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The Alleged Title over the Island of Takeshima Invoked by the Republic of Korea*

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Introduction

Syngman Rhee, at that time the President of the Republic of Korea (ROK), drew the so-called Syngman Rhee line in the high seas surrounding the ROK on January 18, 1952, and Takeshima (1) was included within it. On the same day, Japan issued a Note Verbale to the ROK protesting that the proclamation was in violation of international law and reaffirming that Takeshima was a part of Japanese territory. Yet since 1953, the ROK has been continually stationing its armed police officers on Takeshima and thereby forcefully occupying it until today.

The ROK's basic position on its territorial sovereignty to Takeshima is that, "The fact Dokdo is an integral part of Korean territory is irrefutable in every aspect; historically, geographically and under international law" (2). Furthermore, it continues that:

[t]he Government of the Republic of Korea's position is steady that Dokdo has inherently been Korean territory. The Government does not regard the Dokdo issue as a matter to be dealt with through diplomatic negotiations or judicial settlement. The Government will deal firmly and resolutely with any claims denying Korean sovereignty over the islands. Also, the Government will take a firm and measured approach, based on objective and effective measures that will be more convincing to the international community (3).

Conversely, Japan's consistent standpoint regarding its territorial sovereignty over the island is that: (i) "Takeshima is indisputably an inherent part of the territory of Japan, in light of historical facts and based upon international law"; (ii) "the Republic of Korea has been occupying Takeshima with no basis in international law. Any measures the Republic of Korea takes regarding Takeshima based on such an illegal occupation have no legal justification" (4). It also notes that "[t]he Republic of Korea has never demonstrated any clear basis for its claims that it had effective control over Takeshima prior to Japan's effective control over Takeshima and reaffirmation of its territorial sovereignty in 1905" (5).

After extensive diplomatic negotiations since 1952, Japan came to the conclusion that the diplomatic settlement of the dispute would be impossible and thereby proposed that the matter be entrusted to the International Court of Justice (ICJ). However, the ROK rejected the proposal in its Note Verbale of October 28, 1954 (6). In 2012, after the visit to Takeshima by ROK President Lee Myung-bak at that time, Japan proposed to entrust the matter to the ICJ by a special agreement, and simultaneously to recourse to mediation based on the exchange of notes concerning the settlement of disputes. However, the ROK

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once again refused these proposals. This article will review the historical background to the dispute over Takeshima, and examine the official views, focusing on that of the Ministry of Foreign Affairs and Trade of the ROK in the light of international law.

1 The Potsdam Declaration and the Peace Treaty with Japan

(1) The Korean Peninsula shortly after World War II

Japan annexed Korea by the Japan-Korea Annexation Treaty of August 1910, and thereafter exercised sovereignty over the Korean Peninsula as a part of Japanese territory (7). When the Allied Powers defeated Japan in World War II, on August 15, 1945, Japan accepted the Potsdam Declaration providing that Japan's sovereignty and geographical extent in the post-war period is supposed to be decided by the Allies (8). Then on September 2 of the same year, Japan signed the instrument of surrender, which ended Japan's rule over the Korean Peninsula, and Japan and the Korean Peninsula were placed under the control of the Allies.

The General Headquarters of the Supreme Commander for the Allied Powers (SCAP) provided for the temporary occupation of the Korean Peninsula by dividing it into two zones along the 38th parallel, with the Soviet Union Far East Forces administering the northern part and the US military placed in charge of the southern part. Subsequently, on August 15, 1948, President Syngman Rhee declared the independence of the Republic of Korea with Seoul as its capital, and then on September 9 of the same year, President Kim Il-sung declared the independence of the Democratic People's Republic of Korea with Pyongyang as its capital, and both nations claimed that they were the sole legitimate state on the Korean Peninsula.

Faced with two independent nations that both insisted they were the sole legitimate state on the Korean Peninsula, the United Nations established the Commission for the Unification and Rehabilitation of Korea (UNCURK) after the Third General Assembly in 1948, and launched discussions toward the peaceful unification of the Korean Peninsula. But on June 25, 1950, the North Korea forces suddenly crossed over the 38th parallel and invaded the south with the goal of unifying the Korean Peninsula by military force. The United Nations Security Council adopted resolutions 82, 83, and 84 in quick succession and called on United Nations member states to render assistance to the ROK. The subsequent Korean War saw United Nations forces volunteered by its members states fight against the North Korea army and Chinese forces, until the armistice agreement was signed on July 27, 1953. This agreement divided the Korean Peninsula into north and south along the 38th parallel. The existence of two nations that both claim the same territory as their own is an extremely rare case in international law (9).

Separate to this, from around 1947, the U.S. Department of State, which played a central role in occupation policy, had examined the extent of the Korean Peninsula to be relinquished by Japan in accordance with the Potsdam Declaration. The initial draft proposed by the United Kingdom delimited the sphere of Japanese territory by drawing lines on the map by connecting small islands that are to be attributed to Japan. Yet the final draft determined the sphere by listing the names of the islands (10). Shortly before the preparation of the final draft by the U.S. Department of State, William J. Sebald, who was the acting political advisor to SCAP in Tokyo, sent a letter to the U.S. Secretary of State recommending in its sixth paragraph that "Japan's claim to these islands [*i.e.* referred as Liancourt Rocks (Takeshima)] is old and appears valid (11)". This recommendation was eventually reflected in the final draft dated December 29, 1949. As a result, it was determined that Takeshima belongs to the territory of Japan.

Even after this decision, the ROK continued to make a final push to have Takeshima determined as

being ROK territory in the final draft of the Peace Treaty with Japan. The ROK started the Korean War cease-fire talks at Kaesong on July 10, 1951, and on July 19, the ROK's Ambassador to the United States, Dr. Yu Chan Yang, submitted a letter to the U.S. Secretary of State Acheson to stipulate Article 2(a) of the draft so as to include "Jejudo, Geomundo, Ulleungdo, Dokdo and Parangdo" as parts of ROK territory (12). However, on August 10, the U.S. Assistant Secretary of State Dean Rusk rejected this demand, by stating that "[a]s regards the island of Dokdo, otherwise known as Takeshima or Liancourt Rocks, this normally uninhabited rock formation was [...] never treated as part of Korea" (13). As a result, the attempt by the ROK to include Takeshima as a part of "Korea" being renounced by Japan through the Peace Treaty failed.

Following this sequence of events (14), on September 8, 1951, while the Korean War was still being waged, the Peace Treaty with Japan was signed and it came into effect on April 28 of the following year (15). It provides that Japan recognize the independence of Korea, and delimits the sphere to which the sovereignty of Japan extends. That is to say, Article 2(a) of the Treaty defines "Korea" as "including the islands of Quelpart (Jejudo), Port Hamilton (Geomundo) and Dagelet (Geomundo)(16)."

(2) Establishment of the Rhee Line by the ROK and Takeshima

On January 18, 1952, about one month before the Peace Treaty with Japan came into effect, ROK President Syngman Rhee announced the "Presidential Proclamation of Sovereignty over Adjacent Seas" surrounding the Korean Peninsula, and unilaterally declared that the marine resources in the waters belonged to the ROK.

This line, which generally followed the so-called MacArthur line (M line) being provided for on June 22, 1946, by Article 2 of the Instruction of the General Headquarters Supreme Commander for the Allied Powers (SCAPIN) 1033 (17), put Takeshima on the ROK side of the boundary. From a strict point of view of international law, the so-called Rhee Line that demarked Takeshima as ROK territory is qualified as an extremely unilateral and aggressive action that disregarded the interests of other countries and that completely violated the basic principles of international law (18).

The M Line was a provisional boundary line within which Japanese fishing boats were allowed to operate and was introduced by the Allies as a part of their occupation policy. It certainly placed Takeshima on the ROK side, together with Ulleungdo and Jejudo, and the Article 3(b) of SCAPIN 1033 prohibited Japanese vessels from entering into the maritime area within 12 nautical miles from Takeshima. Nevertheless, Paragraph 5 stipulates that it "is not an expression of Allied policy relative to the ultimate determination of national jurisdiction, international boundaries or fishing rights in the area concerned or in any other area".

On January 28, 1952, Japan issued a Note Verbale (19) that strongly protested against the Presidential Proclamation. It stressed that the content of the Proclamation was (i) entirely incompatible with the long-established international principle of freedom of the high seas that had been established over a long period; (ii) ran counter to the basic principle of international cooperation for the development and protection of marine resources within the high seas; (iii) was utterly untenable under any of the accepted ideas of an international society. As a result, (iv) Japan strongly protested by denying 'the assumption or claim' of the ROK's sovereignty over Takeshima (20). This Note Verbale by Japan was the opening shot in the territorial dispute between Japan and the ROK that has continued up to today over the territorial rights to Takeshima.

The ROK replied to Japan's protest by issuing a Note Verbale with an annex dated February 12 (21) stating as follows: as a sovereign state, the Presidential Proclamation for the development and protection

of marine resources was more or less the same character as the 'specified zone of seas' that had been unilaterally proclaimed by countries such as the United States, Mexico, and Argentina; and the fact that the M Line of SCAPIN 677 (22) of January 29, 1946, placed Takeshima on the ROK side showed that it belongs to the ROK. Finally, the ROK added that it did not feel inclined to enter into a full debate on this issue.

Japan, in its Note Verbale (No.21/A2) (23) of April 25 of the same year, made a rejoinder that rejected the claims of the Government of the ROK and insisted that Takeshima had been a part of Japan's territory up to that time based on four reasons; (i) Takeshima belongs to the village of Goka, Oki-gun, Shimane Prefecture, (ii) Paragraph 1 of SCAPIN 677 did not explicitly exclude Takeshima from the territory of Japan, and Paragraph 6 expressly stated that the Directive is not the ultimate determination of Allied policy; (iii) the M Line, which was a basis of the claim raised by the ROK, was not the Allies' ultimate determination and had already ceased to exist by the time of SCAPIN 2046 of September 19, 1949; (iv) there was no evidence to indicate that Takeshima had been belonging to the ROK for centuries.

Furthermore, based on SCAPIN 2160, the SCAP designated Takeshima as a bombing range in July 1951 and the U.S. military continued to use it for that purpose even after the Peace Treaty with Japan came into effect. Yet this designation was terminated in March 1953 in relation to fishing rights around Takeshima (24). The designation and removal of it took place without involving the government of the ROK. This fact implies that both the United States and the other Allied Powers regarded Takeshima to be Japanese territory.

2 The ROK's Deprivation of Takeshima and Confusion over the Island's Name

(1) The Deprivation of Takeshima

After the initial exchange of diplomatic notes, Japan maintained its effective control over Takeshima. At the same time, the ROK was steadily preparing to deprive Takeshima by force. In January 1953, it ordered that Japanese fishing vessels crossing the Rhee Line were to be seized. In April, a volunteer garrison landed on Takeshima for the first time. The ROK began to show physically its intention to possess Takeshima.

On May 28 of the same year, the "Shimane Maru," a fisheries research vessel of Shimane Prefecture, discovered ROK fishermen collecting seaweed and shellfish in Japanese territorial waters around Takeshima during its patrol of the island. The Government of Japan, in its Note Verbale of June 22 (No.167/A2) (25), protested against the activities of these ROK fishermen within Japanese territorial waters. The ROK rebutted this allegation in its Note Verbale of June 26 (26) as follows; (i) Dokdo (Takeshima) is not a part of Japanese territory, and as previously pointed out in the Note Verbale of February 12, 1952, is part of the territory of the Republic of Korea; (ii) ROK deems it quite legal and proper for the 30 or more ROK fishermen to engage themselves in fishing in the territorial waters of their home country; (iii) Japan is by no means in position to lodge any protest against the operations of ROK fishermen within ROK territorial waters.

On July 12 of the next year, the ROK troops that had been deployed to Takeshima fired upon the "Hekura," a patrol boat of the Japan Coast Guard. In the following day, Japan released the Note Verbale (No.186/A2) (27) that once again refuted the ROK's claims, asserting that: (i) as was stated in Note Verbale (No.21/A2), Takeshima is a part of Japanese territory; (ii) Japan does not permit the operations of ROK fishermen within Japanese territorial waters; (iii) it is evident that Takeshima belongs to Japan in terms of international law. Japan attached a detailed six page statement describing the historical and legal

basis for its sovereignty over Takeshima (28).

Japan responded to the forcible approach of the Government of the ROK by strengthening its control of Takeshima, to which the ROK strongly objected in its Note Verbale of August 4, 1953. Among other objections, the ROK protested the fact that on June 25, a 9 man crew of a Japanese fisheries research vessel landed on Takeshima and questioned the 6 ROK citizens on the island and then deported them; then on the 27th, an 8 man crew of a Japanese fishing vessel landed on Takeshima; then on the 28th, 30 officials of Shimane Prefecture boarded two patrol boats of Japan Coast Guard and landed on Takeshima and erected two landmarks saying “Landing Prohibited” (29).

The Government of Japan replied by issuing a Note Verbale (No205/A2) dated August 8 (30), stating that Takeshima belongs to Japan in the light of historical facts, international law, and the provisions of the Peace Treaty with Japan, and rejecting the ROK’s alleged sovereignty over Takeshima as completely groundless. The Government of the ROK released a 10 page rebuttal to the opinions of the Government of Japan as the annex to its Note Verbale dated September 9 (31).

Subsequently, on February 10, 1954, Japan released its rebuttal to the ROK’s arguments through a Note Verbale that once expressed the opinion of the Government of Japan (32), and then on September 5, the ROK released an objection in the Korean alphabet to the Japanese written view expressed in the documents attached to its Note Verbale (33). In this way, since the ROK’s “Presidential Proclamation of Sovereignty over Adjacent Seas,” Japan and the ROK have repeatedly and bitterly protested against their respective evidence for their territorial claims to Takeshima, and against the landing of Japan citizens on Takeshima through each other’s Note Verbale. Despite Japan’s ongoing protests, the ROK has deprived and stationed armed police officers at Takeshima until today.

(2) The names of Ulleungdo and Takeshima

The Ulleungdo of today was previously known as Takeshima or Isotakeshima during the Edo period, and from about 70 years from the beginning of the 17th century, the Oya and Murakawa families of the Tottori Domain were granted licenses by the Shogunate to visit the island, where they engaged in collecting abalone, hunting sea lions, and harvesting bamboo and trees. When going back and forth to Ulleungdo, both families used today’s Takeshima that was then called Matsushima. But at the end of the 17th century, Korea and the Tokugawa Shogunate opened diplomatic negotiations on the territorial rights to today’s Ulleungdo, and as a result, the Tokugawa Shogunate, which prioritized friendly relations with Korea, prohibited both the Oya family and the Murakawa family from visiting and developing the island.

However, the Tokugawa Shogunate did not prohibit their passage to Matsushima (today’s Takeshima). This fact shows that the Tokugawa Shogunate recognized Matsushima as Japan’s territory. Also, it only prohibited the families’ passage to today’s Ulleungdo, and did not suggest that the island was the territory of Korea.

One of the causes of today’s dispute over the territorial rights to Takeshima is the confusion over the island’s names in the Edo and Meiji periods. Specifically, in the second half of the 18th century, a British explorer named James Colnet who came across Takeshima (today’s Ulleungdo) in his voyages named it “Argonaut Island”, while a Frenchman named Galaup de la Perouse called it “Dagelet Island”. Also, due to the lack of accurate measuring techniques at the time, its position on charts was recorded in places that were not the island’s actual position. Also, it is said that from the middle of the 19th century, explorers who came across Matsushima (today’s Takeshima) wrote the island’s names on their maps as “Liancourt Rocks” or “Hornet Island.”

Further complicating matters, a “Map of Japan” published by a German physician named Philipp Franz von Siebold after he returned to Holland shows two islands in a line named “Takashima Argonaut island” and “Matsushima Dagelet island” between the Korean Peninsula and Oki. Also, Commodore Matthew Perry’s “Chart of the Seas around Japan” that he took with him on his expedition to Japan showed three islands in a row named “Argonaut Island,” “Matsushima Dagelet Island,” and “Hornet Island” but a note written on the chart next to “Argonaut Island” indicates that it did not exist (nicht Vorhanden)”. In this period, the Japanese at the time knew quite well where both Takeshima and Matsushima were and what country each belonged to, but subsequently, due to the confusion over the islands’ names, today’s Ulleungdo that is assumed to be “Matsushima Dagelet Island” came to be called Matsushima, and today’s Takeshima came to be called Liancourt Rocks (Ryanko Island) or Hornet Rocks.

It was on January 28, 1905, that the Japanese government made a Cabinet decision to incorporate today’s Takeshima into Shimane Prefecture. The Oya and the Murakawa families had abandoned the management of Takeshima (today’s Ulleungdo) and a man named Yozaburo Nakai who was a resident of Oki, petitioned the Ministry of Interior, the Ministry of Foreign Affairs, and the Ministry of Agriculture and Commerce on September 29, 1904, “to incorporate Liancourt Rocks into Japanese territory and to grant him a 10 year lease (34)” so that he could stabilize his business on the island.

Following the Cabinet decision, the Ministry of Home Affairs issued the Instruction No.87 (35) on February 15, 1905, requesting that the name of Liancourt Rocks be changed to Takeshima and that the Shimane Prefecture Governor place the island under the jurisdiction of the Oki Island Government Office. The Shimane Prefecture Governor, on the 22nd of the same month, made a public announcement of these developments in Notification No.40 (36). The Meiji government’s measure to incorporate today’s Takeshima into its own territory, which it had recognized to be Japanese territory since the Edo period, was to meet the requirements of international law to confirm today’s Takeshima as Japan’s territory.

The reason why Japan named the island as Takeshima was that the Oki Island Governor of that time requested to do so, because its original name of Matsushima was already being used on sea charts for today’s Ulleungdo (37). One cannot deny that the new name has made today’s territorial dispute more complicated, although this was due to the confusion over the island’s name at the time.

3. The ROK’s official position its own title to Takeshima

(1) The SCAPIN 677 and Dokdo

The ROK officially sums up in five points its vindication of its sovereignty over Takeshima (38). Immediately after the crystallization of the territorial dispute between the two countries, the ROK had relied on SCAPIN 677, in the annex of the Note Verbal of February 12, 1952 discussed above. Yet it subsequently added the Peace Treaty with Japan as a basis for its argument:

[...] while the United States Army Military Government in Korea (USAMGIK) temporarily ruled the country after liberation, Dokdo was excluded from those territory controlled and administered by Japan in accordance with the Supreme Command for Allied Powers Instruction (SCAPIN) No. 677. Later, Dokdo’s exclusion from Japan’s territory was reaffirmed by the Treaty of Peace with Japan, better known as the San Francisco Treaty, of September 8, 1951 (39).

Japan successfully addressed the SCAPIN 677 argument in its Note Verbale (40): it was nothing but a provisional measure during occupation policy providing for the governmental and administrative

separation of certain outlying areas from Japan. Therefore at that time, not only Takeshima (Liancourt Rocks), but also Ulleungdo, Jejudo, the Nansei Islands, the Ogasawara Islands, the Kuril Islands, and other islands were excluded from the scope of Japan's sovereignty.

However, Paragraph 6 of SCAPIN 677 states that "[n]othing in this directive shall be construed as indication of Allied policy relating to the ultimate determination of the minor islands referred to in Article 8 of the Potsdam Declaration," and so this directive was not the ultimate determination of the Allies policy on Japan's sovereignty over islands. The final draft of the Peace Treaty with Japan prepared by the U.S. State Department rather maintained Takeshima as a part of Japanese territory, which was embodied in Article 2(a) of the Peace Treaty with Japan as was examined above.

But with regards to Article 2(a) of the Peace Treaty with Japan, the ROK asserts that:

[a]mong Korea's some 3,000 islands, the said article refers to only Jejudo (Quelpart), Geomundo (Port Hamilton), and Ulleungdo (Dagelet) as examples. Therefore, the mere fact that Dokdo is not directly mentioned in the said article does not suggest that Dokdo is not included among those territories of Korea separated from Japan (41).

This explanation is followed by an unique interpretation of the relevant instruments:

In consideration of the Allied Powers' stance reflected in the Cairo Declaration of 1943 and SCAPIN 677 of 1946, Dokdo must be regarded as having been included among the territories of Korea separated from Japan (42).

Contrary to this unique interpretation by the ROK, in the sequence of the Cairo Declaration, SCAPIN 667, and the drafts by U.S. Department of State for the Peace Treaty with Japan, Article 2(a) of the Peace Treaty embodies the Allies' ultimate determination: the Allies did not determine that Takeshima was a part of territory that should be separated from Japan; it is rather clear that the Allies determined that Takeshima belongs to Japan.

(2) Historical Korean documents and Dokdo

In addition to the previously described provision of Article 2(a) of the Peace Treaty with Japan, the ROK makes use of the following historical documents as the evidence of its title over Takeshima. It claims that today's Takeshima, which it calls Dokdo, has throughout history continuously been ROK territory (since 1530). The evidence the ROK points to support its claim that historically Dokdo was ruled by the ROK as its territory are mainly descriptions in official documents, to which it added the following explanations (43). The "Treatise on Geography of the Sejong Silloc Jiriji" (1454) has the following description; "The two islands of Usan (Dokdo) and Mureung (Ulleungdo) are located in the middle of the sea due directly east of the *hyeon* (Uljin Prefecture)... The two islands are not far apart and are visible on a clear day. They were called Usan-guk or Ulleungdo during the Silla period." From the "Sinjeung Dongguk Yeoji Seung nam" (1531), it quoted the following; Usando and Ulleungdo "are also called Mureung or Ureung. The two islands are located in the middle of the sea due directly east of the *hyeon* (Uljin Prefecture)."

Further, the ROK cites "Dongguk Munheon Bigo" (1770), which describes on Usando (Dokdo) and Ulleungdo that "Together, these two islands comprise Usan... According to *Yeojiji* (Geography of Korea), it is said that Ulleung and Usan are both territories of Usan-guk and that Usan is what the Japanese refer to as Matsushima (old Japanese name for Dokdo)". In "Man-gi Yoram" (1808), it describes that

“Ulleungdo is located in the middle of the sea due directly east of Uljin...According to Yeojiji (Geography of Korea), it is said that Ulleung and Usan are both territories of Usan-guk and that Usan is what the Japanese refer to as Matsushima (old Japanese name for Dokdo).” In addition, “Jeungbo Munheon Bigo” (1908) describes on Usando (Dodo) and Ulleungdo that “Together, these two islands comprise Usan. Addendum: It has now become Uldo-gun. Today, it is known as Ulleung-gun.” The ROK refers to these official documents as evidence for its title.

All these references really say is that there was a state called Usan located directly to the east of Korea and that it was comprised of two islands, Usando and Ullengdo, which lay close to each other. Yet the Government of the ROK has used the descriptions in “Dongguk Munheon Bigo” and “Man-gi Yoram” that “Usan is what the Japanese refer to as Matsushima” as evidence that Usan-do, whose Japanese name was Matsushima, is today’s Dokdo.

However, whereas one comes across such island names as Usando, Ulleungdo, Mureung and Ureng in these documents, nowhere is there any mention of Dokdo. Also, it would be difficult to verify the identity of these islands in the light of today’s designation of the islands in relevant areas. Furthermore, the assertion “Usan is what the Japanese refer to as Matsushima,” which can be found in “Dongguk Munheon Bigo” and “Man-gi Yoram,” refers only to the old book “the Yeojiji” as the reference; no old maps nor documents that identify that Usan-do is today’s Takeshima were quoted as evidence.

Moreover, the ROK relies on a description of Usan-do in “Sejong Sillok Jiriji” that Usan-do and Mureung-do are not far apart from each other and are visible on a clear day as evidence that implies that Usan-do is Dokdo. But in accordance with the methods of description that were the convention in ROK’s topographical compilations of that time, it only means that both islands were not that far away from the Korean Peninsula and could be seen from the mainland; it does not indicate that today’s Takeshima can be seen from Ulleungdo. One must bear in mind that today’s Takeshima is located more than 215km far away from the Korean Peninsula. As a result, the ROK’s interpretation of these historical documents, insisting that Usan-do is Dokdo that is today’s Takeshima, is nothing but a unique interpretation made by the ROK.

(3) Dokdo in the Edo and Meiji period

The ROK relies on several historical events and instruments, such as the capture of An Yong-bok, Japan’s directive that prohibited sea passage, and the directive of Japan’s Dajokan, as evidence suggesting that Japanese government in the Edo and Meiji periods basically recognized that Dokdo, which is today’s Takeshima, was a part of ROK territory (44).

An Yong-bok is a person who came to Japan twice in 1693 and 1696 during the reign of King Sukjong in the Korean Joseon period. The Government of the ROK of that time recorded in “Annals of King Sukjong” in 1696 that An Yong-bok told the Japanese fishermen he encountered in Ulleungdo that “Matsushima is Jasando (Dokdo) and it is Korean territory.” It is also recorded that he went over to Japan to lodge a protest against Japan’s encroachment on the Korean territories of Ulleungdo and Dokdo (45). The ROK argues that these actions taken by An Yong-bok constitute evidence of the ROK’s title to Takeshima. Also, the ROK insists that the 1693 kidnapping of An Yong-bok triggered the Ulleungdo Dispute between Korea and Japan (46).

The incident in which the Tokugawa Shogunate expelled An Yong-bok from Japan is known as the “Takeshima case”. An Yong-bok was arrested when he returned to Korea, with charges of the alleged violation of the closed-country policy of the Government of Korea at that time. It is said that the “Annals of King Sukjong,” to which the Government of the ROK refers, briefly describes a criminal investigation

against and interrogation of him.

The records appearing in the “Annals of King Sukjong” is just testimony delivered by An Yong-bok, who attempts to avoid punishment for the alleged crime. There are many contradictions between his testimony and the Japanese records of his examination while he was in Japan. Doubts about the credibility of his testimony simply cannot be dismissed. For example, regarding An Yong-bok’s testimony that he encountered Japanese on Ulleungdo and ordered them to leave it since it was Korean territory, this seems doubtful because he arrived there at a time in 1696 after Japan’s ban on passage to the island had gone into effect. So we are left with the impression that the testimony of An Yong-bok lacks credibility. He is a person whose origins are obscure and who acted as a private individual, not as a representative of the Korean government charged with executing state policy. For these reasons, the persistence of his testimony would be hard to substantiate under international law.

The ROK also invokes “the Takeshima and another island” directive as evidence for its title over the island. This directive was issued in relation to a Shimane Prefecture inquiry to the Ministry of Home Affairs under the name of Jiro Sakai asking for incorporation of Takeshima and another island in the national land registration. The Ministry judged that Takeshima (Ulleungdo) was of no concern to Japan, but referred the case to the Dajokan for approval. In March 1877, the Dajokan directed that for “Takeshima and another island,” it should bear in mind that Japan has nothing to do with them. The ROK’s interpretation of this directive is that “Takeshima” referred to today’s Ulleungdo and that “another island” referred to Dokdo (now called Takeshima), and Shimane prefecture need not give thought to registering and developing their land. In other words, it is the understanding of the ROK that the Meiji government directed that Ulleungdo and today’s Takeshima are “of no concern to Japan and so need not be reclaimed.” However, the ROK cannot provide any explanation for why this “another island” should be considered to be Dokdo (today’s Takeshima).

There was still considerable confusion over the island’s name at the time of the Dajokan’s directive, with names such as Matsushima, Takeshima, Matsushima Dagelet Island, and Argonaut Island, etc. Even so, the Meiji government continued to regard today’s Takeshima as Japanese throughout this period of confusion, as I have already discussed. Accordingly, the mention in the directive that Japan has nothing to do with “Takeshima and another island” cannot have meant Takeshima (now Ulleungdo) and Matsushima (now Takeshima), as the ROK’s interprets the phrase (47). A more natural interpretation would be that the words referred to a single island, Ulleungdo, with two names, since Ulleungdo was then known in Japan as both Takaeshima and Matsushima.

(4) The Korean Empire’s Governance of Dokdo

The ROK stresses that at the turn of the 20th century, Korea reaffirmed its ownership of Dokdo and acted to govern it (48). The Korea’s Imperial Edict No. 41 of October 27, 1900, is invoked to support this claim. This Edict was to strengthen the legislation of the local government of Ulleungdo and stated that “Ulleungdo shall be renamed Uldo and the post of inspector [dogma] shall be promoted to county magistrate [gunsu],” and the changes were approved by the Emperor on the following day and published as Imperial Edict No. 41 in the government’s official gazette on October, 27, 1900 (49). Article 2 provided that “The location of the county office shall be Teha-dong, as regards the districts, all Ulleungdo as well as Jukdo and Seokdo [Dokdo] shall be placed under the jurisdiction of [Uldo-gun (Uldo country)].” But according to the explanation of the ROK, the provision that “...All of Ulleungdo as well as Jukdo and Seokdo [Dokdo] shall be placed under the jurisdiction of [Uldo-gun (Uldo country)]” clearly indicates that the Uldo-gun district includes Dokdo under its jurisdiction (50).

The ROK emphasizes that administrative measures based upon the Korean Imperial Edict No. 41, which placed Dokdo under the jurisdiction of Uldo-gun, clearly indicates that today's Takeshima belongs to the ROK. However, no evidence indicating that "...all of Ulleungdo, as well as Jukdo, and Seokdo [Dokdo]" in Article 2 of the Edict refers to Dokdo has been provided. Also, as we have seen above, many names of islands appeared in the historical documents as well as in this Imperial Edict invoked by the ROK, such as Usando, Mureungdo, U-leung-do, Ulleung-do, Ulleungdo, Jukdo, and Seokdo. However, no explanation, which identifies Dokdo, thereby today's Takeshima, was provided.

Furthermore, further proof of the Korean Empire's recognition of and rule over Dokdo can be found, the ROK adds, in Directive No.3 of the State Council of the Empire of Korea of 1906, which was a response to the news that Japan had incorporated Takeshima a year earlier. The Directive stated that the claim that Dokdo had become Japanese territory "is completely groundless" and ordered the county magistrate of Uldo-gun to inquire again in to the situation. Rather, the ROK firmly recognized Dokdo as a part of Korean Empire, and actually exercised its sovereignty over it. However, the mere fact that an investigation was ordered because the Korean Empire considered Japan's incorporation to be "completely groundless" cannot be seen as evidence that it ruled the island that is today's Takeshima.

If the ROK takes the position that today's Takeshima has been its territory since the time of the Korean Empire, it would have been insufficient for the ROK to simply order an investigation into the territorial incorporation by Japan in 1905. The ROK needs to show evidence which establishes facts, such as its objection to Japan's conduct or its own measures incorporating the island into its own territory. When compared to the fact that at the end of the 17th century Korea requested that the Shogunate prohibit sea passage to today's Ulleungdo, based on the evidence provided by the Korean Imperial Edict No.41 and the State Council's Directive No.3, it seems unclear whether the Korean Empire actually exercised effective control over the island that is today's Takeshima.

(5) The Illegality of Japan's Incorporation of Dokdo

The ROK maintains that the steps Japan took to incorporate Takeshima, such as 1905 cabinet decision and Shimane notice No.40, were violation of international law (51). As was explained earlier, Japan took the opportunity provided by the petition to the ministries by Nakai Yozaburo in September 1904 to lease Liancourt Rocks to once again carry out an on-site survey and it confirmed that there was no "no trace of any other country being in control of them." On January 28 of the following year, the Cabinet decided to rename Liancourt Rocks, for which the petition to lease had been submitted, as "Takeshima", and to place it under the jurisdiction of the Oki Island Governor. Based on the Cabinet decision and the instruction of the Minister of the Interior, on February 22, the Shimane Prefecture Governor issued Shimane Prefecture Notice No.40, stating that "The islands located at 37° 9' 30" North Latitude and at 131° 55' East Longitude and 85 nautical miles northwest of Oki Islands, shall be named Takeshima and assigned from now on to the head of the public office on the Oki Islands." This was the procedure by which Japan drew Takeshima into its territory.

The Edo and Meiji governments were adequately aware of today's Takeshima whether they went by the name of Matsushima or Liancourt Rocks, and they understood clearly that they were Japanese. Today's Ulleungdo was a separate matter.

As was previously mentioned, the Oya family and Murakawa families engaged in gathering abalone and hunting sea lions on Takeshima (today's Ulleungdo) and following a request from Korea to prevent Japanese from landing on the island, the two governments started negotiations over ownership of it. The negotiations eventually resulted in the Tokugawa shogunate's acknowledgment that today's Ulleungdo

was Korean and its decision to prohibit passage to it, which both families were reluctantly forced to accept.

The ROK argues that Japan's annexation of Dokdo, based on the principle of the occupation of *terra nullius*, constituted a violation of international law, for it is a clear infringement of the undeniable sovereignty of Korea over the island from ancient times to the recent Empire of Korea.

As was pointed out, however, the Meiji government was operating under the assumption that today's Takeshima had been Japanese since Edo period. Having recently gained recognition as a member of the international community, Japan was only taking steps to satisfy once again the necessary requirements for today's Takeshima's incorporation (52). Accordingly, the incorporation of today's Takeshima was not occupation of territory that had been *terra nullius* from the start but official reaffirmation of the state practice over territory to which the Japanese had continuously exercised sovereignty since the distant past in order to satisfy the formal requirements of international law (53). In particular, this was an action taken as a state practice. The presumption of the ROK that the legal basis of Japan's incorporation of the island was the principle of occupying *terra nullius* is a misunderstanding of the actual situation.

Conclusion

The dispute over the sovereignty to Takeshima between Japan and the ROK was triggered by the Japanese objection to the "Presidential Proclamation of Sovereignty over Adjacent Seas" by the ROK. The ROK's sovereignty arguments has been denied by Japan during the initial stage of the exchange of Notes Verbale. Nevertheless, the ROK maintains the same arguments, which contain numerous logical flaws and thereby provide little of the requirements of international law.

It seems that the weakest point of the ROK's argument is that it presents "Dokdo" as today's Takeshima. It is the interpretation of the ROK that Usan-do is located adjacent to Ulleungdo, which seems to be Dokdo (today's Takeshima). The names of various islands are shown in the vicinity of Ulleungdo. However, none of them are named Dokdo in historical documents or on historical maps.

With regards to this point, the ROK has presented the following explanation of how Usando came to be called Dokdo: in the dialect of Korea's Gyeongsang Province at that time, "Dok" meant rock or stone, so "Dokdo" meant rock island or stone island. But today, "Dokdo" means an isolated island, and at some time even the history books came to refer to it as Usan-do or Sambong-do (54). All this is perhaps a reasonable explanation for how Usando came to known as Dokdo over time. Even so, it fails to explain why we should identify Usando with today's Takeshima.

- (1) Takeshima is the collective name for the Western Island (Male Island) and the Eastern Island (Female Island) and numerous surrounding rocks. It is approximately 157km from Oki, around 92km from Ulleungdo, and approximately 215km from the Korean Peninsula. It is located in the Sea of Japan 131°52' East longitude and about 37°14' North latitude.
- (2) The Ministry of Foreign Affairs, the ROK, *Dokdo : Korean Territory*, p. 8, available at <http://www.mofat.go.kr/mofat/popup/2008_dokdo/lang/eng.pdf>, (as of June 8, 2012).
- (3) *Ibid.*, p.2.
- (4) The Ministry of Foreign Affairs, Japan, *Japan's Consistent Position on the Territorial Sovereignty over Takeshima*, available at <<http://www.mofa.go.jp/mofaj/area/takeshima/index.html>> (as of August 17, 2012).
- (5) *Ibid.*
- (6) *Diplomatic documents exchanged between Japan and the ROK* (from January 28, 1958 to December

- 12, 1976), pp. 119-121, available at <http://www.pref.shimane.lg.jp/soumu/web-takeshima/takeshima04/takeshima04_01/takeshima04c.data/4-6-01.pdf> (as of August 6, 2012).
- (7) Article 1 of Japan-Korea Annexation Treaty (signed August 22, 1910, came into effect on 29th of the same month). His Majesty the Emperor of Korea makes the complete and permanent cession to His Majesty the Emperor of Japan of all rights of sovereignty over the whole of Korea, and Article 2. His Majesty the Emperor of Japan accepts the cession mentioned in the preceding article and consents to the complete annexation of Korea to the Empire of Japan.
 - (8) Article 8 of the Potsdam Declaration (signed July 26, 1945; accepted August 14 of the same year) prescribes 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.”
 - (9) Both countries would not renounce their claim to be the only nation on the Korean Peninsula after Japan had been expelled from it, but in actual terms they were two nations with their border being the 38th parallel north, and they joined the United Nations at the same time on September 17, 1991. The Government of Japan concluded the Japan-Korea basic treaty with the Government of the ROK on June 22, 1965, and recognized the Republic of Korea as a sovereign state on the Korean Peninsula.
 - (10) Subsequently, the ROK claimed that Takeshima was ROK territory, based on evidence of a map drawn by the Ministry of Defense, but the same map shows that other minor islands that later become Japanese territory, such as the Bonin Island and the Nansei Islands, are not within the line indicating Japanese territory, so this demonstrates that this map does not show the Allies’ ultimate decision.
 - (11) *Foreign Relations of the United States*, Vol. VII, Part 2 (1949), p. 900, available at <http://goecities.jp/tanaka_kunitaka/takeshima/frus.jpg> (as of July 5, 2012).
 - (12) *A letter sent from Korean Ambassador to the United States Dr. Yu Chan Yang to U.S. Secretary of State Acheson*, available at <http://www.mofa.go.jp/area/takeshima/g_sfjoyaku.html> (as of July 5, 2012).
 - (13) *A letter sent from Dean Rusk, the United States Assistant Secretary of State for Far Eastern Affairs, to Dr. Yu Chan Yang, Korean Ambassador to the United States*, available at <http://www.mofa.go.jp/area/takeshima/g_sfjoyaku.html> (as of July 5, 2012).
 - (14) Regarding the relation between Japan’s territorial right to Takeshima and Article 2(a) of the Peace Treaty with Japan, please refer to Takashi Tsukamoto, “The San Francisco Peace Treaty and Takeshima: from the collection of U.S. diplomatic documents,” National Diet Library Research and Legislative Reference Bureau, *The Reference*, No. 389 (1983); Takashi Tsukamoto, “The Peace Treaty and Takeshima (revisited),” *The Reference*, No. 518 (1994).
 - (15) The Treaty of Peace with Japan, signed September 8, 1951, came into effect on April 28, 1952.
 - (16) Article 2 (a) of the Peace Treaty with Japan prescribes that “Japan shall recognize the independence of Korea, renounces all right, title, and claim to Korea, including the islands of Quelpart, Port Hamilton and Dagelet.”
 - (17) General Headquarters Supreme Commander for the Allied Powers, *Area Authorized for Japanese Fishing and Whaling* (1946), available at <http://www.mofa.go.jp/area/takeshima/g_sfjoyaku.html> (as of July 5, 2012). Article 3(b) of this memorandum states that, “Japanese vessels or personnel thereof will not come approach closer than 12 miles to Takeshima nor have any contact with said island.” Also, Article 5 prescribes that, “The present authorization is not an expression of Allied policy relative to the ultimate determination of national jurisdiction, international boundaries or fishing rights in the area concerned or in any other area.”

- (18) Zengo Ohira, *Shudan Anzen Hosho to Nihon Gaiko* [Collective Security and Japan's Diplomacy] (Hitotsubashi Shobo, 1960), p. 164.
- (19) *Diplomatic documents exchanged between Japan and the ROK*, *supra* note 6, pp. 1-2.
- (20) Furthermore, in the proclamation the Republic of Korea appears to assume territorial rights over the islets in Japan Sea known as 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.' *Ibid.*, p. 2.
- (21) *Diplomatic documents exchanged between Japan and the ROK*, *supra* note 8, pp. 3-6.
- (22) General Headquarters Supreme Commander for Allied Powers, *Governmental and Administrative Separation of Certain Outlying Areas from Japan*, available at <http://www.mofa.go.jp/area/takeshima/g_sfjoyaku.html> (as of July 5, 2012).
- (23) *Diplomatic documents exchanged between Japan and the ROK*, *supra* note 6, pp. 7-9.
- (24) The Ministry of Foreign Affairs, Japan, "7. Takeshima as a U.S. military bombing training zone", available at <http://www.mofa.go.jp/mofaj/area/takeshima/g_sfjoyaku.html> (as of July 5, 2012).
- (25) *Diplomatic documents exchanged between Japan and the ROK*, *supra* note 8, pp. 10-11.
- (26) *Ibid.*, p. 12.
- (27) *Ibid.*, pp. 13-14.
- (28) *Ibid.*, pp. 15-20.
- (29) *Ibid.*, pp. 21-23.
- (30) *Ibid.*, pp. 24-25.
- (31) *Ibid.*, pp. 29-30.
- (32) *Ibid.*, pp. 44-58.
- (33) *Ibid.*, pp. 78-93.
- (34) The Ministry of Foreign Affairs, Japan, "4. The incorporation of Takeshima into Shimane Prefecture," "Petition to incorporate Liancourt Rocks and to issue a lease", available at <<http://www.mofa.go.jp/mofaj/area/takeshima/g.hennyu.html>> (as of July 5, 2012).
- (35) The Ministry of Foreign Affairs, Japan, "Minister of the Interior Instruction No. 87", *ibid.*
- (36) The Ministry of Foreign Affairs, Japan "Shimane Prefecture Notice No. 40", *ibid.*
- (37) Shimane Prefecture General Affairs Division, ed., "Shimane Prefecture Administration Documents 1", November 15, Meiji 37 "No.152, Answer of the Oki Island Governor Bunsuke Higashi to 'No.1073'", (published in Collection of materials related to Takeshima No. 2), pp. 49-50.
- (38) The Ministry of Foreign Affairs, the ROK, *supra* note 2, pp. 3-6.
- (39) *Ibid.*, p. 7.
- (40) The Government of Japan, Note Verbale, April 25, 1952 (No.21/A2).
- (41) The Ministry of Foreign Affairs, the ROK, *Dokdo*, Korea's Beautiful Island (English version), available at <<http://dokdo.mofa.go.kr/#>> (as of June 8, 2012), p. 30.
- (42) *Ibid.*
- (43) The Ministry of Foreign Affairs, the ROK, *supra* note 41, pp. 14-15.
- (44) The Ministry of Foreign Affairs, the ROK, *supra* note 2, p. 4.
- (45) The Ministry of Foreign Affairs, the ROK, *supra* note 41, p. 20
- (46) *Ibid.*
- (47) Takashi Sugihara, "Takeshima and another island should be understood as being of no concern to Japan' Reconsidered: with special reference to the 'petition to reclaim Matsushima' submitted by Kensuke Oya and another person in 1881", available at <<http://www.pref.shimane.lg.jp/admin/pref/>>

takeshima/web-takeshima/takeshima04/takeshima04-1/takeshima04_j.html and http://www.pref.shimane.lg.jp/admin/pref/takeshima/web-takeshima/takeshima04/sugi/take_04g08.html>.

- (48) The Ministry of Foreign Affairs, the ROK, *supra* note 2, p. 5.
- (49) The Ministry of Foreign Affairs, the ROK, *supra* note 41, p. 25.
- (50) *Ibid.*
- (51) The Ministry of Foreign Affairs, the ROK, *supra* note 2, p. 6.
- (52) Ohira, *supra* note 18, p. 169.
- (53) *Ibid.*, p. 170.
- (54) Attached documents to the Note Verbale of September 9, 1953, *supra* note 6, p. 32.