

# Chapter 4

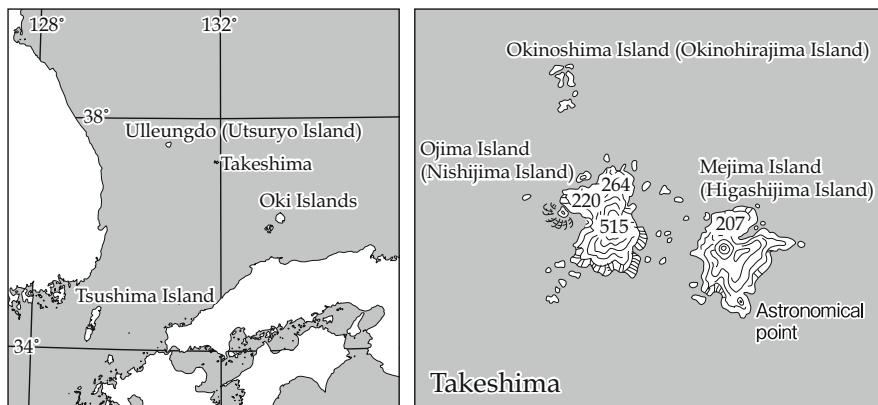
## Takeshima



### The Republic of Korea's Declaration Concerning Maritime Sovereignty: The Origin of the Dispute

Takeshima is located in the Sea of Japan ( $37^{\circ}9'30''$  north latitude and  $131^{\circ}55'$  east longitude), 115 nautical miles from the Japanese mainland, approximately 90 nautical miles from the Oki Islands, and 120 nautical miles from the Republic of Korea (ROK) mainland, approximately 50 nautical miles from Ulleungdo. It comprises two islands, one to the east and one to the west, and numerous reefs connected to these islands. It has a total land area of approximately  $0.23 \text{ km}^2$ , making it slightly larger than Hibiya Park in Tokyo. Takeshima is exposed to strong sea winds, and apart from some weeds growing on the islands' southwestern side, it consists of bare rocks that cannot even sustain trees. The east and west islands are separated by a channel of water approximately 150 m wide. The coastline of continuous sheer cliffs is subjected to high waves, and since drinking water is also scarce, Takeshima is unsuited to human habitation. In a Cabinet decision on January 28, 1905, Japan named the islands Takeshima, incorporated it into Japanese territory, and put it under the jurisdiction of the Oki Islands office affiliated to Shimane Prefecture. The governor of Shimane Prefecture was then directed to announce the Cabinet's decision; based on this directive, he made a public announcement to that effect on February 22, 1905 by means of a prefectoral notice (Fig. 4.1).

After World War II, the ROK ceased being a Japanese colony and became independent. In September 1951, when the Treaty of Peace with Japan was signed and the restoration of Japan's sovereignty became a certainty, the ROK established fishery protection zones on the Korean coast and ramped up efforts to regulate fishing activities by foreign countries. The ROK issued the Presidential Proclamation of Sovereignty over the Adjacent Seas (the Syngman Rhee Line Declaration) on



**Fig. 4.1** Takeshima

January 18, 1952, unilaterally proclaiming ROK sovereignty over sea areas that included Takeshima.<sup>1</sup>

Japan immediately lodged a protest with the ROK side on January 28, stating with regard to Takeshima that, “in the proclamation the Republic of Korea appears to assume territorial rights over Takeshima (otherwise known as Liancourt Rocks). The Japanese Government does not recognize any such assumption or claim by the Republic of Korea concerning these islets which are without question Japanese territory.”<sup>2</sup> The ROK responded on February 12 of the following year, countering that Japan’s assertion was unreasonable in light of the instruction note issued by the Supreme Commander for the Allied Powers No. 677 (SCAPIN No. 677). The two countries have continued to trade barbs ever since, right up to the present day.

ROK security personnel (police) have been stationed on Takeshima’s Higashijima (Mejima) Island since around July 1954. Higashijima (Mejima) Island is equipped with living quarters, a lighthouse, observation posts, antennas, and other facilities, and the ROK is bolstering this presence year by year.<sup>3</sup>

In essence, the ROK’s argument is that, to begin with, Takeshima has been Korean territory since long ago; secondly, that Japan’s territorial incorporation of Takeshima in 1905 is invalid; and thirdly, that a series of measures, from the Cairo

<sup>1</sup>For details of the problems from the standpoint of the Law of the Sea, see Oda, Shigeru. 1972. *Kaiyōhō no genryū o saguru* (Exploring the Origins of UNCLOS). Tokyo: Japan Fisheries Association; and Kawakami, Kenzō. 1972. *Sengo no kokusai gyōgyō seido* (The Postwar International Fisheries System). Tokyo: Japan Fisheries Association.

<sup>2</sup>Ministry of Foreign Affairs. January 28, 1952. [https://www.cas.go.jp/jp/ryodo\\_eg/shiryo/takeshima/detail/t1952012800101.html](https://www.cas.go.jp/jp/ryodo_eg/shiryo/takeshima/detail/t1952012800101.html). Accessed on December 2, 2022.

<sup>3</sup>Rough seas made landing on the island impossible on July 25, 1983, so the ceremony to commemorate the 30th anniversary of the deployment of the Dokdo Volunteer Guard was held by shifting the venue from Dokdo to Ulleungdo. Ahead of a Japan-ROK Ministerial Meeting on August 29 and 30, 1983, the *Asahi Shimbun* raised this issue in the *Shinsō* column in its August 28, 1983 edition and published photographs of the islands and the ROK’s facilities.

Declaration during World War II through to postwar peace treaties, confirm that Takeshima is Korean territory.

## Examining the ROK Side's Arguments and Their Basis

### *Examining the Argument that Takeshima Has Been Korean Territory since Long Ago*

These days Takeshima is known as “Dokdo” in the ROK, but according to the ROK, previously it was called “Usando” or “Sambongdo,” and subsequently it was also recorded as “Jasando” and “Usando” (written with slightly different characters). Long ago in Japan, Takeshima was known by the name “Matsushima.” It was given the names “Liancourt Rocks” and “Hornet Rocks” as a result of European naval voyages in the nineteenth century. Thus, it was also familiarly known by the name “Ryanko Island,” a corruption of “Liancourt.” As this shows, Takeshima might have had around ten names. The examination that follows is based largely on Kawakami Kenzō’s *Takeshima no rekishi chirigakuteki kenkyū* (A Geographical Study of the History of Takeshima, Tokyo: Kokon Shoin, 1966), along with Hori Kazuo’s “1905-nen Nihon no Takeshima ryōdo hennyū (Japan’s Incorporation of Takeshima into its Territory in 1905)” in *Chōsenshi kenkyūkai ronbunshū* (*Bulletin of Society for Study in Korean History* 24, March 1987), which is a critical examination of Kawakami’s work.

According to the ROK, the first person who discovered Takeshima was a Korean. Takeshima appears in a Korean document, *Sejong sillok jiriji* (Geographical Appendix to the Veritable Records of King Sejong) from 1454 (effectively 1432, according to Hori), which states “Usando and Mureungdo . . . The two islands are not far from each other so that one is visible on a clear day.” This predates any mention in Japanese documents by some 200 years. In *notes verbales* from the ROK’s diplomatic mission in Japan, the ROK asserts that the Mureungdo mentioned here was another name for Ulleungdo that was used in the Silla period, meaning the document is referring to a separate island to Ulleungdo, that the two islands can be seen from each other on a clear day, and so conceivably, that Usando, Takeshima, and Dokdo are one and the same.<sup>4</sup>

In response to this, Kawakami states that the Usando that appears in ancient Joseon documents is another name for Ulleungdo, and the location of Sambongdo was not confirmed by a survey conducted by a private citizen named Kim Jaju, nor by a number of surveys conducted by the government, and consequently nothing

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<sup>4</sup>ROK’s diplomatic mission in Japan, official notes dated September 9, 1953; September 25, 1954; and January 7, 1959; in Kawakami, Kenzō. 1966. *Takeshima no rekishi chirigakuteki kenkyū* (A Geographical Study of the History of Takeshima). Tokyo: Kokon Shoin, pp. 114–117.

whatsoever can be found to actively substantiate that these references correspond to the Takeshima of today.<sup>5</sup> Hori Kazuo, meanwhile, is thoroughly critical of Kawakami's assertion that Usando does not exist, and attempts to verify that the existence of Usando was widely known in the Korea Peninsula.

Historically, Ulleungdo was an independent State, Usan-guk (the State of Usan), before yielding allegiance to the Silla Kingdom at the beginning of the sixth century. But assuming that Usando is not another name for Ulleungdo, then even if Usan-guk were made up of Ulleungdo and Usando as the ROK claims, to have used Usando (i.e., Takeshima)—uninhabitable rocky hills without water 100 km away from the inhabited Ulleungdo—as the name of the country, while not impossible, is certainly unusual, as Taijudō Kanae points out.<sup>6, 7</sup> Assuming that Usando is Takeshima, then surely the country would have been known as “Ulleung-guk,” or by Ulleungdo’s other names of Mureung-guk or Ureung-guk, rather than “Usan (i.e., Takeshima)-guk”?

In any event, Hori concludes that “The Joseon government recognized Takeshima/Dokdo as its own territory, Usando, from the fifteenth century, and while periods of confusion did occur, it clarified this territorial awareness once again at the end of the nineteenth century.”<sup>8</sup> However, the accounts in the various records also reveal some confusion, making it difficult to believe that the descriptions were undertaken based on a clear awareness at the time. Furthermore, although the ROK’s *note verbale* of September 1953 mentions that Kim Jaju saw Sambongdo (which it says Dokdo was called from the early stages of the Joseon Kingdom) from afar, given that he was not actually able to land on the island, even if Takeshima was discovered by the Joseon, this document does not demonstrate that the kingdom actually administered the island.

From the fifteenth century the Joseon government adopted a “vacant island” policy on Ulleungdo, effectively abandoning it. During this period, based on a “Takeshima (today’s Ulleungdo) Voyage License” obtained from the shogunate in 1618, the Ōya and Murakawa families developed and utilized Ulleungdo. In the course of making round trips to and from Ulleungdo, they also developed and utilized today’s Takeshima (called Matsushima at the time), and the island’s indigenous produce was presented to the shogunate also. The two families’ management of Ulleungdo continued for around 80 years without interference from the Joseon. A

<sup>5</sup> Separate to Kawakami’s argument, there is an additional theory that Sambongdo is also another name for Ulleungdo.

<sup>6</sup> Taijudō, Kanae. 1966. “Takeshima funsō (The Takeshima Dispute),” *Kokusaihō gaikō zasshi (The Journal of International Law and Diplomacy)* 64, No. 4–5: p. 111.

<sup>7</sup> According to recent reports, Usando is apparently used on Ulleungdo as the historic old name for the island. There is an Usan Culture Festival held on Ulleungdo, and a Jasan Middle School there, for example. See *Sankei Shimbun*, March 19, 1997, *Ringoku e no ashioto* (7).

<sup>8</sup> Kazuo, Hori. 1987. “1905-nen Nihon no Takeshima ryōdo hennyū (Japan’s Incorporation of Takeshima into its Territory in 1905)” in *Chōsenshi kenkyūkai ronbunshū (Bulletin of Society for Study in Korean History)* 24, March: p. 101.

large number of the Joseon confronted them for the first time in 1692, after which trouble ensued.<sup>9</sup>

This “Takeshima Affair” (*Takeshima Ikken*) at the end of the seventeenth century concluded with the January 1696 decision to ban voyages to Takeshima (today’s Ulleungdo) by the Ōya and Murakawa families. Subsequently the Joseon government began dispatching an inspector to Ulleungdo once every 3 years. However, even under the national seclusion of the Edo period, voyages to Takeshima (Matsushima at the time) were not banned. Taijudō Kanae says this is also clear from a verdict reached against ship merchant Imazuya Hachiemon of Hamada in 1836. Imazuya was given the death penalty for violating a ban by traveling to Ulleungdo, but in the wording of said verdict it states that he “[t]raveled to Takeshima (today’s Ulleungdo) under the pretense of voyaging to Matsushima (today’s Takeshima).” This wording therefore suggests that even after the ban on voyaging to Ulleungdo was in place, voyaging to today’s Takeshima (Matsushima at that time) posed no problems whatsoever.

The period of approximately 50 years following that is unknown, but at the very least, from the Meiji period many Japanese citizens were traveling to Ulleungdo, at that time still a vacant island, for logging and fishing. Then, a Joseon inspector’s discovery of this activity in 1881 triggered a protest from the Joseon government to the Government of Japan. This resulted in Japan confirming that Ulleungdo was the territory of the Joseon Kingdom and banning Japanese fishermen from traveling to the island. It was at this point that the Joseon government revised the existing vacant island policy and decided to develop Ulleungdo.

With the above in mind, the argument that the Takeshima of today has been Korean territory since ancient times does not necessarily have a sufficient historical basis. What can be said, based on the way the Takeshima Affair of the Edo period and the logging incident of 1881 were dealt with, is that in the respective eras, the Joseon’s actual control did not extend to Ulleungdo, and consequently Japanese citizens were visiting and utilizing the island in large numbers. Nevertheless, Ulleungdo was confirmed to be Joseon territory by Japan’s handling of these incidents. Regardless of the position of Ulleungdo, however, it would be a stretch to declare that both sides perceive today’s Takeshima as “Ulleungdo’s territorial island” and that as a territorial island its fate is always shared with that of Ulleungdo. Conversely, it can be surmised that, historically, Korea’s control has never extended to today’s Takeshima.

<sup>9</sup>See Kawakami, 1966, p. 93; and Taijudō, op. cit. 113. However, according to Hori Kazuo, “A major clash occurred on Ulleungdo in 1693, between a party from the Ōya family and An Yong-bok and other Korean fishermen who had gone fishing from Gyeongsang,” (Hori, op. cit. 101).

## ***Examining the Argument that Japan's 1905 Territorial Incorporation of Takeshima Is Invalid***

The ROK's argument regarding this point can be summarized as follows.<sup>10</sup>

First, Japan's unilateral domestic measure was an act of title by occupation of *terra nullius*, but because Takeshima is Korean territory and not *terra nullius*, the measure is invalid.

Second, Japan's announcement of its intent of territorial acquisition took the form of a notification by Shimane Prefecture, but that notification was undertaken extremely stealthily, and the Korean government was not notified, so it is invalid.

Third, even if the Korean government had known this fact at that time, it was not in a position to raise objections with the Government of Japan as a result of the Protectorate Treaty of 1904, the First Japan-Korea Agreement.

Fourth, with regard to Japan's activities following its territorial incorporation measure, the surveys and other activities undertaken by the Government of Japan were carried out as one part of its activities for invading Korea, and consequently they are not acceptable as ongoing activities of territorial control based on international law.

Now, the first of the ROK's assertions is the same point as the discussion above relating to whether or not today's Takeshima was Korean territory since ancient times. Thus, as has already been revealed in this examination, it is not possible to say unequivocally that Takeshima was Korean territory. Incidentally, the Government of Japan does not recognize this territorial incorporation as an act of title by occupation of *terra nullius*. In its argument regarding this point, Japan expresses the view that international laws did not apply to Japan before the opening of the country, and at that time, Japan actually believed that Takeshima was Japanese territory and treated it as such, and unless another country disputed that, then this was sufficient to constitute possession.

Even so, in terms of the form of the acquisition of territorial title, the measure that Japan adopted took the form of an act of title by occupation, and where this point is concerned there is a need to examine how Japan defined its neighboring territories as a whole towards the end of the Edo period and during the Meiji period.<sup>11</sup> In the case of the Ogasawara (Bonin) Islands, which Japan incorporated into Japanese territory in 1876, the Meiji government argued that it was self-evident that they came under Japan's jurisdiction, but the United States, the United Kingdom, and other countries were not necessarily convinced of this, and the jurisdiction was decided following

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<sup>10</sup> Minagawa, Takeshi. 1963. "Takeshima funsō to kokusai hanrei (The Takeshima Dispute and International Precedent)" in *Kokusaihōgaku no shomondai: Maehara Mitsuo kyōju kanreki kinens* (Issues of International Law: In Commemoration of Professor Maehara Mitsuo's 60th Birthday). Tokyo: Keio University Press; and Taijudō, op. cit.

<sup>11</sup> See Chapter 1.

complex and difficult diplomatic negotiations.<sup>12</sup> No disputes over Takeshima had arisen with any countries, including Korea. Japan adopted the incorporation measure in order to control the hunting of sea lions, as overhunting took place on a large scale from around 1903.<sup>13</sup> In regard to this point, Korea took no action against the overhunting of sea lions and did not suppress such activities, suggesting that it did not recognize Takeshima as its own territory.

The ROK's second assertion rests on the issue of whether a State's declaration of its territorial intention is required to follow a defined format under international law. The ROK argues that, because no particular notification was made to the Korean government, Japan's declaration was invalid. Recent research by a Korean scholar of international law<sup>14</sup> also argues that this notification duty exists under international law.

However, this research is not necessarily adequate or accurate in the way it interprets the arbitral award in the Clipperton Island case<sup>15</sup> or its interpretation of theory, for example. In addition to international judicial precedents, the theories advanced by the UK's L. F. L. Oppenheim and Ian Brownlie, France's Charles Rousseau and Paul Reuter, and Japan's Yokota Kisaburō and Taoka Ryōichi, among others, state that where title by occupation is concerned, a definite format such as notification is not required, and conversely the key point is "effectiveness." As Rousseau states, the goal of the rules in the Act of Berlin was also to make "fictitious" occupation into effective occupation.<sup>16</sup> Reuter points out that if the possession is effective it is inconceivable that it could remain a secret,<sup>17</sup> and as Taoka says, notification is only "desirable for the safety of legal communication."<sup>18</sup> Incidentally, the General Act of the Berlin Conference of 1885 considered the establishment of regional authority as well as notification to be obligatory requirements for title by occupation, but the Act of Berlin's validity was regionally limited to the African continent's coast. Moreover, the Treaty of Saint-Germain, which

<sup>12</sup> See Ueda, Toshio. 1952. "Ryōdo kizoku kankeishi (History related to Territorial Attribution)," in *Japanese Society of International Law. Heiwa jōyaku no sōgōteki kenkyū* (Comprehensive Studies of the Treaty of Peace with Japan). 1; and Kurabayashi, Tadao. "Ogasawara," in *Kokusaihō Jirei Kenkyūkai*. 1990. *Nihon no kokusaihō jirei kenkyū* (3): Ryōdo (Japanese Practices [Vol. 3]: Territory). Tokyo: Keio University Press.

<sup>13</sup> Yokokawa, Arata. "Takeshima," in *Kokusaihō Jirei Kenkyūkai*. 1990. *Nihon no kokusaihō jirei kenkyū* (3): Ryōdo (Japanese Practices [Vol. 3]: Territory). Tokyo: Keio University Press.

<sup>14</sup> See the chapter "Nihon no sensen shuchō to tsūkoku gimu (Japan's Assertion of Prior Occupation and Obligation of Notification)," in Kim Myung-ki. 1991. *Dokudo to kokusaihō* (Takeshima and International Law). This book was a privately published Japanese translation of the Korean edition: Kim Myung-ki. 1987. *Dokdo wa gukjebeop* (Takeshima and International Law). Seoul: Hwahaksa.

<sup>15</sup> Serita, Kentarō. 1999. *Shima no ryōyū to keizai suiiki no kyōkai kakutei* (Sovereignty over Islands and the Delimitation of Economic Zones). Tokyo: Yūshindo Kōbunsha; and Kim, op. cit. 149.

<sup>16</sup> Rousseau, Charles. 1970. *Droit International Public* (Public International Law), 5th edition. Paris: Dalloz, pp. 148–149.

<sup>17</sup> Reuter, Paul. 1973. *Droit International Public* (Public International Law), 4th edition. Paris: Presses Universitaires de France, p. 143.

<sup>18</sup> Taoka, Ryōichi. 1955. *Kokusaihō kōgi* (Lecture on International Law). Tokyo: Yūhikaku, p. 338.

annulled the Act of Berlin in 1919, confirmed the duty to maintain regional authority but excluded the duty of notification.

Furthermore, although the ROK states that Japan carried out the territorial incorporation measure “stealthily,” in fact the notice was officially announced publicly, and moreover, it was also reported in newspapers.

Thirdly, the ROK says that even if it had known of the matter at the time, Japan had made the Korean government promise to appoint a foreigner recommended by the Government of Japan as a diplomatic advisor, and so Korea was in no position to raise objections with the Government of Japan. Certainly, based on the power relationship between the two countries at the time, there is room to be sympathetic to the ROK’s position. The individual who was actually appointed, however, was the American Durham Stevens, and it is doubtful Korean diplomacy was influenced by him. In the verdict reached in the case concerning the Temple of Preah Vihear,<sup>19</sup> considering that the International Court of Justice (ICJ) placed emphasis on the fact that Thailand did not protest against France, then even if assuming the situation that existed was as the ROK claims, it would not make the incorporation measure invalid as the ROK asserts. What is important is that Korea was fully in a position to be able to exercise effective control over Takeshima prior to 1904, yet it did not exercise that authority.

Incidentally, to summarize Hori Kazuo’s views on Japan’s declaration and the Korean side’s response, “The Korean side learned of Japan’s territorial incorporation of Takeshima in March 1906, 1 year after the measure was taken.”<sup>20</sup> 1906 was the year a delegation led by Shimane Prefecture administrative official Jinzai Yoshitarō undertook an inspection survey of Takeshima, stopping off at Ulleungdo on its way back. On March 28 the delegation visited Shim Heung-tae, the island’s magistrate, and notified him of Takeshima’s incorporation into Japanese territory. Surprised by this unexpected news, Shim promptly sent a report to his central government the following day and requested instructions. The central government’s instructions are not clear in the form of an administrative document, but leading newspapers in Korea of the time picked up the story: “It is certain that many Korean people learned through this newspaper coverage of the Japanese move to incorporate Takeshima/Dokdo into its territory and must have viewed it as an invasion of Korean territory.”

In summary:

*Korea’s central government, the local Ulleungdo county magistrate, and civilians all considered Japanese incorporation of Takeshima/Dokdo as aggression [invasion] at that time. But, by that time, Japan had virtually started colonial rule over Korea, by establishing the Residency-General in Korea. That is why no further development could be made within the Korean government to cope with the problem of Takeshima/Dokdo. As the entire country was being robbed of its sovereignty and vanishing, it could not afford to pay attention to trifling matters such as a small rocky island. However, that the Korean people clearly raised*

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<sup>19</sup> Cambodia, which had become independent from France, became involved in a dispute with Thailand over the possession of the Preah Vihear Temple on the Cambodia-Thailand border, and the land in the temple’s vicinity. Cambodia won the case.

<sup>20</sup> Hori, op. cit., pp. 118–120.

*objection to the Japanese action of incorporating Takeshima/Dokdo is a decisively important fact worthy of historical evaluation.*<sup>21</sup>

This point that historian Hori raises is very important in terms of understanding how Koreans today feel about Takeshima; it should be listened to empathetically. If one is to calmly analyze international judicial precedents on territorial disputes and view them with the eyes of a lawyer, however, it must be said that, when making a legal assessment, the significant points are that the Korean government did not lodge a protest (the administrative documents outlining the moves made by the central government at that time have not been disclosed), and above all else, that Korea had not been taking any effective measures with regard to Takeshima prior to its incorporation into Japanese territory.

Fourthly, the ROK argues that where Japan's activities following its territorial incorporation were concerned, the surveys and other activities undertaken by the Government of Japan were carried out as part of its activities for invading Korea, and consequently are not acceptable as ongoing activities of territorial control based on international law. As noted earlier, this argument does not constitute a reason unless it can be verified that Takeshima was Korean territory.

With regard to this point, Taijūdō Kanae states that "As a result of using the harsh term 'invasion,' Korea appears to have indirectly acknowledged that Japan had effectively occupied Takeshima and acknowledged that Korea itself did not exercise effective control over Takeshima."<sup>22</sup> In other words, Japan's 1905 territorial incorporation can only be described as invalid by verifying that Takeshima had been effectively under Korean possession. Incidentally, in Korea's Imperial Decree No. 41 issued on October 27, 1900, which is titled "The renaming of Ulleungdo to Uldo and the promotion of the post of the Island Chief [dogma] to county magistrate [gunsu]," Article 2 states that "The county office shall be located at Taeha-dong, and as regards its districts, all of Ulleungdo as well as Jukdo and Seokdo shall be placed under the jurisdiction of [Uldo-gun (Uldo county)]," and consequently the ROK claims that Takeshima was already incorporated as Korean territory administratively.<sup>23</sup>

However, the Takeshima of today came to be called "Takeshima" after Japan incorporated it into its territory. It was never called "Takeshima" in Korea at that time. In Korea, today's Takeshima is called "Dokdo," and according to research by a Korean scholar,<sup>24</sup> the origins of the name are not necessarily clear—it is said to have been named to mean distant island, or alternatively it was called Dokdo to mean

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<sup>21</sup> English adapted from Hori, Kazuo. "Japan's Incorporation of Takeshima into Its Territory in 1905," in *Korea Observer*, Autumn 1997, pp. 520–524. The article was slightly revised from the original in Hori, op. cit.

<sup>22</sup> Taijūdō, op. cit.

<sup>23</sup> For example, *Mainichi Shimbun*, April 4, 1996. The English text here follows that found on page 24 in "Dokdo, Beautiful Island of Korea – Pamphlet" at <https://dokdo.mofa.go.kr/eng/pds/pdf.jsp>. Accessed on March 7, 2023.

<sup>24</sup> Taijūdō, op. cit., p. 115.

rocky island because rocks are known as “dok” in the dialect of South Gyeongsang Province. However, “Ulleungdo residents probably gave it that name after Ulleungdo was opened up in 1881.” Accordingly, it is not possible to identify which islands are the “Jukdo and Seokdo” referred to in this decree. There are suggestions that it may refer to “Jukdo” adjacent to the east coast of Ulleungdo, but in any event, the lack of clarity means it cannot be said to verify Korea’s effective control.

### ***Examining the Argument that in Addition to the Cairo Declaration, a Series of Postwar Measures Confirm Takeshima to be Korean Territory***

The Cairo Declaration of November 27, 1943 states that “Japan will be expelled from all other territories which she has taken by violence and greed.” Article 8 of the Potsdam Declaration of July 26, 1945 states that “The terms of the Cairo Declaration shall be carried out and Japanese sovereignty shall be limited to the islands of Honshu, Hokkaido, Kyushu, Shikoku and such minor islands as we determine.”

Accordingly, the ROK argues that Japan assumed an obligation to fulfil the Cairo Declaration as a result of agreeing to and accepting the Potsdam Declaration, thus determining that Takeshima, which Japan supposedly took from Korea through violence and greed, would be separated from Japan. Additionally, Japan ceased exercising authority over Takeshima after Takeshima was included in the certain regions to be administratively separated from Japan along with Jeju Island and Ulleungdo that were designated as a result of SCAPIN No. 677, “Governmental and Administrative Separation of Certain Outlying Areas from Japan,” dated January 29, 1946. In addition, regulations on the passage of mainstream commercial vessels and fishing vessels were eased immediately after Japan’s defeat in the war, and the MacArthur Line was established on June 22, 1946, restricting the operating zones of fishing vessels. Takeshima was placed outside the operating zones of Japanese fishing vessels, however.<sup>25</sup> The ROK invokes these facts to assert that Takeshima was separated from Japan and became Korean territory.

The Japanese government refutes these assertions by the ROK as entirely without foundation.

To begin with, Paragraph 6 of SCAPIN No. 677 states: “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.” As such, it was a provisional measure under the Occupation and did not exclude Takeshima from Japan’s territory.

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<sup>25</sup>For information on the MacArthur Line, see Kawakami, 1972, Chapter 1, Paragraph 1, “The MacArthur Line.”

Paragraph 5 of SCAPIN 1033/1, which was the note that established the MacArthur Line, clearly states that the note is “not an expression of [A]llied policy relative to [the] ultimate determination of national jurisdiction, international boundaries or fishing rights in the area concerned or any other area.”

Japan’s territory following its defeat in the war was settled in the Treaty of Peace with Japan signed in San Francisco (San Francisco Peace Treaty), which entered into force on April 28, 1952. The treaty also determined the ownership of Takeshima: Article 2 (a) of that treaty determines that “Japan, recognizing the independence of Korea, renounces all right, title and claim to Korea, including the islands of Quelpart [Jeju Island], Port Hamilton [Geomundo] and Dagelet [Ulleungdo].” It excludes Takeshima from the regions renounced by Japan. The name Takeshima had been clearly stated in SCAPIN No. 677; the fact that it disappeared in the Treaty of Peace with Japan must be considered to be materially significant.<sup>26</sup> Assuming that there was the intention of recognizing Takeshima, a solitary island approximately 90 km away from Ulleungdo, as Korean territory, that fact would no doubt have had to have been clearly stated in the treaty in the same way that the treaty made clear mention of Port Hamilton (Geomundo), which is somewhat separated from the Korean mainland.

## Examining the Japanese Side's Arguments

Japan argues that its view is that international laws were not applicable to it before the opening of the country, that at that time Japan actually believed that Takeshima was Japanese territory and treated it as such, and that unless another country disputed that, then it was sufficient to constitute possession. Japan cites the fact that Ōya Jinkichi and Murakawa Ichibei, merchants from Yonago, Hōki Province, received permission in 1618 for passage to Ulleungdo from the shogunate via Matsudaira Shintarō (Ikeda Mitsumasa), a feudal lord. Subsequently, they traveled to Ulleungdo to engage in fishing every year, customarily presenting the abalone they gathered there to the shogunate.

As explained earlier, after the Ōya and Murakawa families obtained a voyage license (the “Takeshima Voyage License” of 1618, for Ulleungdo was known as Takeshima at the time), they administered Takeshima (today’s Ulleungdo) for 80 years with no interference. The two families also managed Matsushima (today’s Takeshima), which is located on the way to Takeshima (today’s Ulleungdo), and they were newly granted around 1661 a voyage license to Matsushima as well. Today’s Takeshima first appears in Japanese documents in *Onshū shichō gōki* (Records of Observations in Oki Province) of 1667, written by Saitō Hōsen, an Izumo feudal retainer, where it is cited alongside Takeshima (today’s Ulleungdo)

<sup>26</sup>For a similar view, see Taijūdō, op. cit., p. 130; and Takano, Yūichi. 1962. *Nihon no ryōdo* (Japan’s Territory). Tokyo: University of Tokyo Press, p. 69.

using the name Matsushima. There are descriptions in materials cited by Kawakami such as “Matsushima in the vicinity of Takeshima,” “Matsushima in the neighborhood of Takeshima,” and “a small island in the neighborhood of Takeshima,” which very interestingly demonstrate the different usage values assigned to the two islands at the time. However, given the distances between the two islands, it is not possible to declare that today’s Takeshima (Matsushima at that time) is a dependent domain of today’s Ulleungdo (Takeshima at that time). In any event, compared to the Japanese side, which knew about the form of these two islands in considerable detail, the Korean side had almost no detailed knowledge of Takeshima (then-Matsushima) at that time (which is perhaps only natural, for although Korea supervised today’s Ulleungdo by dispatching an inspector there once every 3 years after the aforementioned Takeshima Affair, there is no record that today’s Takeshima was inspected).<sup>27</sup> Even after Japanese authorities prohibited the voyaging to today’s Ulleungdo, they did not prohibit voyaging to Takeshima. Subsequent records, such as the *Takeshima zusetsu* illustrated work that was compiled in the Hōreki period (1751–1763), contain the expression “Okinokuni Matsushima,” while the account *Chōsei Takeshima ki* of 1801 mentions “the westernmost part of Japan,” indicating that, either way, Matsushima (today’s Takeshima) is Japanese territory. The positional relationship of today’s Takeshima is accurately recorded in maps, including Nagakubo Sekisui’s *Nihon yochi rotei zenzu* (1773), said to be the first Japanese map to use a graticule.

Nevertheless, Japan’s knowledge was extremely disordered as a result of contact with Europe and the United States from the latter part of the Edo period to the early years of the Meiji period. Successive French and British vessels that entered the Sea of Japan at the end of the eighteenth century “discovered” Ulleungdo, and because locational surveying was inaccurate, the island was referred to as two separate islands, Dagelet and Argonaute, and today’s Takeshima was given the name “Liancourt.” Even on maps, Ulleungdo was depicted as two islands—Takeshima and Matsushima—while today’s Takeshima was omitted; the existence of Argonaute was denied; or, in contrast to the Edo period, Ulleungdo was called “Matsushima,” and some maps showed only one island in the Sea of Japan.

Unconnected to this, Japanese private forays to Ulleungdo intensified and the government received requests to develop it. In connection with the “Argument for the Development of Matsushima,” the warship *Amagi* carried out an on-site survey in July 1880 that established that the Matsushima referred to in the development requests was Ulleungdo, and thus all the development requests were rejected. Nevertheless, Japanese citizens continued to visit Ulleungdo for logging and fishing as usual, and when this was discovered by a Joseon inspector in 1881, the Joseon government promptly referred the incident to the Japanese government and requested that these voyages be banned. The Japanese government acknowledged Ulleungdo to be the territory of the Joseon Kingdom, and it took action in 1883 by

<sup>27</sup>Hori, op. cit., p. 101. For the wording in the records of the various documents, see Yokokawa, op. cit., pp. 166–167.

forcibly repatriating all of the 254 Japanese citizens residing on Ulleungdo.<sup>28</sup> No such action whatsoever was taken with today's Takeshima, however.

It appears there were ongoing voyages to Ulleungdo from regions around Japan even after the removal of Japanese citizens en masse in 1883. The administration of Takeshima was also moving ahead. To regulate the excessive hunting of Takeshima's sea lions, it was decided in January 1905 to name the islands Takeshima, incorporate Takeshima into Japanese territory, and put it under the jurisdiction of the Oki Islands branch office attached to the Shimane Prefectural Government. That April, Shimane Prefecture amended its fishing industry control regulations to introduce a licensing system for sea lion hunting at Takeshima, and approved applications by Nakai Yozaburō and other hunters. Sea lion hunting and the harvesting of abalone, seaweed, and other produce from the island ebbed and flowed but nonetheless continued until being suspended in 1941 as a result of the war; license holders continued to pay land usage fees into the national coffers every year. In this way, Japan's effective control over Takeshima continued peacefully until the end of World War II.

## Approaches to the Takeshima Issue until a Final Decision is Reached

The process for resolving the dispute will differ depending on which side actually occupies the island while it is under dispute. Takeshima is in fact occupied by the ROK, which will undoubtedly maintain that occupation until a final resolution is arrived at. Consequently, from a legal perspective, in addition to proposing peaceful resolutions, Japan will have to take actions such as lodging effective protests proactively and repeatedly.

The Government of Japan sent a series of *notes verbales* of protest to the Government of the ROK between 1952 and 1960. They comprised five notes in 1953, when an incident occurred in which ROK authorities at Takeshima fired upon a Japan Coast Guard patrol boat; nine notes in 1954, when ROK authorities became permanently stationed on Takeshima; and one note each year in other years.<sup>29</sup> Beginning in 1971, Japan has published its response to Takeshima in its *Diplomatic Bluebook*. There is only one mention in the 1992 edition: "As for the territorial dispute over Takeshima between Japan and the ROK, it is clear on both historical and legal grounds that the islets are a part of Japanese territory. From this standpoint, Japan has made protests against the ROK whenever necessary."<sup>30</sup>

<sup>28</sup>Hori, op. cit., p. 107.

<sup>29</sup>For the content of the *note verbale* of December 26, 1961, see Yokokawa, op. cit., p. 177.

<sup>30</sup>"Section 1. Asia-Pacific; 2. The Korean Peninsula; 2-3. The Republic of Korea; (2) Relations with Japan" <https://www.mofa.go.jp/policy/other/bluebook/1992/1992-3-1.htm#The%20Korean>. Accessed on December 3, 2022.

In a *note verbale* dated September 12, 1954, Japan proposed to the ROK that the dispute be resolved through the ICJ, but on October 28 of the same year the ROK rejected this proposal in a memorandum, in which it asserted the following: “The proposal of the [Japanese] government [that the dispute be submitted to the International Court of Justice] is nothing but another false attempt disguised in the form of judicial procedures. Korea has the territorial rights *ab initio* over Dokdo and sees no reason why she should seek the verification of such rights before any international court.”<sup>31</sup>

Following this, Japan and the ROK started negotiations in 1951 that concluded in June 1965 with the signing of the Treaty on Basic Relations between Japan and the Republic of Korea. No progress whatsoever was made on the Takeshima issue, however, and the matter simply ended with the Exchange of Notes concerning the Settlement of Disputes between Japan and the Republic of Korea.

Certainly, this exchange of notes stipulated that “Unless otherwise agreed on in advance, the two governments are to seek to settle disputes through diplomatic routes. In cases where disputes cannot be settled in this manner, the governments are to attempt to achieve resolution through conciliation as per the procedures agreed by the two countries.” The ROK foreign minister told an ROK National Assembly special committee in August 1965 that “Japan’s Minister for Foreign Affairs Shiina Etsusaburō and Prime Minister Satō Eisaku accepted that this did not include the Dokdo problem,” an assertion that Foreign Minister Shiina and Prime Minister Sato both rejected in their responses at a special committee of the House of Representatives on the Treaty on Basic Relations between Japan and the ROK later that October. As these events show, discrepancies exist between Japan’s and the ROK’s interpretations of the exchange of notes concerning the settlement of disputes; this exchange of notes is not functioning in terms of resolving the Takeshima issue. It is unclear whether or not the Japanese side has thus far made any proposals aimed at reconciliation. Consequently, the current situation is as stated in the above-mentioned *Diplomatic Bluebook*, namely, that Japan is making protests against the ROK whenever necessary, based on Japan’s standpoint.

Therefore, in light of the examination just made of both countries’ arguments, it is difficult to detect a legitimate reason why Takeshima should belong to the ROK historically. However, could it not be said that Japan’s protest was no more than a “paper protest” as described by Judge Levi Carneiro in his separate opinion in the Minquiers and Ecrehos case mentioned earlier, whereby “The British Government . . . continued to exercise its sovereignty [while] the French Government was satisfied to make a ‘paper’ protest (*protester ‘sur le papier’*). Could it not have done anything else? It could have, and it ought to have, unless I am mistaken,

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<sup>31</sup>“Q&A on Dokdo: What was the Korean government’s response to its Japanese counterpart’s proposal in 1954 to refer the issue of Dokdo to the International Court of Justice (ICJ)?” <https://dokdo.mofa.go.kr/m/eng/dokdo/faq14.jsp>. Accessed on December 3, 2022.

proposed arbitration.”<sup>32</sup> “The failure to have not made such a proposal deprives the claim of much of its force; it may even render it obsolete.”<sup>33</sup> In other words, diplomatic protests are not enough to prevent origin of rights from being obtained based on unlawful occupation. Alongside the legal maxim “*ex injuria non oritur jus*” (unjust acts cannot create law), the normative force also has to be considered. That is because the legal maxim “*ex factis oritur jus*,” in which the existence of facts creates law, also exists.

Naturally, Japan must avoid resorting to the use of force at any cost. But if it maintains a passive attitude, then ultimately third parties are likely to accept that Japan tacitly consents to the ROK’s territorial claim to Takeshima. If strictly limiting resolution standards to international law is not considered to be politically desirable, then undoubtedly it would make sense to take equitable factors into consideration.

Certainly, there are also emotive issues that arise from Japan’s 36-year colonial rule over Korea, and it has to be acknowledged that difficult circumstances exist, including problems between the two countries that are yet to be resolved even today. Even now in the ROK, comments that reflect a detailed knowledge of Japan—not just pro-Japanese comments—seem to spark fierce attacks from the government and the media. Furthermore, the reality is that in school education, ROK students are taught that Takeshima is ROK territory, and there is even a widely-known song to that effect, yet in Japan not even law students know of Takeshima’s existence.

In addition, the existence in Japan of ethnocentric history textbooks and the fact that its prime ministers offer prayers at Yasukuni Shrine, where Class A war criminals are enshrined, are also issues that serve to inflame the sentiments of the Korean people and ignite nationalism. On occasion, ROK politicians can also be seen using these sentiments of the Korean people for political ends. Taking these various circumstances into account, the most important thing for the two countries to do is to decide first and foremost to reform the current approach of one side making dogmatic decisions on the matter. Where resolving the Takeshima issue is concerned, rather than taking the course of blowing up Takeshima, as a certain high-level ROK official is reported to have suggested, the issue should pursue a constructive course.<sup>34</sup>

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<sup>32</sup>International Court of Justice. 1953. *Reports of Judgments, Advisory Opinions and Orders*, p. 107.

<sup>33</sup>Ibid., 108.

<sup>34</sup>See the proposal by Serita in the April 4, 1996 edition of the *Mainichi Shimbun*, and Chapter 7.

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