the mere mention of a county area in a government statute does not mean that it had become the territory of Korea. With regard to (4), this is the first time that reference to the name of Dokdo appears in Korean records. Although it may show the territorial intention of the Empire of Korea, as in (3) above, evidence of effective possession is necessary to establish territorial rights, and Korea lacks such evidence. In addition, the Korean government did not make any inquiry or protest to the Japanese government.<sup>21</sup> With regard to (5), the above-mentioned document records NAKAI’s

<sup>19</sup> See Sugihara Takashi, “Meiji Junen Dajokan Shirei—Takeshima Hoka Itto no Gi Kankei Korenashi—wo Meguru Shomondai” (1877 Dajokan Order: Various Issues Relating to “The Matter of Takeshima and Another Island being of no Concern to Japan”), in *Takeshima Mondai ni Kansuru Chosa Kenkyu: Chukan Hokokusho* (Interim Report of the Research Study on the Takeshima Issue) (Takeshima Mondai Kenkyukai of Shimane Prefecture (Second Period) March 2011), pp. 11–18. (<http://www.pref.shimane.lg.jp/soumu/web-takeshima/takeshima04/takeshima04-02/index.data/-04.pdf>), and Tsukamoto Takashi, “The Late-Seventeenth-Century ‘Takeshima’ Dispute, with Reference to the Dajokan Order of 1877,” op. cit. (see note (11)). With regard to the documents of the Dajokan Order, see “Nihonkai-nai Takeshima hoka Ittō Chisekihensan-kata Ukagai” (Inquiry as to the Land Registration of Takeshima and Another Island in the Sea of Japan) in *Kōbunroku* (Records of the Meiji Government), March 1877, Section 1 of the Ministry of Home Affairs, and others. Image available to view on the website of the Japan Center for Asian Historical Records (JACAR), at JACAR Ref. A07060000300, *Kōbunroku*, Vol. 25 (March 1877), Naimusho-ukagai (1) (original document in the National Archives of Japan).

<sup>20</sup> See Shimojo Masao, op. cit. (see note (9)), pp. 105-116. See also Tsukamoto Takashi, “Kankoku no Hogo/Heigo to Nik-Kan no Ryodo Ninshiki--Takeshima o Megutte” (The Annexation of Korea and the Recognition of Takeshima/Dokdo Island), *Higashi Ajia kindaiishi* (Modern East Asian History), Vol. 14 (March 2013), pp. 52–67. The original text of the Imperial Ordinance is in *Kwanbo*, No. 1716 (October 27, 1900), reproduced in *Gu Hanguk Gwanbo* [Official Gazette of Former Korean Empire] 9, Vol. 7, Final Part (Seoul: Asia Munhwasa, 1973), p. 1113. The year in which the survey of U Yong-jeong was implemented (1899) is according to Lee Sang-Tae, *Historical Evidence of Korean Sovereignty over Dokdo*, Paju: Kyongsaeon, 2007, p. 192.

<sup>21</sup> Although it is argued that Korea was unable to protest as a result of the loss of diplomatic rights due to the Japan-Korea Treaty of 1905, Yamasaki Yoshiko makes it clear that there were other cases in which inquiries were made to the resident-general of Korea: “Kankoku Seifu ni yoru Takeshima Ryoyu Konkyo no Sosaku” (The Creation of a Basis for the Possession of Takeshima by the Korean Government) (in *Takeshima Mondai ni Kansuru Chosa Kenkyu: Saishu Hokokusho* (Final Report of the Research Study on the Takeshima Issue) (Takeshima Mondai Kenkyukai of Shimane Prefecture (Second Period) March 2012), pp. 61–72. [English translation: [http://www2.jiia.or.jp/en/pdf/digital\\_library/japan\\_s\\_territories/160414\\_Yoshiko\\_Yamasaki.pdf](http://www2.jiia.or.jp/en/pdf/digital_library/japan_s_territories/160414_Yoshiko_Yamasaki.pdf)].

recollections made in his later years, and in addition to there being doubts over the document's reliability as a historical record, including the fact that when NAKAI travelled to Tokyo in 1904 the Residency-General of Korea (Tokanfu) did not yet exist,<sup>22</sup> Takeshima at the time was not a Korean territory, nor had the Japanese government recognized it as such.

#### **4. Was the legal status of Takeshima changed by the measures taken by Allied Powers after World War II?**

At the end of the war Japan accepted the Potsdam Declaration and surrendered to the Allied Powers. Clause 8 of the declaration states that "...Japanese sovereignty shall be limited to Honshu, Hokkaido, Kyushu, Shikoku, and such minor islands as we determine." In other words, the Allied Powers would be able to decide which territories Japan would retain and which would be separated from Japan's possession.<sup>23</sup>

Under the occupation, the Supreme Commander for the Allied Powers Instruction Note (SCAPIN) No. 677 of January 29, 1946, prohibited the Japanese government from exercising power over outlying areas including Takeshima. On June 22, 1946, when the areas where Japanese fishing vessels were permitted to operate were expanded under the directives of SCAPIN No. 1033, it was stated that Japanese nationals should not approach Takeshima. However, these notes state that, "[n]othing 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" (SCAPIN No. 677), and, "[t]he 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" (SCAPIN No. 1033). In any event, the General Headquarters did not possess any rights to dispose of territories, and it is usual under international law for territories to be determined by peace treaties.

The Treaty of Peace with Japan (signed in San Francisco on September 8, 1951) stipulates that, "Japan, recognizing the independence of Korea, renounces all right, title, and claim to Korea, including the islands of Quelpart, Port Hamilton, and Dagelet" (Article 2(a)). In the process of drafting the treaty, on July 19, 1951, the ROK requested the United States, which was preparing

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<sup>22</sup> For analysis of Nakai Yozaburo's "Jigyo Keiei Gaiyo" (Outline of Business Management) (Documents relating to Takeshima Gyoryo Goshi-kaisha, in *Gyosei Shokancho Ofuku Zasshorui Meiji Sanjuhachinen yori* (Miscellaneous Documents Exchanged between Administrative Offices, from 1905), see Takashi Tsukamoto, "Okuhara Hekiun Takeshima Kankei Shiryo (Okuhara Hideo Shozo) o Megutte" (On the Hekiun Okuhara Materials Relating to Takeshima (in the Collection of Hideo Okuhara)), *Takeshima Mondai ni Kansuru Chosa Kenkyu: Saishu Hokokusho* (Final Report of the Research Study on the Takeshima Issue) (Takeshima Mondai Kenkyukai of Shimane Prefecture (First Period) 2007), pp. 62–70, available at ([http://www.pref.shimane.lg.jp/soumu/web-takeshima/takeshima04/takeshima04\\_01/](http://www.pref.shimane.lg.jp/soumu/web-takeshima/takeshima04/takeshima04_01/)).

<sup>23</sup> For further details on this point, see Tsukamoto Takashi, "Heiwa Joyaku to Takeshima (Sairon)" (The Peace Treaty and Takeshima, Revisited), *The Reference*, No. 518 (March 1994), pp. 31-56, [English translation: [http://www2.jiia.or.jp/en/pdf/digital\\_library/japan\\_s\\_territories/2018\\_Tsukamoto\\_The\\_Treaty\\_of\\_Peace\\_with\\_Japan\\_and\\_Takeshima\\_Revisited.pdf](http://www2.jiia.or.jp/en/pdf/digital_library/japan_s_territories/2018_Tsukamoto_The_Treaty_of_Peace_with_Japan_and_Takeshima_Revisited.pdf)]; and Tsukamoto Takashi, "Tainichi Heiwa Joyaku to Takeshima no Hoteki Chii" (The Treaty of Peace with Japan and Takeshima's Legal Status), *Review of Island Studies*, Vol. 2, No. 1 (October 2012), pp. 40–53. [English translation: <https://www.spf.org/islandstudies/research/a00002.html>]



the draft treaty, to add “Dokdo” to the abovementioned draft article.<sup>24</sup> In a letter dated August 10, 1951, the United States responded thus: “...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.” That is, the ROK request for revision was rejected.<sup>25</sup>

“Korea” as referred to in Article 2 (a) of the Peace Treaty is understood to be the Korea annexed by Japan in 1910. Takeshima was not part of the annexed Korea, nor was it transferred administratively to the jurisdiction of the Governor-General of Korea after the annexation. Article 2 (a) of the Peace Treaty does not imply any new transfer of territory from Japan in the event of the separation of Korea. In addition, based on the abovementioned facts concerning the process of drafting the treaty, Takeshima was not included in territories of Korea that Japan renounced in Article 2 (a) of the Peace Treaty, and the retention of Takeshima by Japan was confirmed.

## Conclusion

When territorial disputes between nations have been brought before an international tribunal, they have been judged according to which nation was able to present more evidence pertaining to the manifestation of national authority (acts of sovereignty) directly related to the disputed territory. These include, in addition to the stationing of military personnel, colonization, and the establishment of government offices, the application of the country’s laws and regulations to the territory in question, taxation of the land and economic activities thereon, and investigation and trial of incidents that occur therein (effective possession, effective control).<sup>26</sup> The occupation of the land by a citizen or citizens (economic activity, etc.) is not the act of the state, but the state may ratify it.<sup>27</sup> Historical or original title—such as when a land has belonged to a state from time immemorial—is recognized, but in the event that there are competing claims and those claims are based on effective possession, and particularly if the state in question failed to respond in a timely and appropriate manner to the sovereign acts of the other party, then there are cases in which sovereignty may be transferred.

Looking at territorial dispute over Takeshima, it can be assumed that as Japanese people travelled to Takeshima [to gather abalones and hunt sea lions] in the 17th century after having received permission from the shogunate, this would suggest that Japan possesses some kind of title to the island. This assumption is further amplified since other countries (Korea) had no recognition of the island. However, the Tottori domain replied to the Shogunate that the island did not belong to Inaba-Hoki province (Section 2. above). In addition, the prohibition on travel to Ulleungdo resulted in the suspension of fishing around what is today known as Takeshima actually (given that fishing around Takeshima alone would not have been profitable). Therefore, if other countries (whether

<sup>24</sup> “The Korean Ambassador to the Secretary of State,” *Foreign Relations of the United States 1951*, Vol. 6, Pt. 1, p. 1206 / National Archives and Records Administration (NARA): RG59, Lot54 D423, Japanese Peace Treaty Files of John Foster Dulles, Box 8, Korea / Microfilm: *Confidential U.S. State Department Special Files JAPAN 1947-1956, LOT FILES*, Bethesda: University Publications of America, [ca.1990], Reel 9, Frame 0577-.

<sup>25</sup> NARA: RG59, Lot 54 D423, Box 8, Korea / Microfilm (ibid.) / FRUS 1951, Vol. 6, Pt. 1, p. 1203, note 3.

<sup>26</sup> For a brief compilation of relevant international rulings, see Tsukamoto Takashi, “Kokusaiho Kara Mita Takeshima Mondai” (The Takeshima Dispute from the Perspective of International Law), a lecture delivered in Shimane Prefecture, 2008. (<http://www.pref.shimane.lg.jp/soumu/web-takeshima/H20kouza.data/H20kouza-tsukamoto2-1.pdf>)

<sup>27</sup> See William Edward Hall, *A Treatise on International Law*, Oxford: Clarendon Press, 1880, p.90.

they be Korea or western countries) were to have made competing territorial claims that were based on effective possession, there would be a possibility that Japan's title would be subordinated. However, Japan came to have definite territorial rights over Takeshima through the measures it took to incorporate Takeshima into Japanese territory in 1905 (the intention of possession and the ratification by the state of the act of possession by Japanese people) and the series of subsequent display of state authority, including the inclusion of Takeshima in the ledger of state-owned land (May 1905), permission for sea lion hunting (June 1905), the implementation of a field survey by Shimane Prefecture officials (March 1906), and the leasing of Takeshima and the levy of usage fees (July 1906 and thereafter). Although the territorial scope of Japan changed after World War II, there was no change in the status of Takeshima as Japanese territory.

On the other hand, as set forth in each of the points of issue above, many of the ROK's territorial claims are conceptual, insufficiently proved, or negative in that they claim that Japan did not regard Takeshima as its territory. However, the arguments in 3.(4) above represent an active territorial claim. If specific examples of the exercise of administrative authority were to be provided, they could be compared and considered with Japan's evidence of effective possession. Activities conducted after the occurrence of a dispute do not constitute evidence of effective possession (see note (1)). In the case of Takeshima, the ROK's actions since 1952, including the stationing of armed personnel, academic research, construction of a lighthouse, wharf, heliport, etc., all fall into this category. However, it is necessary to react to the ROK's actions in a timely and appropriate manner to avoid acquiescence, and Japan has actually protested on each such occasion. It was also meaningful in this context for Japan to once again propose that the dispute be referred to the International Court of Justice, following Korean President Lee Myung-bak's visit to Takeshima in August 2012.