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Takeshima^{*}

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I. Geographical Scope

Takeshima is part of Goka Village, Oki District, Shimane Prefecture (Translator's note: Currently Okinoshima Town, Shimane Prefecture). It is located in the Sea of Japan (37°9'30" north latitude and 131°55' east longitude) approximately 157 km northwest of Okinoshima Island of Shimane Prefecture (approximately 70 km from the Shimane Peninsula in Honshu Island), and approximately 213 km linearly from mainland Japan. It is comprised of two small islands and numerous small outcroppings connected with the islands. Nishijima (Ojima) Island has the largest land area with 0.17 sq. km, nearly equal to the land area of Tokyo's Hibiya Park. The second largest island, Higashijima (Mejima) Island, has 0.05 sq. km. The total land area of Takeshima, including its approximately 40 small outcroppings, is 0.23 sq. km.

Takeshima is influenced by strong onshore winds. Its landmasses are bare rocks inhospitable for tree growth and other vegetation, aside from some wild grass growing on the southwestern side of the island. The highest point is found on Nishijima Island at 157 m above sea level. The Higashijima and Nishijima Islands are divided by a water path approximately 150 m in width. The shoreline of both islands consists of steep sea cliffs. Since the coastal areas of the island are hit by high waves and drinking water is scarce on the islands, Takeshima is unsuitable for human habitation.

II. History of Territorial Title

i. Early history

On the Korean Peninsula, in 1392, the Goryeo Dynasty was overthrown, and the Joseon Dynasty was established. In order to control the many refugees who came to Utsuryo Island during the end of the Goryeo Dynasty, King Taejong (1401-1418) and King Sejong (1418-1450) adopted the so-called "evacuated island policy" on the island. Under this policy, islanders were ordered to return to the mainland or were captured and taken to the mainland. As a result of the Joseon government's measures, Utsuryo Island remained an evacuated island for some 450 years until 1881.

Japanese people have travelled between Japan and Utsuryo Island since ancient times. After Utsuryo Island became an evacuated island, more Japanese people started to make the passage to the island. Since the Joseon government did not attempt to control it, Japanese people began to travel to Utsuryo Island more in numbers. Utsuryo Island developed into a fishing ground of the Japanese people over about 100 years after the Japanese invasion of Korea during the Bunroku Period (1592-1596).

On May 16, 1618 in the early Edo Period, through Shintaro Matsudaira, the Lord of the Houki domain, Jinkichi Oya and Ichibei Murakawa of the Houki domain received permission from the Tokugawa

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central government (*Bakufu*) for passage to Utsuryo Island (then Takeshima) (exclusive rights to develop the island). Afterwards, for some 80 years, the two men engaged in fishing activities on the island, primarily for abalone. In those years, Takeshima (then Matsushima) was used as a navigational port on the way to Utsuryo Island from Okinoshima Island, as well as for a ground for hunting sea lions. Although Tokugawa Iemitsu, Shogun of Japan, issued a *sakoku* (closed-door policy) directive and banned foreign trade in 1639, the *Bakufu* continued to issue permissions for passage to Utsuryo Island and Takeshima.

The earliest documentary reference to Takeshima (Matsushima) is the following description in Volume 1 of “*Inshu (Onshu) Shicho Gakki* [Records of Observations in Oki Province]” published in 1667.

Inshu (Okinoshima Island) is located in the northern sea...When one travels northwest for two days and one night from the island, there is Matsushima. When one travels one more day, there is Takeshima...The two islands are uninhabited. Viewing Goryeo from there is the same as viewing Okinoshima Island from Izumo. Therefore, this island is the northwest boundary of Japan.

Furthermore, a written request submitted to the Tokugawa *Bakufu* in May 1681 by Kyuuemon Katsunobu Oya, the third-generation descendent of the aforementioned Jinkichi Oya, contains the following description:

On the way to Takeshima (Utsuryo Island), there is a small island with a circumference of around 20 *cho*. There are no grass and trees. The island consists of rocks. Twenty-five years ago, with the permission of Shogun through Shirogoro Abe, I sailed to the island by boat. In this small island, I engaged in the work of hunting a few sea lions and collecting some fish oil. The distance from Dougo Fukuura in Okinoshima Island to this small island is about 60 *ri*.

Subsequently, in 1692, a dispute arose between the Japanese and Joseon people over fishing operations in Utsuryo Island. The *Bakufu* instructed So Tsushima-no-kami, the Lord of the Taishu domain, to negotiate with the Joseon government. In September 1693, So dispatched Yozaemon Tada to Pusan as the official delegate for the negotiations. However, due to the passive *sakoku* policy, the *Bakufu* decided to prohibit Japanese people from sailing to Utsuryo Island (then Takeshima) as of January 1696.

Nonetheless, even after the prohibition of passage to the Island, Utsuryo Island (Takeshima) and Takeshima (then Matsushima) were clearly differentiated in Japan. People continued to recognize the latter as Japanese territory, and thus, passage to Takeshima was never prohibited.

The memorandum of Hoki-no-kami Matsudaira dated January 23, 1696, shortly after the prohibition of passage, states as follows and shows that the locations of Takeshima (then Matsushima) and Utsuryo Island (then Takeshima) were correctly understood:

1. In going to Matsushima to hunt, one stops there as it is on the way to Takeshima.
1. It is about 80 *ri* from Fukuura to Matsushima.
1. It is about 40 *ri* from Matsushima to Takeshima.

The “*Takeshima Zusetsu* [Explanation of Takeshima with Maps]” edited by Tsuan Kitazono during the Horeki Period (1751-1763) contains the following description:

There is an island about 40 *ri* north of the west island (Nishijima) of Matsushima (Takeshima) in

Oki county. It is called Takeshima (Utsuryo Island). This island is close to Japan and next to Joseon and is shaped like a triangle. Its circumference is about 15 *ri*.

...

The distance from Hakushu's Yonago to Takeshima is about 160 *ri* by sea. One should go from Yonago to Izumo, and then reach to Takeshima via Oki's Matsushima. It is said that the distance from Oki's Fukushima (Fukuura) to Matsushima is about 60 *ri*, and from Matsushima to Takeshima is 40 *ri* by sea.

This document is noteworthy for the following reasons. First, it clearly notes that Matsushima (present Takeshima) belongs to Oki county in Japan by stating "Matsushima in Oki county." Second, it clearly describes that Matsushima (Takeshima) is comprised of two islands east and west, by noting "the west island (Nishijima) of Matsushima." Thirdly, it accurately records the distances between the mainland of Japan and Takeshima and between its mainland and Utsuryo Island.

Additionally, the "*Chosei Takeshima Ki* [The Account of Longevity Takeshima]" authored by Takamasa Yada in 1801 states:

From Oki-Dogo, Matsushima (Takeshima) is located off the west-southwestern coast. The east wind will get you to the island in two days and two nights. Assuming that 36 *cho* (3,927 m) is equivalent to 1 *ri*, the distance is probably about 170 *ri* by sea. The island is mountainous and rugged. Its length is said to be 5 *ri* or 3 *ri*...However, it is said that the island has a water shortage when the hot sun is out. The vessel Takeshimamaru is said to always have made a port call at this island during its passage to Takeshima (Utsuryo Island). The so-called Matsushima is said to have been visible when a 150-ton cargo vessel was caught up in a storm on its way to Ezo Matsumae. Matsushima is located at the far end of Japan's western sea.

The above description reveals that at the time, the Takeshimamaru, on its way to Utsuryo Island, commonly made a port call at Takeshima which was along the route, and that Takeshima belongs to Japanese territory although it is "located at the far end of Japan's western sea."

With regard to old maps, "*Takeshima no Ezu* [Diagrams of Takeshima]", made around 1696 by Ihei Kotani, a government official in Tottori domain, provides an accurate illustration of Takeshima's Higashijima and Nishijima Islands and associated reefs. Maps, including Sekisui Nagakubo's "*Nihon Yochirotei Zenzu* [Route Map of Japan]" (1775) and Juzo Kondo's "*Henryo Bunkai Zuko* [Records and Maps of Boundary of Remote Areas]" (1804), depict two islands between Okinoshima Island and Korea. The maps are unique in that Matsushima (present Takeshima), which is closer to Okinoshima Island, is distinguished from Takeshima (present Utsuryo Island), which is closer to Korea.

ii. Confusion over the name of the islands

In Japan, until the late Edo Period, it was commonly understood that there were two islands on the Sea of Japan between Oki and Korea; and furthermore, that the small island on the side of Japan was called Matsushima and the island closer to Korea was called Takeshima (or Isotakeshima). This can be observed from various documents and maps.

A French colonel, Jean François de Galaup, comte de La Pérouse, surveyed Utsuryo Island for the

first time and named the island “Dagelet” in 1787. Following this, a British lieutenant colonel, William R. Broughton, surveyed the same Utsuryo Island and named it “Argonaute” in 1797. The two men had different measurements for the island’s latitude and longitude, despite the island being the same Utsuryo Island. As a result, the same island was depicted as two separate islands on subsequent European maps. In 1840, Philipp Franz Balthasar von Siebold drew the “Map of Japan” by forcibly integrating this erroneous information with the map of Japan at the time. On the map, Argonaute, near Korea, was identified as “Takashima,” and Dagelet, near Japan, was identified as “Matsushima,” further adding to the confusion over the name of the islands.

Later, in 1854, measurements taken by the Russian ship Pallada and other information revealed that the latitude for Argonaute was incorrect. This led to the disappearance of the name “Argonaute” and to the consolidation of the names of Utsuryo Island into a single name, “Dagelet.” At the same time, the name “Takushima” also disappeared, and Utsuryo Island came to be called “Matsushima” in Japan. Afterwards, in 1880, a survey of the warship “Amagi” identified the accurate location of Utsuryo Island, an island that was recognized since ancient times. In 1905, when the islets that were known as “Matsushima” since ancient times were incorporated into Japanese territory, the Meiji government formally named the islets “Takushima” based on the following written response from the administrator of Okinoshima Island:

I deem Takushima is an appropriate name. It is generally recognized that Matsushima and Takushima exist in seas east of Korea... Since there is no island called Takushima other than this new island, it is natural that we apply the name miscalled in the past to it and name a new island Takushima as commonly called.

From then on, in Japan, islands which were long known as “Matsushima” and “Takushima” came to be called “Takushima” and “Matsushima,” respectively.

Thus, the islands now known as Takushima means the islands which: (1) were called “Matsushima” in Japan from the 17th century through the Meiji Period; (2) were called “Hornnet,” “Liancourt” and “Lyanko” during the 19th century, when there was confusion over the name of the islands; (3) are called Takushima in Japan since its incorporation into Japanese territory in 1905; and (4) are presently called “Dokdo” in the Republic of Korea (ROK).

iii. Incorporation into Japanese territory

From the beginning of the Meiji Period, Japanese people again began to cross the seas to foreign countries. They began to go to Utsuryo Island, which was still an evacuated island, to engage in lumbering and fishing operations. In turn, many people started to submit petitions to the government in order to develop Takushima, mistaking Utsuryo Island for the Japanese territory of Takushima. The petitions included “Petition to Develop Matsushima” by Sadaaki Kodama; “Petition to Develop Matsushima and Takushima” by Heigaku Muto in 1876; and the “Petition of passage to Takushima” by Takayoshi Toda, a warrior in Shimane Prefecture in 1877. In response to the petitions, the Meiji government in 1880 deployed the warship “Amagi” to confirm that Matsushima and Takushima, referred to in the petitions, were indeed present-day Utsuryo Island.

In 1881, the Royal Inspector of Joseon who was dispatched to Utsuryo Island found Japanese people engaged in lumbering at the island, and reported this to the Joseon government. In 1882, the Joseon government lodged a protest to the Japanese government in the form of a letter under the name of Sim Sun-taek, Minister of Rites, Protocol, Culture and Education. The Japanese government affirmed that

Utsuryo Island was Korean territory and issued the following notice, prohibiting Japanese people from going to Utsuryo Island:

Japan and Korea have entered into an agreement which states that Japanese people would not sail to nor land on, without reason, the island that Japan calls Matsushima (also known as Takeshima) and Korea calls Ulleungdo, located at 37°30' north latitude and 130°49' east longitude. We hereby notify thereof to the heads of local governments in order to avoid any confusion.

March 1, 1883
Grand Minister

Around 1897, fishermen from Oki discovered flocks of sea lions in Takeshima during their search for a shipwrecked fishing vessel on Utsuryo Island. The fishermen killed and brought back to mainland Japan 50 to 60 sea lions, and made considerable profit. On hearing this news, the people of Okinoshima Island began to hunt sea lions in large numbers in Takeshima from 1903, putting Takeshima sea lions at risk of extinction. In light of the situation, one of the fishermen, Yozaburo Nakai, submitted the "Request for Territorial Incorporation of Lyanko Island (Takeshima) and its Lease" to the ministers of the Home Affairs, Foreign Affairs, and Agriculture and Commerce on September 29, 1904. Nakai requested the government to incorporate Takeshima into Japanese territory and to grant him a ten-year lease of the islets.

In accordance with this request, the government, after hearing the opinions of the Shimane prefectural government, decided on a Cabinet meeting on January 28, 1905, that it would name the islands enumerated below as "Takeshima," incorporate them into Japan, and place the islands under the jurisdiction of the administrator of Okinoshima Island of Shimane Prefecture.

We have examined the proposal made by the Minister of Home Affairs concerning the uninhabited island, which is located at 37° 9' 30" N and, 131° 55' E. and 85 nautical miles northwest of the Oki Islands. The gist of the proposal is that there is no evidence of occupation by any other countries; a national named Nakai Yozaburo recently petitioned to incorporate the island, and to grant a concession thereof; he has already begun sea lion hunting at the island since 1903; for that purpose, he built a hut for fishery, transferred laborers, and got proper fishing gear; it is necessary to confirm the affiliation and the name of the island; the island shall be called Takeshima, shall belong to Shimane Prefecture, and shall be put under the jurisdiction of the governor of the Oki Islands from now on. We found that occupation of the island was established under international law, as evidenced by documents indicating that Nakai Yozaburo had moved to the island in 1903 and had been engaging in fishery there. We thereby conclude that nothing prevents the incorporation of the island into Japanese territory, making it belong to Shimane Prefecture, and putting it under the jurisdiction of the governor of the Oki Islands. Consequently, a Cabinet decision is made as requested.

The government then instructed the governor of Shimane Prefecture on how to notify the public about the content of the cabinet decision. Through a prefectural notice dated February 22, 1905, the governor announced that Takeshima came under the jurisdiction of Shimane Prefecture, and issued an order to this effect to the Okinoshima Branch Office.

Shimane Prefectural Notice No. 40

The islands located at 37°9'30" north latitude and 131°55' east longitude, a distance of 85 nautical miles northwest the Okinoshima Island, shall be designated as Takeshima, and are hereby placed under the jurisdiction of the Okinoshima Branch Office of this prefecture.

February 22, 1905

Bukichi Matsunaga

Governor of Shimane Prefecture

After Takeshima was incorporated into Shimane Prefecture, studies and surveys of Takeshima were conducted pursuant to the order of the governor of Shimane Prefecture. In May 1905, the administrator of Okinoshima Island submitted an application to the governor of Shimane Prefecture to register Takeshima's land area as "23 *cho*, 3 *tan*, 3 *se bu*" (Japan's old system of measurement). Shimane Prefecture registered Takeshima in the land-book as government owned land according to this request. In April of the same year, Shimane Prefecture revised its fisheries control regulations to introduce a license system for the hunting of sea lions in Takeshima. In June of that year, a license was granted to the Takeshima Fishery Company, a registered company set up by four individuals, including Yozaburo Nakai. The company immediately commenced the hunting of sea lions. In 1906, the company submitted a request to lease the government owned land of Takeshima. The governor of Shimane prefecture granted the company a license of the five-year lease of the property. Since then, fishing operations in Takeshima, mainly involving sea lions, abalone, and *wakame* seaweed, continued until their suspension in 1941 due to Japan's entry into war. Land use fee from licensees was paid to the national treasury every year.

In the meantime, in November 1905, the second Japan-Korea treaty was concluded. The Great Han Empire became a protectorate of Japan, and in 1910, was annexed into Japanese territory.

In 1939, an administrative measure was taken to incorporate Takeshima into the Goka Village area. In 1940, the administration of Takeshima was transferred to the Maizuru Naval District as its naval land. Nevertheless, in November 1941, it issued the order which gave Choshiro Yahata in Goka Village permission to use the naval land for the hunting of sea lions, the collecting of seaweed and seashells, and the preservation of breeding grounds.

On November 1, 1945, following the end of World War II, administration of Takeshima was transferred from the navy to the Ministry of Finance pursuant to Article 2 of the Order for Enforcement of the National Property Act. This situation continues to the present.

III. Developments after World War II

i. Occupation and control of the Allied Powers, and Takeshima

Following the end of WWII, the "Basic Initial Post-Surrender Directive to Supreme Commander for the Allied Powers for the Occupation and Control of Japan" was issued by the General Headquarters of the Supreme Commander for the Allied Powers (SCAP) on November 1, 1945, thereby limiting Japan's sovereignty to the four islands of Honshu, Hokkaido, Kyushu, and Shikoku, and the smaller islands determined by the Allied Powers. On January 29, 1946, a memorandum of the General Headquarters of SCAP, titled "Governmental and Administrative Separation of Certain Outlying Areas from Japan (SCAPIN-677)", directed Japan to cease exercising governmental and administrative authority over Utsuryo Island, Quelpart Island, as well as Takeshima. This was followed by a memorandum of the General Headquarters

of SCAP dated June 22 of the same year (SCAPIN-1033), which placed Takeshima outside of the so-called MacArthur Line and banned Japanese vessels and their personnel from approaching closer than 12 miles to Takeshima (later revised to 3 miles by a memorandum dated September 19, 1949 [SCAPIN-2046]). Accordingly, Shimane Prefecture issued prefectural ordinance no. 49 dated July 26, 1946 to delete sea lion hunting in Takeshima from the scope of its fisheries control regulations. Nonetheless, the measures taken by the General Headquarters of SCAP should not be seen as the ultimate determination of Japanese territory, as is made evident in Paragraph 6 of the aforementioned memorandum dated January 29, 1946: “Nothing in this directive shall be construed as an indication of Allied policy relating to the ultimate determination of the minor islands referred to in Article 8 of the Potsdam Declaration.”

The Treaty of Peace with Japan was signed on September 8, 1951, making the restoration of Japanese sovereignty certain. In the meantime, the Republic of Korea (ROK) took steps to restrict fishing operations of foreign vessels in its coastal areas through the establishment of fishery protection areas. On January 18, 1952, the ROK issued the “Presidential Proclamation of Sovereignty over the Adjacent Seas (Syngman Rhee Line Declaration)”, unilaterally proclaiming sovereignty over the adjacent seas which included Takeshima.

Supported by well-established international precedents and urged by the impelling need of safeguarding, once and for all, the interests of national welfare and defence, the President of the Republic of Korea hereby proclaims:

1. The Government of the Republic of Korea holds and exercises national sovereignty over the shelf adjacent to the peninsular and insular coasts of the national territory...protecting, preserving and utilizing...all the natural resources, mineral and marine (Abridged).
2. The Government of the Republic of Korea holds and exercises national sovereignty over the seas adjacent to the coasts of the peninsula and islands of the national territory, no matter what their depths may be (Abridged).
3. The Government of the Republic of Korea hereby declares and maintains the lines of demarcation, as given below...The zone to be placed under sovereignty and protection of the Republic of Korea shall consist of seas lying between the coasts of the peninsular and insular territories of Korea and the line of demarcation made from the Continuity of the following lines:
 - a. from the highest peak of U-Am-Ryung, Kyung-Pung-Kun, Ham-Kyong-Pukdo to the point (42° 15'N - 130° 45'E)
 - b. from the point (42° 15'N - 130° 45'E) to the point (38° 00'N - 132° 50'E)(Abridged)
4. This declaration of sovereignty over the adjacent seas does not interfere with the rights of free navigation on the high seas.

On January 28, 1952, the Japanese government immediately lodged a protest to the ROK. With regard to Takeshima, the Japanese government asserted:

In the Proclamation, the Republic of Korea appears to assert territorial rights over the islets in the Sea of Japan known as Takeshima. The Japanese Government does not recognize any such assumption or claim by the Republic of Korea.

The MacArthur Line was fully abolished on April 25, 1952, shortly before the entry into force of

the Treaty of Peace with Japan. On April 28, the state of occupation of Japan by the Allied Powers was dissolved with the entry into force of the peace treaty. As the provision of Article 2, Paragraph (a) of the treaty did not include Takeshima on the list of territories Japan renounced, Takeshima was placed back under the jurisdiction of the Okinoshima Branch Office of Shimane Prefecture with the entry into force of the treaty.

On July 26, 1952, the Japan-U.S. Joint Committee designated Takeshima as an air force exercise area to be utilized by the U.S. Forces in Japan, in accordance with Article 2 of the Administrative Agreement under Article III of the Security Treaty between Japan and the United States of America. On March 19, 1953, Takeshima was removed from the exercise areas.

On June 19, 1953, Shimane Prefecture issued Notice No. 352, granting joint fishing rights for Takeshima's adjacent waters to the Federation of Okinoshima Island Fishery Cooperatives from June 18, 1953 to August 31, 1961. In addition, the prefecture issued a public announcement dated June 19, 1953, granting Tadashige Hashioka and two others in Goka Village, Ochi District, Shimane Prefecture permission to hunt sea lions in Takeshima from June 10, 1953 to December 31, 1965.

On February 26, 1954, the director of the Hiroshima Regional Bureau of the Ministry of International Trade and Industry granted licenses to Tomizo Tsuji and two others at their requests to establish mining rights for phosphate in Takeshima and its adjacent waters.

Since 1953 to this day, however, Japanese people have not engaged in fishery and mining operations in Takeshima, due to Korean fishermen's fishing operations on the island and ROK authorities' continued occupation of the island.

ii. The ROK's territorial claim and Japan's responses

Japan and the ROK have disputed over Takeshima ever since the ROK announced the proclamation of sovereignty over the adjacent seas on January 18, 1952 and included Takeshima within the Syngman Rhee Line that was established based on the proclamation. The Japanese government protested the ROK's proclamation in a note verbale dated January 28, 1952. In response, the ROK asserted as follows in a note verbale dated February 12 of the same year:

The Government of the Republic of Korea merely wishes to remind the Japanese Government that SCAP, by SCAPIN No.677 dated January 29, 1946, explicitly excluded the islets (Takeshima) from the territorial possessions of Japan and that again the same islets have been left outside of the MacArthur Line, facts that endorse and confirm the Korean claim to them, which is beyond any dispute.

On April 25 of the same year, the Japanese government objected as follows: "SCAP's memorandum dated January 29, 1946 no more than ordered the Japanese government to cease exercising or attempting to exercise governmental or administrative authority over Takeshima, and is unrelated to its attribution. Similarly, the MacArthur Line is not an expression of Allied policy relating to the ultimate determination of national jurisdiction, international boundaries, or fishing rights." Along with this, the Japanese government noted that the ROK's assertions do not provide grounds under international law, and that discussions of this nature have become wholly unnecessary due to the abolishment of the MacArthur Line on this day of April 25.

On May 28, 1953, a fishery experimental vessel of Shimane Prefecture "Shimanemaru" discovered,

while conducting a development study of the Tsushima Warm Current, that approximately 30 Korean fishermen had landed on Takeshima and engaged in the harvesting of abalone, *wakame* seaweed, and other products. On June 23 of the same year, the Japanese government lodged a protest to the ROK government and dispatched patrol vessels of the Maritime Safety Agency several times to the islands to control the activities. Nevertheless, even after this, Korean fishermen continued their fishing operations in Takeshima.

On July 12, 1953, the Japanese government dispatched a patrol vessel of the 8th Regional Coast Guard Headquarters "Hekura" (450-ton) to Takeshima to conduct its fourth local survey. The vessel found approximately 40 Koreans on Takeshima, including armed police officers. When Japan demanded them to leave the islands, the ROK authorities fired approximately 40 bullets upon the patrol vessel using carbines and light machine guns. This was the "shooting incident involving ROK authorities in Takeshima." On the next day, July 13, the Japanese government lodged a strong protest to the ROK in which the Japanese foreign ministry sent a note verbale to the ROK mission to Japan. In addition, the Japanese Ministry of Foreign Affairs issued a statement dated the same day which expressed its opinions regarding Takeshima to the following effect:

Takeshima, over which disputes arose between Japan and Korea after 1693 and where fishing by Japanese people was later prohibited by an order of the *Bakufu*, concerns the period when present-day Utsuryo Island was called Takeshima or Kantakeshima and is not present-day Takeshima. It is evident from the literature, old maps, and other sources that since ancient times, Japan knew about present-day Takeshima by the name of Matsushima and considered it a part of Japanese territory. Takeshima is without a doubt a part of the territory of Japan, in light of historical facts and based on international law. Prior to the Japan-Korea annexation, the Japanese government already placed Takeshima under the jurisdiction of the administrator of Okinoshima Island of Shimane Prefecture through Shimane Prefectural Notice No. 40 dated February 23, 1905. Since then, Takeshima was under the valid control of Japanese people until shortly before the outbreak of the recent war. During these years, no country questioned Takeshima's attribution to Japan... Furthermore, the peace treaty does not contain any provisions indicating that territories which were Japanese territory prior to the Japan-Korea annexation would be ceded to Korea.

On September 9, 1953, the ROK government challenged the statement of the Japanese government regarding Takeshima on eight grounds: 1. The ROK's historical title to Dokdo (Takeshima); 2. Effective rule over Dokdo; 3. Geographical proximity between Ulleungdo (Utsuryo Island) and Dokdo; 4. Illegality of the Japanese government's incorporation of Dokdo; 5. The ROK's peaceful and continuous exercise of sovereignty over Dokdo; 6. The removal of Dokdo from Japanese territory pursuant to the memorandum of SCAP dated January 29, 1946; 7. Relevance with the Treaty of Peace with Japan; and 8. Relationship between maneuver areas for the U.S. Forces and Dokdo.

Furthermore, the ROK government asserted:

In conclusion, it is the view of the Government of the Republic of Korea that Dokdo is indisputably a part of the Korean territory in the light of its historical and geographical background and in view of the accepted notions of international law regarding the territorial ownership of the land.

In response to the views of the ROK government, on February 10, 1954, the Japanese government

responded as follows: 1. The ROK inaccurately cites literature and facts, including the articles related to An Yong-bok in “*Sinjeung Dongguk Yeoji Seungnam* [A Revised Edition of the Augmented Survey of the Geography of Korea]” and “*Sukjong sillok* [Annals of King Sukjong],” which the ROK presents as grounds of its territorial title. Furthermore, they are interpreted erroneously and do not support the ROK’s claims. 2. All of the literature and facts that the ROK presents as proof of its valid control over Takeshima, including the report of Sim Heung-taek, the County Magistrate of Utsuryo Island, and Yozaburo Nakai’s request for the territorial incorporation of Takeshima and its lease, are cited inaccurately and do not serve as grounds for the ROK’s claims. 3. The Japan-Korea Protocol dated February 23, 1904 and the Japan-Korea Agreement dated August 22, 1904 have no relevance to the incorporation of Takeshima into Japanese territory. 4. The SCAP memorandum dated January 29, 1946 and the peace treaty are not interconnected. This is also illustrated by the fact that the Nansei Shoto Islands, over which the Japanese government had ceased administrative authority pursuant to the same memorandum, were reverted to Japan. 5. Since ancient times, the Japanese people knew of the existence of Takeshima, considered it a part of the territory of Japan, and had accessed it as is evident from various resources, including the “*Inshu Shicho Goki* [Records of Observations in Oki Province]” of 1667 and the records of Kyuemon Katsunobu Oya of 1681. 6. Japan’s incorporation of Takeshima into its territory on January 28, 1905 fulfilled the requirements for acquiring territory that are deemed necessary under modern international law. 7. The ROK did not consider Takeshima as ROK territory before and after the incorporation of Takeshima into Shimane Prefecture in 1905, as is revealed from “*Daehan Jiji* [Map of Great Han Empire]” and “*Hanguk Tongsa* [Painful History of Korea].” Additionally, the Japanese government asserted that, “Takeshima is without a doubt a part of the territory of Japan, in light of historical facts and in view of the requirements for territorial acquisition under international law.” On September 25, 1954, the ROK government published in newspapers a refutation of the views of the Japanese government.

Meanwhile, from 1954, ROK authorities began to be assigned permanently to Takeshima and a series of shootings then occurred which were targeted at Japanese patrol vessels.

The content and total number of notes verbale that the Japanese government sent to the ROK government over the Takeshima dispute during a nine-year period from 1952 to 1960 are as follows.

Notes Verbale that Japan Sent to the ROK over the Takeshima Dispute
(January 1952-December 1960)

Main Content	Year									
	Total	1952	1953	1954	1955	1956	1957	1958	1959	1960
Total	24	2	5	9	2	1	2	1	1	1
Opinion describing why Takeshima is a territory of Japan	3	—	1	1	—	1	—	—	—	—
Proposal of referral to the International Court of Justice	1	—	—	1	—	—	—	—	—	—
Protest against the issuance of Takeshima postal stamps	1	—	—	1	—	—	—	—	—	—
Protest against the notice on the establishment of a lighthouse	2	—	—	1	1	—	—	—	—	—
Protest against “intrusion into territorial waters,” “illegal fishing,” “facilities,” “permanent stationing of authorities,” “shooting incident”	15	—	4	5	1	—	2	1	1	1
All other denials of the ROK’s territorial claim	2	2	—	—	—	—	—	—	—	—

Gaimusho Chosa Geppo, Vol. 2, No. 5 (May 1961)

With the ROK’s continued “illegal occupation” of Takeshima, the Japanese government continued to lodge protests against the ROK government every year thereafter. The note verbale sent on December 26, 1961 stated as follows:

1. The Government of Japan has conveyed on numerous instances to the ROK Government that Takeshima is a part of the territory of Japan, in light of historical facts and based on international law. The Government of Japan has repeatedly lodged strong protests over the illegal occupation of Takeshima by the authorities of the ROK Government.
2. Despite this, during a survey of Takeshima on December 3, 1961, Japan’s Maritime Safety Agency patrol vessel “Hekura” found that the ROK Government had still not removed the lighthouse, houses, flag poles, radio facilities, and other structures that it had set up on the islands, and furthermore, that ROK authorities were staying at the islands.
3. The Government of Japan hereby once again lodges a strong protest against the ROK Government for continuing to illegally occupy Takeshima, a Japanese territory, notwithstanding the repeated protests of the Japanese Government. The Government of Japan demands the ROK Government to promptly withdraw its authorities from the islands and remove all structures on the islands.

Since 1971, Japan’s response to the Takeshima dispute has been unveiled in the *Diplomatic Bluebook (Japan’s Diplomatic Activities)* published by the Ministry of Foreign Affairs. The 1987 edition of the *Diplomatic Bluebook* stated as follows:

Japan has repeated its protest against the ROK’s illegal occupation of Takeshima Island. A Japanese

protest was filed on the basis of a survey by a patrol boat of Japan's Maritime Safety Agency in November 1986. Japan has taken up the issue at various meetings with the ROK.

iii. Proposal of referral to the International Court of Justice

From 1952, Japan and the ROK repeatedly exchanged written responses over their dispute over the title of Takeshima. Nevertheless, in 1953, an incident took place involving the shooting of a patrol vessel of the Maritime Safety Agency by ROK authorities in Takeshima. In 1954, notwithstanding the repeated protests of the Japanese government, the ROK erected territorial markers, established a lighthouse, and stationed coast guard personnel in Takeshima. Through the accumulation of such measures, the ROK began to proactively use power over Takeshima in order to legitimize its occupation of the islands. In view of the difficult situations to settle the Takeshima dispute through negotiations with the ROK, the Japanese government issued the following note verbale on September 12, 1954, proposing that the Takeshima dispute be settled at court by referring it to the International Court of Justice (ICJ). (Translator's note: provisional translation)

[The Takeshima issue] is a territorial dispute touching on basic principles of international law; thus, the only fair mode of settlement is to refer the dispute to the International Court of Justice and to receive its ruling. The Government of Japan eagerly desires a peaceful resolution and so proposes to the Government of the Republic of Korea that this dispute be submitted to the International Court of Justice under an agreement between the two governments.

The Government of Japan firmly believes that the Government of the Republic of Korea will agree to refer the final resolution of this dispute to an organization of the highest fairness and authority, namely, the International Court of Justice, and looks forward to receiving a prompt and favorable response.

The Government of Japan hereby pledges to faithfully abide by whatever judgment the International Court of Justice reaches.

The ROK rejected Japan's referral proposal in the following memorandum dated October 28, 1954:
(Translator's note: provisional translation)

Dokdo [Takeshima], as the Government of the Republic of Korea has made clear at every opportunity, has been part of Korean territory since ancient times and remains so today...

The proposal of the Japanese Government that the dispute be submitted to the International Court of Justice is nothing but another attempt at the false claim in judicial disguise. Korea has territorial rights *ab initio* over Dokdo and sees no reason why Japan should seek the verification of her rights before the International Court of Justice. It is Japan who conjures up a quasi territorial dispute where none should exist...

The people of the Republic of Korea are determined to protect Dokdo and thereby maintain the integrity of our nation. In that sense, the Government of the Republic of Korea has no need to refer the question of its sovereignty over Dokdo to a verdict of the International Court of Justice.

iv. Domestic court rulings

The following are two examples of cases in which the Takeshima dispute was raised before a Japanese court.

1. Case concerning a state compensation claim (October 18, 1960, Tokyo District Court)

Plaintiff: Toru Higo

Defendant: The Government of Japan

<Facts>

The Plaintiff transferred his registered residence to Takeshima, Goka Village, Ochi District, Shimane Prefecture on September 25, 1959 and made repeated attempts to go to the said location. However, the Plaintiff was unable to go ashore and reside in the said location due to the stationing of the ROK armed forces. The Plaintiff sought 50,000 yen in damages compensation on the account that the Prime Minister, who exercises the public authority of the State, intentionally failed to request the dispatch of the Self-Defense Forces to Takeshima, or the U.S. Forces in Japan in accordance with the Japan-U.S. Security Treaty, notwithstanding the Prime Minister's obligations to do so.

<Summary of Ruling>

The court stated that the government's obligation to have foreign forces withdraw from occupied territory is a public legal obligation and is not a private legal responsibility owed to respective individuals. While the government of Japan recognizes that Takeshima is no doubt a territory of Japan, the court determined that whether or not to take measures to realize the withdrawal of ROK forces from Takeshima is a political issue and is not a legal issue to be determined by the court. On this account, the court dismissed the claims of the Plaintiff.

(1959 [Wa] 7961, *Shomu Geppo* [Monthly Bulletin of Litigations], Vol. 6, p. 2100)

2. Case concerning a claim for compensatory damages (November 9, 1961, Tokyo District Court)

Plaintiff: Tomizo Tsuji

Defendant: The Government of Japan, Shimane Prefecture

<Facts>

In 1954, the director of the Hiroshima Regional Bureau of the Ministry of International Trade and Industry granted the Plaintiff a license to mine phosphate in Takeshima. From 1954 onwards, however, the ROK rejected Japanese administrative authority by force; and therefore, the Plaintiff was unable to carry out mining operations. During this period, Shimane Prefecture levied the mine-lot tax, among other fees, on the Plaintiff.

The Plaintiff claimed that the government of Japan does not exercise the right of taxation in Takeshima where the administration of the government does not extend in reality, and by extension, does not exercise the right to levy and collect the mine-lot tax for the islands. On this basis, the Plaintiff requested the court to affirm that Shimane Prefecture's collection of the mine-lot tax was illegal and that the Plaintiff had no obligation to pay the said tax. Moreover, the Plaintiff alleged that he incurred significant losses because he could not conduct mining operations in accordance with the mining right granted to him because of the ROK's illegal occupation of Takeshima. The Plaintiff sought the payment of compensatory damages by the governments, on the account that the losses were the result of the Cabinet's or the Prime Minister's neglect of obligations to take effective and appropriate measures to protect and restore rights and interests in Takeshima.

<Summary of Ruling>

The court stated that the mine-lot tax is applied on the basis of the enjoyment of mining rights *per se*. The court noted that even if the ROK had rejected Japanese administrative authority over Takeshima, the area for which the Plaintiff possesses mining rights and to which the said tax applies, this in and of itself gives no reasons for the extinguishment of the right of taxation, which is a function of exercise of administration by the Japanese government over the Plaintiff, a Japanese national. If the case is such that the government's exercise of administration over the mine-lot area no more than became *de facto* infeasible, then this does not legally extinguish the aforementioned mining right. Accordingly, the government does not lose the right to levy and collect the mine-lot tax for the mining right. On this account, the court rejected the Plaintiff's request to affirm that he had no obligation to pay the mine-lot tax.

Moreover, the court stated that under existing law, neither the Cabinet nor the Prime Minister has obligations under positive law to take certain measures to repel the illegal occupation of a territory by another country for the purpose of protecting and restoring rights that particular nationals have in the occupied area. The settlement of territorial disputes is a highly diplomatic issue which should be determined and carried out in view of various circumstances, including the existing relationship with the counterpart country, the stance and domestic situation of the counterpart country, relations with third countries, and other international situations in general. Hence, the court dismissed the claim for compensatory damages in this case, which assumed that the government has a legal obligation to take measures to protect and restore the mining right of the Plaintiff.

(1968 [Gyo] 139, *Gyosei Jiken Saiban Reishu* [Compilation of Judgments of Administrative Cases], Vol. 12, p. 2252)

v. Treaty on Basic Relations between Japan and the Republic of Korea

The Japan-ROK meetings which continued for approximately 14 years from 1951 were brought to fruition with the conclusion of the Treaty on Basic Relations between Japan and the Republic of Korea on June 22, 1965. Nonetheless, the treaty contains no provisions that set forth the settlement of the territorial dispute over Takeshima. Japan and the ROK did no more than provide the following in the Exchange of Notes Constituting an Agreement between Japan and the Republic of Korea Concerning the Settlement of Disputes: (Translator's note: provisional translation)

Unless otherwise agreed, the two Governments shall settle disputes between the two countries primarily through diplomatic channels and, when they fail to do so, shall seek settlement by mediation in accordance with procedures to be agreed upon between the two Governments.

With regard to the attribution of Takeshima, on August 9, 1965, Foreign Minister Lee Tong-won of the ROK stated in a Special Committee of Korean National Assembly as follows: "It is a fact that notes are exchanged for the settlement of disputes. This is a conventional and common practice at international meetings. History shows that misunderstandings and frictions arise in relations to treaties even between friendly countries after time has passed. Therefore, we exchanged notes on solutions, that is, how to settle disputes in the chance that a dispute arises, particularly over fishing issues or compensation claims. Foreign Minister (Etsusaburo) Shiina and Prime Minister (Eisaku) Sato of Japan expressed understanding that the Dokdo issue could not be covered by the Exchanges of Notes."

At the Japanese Diet, House of Councillors member Bunzo Ninomiya asked Foreign Minister Shiina a question about different interpretations of the exchange of notes concerning the settlement of disputes

between Japan and the ROK. Foreign Minister Shiina gave the following response at a meeting of the House of Councillors' Special Committee on the Japan-ROK Treaty and Other Matters on November 26, 1965: (Translator's note: provisional translation)

Based on an objective examination, it can be said that Takeshima is the biggest dispute between the two countries...As you are aware, it is not written anywhere that the Takeshima dispute is excluded with regard to the settlement of disputes. It is clear that Takeshima is a dispute. It is not an issue as whether it is written "Takeshima" or "Dokdo". Obviously, [Takeshima] is a critically important dispute between the two countries. Therefore, we will strive to settle this matter by negotiations through conventional diplomatic channels. And it was agreed that if negotiations fail, we would strive to settle the matter by mediation as agreed upon between the two countries. Consider why this important Exchange of Notes was agreed upon. It is clear that the parties of the two countries took into account this Takeshima dispute in drafting the Exchange of Notes.

Similarly, at a meeting of the House of Representatives' Special Committee on the Japan-ROK Treaty and Other Matters on October 27, 1965, a question was asked as to "whether, as stated in the Korean National Assembly, Foreign Minister Shiina and Prime Minister Sato expressed understanding that the Takeshima dispute could not be covered in the Exchange of Notes Concerning the Settlement of Disputes." Prime Minister Sato answered:

I would like to make it clear here that that is not the case.

Foreign Minister Shiina also responded:

Like the Prime Minister, I didn't express such understanding.

Japan takes the position that as the issue of the attribution of Takeshima was not settled at Japan-ROK meetings and the Exchange of Notes does not stipulate the exclusion of the Takeshima dispute from its coverage, the Takeshima dispute, therefore, should be settled in accordance with the said Exchange of Notes.

vi. Current situation in Takeshima

On February 14, 1983, House of Councillors member Yutaka Hata submitted written questions regarding the current situation in Takeshima to the President of the House of Councillors Masatoshi Tokunaga, as outlined below.

1. The basic understanding of the Japanese government regarding the Takeshima dispute
2. The current situation in Takeshima
3. Countermeasures of the Japanese government
4. Diplomatic measures of the Japanese government
5. Whether or not Japan acquiesces the ROK's effective control

In response to the questions, Prime Minister Yasuhiro Nakasone sent a written response through the President of the House of Councillors on February 22, 1983 as follows:

With regard to 1.,

Takeshima is indisputably an inherent part of the territory of Japan, in light of historical facts and based on international law. The government deeply regrets that the ROK government has built various facilities in Takeshima and continues to illegally occupy the islands.

With regard to 2.,

Based on repeated patrols, it has been found that at present, structures have been built in Takeshima, including a lighthouse, watch house, barracks, concrete buildings, iron-made towers, and antennas. The patrols have also found that security personnel are assigned to Takeshima.

With regard to 3. to 5.,

- (1) It is the basic policy of the government to settle the dispute between Japan and the ROK over the territorial title of Takeshima by peaceful means. The government has strongly conveyed to the ROK government through diplomatic channels that the ROK's territorial claims over Takeshima cannot be accepted. Based on repeated patrols, the government has repeatedly protested the ROK's establishment of facilities and continued illegal occupation. The government does not acquiesce the illegal occupation of the ROK.
- (2) The government has made diplomatic efforts *vis-à-vis* the ROK. In 1982, Japan raised this dispute at the working level during Foreign Minister Lee's visit to Japan in July. Also, the government lodged a protest against the ROK based on a result of the patrol of the adjacent seas of Takeshima on October 28.