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The Takeshima Dispute*

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1. The Dispute and Related Developments

While the Treaty on Basic Relations between Japan and the Republic of Korea and other related agreements signed in Tokyo on June 22, 1965 marked the settlement of many of the bilateral concerns that had troubled bilateral relations during the preceding fourteen years, no satisfactory agreement was reached on the question of sovereignty over Takeshima. Consequently, resolution of this thorny dispute was carried over to the future. The Japanese government initially advocated for a comprehensive settlement of bilateral issues, including the Takeshima dispute, and took the position that it was impossible for bilateral negotiations with South Korea to reach a settlement without the resolution of the Takeshima problem. In light of the fact that South Korea has occupied Takeshima since 1954 through the use of force, the position taken by the Japanese government on this specific issue was certainly appropriate, as it would have been difficult to expect that a reasonable resolution could be pursued once the Treaty had been formally signed. However, as the negotiations moved forward, the Japanese government shifted its position toward the expression, “establish a pathway to resolution.” Given the diametrically opposite positions of the two countries, it was clear that it would be virtually impossible for the two sides acting on their own to reach an agreement on Takeshima. Therefore, if the policy of “establish a pathway to resolution” connoted the long-standing position of the Japanese government that the matter should be referred to the International Court of Justice, the shift toward this expression cannot necessarily be labeled to have been a retreat in the Japanese position. Rather, it was believed that this approach to dispute resolution was the most reasonable one. However, as the negotiations approached their conclusion, the position of the Japanese government began to erode rapidly. With regard to the method of resolution, referral to the International Court of Justice gave way to arbitration. Moreover, in its final form, the

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agreement failed to explicitly identify Takeshima as subject to arbitration. Whether justified or not, the South Korean government would henceforth claim that the Exchange of Notes concerning the dispute settlement did not apply to Takeshima, and that its position that Takeshima was an integral part of South Korea's sovereign territory was consistently maintained.[1]

Thus, on the matter of Takeshima, the bilateral negotiations appear to have ended in a unilateral concession made by the Japanese side. Parliamentary debate from the time contains harsh criticism of the government alleging that Japan may in fact have conceded Takeshima. The government has stubbornly refuted these allegations and has continued to argue that a pathway to resolution has been duly established. Nevertheless, the impression is that the Japanese government did soften its stance to retreat from its initial position, and that this retreat was based on a comprehensive assessment of the future of bilateral relations. Needless to say, implacable positions do not lend themselves to the successful conclusion of negotiations, and some level of compromise and acceptance is indispensable to success. While the significance of this axiom may differ from situation to situation, its truth applies to both parties and there is no reason to expect one side to make unilateral concessions. If it were to be argued that the Japanese side was in a rush to conclude the negotiations, would it not be possible to make the same argument for South Korea? However, in a session of the parliament convened immediately after the signing of the bilateral agreements, South Korea's Foreign Affairs Minister Lee Tong Won stated that he would never have accepted the Japanese position even if that meant failure to normalize relations with Japan.[2] It is difficult not to realize that the two sides simply approached the issue of Takeshima with different levels of gravity at that point. Furthermore, with its obligation to spur the government forward, the Japanese public may also be faulted for lacking a clearer understanding of the situation.

This lack of proper understanding is found on two levels in the Japanese public. First, the history of Takeshima is not properly understood. Second, the value of Takeshima is not fully appreciated. With regard to the history of Takeshima, the fact that the name of the island was changed in the past should be part of our most basic factual knowledge. Without this knowledge, all historical materials can easily be misconstrued. Unfortunately, however, this most basic fact is not always common knowledge even among commentators and intellectuals discussing Takeshima.[3] As pointed out by Kenzo Kawakami, Takeshima was simply another name for Utsuryo-tou (Ulleungdo) in the historical past, while the present-day Takeshima was historically

referred to as Matsushima.[4] Throughout the period preceding and following the signing of the Treaty on Basic Relations, the media frequently reported on the discovery of old maps that identified Takeshima as Japanese territory or alternatively as Korean territory. While the public went through phases of elation and disappointment with the release of each of these reports, all of these emotions were based on a misunderstanding that came from confusion over the name of the island. The truth of the matter is that no old maps have ever been discovered showing present-day Takeshima to have been a part of Korea.[5] In Japan, the existence of two islands in the Sea of Japan was generally known since ancient times. One was Matsushima located closer to Oki Island and the other was Takeshima (Isotakeshima)(Ulleungdo) located closer to Korean territory. The confusion in nomenclature dates to 1840 when von Seibold misidentified two islands that had been sighted by European sailors. These consisted of Dagelet Island corresponding to Utsuryo-tou (Ulleungdo), and Argonaut Island, the name given to a fictional island located closer to Korean territory. Drawing on the Japanese information that was available to him, von Seibold produced and published maps that respectively identified these as Matsushima and Takeshima (Takashima). This is the origin of the confusion. As a result of surveys conducted in later years, the fictional Argonaut Island disappeared from all maps. On the other hand, present-day Takeshima was renamed the Liancourt Rocks and Hornet Rocks by French and British ships that surveyed the area. When the Meiji government formally incorporated this island into Japanese territory, it assigned the previously defunct name of Takeshima to the island. As a result, the two names of Matsushima and Takeshima that had been in use since ancient times became completely reversed.

In the context of the territorial issues that Japan faces, it must be admitted that Takeshima is a very small island with relatively minor value. Located in the Sea of Japan, Takeshima consists of two isles situated on an east-west axis, plus dozens of reefs and rocks. The total area of Takeshima is only about 230,000 square meters, which makes it slightly larger than Tokyo's Hibiya Park. While the southern faces are covered with weeds, no trees grow on the barren rocks of these uninhabited isles. The true value of Takeshima is said to lie under its waters. The resolution of the Shimane Prefectural Assembly on territorial rights over Takeshima and various petitions filed by local groups point to the value of Takeshima as an important source of marine resources in the Sea of Japan.[6] Beginning in the Edo Period, Takeshima served as a hunting ground for sea lions and a source of abalone, seaweed, turban shells and other marine products. More importantly, it is the fishery resources found in the areas surrounding Takeshima that cannot be ignored.[7] Sure enough, in addressing the parliament following the signing of the

Treaty on Basic Relations, South Korea's Prime Minister Chung Il-kwon stated, "No doubt, Takeshima comes with its own 12 nautical mile."[8] On the day of the signing, Japan's Ministry of Foreign Affairs released maps identifying Japan's territorial waters and the Japan-Republic of Korea Fisheries Restricted Zone. However, these maps contain no indication of territorial waters in the vicinity of Takeshima as well as in the vicinity of Utsuryo-tou. Is it possible that in the course of the negotiations, the Japanese side failed to recognize that the South Korean government aimed to monopolize fisheries in the areas surrounding Takeshima?

The Takeshima dispute between Japan and South Korea dates back to the Declaration of Maritime Sovereignty issued by President Syngman Rhee of the Republic of Korea on January 18, 1952 and the inclusion of Takeshima in the so-called "Syngman Rhee Line." Japan protested the Syngman Rhee Line on January 28 and made it clear that while it appeared that South Korea was making territorial claims on Takeshima, Japan did not recognize any such assumption or demand. South Korea responded with a claim that Takeshima was indeed part of its sovereign territory. This was followed by several written exchanges, but no point of agreement could be found, as the claims of the two sides remained diametrically opposed to each other. In July 1953, a Japanese Maritime Safety Agency vessel on patrol near Takeshima was fired on by South Korean police authorities. Shortly thereafter, South Korea erected a territorial marker on Takeshima and stationed a coastal patrol force on the island beginning around June 1954. In the following month, a lighthouse was established and this fact was formally announced to related countries in August. During the same month, a Japanese patrol boat was fired on for the second time. In light of these developments, the Japanese government concluded that it was unlikely that continued negotiations would lead to settlement of the dispute. Consequently, in September 1954, Japan proposed that the dispute be submitted to the International Court of Justice for reaching a fair and peaceful settlement. South Korea rejected this proposal and instead continued to bolster its claim with fait accompli and to establish and reinforce its control of Takeshima by force.

The South Korean stance to the Takeshima issue can be summarized as follows. From all perspectives of history, geography and international law, it is clear that Takeshima is an integral part of South Korea's sovereign territory. Therefore, the matter cannot be made subject to negotiation, and naturally there is no need to seek a third-party judgment. In rebutting the Korean claim, Japan has argued that there are historical grounds for Japanese sovereignty of Takeshima, and that Japan's incorporation of Takeshima satisfies the conditions for the

acquisition of territory under modern international law. Regardless of how this problem may be eventually settled, it is important to find a clear resolution that does not leave behind unresolved questions for the future. The first step to be taken would be to re-examine the evidence and facts invoked by the two sides and to evaluate these in the context of international law. The goal of this exercise would be to unequivocally answer the question: The claims of which country does international law uphold?

2 Historical Facts

In South Korea today, Takeshima is referred to as Doku-tou (Dokdo). However, in the past, it is said to have been known as Uzan-tou (Usando) or Sanpo-tou (Sambongdo). In later days, it was even recorded as Shizan-tou (Jasando) or Uzan-tou (Usando) [in a different character from the above-mentioned Uzan-tou]. In Japan, on the other hand, the island was known as Matsushima in the days of old. Furthermore, as explained in the preceding section, 19th century European sailors assigned such names as Liancourt Rocks and Hornet Rocks to Takeshima. Based on a mispronunciation of Liancourt, the island was at one time commonly referred to as Lyanko Island. In other words, over the ages, Takeshima has had nearly ten different names. From the perspective of South Korea and its claim that Takeshima has been an integral part of its territory since ancient times, it is absolutely essential to be able to prove that the names Uzan-tou (Usando) and Sanpo-tou (Sambongdo) that appear in old Korean documents correspond to the present-day Takeshima.[9]

It is a fact that the names Uzan-tou (Usando) and Sanpo-tou (Sambongdo) appear in national atlases produced by the Yi Dynasty. The section on Uruchin-ken Kogen-dou (Uljin County in Gangwon Province) appearing in *Sesou Jitsuroku Chirishi* (*Sejong Sillok Chiriji)* [The Geographical Records from the Annals of King Sejong] published in 1454 contains the following description. “The two islands of Uzan (Usando) and Buryo (Muleungdo) lie due east of Uljin County. The distance between the two islands is small and each can be seen from the other on a clear day.” The name Buryo-tou (Muleungdo) that appears in this passage is another name for Ulleungdo (Utsuryo-tou) that was in use since the Korai (Goryeo) Period. In the sea east of Uruchin (Uljin), there are no islands other than Ulleungdo and Takeshima. Furthermore, these two islands are visible from each other on clear days. It is therefore argued that Uzan-tou (Usando) in this passage is none other than Takeshima. The names of Uzan-tou (Usando) and Ulleungdo also appear in the section on Uruchin-ken, Kogen-dou (Uljin County in Gangwon

Province) contained in *Shinzo Togoku Yochi Shoran* (*Sinjung Tongguk Yoji Sungnam)* [Revised and Augmented Gazetteer of Korea] published in 1531. An annotation appearing in this section states, "One is known as Buryo (Muleungdo) and the other is also known as Uryo (U-leungdo). The two counties are located in the sea due east of Uljin County." With regard to Sanpo-tou (Sambongdo), a notation appears in the section on the seventh year (1476) of the reign of Seisou (King Seongjong) in Volume 72 of Seisou Jitsuroku (*Seongjong Sillok)* [Annals of King Seongjong] stating that Kin Jisyu (Kim Ja-ju) of Eiko (Yeongheung) and his entourage observed this island from afar.[10]

Based on the foregoing documents and records, South Korea has argued that Takeshima was first discovered by Koreans, and that it is clear that Takeshima belongs to Uruchin-ken, Kogen-dou (Uljin County of Gangwon Province) and is thus an integral part of Korean territory. Responding to this, the government of Japan has cast doubt on the argument that Uzan-tou (Usando) and Sanpo-tou (Sambongdo) appearing in these documents correspond to present-day Takeshima. The Japanese counter-argument is that these islands actually both refer to Utsuryo-tou (Ulleungdo). As proof for its position, the Japanese side points to the additional descriptions regarding Uzan (Usando) and Buryo (Muleungdo) that appear in *Sesou Jitsuroku Chirishi* (*Sejong Sillok Chiriji)*: "In the days of Shiragi (Silla), these were referred to as the Uzan-koku (Kingdom of Usan). It was also called Utsuryo-tou (Ulleungdo)." Furthermore, *Shinzo Togoku Yochi Syoran* (*Sinjung Tongguk Yoji Sungnam)* contains an annotation stating, "According to some explanations, Uzan (Usando) and Utsuryo-tou (Ulleungdo) are the same island." The description of Sanpo-tou (Sambongdo) that appears in *Seisou Jitsuroku (Seongjong Sillok)* contains the statement that this island was inhabited by many refugees who had evaded military service or taxation on the Korean mainland. Japan has argued that this could not be Takeshima because Takeshima cannot support populations of large size. *Bunken Satsuroku* [The Collected Annals] published at the end of the Yi Dynasty goes even further to state that Sampo-tou (Sambongdo) is named for its three peaks in Utsuryo-tou (Ulleungdo), and explains that Uzan (Usando), Uryo (Ulleungdo), Buryo (Muleungdo) and other names merely represent different pronunciations for the same island.

Utsuryo-tou (Ulleungdo) originally stood as an independent state known as Uzan -koku (the Kingdom of Usan), but yielded its allegiance to Shiragi (the Kingdom of Silla) in the early 6th century. Later it would become a tributary of Korai (the Kingdom of Goryeo) until being vanquished by Higashi Joshin (the Eastern Jurchen) in the 11th century.[11] South Korea argues

that Uzankoku (the Kingdom of Usan) is not the same as Uzan-tou (Usando), and that Uzan-koku (the Kingdom of Usan) consisted of Utsuryo-tou (Ulleungdo) and Uzan-tou (Usando), the latter of which corresponds to present-day Takeshima. In the context of this scheme, it is claimed that Takeshima was governed as a subsidiary territory of Utsuryo-tou (Ulleungdo). If Uzan-tou (Usando) were not an alternative name for Utsuryo-tou (Ulleungdo), it would be more natural to opt for such names as the Utsuryo-koku (Kingdom of Ulleung) or Buryo-koku (Kingdom of Muleung). While it would not be impossible for a kingdom to take the name of a subsidiary island as the name of kingdom, this would certainly seem unnatural. Putting these matters aside, the fact remains that the historical documents and materials cited by South Korea do not provide definite proof to equate Uzan-tou (Usando) to present-day Takeshima. In the "Hachido Souzu" ("Map of the Eight Provinces") published in the preface to *Shinzo Togoku Yochi Shoran (Sinjung Tongguk Yoji Sungnam)* and the map appearing in Volume 44 "Kogen-dou" ("Gangwon Province"), Uzan-tou (Usando) is depicted as being approximately the same size as Utsuryo-tou (Ulleungdo) and is placed between Utsuryo-tou (Ulleungdo) and the Korean mainland. If Uzan-tou (Usando) corresponds to Takeshima, it would have to be positioned east of Utsuryo-tou (Ulleungdo).[12] These inconsistencies are enough to support the contention that the cited texts were not written with any clear knowledge or information regarding Uzan-tou (Usando). Even if it were to be conceded that Takeshima was first discovered by Koreans, there is no documentary evidence that the island was actually managed or settled by Koreans. As for Kin Jisyu (Kim Ja-ju), it can be seen from the cited text that his entourage observed Sanpo-tou (Sambongdo) from afar but was unable to land on the island.

With the start of the Joseon Period, a new policy was adopted in connection to Utsuryo-tou (Ulleungdo). As a large number of displaced persons had come to inhabit Utsuryo-tou (Ulleungdo) after the end of the Korai (Goryeo) Period, the decision was made in the 15th century in order to regulate them, and decided to evacuate these populations from the island to make the island with no population. Henceforth, for a period of approximately 450 years till 1881, the Korean government maintained Utsuryo-tou (Ulleungdo) as a totally uninhabited island. While South Korea argues that this did not signify an abandonment of its territorial claims, one suspects that territorial rights were virtually renounced for a period of three hundred years that extended to the end of the 17th century when Korea began to dispatch inspection missions at three-year intervals to Utsuryo-tou (Ulleungdo) following the Takeshima Affair that brought it into conflict with Japan. It was during this long period of Korea's non-habitation policy that Japanese began to travel to Utsuryo-tou (Ulleungdo). Volume 34 of *Taiso Jitsuroku*

(Taejong Sillok) [Annals of King Taiso (Taejong)] records that "Japanese came to Uzan (Usando) and Buryo (Muleungdo)" in 1417. While aware of their arrival, Korean government took no action to thwart the landing of Japanese. This inaction encouraged a growing number of Japanese travellers until Utsuryo-tou (Ulleungdo) became a land for fishery by Japanese completely.[13] The first negotiations between the two countries finally took place in 1614 when Korean envoys met with representatives of the Tsushima Domain. Although a number of exchanges were undertaken, the negotiations ended without showing any positive developments.

In the course of the current dispute over Takeshima, the Japanese government has cited the following historical facts and developments. In 1618, two townsmen of Yonago of Hoki Province, namely Jinkichi Oya and Ichibei Murakawa, received license for permission of passage to Utsuryo-tou (Ulleungdo) from the Tokugawa Shogunate through the offices of Shintaro Matsudaira (Ikeda Mitsumasa), the lord of the Hoki Domain. Upon being duly licensed, the townsmen sailed to Utsuryo-tou (Ulleungdo) every year to engage in fishing and harvesting marine products. Abalone gathered in these waters (prized as "Takeshima abalone") was regularly presented to the Tokugawa Shogunate. The management and exploitation of Utsuryo-tou (Ulleungdo) by the two houses of Oya and Murakawa continued for about 80 years without any obstruction. Records remain from this period identifying Takeshima as a fisheries center and a port of call located beyond Oki Island and on the way to Utsuryo-tou. This is affirmed by the specific records contained in *Inshu Shicho Gakki* [Records of Observation in Oki Province] compiled in 1667 and other documents. According to *Takeshima Tokai Yuraiki Nukigaki Hikae* [Records of Journeys to Takeshima] compiled by Kyuemon Oya, the Tokugawa Shogunate bestowed Takeshima (Utsuryo-tou) on the House of Oya in 1618. Thereafter, the House of Oya sailed every year to Utsuryo-tou (Ulleungdo) where it engaged in fishing and forestry activities. Oya further records that in later years, the Tokugawa Shogunate also bestowed Matsushima (present-day Takeshima) located on the way to Takeshima, which was then used as a port of call on the way to and from Takeshima and as hunting grounds for gathering seal oil.[14] It can be inferred from these records that the Oya and others assumed that they had not merely been licensed by the Tokugawa Shogunate to travel to Utsuryo-tou, but that the island had been bestowed on them and that they were in fact acting as owners or concessionaries of the island.

If the Tokugawa Shogunate had actually bestowed the islands on the houses of Oya and Murakawa, the implication would be that it would not bestow the rights to a territory that it did not control or own in the first place. From this, it can be inferred that the Tokugawa Shogunate

did have a consciousness of territorial sovereignty. However, perusal of the license shows that the license consisted of no more than a permit to sail the seas and contained no mention of bestowal or assignment of the island. South Korean has seized on this fact to make the following rebuttal. Passage licenses issued by the Japanese government during this age were in effect equivalent to a license to engage in foreign trade. This in itself is evidence that the Japanese people recognized and acknowledged that Takeshima was under the sovereign rule of Korea. The problem with this argument is that it is questionable whether all passage licenses can be uniformly identified as licenses to engage in foreign trade. Some passage licenses, as those issued for passage to Luzon, definitely functioned as foreign trading licenses. But can passage licenses issued for voyages to such uninhabited islands as Utsuryo-tou (Ulleungdo) and Takeshima be viewed to be the same? If at the time the Tokugawa Shogunate actually recognized that Takeshima (Utsuryo-tou) and Matsushima (Takeshima) constituted foreign territories, Shogun Iemitsu certainly would have cancelled the passage licenses to these islands when Sakoku-rei (the Seclusion Edict) of 1639 was issued banning foreign trade. However, passage to Utsuryo-tou (Ulleungdo) was not prohibited until Japan and Korea became embroiled in a dispute over the island in 1696. And even after that, passage to Takeshima was not prohibited.

The dispute over Utsuryo-tou (Ulleungdo) between the two countries developed as follows. Throughout the period preceding the dispute, Japanese fishermen travelled every year to the island to engage in fishery activities. All went smoothly and peacefully until 1692 when for the first time they met with a large group of Koreans, an encounter that quickly led to trouble. In the following year, 1693, the Tokugawa Shogunate instructed Lord So of the Tsushima Domain to demand Korea to prohibit Koreans from fishing at Utsuryo-tou(Ulleungdo). This marked the start of negotiations between Lord So and the representatives of the Kingdom of Joseon. Initially, there was a strong feeling on the Korean side that it was inadvisable to enter into a dispute with Japan over an island that had remained uninhabited for 300 years. However, Korea shifted to a much more rigid position when Japan insisted on receiving explicit assurances. Faced with this opposition, the Tokugawa Shogunate reversed itself and adopted a far more passive stance, which ended with a decision to prohibit fishing at Utsuryo-tou (Ulleungdo) by Japanese fishermen.[15] Thereupon, the Tokugawa Shogunate conveyed this decision to the houses of Oya and Murakawa in January 1696, and similarly notified the Kingdom of Joseon in the following year. What is referred to as the Takeshima Affair in the Genroku Era was brought to a close in this manner.

The Tokugawa Shogunate thus prohibited passage to Utsuryo-tou (Ulleungdo) in 1696, but it should be noted that no prohibition was issued for passage to present-day Takeshima. However, South Korea has claimed that in the course of the foregoing negotiations Japan accepted that both Utsuryo-tou (Ulleungdo) and Takeshima belonged to Korea. This claim by South Korea is based on the statements found in the section pertaining to the events of the month of September in the 22nd year of the reign of Syukuso (King Sukjong) (1696) in Volume 30 of *Syukuso Jitsuroku (Sukjong Sillok)* [Annals of King Sukjong] that refer to An Yong-bok, a Korean fisherman from Dongnae. The statements record that An Yong-bok came across Japanese fishermen on Utsuryo-tou (Ulleungdo) and reprimanded them and next went to Matsushima (Takeshima) where he proclaimed to the Japanese there that this island also belonged to Korea and forced them to leave. The Annals then report that An Yong-bok travelled to the Hoki Domain via Oki Island and engaged in negotiations that ended with Japan's acceptance that both islands belonged to Korea. The Japanese government has argued that these statements from *Syukuso Jitsuroku (Sukjong Sillok)* contain numerous falsehoods and are not credible because they were made when An Yong-bok was being interrogated by the Border Defense Council after returning home to Korea. Japanese records that remain from this period tell a very different story about An Yong-bok. According to these records, An Yong-bok was captured by Japanese people on Utsuryo-tou (Ulleungdo) in 1693 and transferred to the Hoki Domain via Matsushima (Takeshima), and was later sent back to Korea via Tsushima. Furthermore, it is recorded that An Yong-bok returned to Japan in June 1696 travelling via Utsuryo-tou (Ulleungdo) and Oki Island. It should be noted that at this date the Tokugawa Shogunate had already issued its ban on passage to Utsuryo-tou (Ulleungdo) in January so that there would have been no Japanese on the island by this time. The issuance of the ban on passage to Utsuryo-tou (Ulleungdo) predated the arrival of An Yong-bok by several months, so that it is clear that the decision to prohibit passage was not the result of any negotiation that he may have been engaged in with Japanese authorities.[16]

The suspicion that arises is that when being interrogated under duress by the Korean authorities for illegally travelling to foreign lands, An Yong-bok may have tried to evade punishment by weaving a grandiose tale of falsehood peppered with what he had seen and experienced three years earlier. A host of other irregularities can also be identified. For example, it is reported that An Yong-bok claimed to be the "chief tax inspector" for the two islands of Utsuryo (Ulleung). The problem is that no such office existed in the bureaucracy of the Kingdom of Joseon.

Moreover, An Yong-bok was not commissioned by the Korean government to travel to Japan and was instead sentenced to exile for the crime of illegally exiting Korean territory after returning home. In other words, the activities of An Yong-bok were purely private and personal in nature and cannot in any case be viewed to have constituted an exercise of Korea's sovereign rights.

Aside from the value or veracity that may or may not be assigned to the attestations and actions of An Yong-bok, it is probably true that Korean people actually saw Takeshima with their own eyes, which at best was previously no more than a mysterious island in the minds of Koreans. However, even after this, Korea continued to prohibit passage to Utsuryo-tou (Ulleungdo) and maintained it as an uninhabited island. Judging from the enforcement of this ban, it is difficult to think that Koreans were travelling to the more distant Takeshima. Subsequent to the Takeshima Affair, Korea began dispatching inspection missions to Utsuryo-tou (Ulleungdo) at three-year intervals. However, there are no records to indicate that any inspection of Takeshima was undertaken at that time. As opposed to this, a very clear awareness of Takeshima continued to exist in Japan even after the issuance of the prohibition on passage to Utsuryo-tou (Ulleungdo). This awareness can be confirmed in such expressions as "Matsushima of Oki Province" found in *Takeshima Zusetsu* [Takeshima Map Explanation] complied during the Horeki Era (1751–1763), as well as in the description of Matsushima as "located at the western end of the sea" found in *Chosei Takeshima Ki* [A Note on Takeshima] published in 1801. Both of these references indicate that Matsushima (Takeshima) belonged to Japan. Similar evidence can be found in numerous maps that identify Takeshima as Japanese territory, such as *Nihon Yochi Rotei Zenzu* [Complete Map of Japanese Lands and Roads] compiled by Sekisui Nagakubo in 1775, and various other maps produced after the middle of the Edo Period. Particularly noteworthy is *Takeshima Zu* [Map of Takeshima] produced in 1724 by Lord Ikeda of the Tottori Domain by order of the Tokugawa Shogunate. The copy of this map that remained in the archives of the Ikeda Family describes the geography of Takeshima with a high degree of accuracy.[17] Hachiemon Aizuya, a shipping agent operating from the port of Hamada, was put to death in 1836 for having travelled to Utsuryo-tou (Ulleungdo) in violation of the prohibition. The ruling of the court handed down in sentencing Hachiemon Aizuya contains the statement, "having travelled to Takeshima under the pretense of travelling to Matsushima," which indicates that passage to Matsushima (Takeshima) was not considered to be crime even after the prohibition on passage to Takeshima (Utsuryo-tou (Ulleungdo)) came into force.

With the dawning of the Meiji Era, the Japanese again started to travel overseas. Some took to the sea to reach Utsuryo-tou (Ulleungdo), which still remained uninhabited at the time, to engage in forestry activities. When the Korean inspection mission of 1881 discovered that Japanese were working on Utsuryo-tou (Ulleungdo), it reported the matter to the Korean government, which in turn filed a protest with the Japanese government. The outcome of this protest was that Japan acknowledged Korea's ownership of the island and prohibited Japanese fishermen from travelling there. It was at this time that the Korean government decided to reverse its long-standing ban on habitation and to commence the development of the island. Professor Sin Seokho states that concurrent to the development of Utsuryo-tou (Ulleungdo), Korea took possession of Dokdo.[18]

Varying etymologies have been suggested for the Korean name of Dokdo. One is that it denotes an isolated island, and another is that it comes from the word stone, which is pronounced *dok* in the dialect of Keisyonandou (South Gyeongsang Province), so that Dokdo denotes "stone island." Professor Sin states, "The name was probably given to the island by the new inhabitants of Utsuryo-tou (Ulleungdo) after Utsuryo-tou (Ulleungdo) began to be colonized in 1881."[19] The first mention of Dokdo in records and documents can be dated to 1906, which is one year after the formal incorporation of Takeshima into Japanese territory. It can be conjectured from this chronology that the Korean people came to know of the existence of Takeshima at some point during the brief period between 1881 and 1906. Even if Usando or Jasando mentioned by An Yong-bok did in fact refer to Takeshima, there is nothing that would link these to the appellation of Dokdo. Hence, it must be noted that a clear separation and discontinuity exists between the two. On the other hand, as discussed in the previous section, Japanese sources allow us to very clearly trace the developments that resulted in the replacement of the name of Matsushima with Takeshima. That is to say, a definite continuity can be affirmed in the awareness of what constituted Takeshima. This is borne out by the opinion in 1877 by Koki Watanabe, Director of the Documents Bureau of the Ministry of Foreign Affairs.

Shortly before the previously mentioned "forestry incident" of 1881, a number of applications were filed with the Ministry of Foreign Affairs and the Tokyo Prefectural Government during the period between 1871 and 1878 by Japanese individuals seeking permission to develop or to travel to Utsuryo-tou (Ulleungdo). Among such applications, those that named Takeshima as the intended destination were rejected because it was clear that what was meant by this appellation was Utsuryo-tou (Ulleungdo). On the other hand, other applications named

Matsushima as the intended destination, whereas the intended destination was in fact Utsuryo-tou (Ulleungdo). While this misrepresentation may have resulted from the use of European maps that reflected von Seibold's confusion in nomenclature, this matter required further clarification. The 1877 documentation produced by Director Watanabe of the Documents Bureau clarifies that the island that had long been referred to by the Japanese as Takeshima was in fact Utsuryo-tou (Ulleungdo), and the island referred to as Matsushima was actually the island identified as Hornet Rocks in European maps. In this context, particular attention must be paid to the fact that Watanabe clearly states that this Takeshima (Utsuryo-tou (Ulleungdo)) belonged to Korea and that Matsushima (Takeshima) belonged to Japan.[20] Furthermore, when Japan recognized in 1881 that Utsuryo-tou (Ulleungdo) belonged to Korea, no acknowledgement was made concerning Korean ownership of Takeshima.

At some time around 1897, residents of Oki Island discovered large populations of sea lions living on and around Takeshima. Some 50 to 60 sea lions were slaughtered, yielding substantial profits when brought back to mainland of Japan. News of this commercial success prompted many residents of Oki Island to hunt for sea lions at Takeshima. This competition became increasingly heated after 1903 and eventually resulted in overhunting on a scale that threatened extinction of sea lions in the area. Against this backdrop, on September 25, 1904, a fisherman named Yozaburo Nakai filed applications with the three ministries of Home Affairs, Foreign Affairs, and Agriculture and commerce petitioning for the "incorporation into the territory and lease of the Lyanko Island." The petition specifically called for the incorporation of the island into the territory of Japan and the concession of a ten-year lease to the applicant. The Ministry of Home Affairs referred the case to the government after hearing the opinion of the Shimane Prefectural Government related to the matter. Based on this referral, a Cabinet decision was made on January 28, 1905 to name the island Takeshima, to formally incorporate it into the territory of Japan, and to place it under the jurisdiction of the Oki Island branch of the Shimane Prefectural Government. The Cabinet thereupon instructed the Governor of Shimane to promulgate this decision. In response to this instruction, the Governor of Shimane publicized this decision in its prefectural notice of February 22, 1905 and announced that Takeshima had been placed under the jurisdiction of Shimane Prefecture. At the same time, an order was issued to the Oki Island branch instructing it to place Takeshima under its administration. In August of the same year, Shimane Governor Bukichi Matsunaga embarked on an inspection tour of the island. In March of the following year, an official mission led by Yoshitaro Kanda, Director of the third Department of Shimane Prefecture, undertook onsite inspection tour of the island as

well. After visiting Takeshima, Director Kanda stopped at Utsuryo-tou (Ulleungdo) and met with Governor Shim Heung-taek of Utsuryo (Ulleung) County. In this meeting, Director Kanda informed the Korean governor of Utsuryo (Ulleungdo) that he had completed an inspection of Takeshima, which Japan had formally incorporated into its territory, and presented the governor with a sea lion that had been hunted at Takeshima.[13] The governor duly reported these matters to the Korean government, but no actions were taken in response to the report.

When Takeshima was formally placed under the jurisdiction of the Oki Island branch of the Shimane Prefecture in May 1905, the head of the Oki Island branch requested permission to formally enter the island in its land registry. As a result, Takeshima was entered into the land registry as state-owned property with a total area of 23 *cho* 33 *sebu (0.23km^2)*. In April 1905, Shimane Prefecture revised its regulations for the control of fishing activities, stipulating that the hunting of sea lions at Takeshima would thereafter be subject to licensing. Subsequently, in June 1905, hunting licenses were granted to Yozaburo Nakai and three other applicants who thereupon entered into a partnership to form the Takeshima Fishing and Hunting Company that launched its operations in the same year. In the years that followed, fishing rights in Takeshima were eventually transferred to an individual named Choshiro Yawata. Hunting for sea lions and the collection of abalone, seaweed and other marine products at Takeshima continued until 1941 when all activities were suspended due to the war, while ups and downs were observed in subsequent years. During that period, licensees continued to make annual land lease payments to the National Treasury. Throughout this period, regulations governing fishing activities at Takeshima underwent a number of revisions. For instance, in August 1940, the administration of Takeshima was transferred to the Maizuru Naval Authority for use as a naval site. However, even after this transfer, use of the island continued to be licensed to the Yawata Family who thereafter were subject to regulations governing use issued by the Commander of the Maizuru Naval Authority. As can be seen from these developments, the Japanese government effectively controlled Takeshima peacefully and without incident until the end of the Second World War. In November 1945, Takeshima was once again transferred to the Ministry of Finance pursuant to the provisions of Article 2 of the Order for Enforcement of the National Property Act.

3 Assessment from the Perspective of International Law

From the perspective of international law, Takeshima either belongs to Japan or to the Republic of Korea (Kingdom of Joseon). That is to say, there are no legal grounds for asserting that

Takeshima is subject to joint rule by Japan and the Republic of Korea, or that it comprises the territory of a third country. Nor is there any justification for assigning to Takeshima the status of terra nullius with indeterminate ownership. This can be surmised from the fact that while Japan and the South Korea have each claimed Takeshima to be a part of their own territory, at no time has a third country protested the positions taken by the two. The opposing claims made by Japan and South Korea can be organized into three distinct categories. The first category relates to historical evidence, which is to say that both countries claim that their ownership of the island goes far back into old history. The second category relates to the validity of the actions taken by the Japanese government in 1905 to formally incorporate Takeshima into Japanese territory. While Japan asserts that this action satisfies the necessary conditions for the acquisition of territory as required under modern international law, South Korea counters to say decidedly that this incorporation is null and void. Finally, the third category of opposing claims relates to the significance and interpretation of the series of measures, including the Cairo Declaration issued during the Second World War and the postwar Treaty of Peace with Japan. South Korea claims that these measures confirm that Takeshima is part of its territory, and Japan rejects this claim.

These three categories of opposing claims need to be reviewed in light of international law. But before embarking on this exercise, it will be useful to attempt an overview of the norms of international law that apply to territorial disputes. According to textbooks of international law, original title may be established by prior occupation, prescription, cession, annexation or conquest. However, in actual territorial disputes, there is no guarantee that the application of any of these forms of original title can necessarily result in settlement of the dispute.[21] An exception would be an instance in which a treaty of cession or some other concrete legal conveyance exists. In any case, these forms of original title do not cover a dispute where one of the parties asserts that its territorial claim predates the valid application of modern international law. A similar problem arises if a dispute involves a territory where multiple countries have taken mutually contradictory actions over the span of several centuries. Should the doctrine of prior occupation be invoked in resolving the dispute, or should prescription be given priority? In some instances, it would be very difficult to make a determination on how to establish title. However, prior occupation and prescription at least have a point of commonality in that intent of possession and effective occupation by a state constitute necessary conditions in both instances. To resolve such complex disputes, international law in recent years has on occasions stepped beyond the confines of traditional legal constructs to make a judgment on original title

based on the "peaceful and continuous display of State authority."[22] This signifies the composition of a concept of original title that is based on more specific expressions of both the acquisition of rights and the maintenance of such rights. This approach makes it possible to create a framework that does not contradict existing positive laws but which can elucidate a rational path to the resolution of actual disputes. This approach, which stipulates that effective control as state territory is the deciding factor in the establishment of territorial title, was first applied in the 1928 settlement of the Island of Palmas Case, and was similarly applied in the Eastern Greenland Case of 1933 and the Minquiers and Ecrehos Case of 1953.

Effectiveness, as used in such expressions as effective occupation or effective control, is very much a relative concept. Hence, due attention must be paid to the fact that the necessary conditions of effectiveness may differ substantially according to such factors as the topography of the territory in question, size of population and whether or not other countries have displayed an interest in the territory.[23] Furthermore, effective control may not necessarily function as a deciding factor even if a high degree of effective control has been wielded over a significant period of time. For instance, if effective control is predated by an explicit treaty that clearly assigns territorial sovereignty to another country, the claim of effective control may not be powerful enough to override this previous assignment of sovereignty.[24]

Turning now to Takeshima, no treaty has previously existed or currently exists between the two countries that makes an explicit determination regarding the sovereignty over the island. Both countries have simply forwarded opposing claims that Takeshima has been part of their sovereign territory since the days of old. For this reason, as pointed by Professor Minagawa, the Takeshima dispute is similar to the Minquiers and Ecrehos Case[25] where both disputants (Britain and France) invoked ancient or original title going back to 1066. Furthermore, both sides claimed that original title had been maintained without interruption and had not been lost or abandoned at any time.[26] The first step for seeking the settlement of the dispute over Takeshima would be to follow the precedent of the Minquiers and Ecrehos Case and to examine the significance of the historical evidence cited by the two sides in the context of international law. Next, in comparing the arguments presented by the two sides, a determination should be made regarding which better meets a more modern requirement of effective occupation.

(I) The Republic of Korea has sought to justify its claims on Takeshima as its inherent part of the territory by citing historical documents dating from the Yi Dynasty consisting of various

references to Uzan-tou (Usando) and Sanpo-tou (Sambongdo) and descriptions about An Yong-bok. In addition to these, South Korea has cited the 1906 report submitted by Governor Shim Heung-taek of Utsuryo (Ulleung) County, which contains the statement, "Dokdo belonging to Utsuryo (Ulleung) County." Based on this report, South Korea claims that Takeshima remained under its sovereignty without interruption from the Shiragi (Silla) Period all the way through to 1905 when it was incorporated into Japan. However, as discussed in the previous section, the references to Uzan-tou (Usando) and Sanpo-tou (Sambongdo) are far too imprecise and indistinct to prove the argument that these referred to Takeshima. Similarly, the descriptions about An Yong-bok leave significant room for suspicion. It is notable that even the historian, Professor Sin, who attaches considerable importance to the actions of An Yong-bok, admits that the relevant descriptions contain some hyperbole.[27] Moreover, while no reference to Dokdo can be found prior to the Utsuryo (Ulleung) County governor's report of 1906, it is notable that the governor was moved to write his report only after meeting Director Kanda of Shimane Prefecture and gleaning from him the facts about Takeshima. There is no evidence that Takeshima was controlled at any time by Korean authorities. Likewise, there is no evidence that Takeshima was managed or exploited by Koreans. Furthermore, throughout history, there was no clear consciousness of the existence of this island among Koreans. Considering that Utsuryo-tou (Ulleungdo) remained uninhabited for 450 years, this absence of awareness of Takeshima can be said to be only natural. Sure, it is possible that fishermen of Utsuryo-tou (Ulleungdo) visited Takeshima after the change of the non-inhabitation policy. But as can be seen from the fact that absolutely no relation exists between the name of Uzan-tou (Usando) and Doku-tou (Dokdo), even if it were to be admitted that the Uzan-tou (Usando) of past ages was in fact Takeshima, this would only underscore the discontinuity of any awareness of the existence of Takeshima by Koreans over a long period of time. It cannot be believed that territorial title based on such unclear and dubious historical evidence can provide powerful enough grounds for excluding effective occupation by another country.

Compared to the Korean side, the historical evidence presented by Japan is far more distinct and concrete. First of all, it can be surmised that the Japanese already knew of the existence of Takeshima as early as in the Muromachi Period of the 14th and 15th centuries. Specific and exact records remain to prove that in the 17th century, the Tokugawa Shogunate licensed a townsman of the province of Hoki to manage and exploit Utsuryo Island and even Takeshima, which continued for a period of 80 years. While it appears that interest in managing and exploiting Takeshima waned after Utsuryo-tou (Ulleungdo) was abandoned, a very clear

awareness of Takeshima persisted and extremely accurate maps describing the island's topography existed. Furthermore, various historical records and maps exist to show that Takeshima was recognized as the territory of Japan.

The Japanese government takes the position that international law did not apply to Japan prior to its opening the country. Therefore, prior to Japan's opening, it was sufficient to meet the following conditions to establish sovereignty. That is, any territory that the Japanese actually believed to be their own and treated as being their own and which was not contested by any other country can be considered to have been part of Japan's sovereign territory. This is of course correct. But what is to be done when another country is disputing this today and is claiming that it has considered the same territory to have been its own throughout history? In this case, there is no choice but to turn to international law for standards to be applied in reaching a judgment. However, it is necessary to bear in mind that the principle still applies that the effect of an act is determined by the laws that were in place at the time.[28] If a weak point exists in the historical facts presented by Japan, it would be that the Tokugawa Shogunate did not expressly indicate its consciousness of territorial sovereignty and did not display so clearly state authority with regard to Takeshima. But as discussed in the previous section, the Shogunate's consciousness of territorial sovereignty can be inferred from the fact that passage to Takeshima was not prohibited after the Seclusion Edict was issued. This inference is definitely reinforced by the consciousness of territorial sovereignty of Takeshima that existed in Japan after this. In defining occupation as a requirement for the acquisition of territorial title, the doctrine of prior occupation invoked in the 17th and 18th centuries assigns special importance to physical occupation, such as use of the land and settlement. That is to say, even if an agency of the state has not exercised or displayed its sovereignty in any concrete way, it is enough for the people to have actually used or managed the land and finally settled on it. It was only in the 19th century that the earlier emphasis on physical occupation gave way clearly to the principle of social occupation as represented by the exercise and display of national authority.[29] Takeshima was used by the Japanese and managed by the Japanese. It is true that people did not settle on Takeshima, but there was no need to inhabit a barren rocky island that was so ill suited to habitation and settlement. For the sake of argument, let us assume that Takeshima was first discovered by Koreans. The point is that the mere fact of discovery does not provide powerful enough grounds for overriding territorial title based on continuous occupation after the fact of initial discovery.[30] Therefore, judging from the standards of international law, it can be concluded that Takeshima would have been recognized as the territory of Japan in the 17th

century. There is no evidence that Japan abandoned its claim on Takeshima at any time in the ensuing years, nor is there any evidence of positive occupation by Koreans. Judging from this historical perspective, there is no doubt that, at least in comparison to evidence cited by South Korea, the claims made by Japan are endowed with relatively greater strength.

(II) In the Minquiers and Ecrehos Case, Britain and France based their respective claims on historical evidence dating back to the feudal ages. Presented with the evidence, the International Court of Justice concluded that the dispute was based on uncertain and disputable views, and determined that it was not necessary to resolve these historical controversies before issuing a ruling in the case. The Court proceeded to state that even if the French kings had held original feudal title to the disputed islands, such title would have been superseded and rendered void by the events that occurred in subsequent ages. The Court went on to opine that unless the original feudal title had been replaced by some other form of valid title made necessary by changes in the law introduced in subsequent ages, the original feudal title would be devoid of any legal effect today.[31] Needless to say, what is meant here by new valid title is title based on effective occupation. Finally, according to the Court's ruling, decisive importance cannot be attributed to inferences derived indirectly from medieval evidence, and rather must be attributed to evidence directly related to the occupation of the Minquiers and Ecrehos isles.[32]

Even if it were to be assumed that the Republic of Korea had some form of historical title over Takeshima, such title was never replaced by some form of title grounded in effective occupation. As opposed to this, the Japanese government formally incorporated Takeshima into its territory in 1905 and, based on this act, thereafter displayed state authority on a continuous basis. Thus, Japan's original title, which was established in the 17th century and can be said to have been in general conformity to the standards of international law that prevailed at the time, was fully and satisfactorily replaced by a form of title that meets modern-day demands. The problem of course is that South Korea argues that the act of incorporation was itself null and void in the first place.

(1) The Republic of Korea has presented the following arguments on why it considers the act of Japan's incorporation of Takeshima to be null and void. First, whereas the Japanese act constituted prior occupation of terra nullius, Takeshima was not terra nullius because it constituted the sovereign territory of Korea. It must be admitted that the formalities of the act undertaken by the Japanese government paralleled the formalities for an act of prior occupation.[33] However, it appears that at that time, the Japanese government believed that

formal establishment of territorial sovereignty over distant islands necessitated meeting the requirements of prior occupation as required under international law. For this reason, after the beginning of the Meiji Era, similar measures were taken whenever the need for incorporation arose. For instance, the Ogasawara Islands were incorporated into Japanese territory in 1876 because foreign people had settled on the islands, which could have led to conflict.[34] In the case of Takeshima, there was no dispute with Korea or any other country, but incorporation was undertaken in 1905 in response to the need to control the hunting of sea lions to prevent over-exploitation of the resource. Even if the Japanese government had considered the ownership of Takeshima to be indeterminate, there is no question that there was absolutely no understanding that the island belonged to Korea. This can be considered to be a very natural position to take given the total absence of any evidence of Korean sovereignty over Takeshima. South Korea bears the burden of proof to show that Takeshima was under its effective occupation. Unless it is able to do so, there is no legal significance to its claim that Japan's act of incorporation was null and void.

(2) The second argument presented by South Korea points to the fact that Japan's manifestation of territorial sovereignty took the form of a prefectural notice issued by Shimane Prefecture. The point of the argument is that the manifestation was not made by the central government, but was instead made by a local government office stealthily. The argument also claims that the Korean government was not properly informed of the incorporation of Takeshima, so that the act was null and void also for this reason. However, while the expression of consciousness of territorial sovereignty is a mental requirement for the acquisition of territory under international law, it is not limited to any specific form. That is to say, even where an explicit manifestation has not been made, it is possible to infer the requisite manifestation from the peaceful and continuous display of state authority. In the case of Takeshima, a manifestation was indeed made, albeit by a local government office. That is enough. This in itself does not alter the fact that a clear and sufficient manifestation of sovereignty was made by an agency of the state. The incorporation of peripheral islands since the Meiji Era was not necessarily undertaken in the name of the central government, and there are other instances in which incorporation was effected through the act of a local government office in accordance with an instruction issued by the central government. For example, the incorporation of Minami Torishima in 1898 was undertaken through a notification issued by the Tokyo Prefectural Government, an act that was not protested by any country.[35]

The position that prior occupation does not take effect without notification to foreign governments is no more than a minority view. It is true that the General Act of the Berlin Conference of 1885 specifies both the establishment of local authority and issuance of notification as requirements for recognition of occupation. However, it should be noted that the provisions of the General Act were solely and exclusively applicable to the coast of the African continent. Moreover, the Treaty of Saint-Germain of 1919 that abrogated the General Act affirmed the requirement of maintaining local authority, but removed the obligation of notification. A review of the acts of various countries shows that notifications were issued only in exceptional cases.[36] Similarly, the majority of legal precedents and academic theories do not recognize notification as a requirement.[37] This leads to the conclusion that notification is not an obligation under customary international law. Nevertheless, notification is desirable in that it constitutes a clear expression of the government's consciousness of territorial sovereignty. When the Ogasawara Islands were incorporated, notification was duly served to foreign ambassadors stationed in Tokyo. But this is because the United States and the United Kingdom had expressed an interest in the territorial sovereignty of these islands.[38] In the case of Takeshima, an uninhabited island in which no other country had expressed interest, it cannot be established that notification was necessary even from a policy perspective. Finally, the criticism of stealthy manifestation is completely contrary to the facts of the case as can be confirmed from related reports that appeared in the newspapers of the time.

With regard to this point, the government of South Korea has argued that even if its government had been aware of the incorporation of Takeshima, it was in no position at the time to lodge a protest against Japan. South Korea initially argued that pursuant to the provisions of the Japan-Korea Treaty of February 1904 and the First Japan-Korea Agreement signed in August of the same year, the Korean government was obliged to accept the assignment of several Japanese diplomatic advisers. However, this statement is incorrect as effectively rebutted by the Japanese government. Under the terms of Article 2 of the First Japan-Korea Agreement, the Korean government agreed only to engage as a diplomatic adviser one foreigner recommended by the Japanese government. Moreover, the adviser who was engaged under this provision was Durham Stevens, an American national.[39] Nevertheless, given the bilateral relations that prevailed at the time between Japan and Korea, there is considerable room for sympathy for the Korean position. However, for the resolution of the dispute at hand, there is no need to become too deeply involved in these details. Even if we were to assume that the government of Korea was in fact not in a position to protest Japan's actions after the incorporation of Takeshima in

February 1905, this would not immediately nullify the relevant measures taken by Japan. It is important to bear in mind that while Korea was fully capable of exerting effective control over Takeshima prior to 1904, it did absolutely nothing to exert or establish its sovereignty. Notwithstanding the need to control the hunting of sea lions at Takeshima, Korea did not take action to address this problem.

(3) Thirdly, the Republic of Korea has argued that the actions taken by the Japanese government after the incorporation of Takeshima do not meet the requirements for continuous territorial control under international law. The reason given is that the survey and investigative activities of the Japanese government were undertaken only as a part of Japan's general incursion and aggression against Korea. This argument cannot be accepted unless the first argument claiming that Takeshima was the sovereign territory of Korea can be proven. South Korea has also argued that *Inshu Shicho Gakki* as well as the notes of Kyuemon Oya, both of which were written during the Edo Period, are inadmissible as evidence because they were produced during Japanese aggression in Utsuryo-tou (Ulleungdo). However, it seems the use of the harsh term "aggression" can be taken as indirect acknowledgment of the fact that Japan effectively controlled Takeshima and that the island was not under effective Korean control.

To summarize, Korea can argue that Japan's incorporation of Takeshima in 1905 was null and void only if it can be proven that Takeshima was effectively occupied by Korea prior to this act, which is to say only if the effective display of Korean state authority can be proven. However, the problem with this exchange is that the Korean side has repeated its position that the acts of the Japanese government are null and void, but has not presented even a single piece of positive evidence proving its effective occupation of Takeshima. Contrary to the lively activity undertaken by the Korean side since the start of the dispute with Japan in 1952, it is notable that the Korean government essentially took no formal action prior to 1905.

South Korea has repeatedly emphasized that Takeshima is a "subsidiary island" of Utsuryo-tou (Ulleungdo), which of course may be what Governor Shim of Utsuryo (Ulleung) County believed in 1906. However, no administrative action had been taken at any time before this date that could be taken to be evidence of possession of Takeshima. For sake of argument, let us assume that in fact Takeshima was administratively a subsidiary of Utsuryo-tou (Ulleungdo). However, this would not have much significance in the context of international law unless effective occupation extended to Takeshima from Utsuryo-tou (Ulleungdo). By

overemphasizing the subsidiary status of Takeshima, here again South Korea has indirectly admitted that it did not effectively control Takeshima.

Another point that has been made is that Takeshima is closer to Utsuryo-tou (Ulleungdo) than to Japan's Oki Island. It is true that Takeshima is located approximately 90 nautical miles from Oki Island compared to 50 nautical miles from Utsuryo-tou (Ulleungdo). However, if physical distance were to be made an issue, it would also be necessary to consider the distance between Takeshima and the Korean Peninsula. This is significant in light of the fact that a total ban on the habitation of Utsuryo-tou (Ulleungdo) was enforced for a period of 450 years. In comparison, at no time was the population removed from Oki Island. The distance from Takeshima to the Korean mainland is 120 nautical miles as compared to 115 nautical miles to the Japanese mainland, which is thus actually closer. Furthermore, Utsuryo-tou (Ulleungdo) and Takeshima are separated by waters that are deeper than 2,000 meters and are not situated on the same continental shelf. In other words, it cannot be simply said that Takeshima is closer to Korea. What is more, physical distance has almost no significant standing in international law.[40] In the Island of Palmas Case, the Permanent Court of Arbitration ruled that the principle of contiguity could not be used as legal grounds for the settlement of territorial disputes, and thereby dismissed claims based on contiguity.[41] If physical proximity or contiguity were to serve as a legal standard, then sovereign title to all of the Channel Islands would have been brought into dispute in the Minquiers and Ecrehos Case. While the Channel Islands are located across the English Channel and at a significant distance from Britain, they are separated only by a narrow strip of water from Normandy and Bretagne in France. Notwithstanding these facts, British sovereignty of the Channel Islands was not contested at all. The dispute solely applied to ownership of the Minquiers and the Ecrehos. Of these two sets of isles, the Minquiers are closer to France's Chausey Isles than to Britain's Jersey Island in the Channel Islands.[42] Therefore, if the Permanent Court of Arbitration had adopted the principle of contiguity in rendering its ruling, the Minquiers would have been awarded to France. However, the outcome was the opposite.

Can there be any case in which contiguity actually has some legal significance? Assuming the existence of effective occupation of the mainland or the main island, contiguity could in fact function as a type of inchoate title that serves as a tentative indicator of the scope of sovereign territory. For example, consider a closely spaced cluster of islands. Occupation of the entire cluster may be inferred for a certain period of time from the occupation of the main island in the

cluster. However, unless the effect of this inchoate title is strictly circumscribed, it can come into conflict with the requirements of effective occupation. Therefore, this inference has effect only in the initial stages of the occupation, and must thereafter be followed by extension of the scope of sovereignty to the other islands. Takeshima is not part of a cluster of isles centered on Utsuryo-tou (Ulleungdo) and constitutes a completely independent island. Consequently, ownership of Ulleungdo and Takeshima must be determined independently of each other. There is no evidence that Korean sovereignty extended in any form to Takeshima after its occupation of Utsuryo-tou (Ulleungdo).

(III) Finally, the Cairo Declaration and related series of measures by United Nations need to be examined.[43] Here again, the claims made by the Republic of Korea are difficult to justify, and the counter-arguments presented by Japan should be adopted as being correct. The Cairo Declaration of November 27, 1943 proclaimed that Japan should be expelled from all other territories she has taken by violence or greed. Next, Article 8 of the Potsdam Declaration of July 26, 1945 stipulates 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." The South Korean government has argued that by accepting the Potsdam Declaration, Japan accepted to honor and carry out the provisions of the Cairo Declaration, and that because Takeshima was taken from Korea by violence and greed, a determination was therefore adopted to separate Takeshima from Japan. Another document of interest is the Supreme Commander for the Allied Powers Instruction Note (SCAPIN) No. 677 dated January 29, 1946, which specifies certain outlying areas where Japan is to "cease exerting or attempting to exert political or administrative power." Takeshima was included in the scope of the specified areas together with Saisyu-tou (Jejudo) and Utsuryo-tou (Ulleungdo), meaning that Japan would cease exerting political or administrative power in Takeshima. SCAPIN dated June 22, 1946 is notable for establishing the so-called "MacArthur Line" that placed Takeshima outside the areas where Japanese were permitted to engage in fishing. South Korea has cited these documents to claim that Takeshima was duly separated from Japan to become sovereign Korean territory. The Japanese government has presented the following arguments to rebut these claims as being totally groundless.

SCAPIN No. 677 was no more than a temporary measure implemented during the Allied Occupation of Japan and did not remove Takeshima from the territory of Japan. This matter can be clearly ascertained from Paragraph 6 of this document that states, "Nothing in this directive

shall be construed as an indication of Allied policy relating to the ultimate determination of the minor islands referred to in Article 8 of the Potsdam Declaration." As for the MacArthur Line, Paragraph 5 of the relevant document establishing the MacArthur Line explicitly stipulates, "The present authorization is not an expression of allied policy relative to ultimate determination of national jurisdiction, international boundaries or fishing rights in the area concerned or in any other area." The basic policies that were applied to Japan after its surrender constituted no more than a statement of the general policies of the Allied Power toward Japan. While Japanese sovereignty over Honshu, Hokkaido, Kyushu and Shikoku were definitively established, determination of sovereignty over minor islands was left for later measures. The final determination of Japan's postwar territory was made in the Treaty of Peace with Japan signed on April 28 1952. In this Treaty, Japan recognized the independence of Korea. This means that Japan recognized that the Kingdom of Korea that existed prior to annexation by Japan was separate and independent of Japan. This recognition does not at all contain the connotation that Japan was ceding to the newly independent Korea an area that was Japan's sovereign territory from before the annexation. Moreover, it is perfectly clear that as an inherent part of Japan's sovereign territory since ancient times, Takeshima does not come under "territories taken by violence and greed" as defined in the Cairo Declaration.

As reflected in these arguments presented by the Japanese government, determination of postwar sovereignty over Takeshima was made in the Treaty of Peace. Article 2 Paragraph (a) of the Treaty of Peace states, "Japan, recognizing the independence of Korea, renounces all right, title and claim to Korea, including the islands of Quelpart (Jejudo), Port Hamilton (Komundo) and Dagelet (Ulleungdo)." Thus, Takeshima is excluded from the areas renounced by Japan. The Korean counter-argument is as follows. The territorial determinations contained in the Treaty of Peace confirm the directive issued by the Supreme Command of the Allied Powers in SCAPIN No. 677 concerning ceasing to exert political or administrative power without making material changes in the directive. However, contrary to the Korean claim, changes were already being made during the Occupation to the directive of SCAPIN No. 677 on ceasing to exert political or administrative power. For example, some of the isles of the Nansei Islands were returned to Japan during the Occupation, and Japan's residual sovereignty of the remaining Nansei Islands and Ogasawara and other southern islands were also confirmed during the Occupation. In other words, material changes were made to SCAPIN No. 677. While peace treaties may well be forced upon the losing side by the victors, it goes without saying that a defeated nation is not bound by claims and other matters that lie outside the scope of the treaty

that it has accepted and signed. The fact that Takeshima is explicitly referred to in SCAPIN No. 677 but not in the Treaty of Peace should be interpreted to be of material significance.[44] As opposed to this, South Korea has forwarded the following interpretation. Article 2 Paragraph (a) of the Treaty of Peace specifies the names of the three large islands not for the purpose of excluding Takeshima from the sovereign territory of Korea. If this had been the purpose of not naming Takeshima in the Treaty of Peace, then all the small islands in the vicinity of Korea would have to have been explicitly mentioned. In other words, the three major islands were explicitly mentioned only as examples of the representative islands that came under Korean sovereignty. To counter this interpretation, it is enough to take a closer look at the map. Kyobun-tou (Komundo) is by no means a large island, while Kyosai-tou (Geojedo) is a far larger and more important island. Why does the Treaty of Peace mention the smaller and less important Kyobun-tou (Komundo) and fail to mention the larger and more important Kyosai-tou (Geojedo)? The simple answer is that Kyosai-tou (Geojedo) is very close to the Korean mainland, so that there was no need to refer to its title. On the other hand, Kyobun-tou (Komundo) is more distant from the mainland, and together with Saisyu-tou (Jejudo) and Utsuryo-tou (Ulleungdo) forms the outermost demarcation of Korean territory. Therefore, given that Takeshima lies further out from Utsuryo-tou (Ulleungdo), there can be no doubt that Takeshima would have been explicitly mentioned in the Treaty of Peace if the intent of the signatories had been to assign Takeshima to Korea.

4 Prospects for Resolution

It can be concluded from the preceding discussions that Takeshima must clearly be viewed to be the sovereign territory of Japan under international law. However, the Republic of Korea claims that in light of “irrefutable legal doctrine” and for reasons of both geography and history, Takeshima constitutes an inseparable and integral part of the sovereign territory of Korea. Much like Japan has done, the Republic of Korea has also sought to justify its claim based on international law. As a result, the Takeshima dispute has taken on the aspects of a legal contest.[45] Therefore, the most rational course of action would be to refer the matter to the International Court of Justice. While socialist countries and certain Asian and African emerging countries have chosen to shun or otherwise avoid the International Court of Justice due to their criticism of current international law as a valid standard for judgment, such hesitation should not apply to the Takeshima dispute.[46]

The norm of prior occupation is recognized as a standard for the settlement of territorial disputes under international law. Historically, it functioned primarily to regulate the competition among European nations in acquiring colonies, and has been used as a legal means for seizing the lands inhabited and occupied by aboriginal peoples in the Americas, Asia and Africa. However, no reason exists to obstruct the use of this norm today as a standard for determining sovereign title to uninhabited islands. As a matter of fact, South Korea has argued that Japan's 1905 incorporation of Takeshima doesn't satisfy the requirements for prior occupation under international law but has never objected to the application of the norm of prior occupation to the resolution of this dispute. Therefore, if South Korea is confident of the validity of its claim, it should accept the Japanese proposal and agree to submit the case to the International Court of Justice so that the case can be argued before a neutral and disinterested third party. The fact that the Republic of Korea continues to reject Japan's proposal creates the suspicion that it is well aware that its claims stand on weak legal grounds.

Since 1952, the Republic of Korea has actively pursued the exercise of rights concerning Takeshima. However, it should be noted that if the Takeshima dispute were to be referred to the International Court of Justice at some time in the near future, acts undertaken after the original occurrence of the dispute would not be admitted as evidence, meaning that it is highly probably that the Court would rule in favor of Japan. On the other hand, what requires careful attention is the "normative power of the de facto." It is reported that the Japanese government will continue to issue administrative guidance to Japanese fishing boats instructing them not to operate in the vicinity of Takeshima in order not to get South Korea hackles up.[47] Although South Korea has occupied Takeshima through the use of force, it goes without saying that Japan must strictly avoid the use of force to realize their removal. Having said this, it must be understood that the continuation of Japan's passive attitude may be interpreted by third parties to mean that Japan has tacitly consented to the Korean occupation of Takeshima. Even in the absence of such misinterpretation, the mere repetition of simple protestation comes with its own risks as seen in the case of the British occupation of the Falkland Islands. Notwithstanding persistent and repeated protests by Argentina, with the passage of time, the British occupation was ultimately recognized and accepted by the world.[48] The "establishment of rights originating from an illegal act" is a situation that may conceivably occur in Takeshima. The Japanese government must employ all possible means to prevent such an outcome.[49]

In an Exchange of Notes on the settlement of disputes undertaken at the recent conclusion of the Treaty on Basic Relations between Japan and the Republic of Korea, the two governments agreed to the following. Unless otherwise agreed upon, bilateral disputes "shall be settled, first of all, through diplomatic channels." Any dispute that fails to be settled in this manner "shall be referred for decision to arbitration in accordance with a procedure agreed to by the Contracting Parties." The two governments also agreed to resolve disputes related to the interpretation and implementation of the Agreement Concerning Fisheries and the Agreement Concerning the Settlement of Problems in Regard to Property and Claims and Economic Cooperation by submitting to the decision of an arbitration board if they cannot be settled through any diplomatic channels. Needless to say, as the abovementioned agreements and treaties have yet to go into effect at the time of this writing (November 1965), specific disputes have not yet arisen. However, because the very specific dispute that already exists today concerning ownership of Takeshima was not settled under the Treaty, it is only natural to dispose of this dispute in accordance with the provisions contained in the Exchange of Notes. Instead, the Republic of Korea has used the fact that Takeshima was not explicitly referred to in the Exchange of Notes as an excuse for claiming that the Exchange of Notes does not apply to Takeshima.

The Republic of Korea has consistently taken the position that it will not negotiate on Takeshima because it is perfectly clear that the island is an integral part of its sovereign territory.[50] However, the claim that Takeshima belongs to the Republic of Korea is merely its own one-sided claim, while Japan on its part also claims Takeshima to be an inherent part of its territory. In other words, the parties are standing by their two diametrically opposing claims. International disputes come into being as a result of conflicting interpretations of the facts or conflicting interpretations of the law between countries. It was in January 1952 that the Takeshima dispute between Japan and the Republic of Korea first came to the fore. However, South Korea asserts that the Takeshima issue does not constitute a dispute. According to the advisory opinion issued by the International Court of Justice in 1950, the determination of whether an international dispute exists or not must be made objectively, and the refusal of one party to admit to the existence of a dispute does not prove its non-existence.[51] As a scholar of international law, Professor Park Guan-sook clearly admits that the Takeshima issue constitutes a dispute between Japan and the Republic of Korea before proceeding to present his argument.[52] Therefore, given that no agreement has been reached otherwise concerning the disposal of the

Takeshima dispute, the obvious course of action would be to apply the method set forth in the Exchange of Notes.

While it may be impossible to reject an objective resolution by claiming that the Takeshima problem does not constitute a dispute as provided under the Exchange of Notes, South Korea has been given other paths to realizing its desire. As a second option, it may refuse to give its approval to the arbitration process. Finally, it may refuse to accept the arbitral decision. There exists no arbitration commission between Japan and Korea. Unlike the Agreement on Fisheries and the Agreement on the Settlement of Problems Concerning Property and Claims, which contain detailed provisions regarding the composition of their respective arbitration mechanisms, the fact of the matter is that no details are given on the composition of the relevant arbitration commission on this issue. The explicit provision, "in accordance with a procedure agreed to by the Contracting Parties," means that arbitration cannot begin until the both parties have reached agreement not only on the composition of the arbitration commission but also on its powers and specific procedures. Assuming that an arbitration commission is established and ultimately succeeds in arriving at a decision, the problem is that, unlike a court ruling, such a decision has no binding power on the disputants. This leads to the conclusion that the effectiveness of the dispute settlement method set forth in the Exchange of Notes rests on two uncertain and shaky premises—the ability of the Japanese government to engage in patient persuasion and the sincerity and good faith of the government of the Republic of Korea.

As discussed in the preceding pages, from the perspective of both geography and history, there are no valid reasons why Takeshima must belong to South Korea. If for some political reason, it is deemed undesirable to base settlement and resolution strictly on international law, some element of equity may be added to the criteria. But what is needed before all else is to rectify the attitude that one side in the dispute can unilaterally and arbitrarily settle the dispute. We must recognize that the relations between Japan and the Republic of Korea are affected by the emotional problems that come from 36 years of Japan's colonial rule, and that the pursuit of logical discourse may prove to be difficult under this highly charged environment. Be that as it may, Japan should seek to make amends for its past colonial rule in other ways rather than to allow this territorial dispute to remain unsettled in a cloud of ambiguity. Such a choice will ultimately act as a barrier to the development of friendly ties between the two nations. It is my most earnest hope that the government of the Republic of Korea will also come to appreciate the significance of this point. A certain high-ranking officer of the Republic of Korea, it has been

reported, let it slip that "We would be better off if we blow up the islands." But my sincerest plea is for a positive and constructive solution, not a catastrophically destructive one like that.

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[1] Minutes of the August 3, 1964 session of the National Assembly of the Republic of Korea, No. 3, p. 5 (*Kyoto Shimbun,* morning edition of October 14, 1965, p. 3).
[2] Ibid.
[3] In an article appearing in the November 1965 issue of *Bungei Shunju* entitled "Tokugawa jidai no 'Takeshima' funso'" [Takeshima dispute in the Tokugawa Period], Kyoji Shirai states as it were the Tokugawa Government abandoned its claims on Takeshima. However, it is obvious that the "Takeshima" dispute referred to by Shirai is the "Takeshima Affair" discussed below, which involved a dispute over possession of Utsuryo-tou (Ulleungdo). Similarly, a map appearing on page 23 of the October 10, 1965 issue of *Asahi Journal* featuring the Takeshima problem misidentifies Utsuryo-tou (Ulleungdo) as Takeshima and gives the illusion that Takeshima is located within the Japan-Republic of Korea Fisheries Restricted Zone. The same error is made in a map appearing on page 20 of the August 1, 1965 issue of *Jurist.*
[4] Treaties Bureau of the Ministry of Foreign Affairs, *Takeshima no ryoyu* [Territorial sovereignty of Takeshima] (1953), pp. 9–33. As this publication was produced by Kenzo Kawakami, it is hereinafter referred to as Kawakami. (Adopted the same way of writing for other authors.)
[5] An article appearing on page 14 of the July 12, 1965 morning edition of *Kyoto Shimbun* reported the discovery of a map produced by Shihei Hayashi that identified Takeshima as the territory of Korea. This was followed by an article appearing on page 12 of the July 20, 1965 issue reporting the discovery of two old maps identifying Takeshima as the territory of Japan. In both instances, the island in question was actually Utsuryo-tou (Ulleungdo).
[6] Seizaburo Tamura, *Shimane-ken Takeshima no shin kenkyu* [New research on Takeshima of Shimane Prefecture] (1965), pp. 137–138. This book presents detailed research on Takeshima based on a wealth of materials.
[7] In June 1953, Shimane Maru, a research vessel of the Shimane Prefectural Fisheries Research Institute, discovered a new rock under the sea situated 12 nautical miles east of Takeshima and named it "Shinto-tai." It confirmed that the waters between the rock and Takeshima were feeding and spawning grounds for mackerel and saury. [Tamura, p. 119]
[8] *Asahi Shimbun,* morning edition of August 13, 1965, p. 5. Following the completion of writing this article, instruments of ratification were exchanged and the Treaty on Basic Relations between Japan and Republic of Korea and ancillary agreements came into force on December 18. Subsequently, the government of South Korea issued a presidential proclamation entitled "Waters Related to South Korean Fisheries," which does not contain any explicit reference to Takeshima. However, the government of South Korea took the position that Takeshima belonged to South Korea and that it therefore obviously generated 12 nautical miles of territorial waters (*Asahi Shimbun,* morning edition of December 19, 1965, p. 2), and stated that resolute action would be taken against any Japanese fishing vessels entering these waters without permission (*Asahi Shimbun,* evening edition of December 21, 1965, p. 2).
[9] For an excellent summary of the differences in the positions of Japan and Korea regarding the history of Takeshima, see Yoshio Morita, "Takeshima ryoyu o meguru nikkan ryokoku no rekishijo no kenkai" [Historical views of Japan and Korea on possession of Takeshima] in *Gaimusho chosa geppo* [Ministry of Foreign Affairs monthly review] Vol. 2, No. 5.
[10] Records of statements made by Kim Ja-ju indicate the following. On September 25, 1476, Kim Ja-ju and his entourage spotted Sanpo-tou (Sambondo) at a distance of seven or eight

ri (about 30 km) to the west and observed a row of three outcroppings on the north. This was followed by a small isle with a row of rocks. Next, a middle island was observed with a small isle to its west. Seawater flowed freely between all of these isles and rocks. About thirty doll-like creatures were seen between the isles. Frightened by this sight, the entourage was unable to approach the islands and sketched their forms from a distance. Professor Sin Seokho of Korea University argues that these descriptions accurately describe Takeshima as it exists today, and that the doll-like creatures that Kim Ja-ju spotted were probably sea lions. Sin Seokho, "Dokdo no raireki" [Genesis of Dokdo] in *Shiso kai*, August 1960 (as translated by Ministry of Foreign Affairs, Northeast Asia Division).

[11] Kawakami, op. cit., pp. 33–34.

[12] Morita, op. cit., pp. 10–11.

[13] Kawakami, op. cit., p. 35.

[14] Tamura, op. cit., p. 2.

[15] Kawakami, op. cit., p. 46.

[16] Morita, op. cit., pp. 11–12.

[17] See map reproduced in Morita, p. 7. The accuracy of this map is also emphasized by Kozo Tagawa in his article entitled "*Futatsu no Takeshima"* [The two Takeshimas] appearing in the October 28, 1965 evening edition of *Asahi Shimbun.*

[18] Sin, op. cit.

[19] Ibid.

[20] Kawakami, op. cit., pp. 28–29.

[13] While the Japanese government claims that the governor of Ulleung County thanked Kanda for making the long voyage to Ulleungdo and expressed his appreciation for Kanda's gift, the Korean side denies these claims.

[21] Professor Jennings points out that the traditional original title is incomplete and insufficient, as it does not provide for such situations as birth of a new nation. R.Y. Jennings, *The Acquisition of Territory in International Law* (1963), p. 7.

[22] The words of Max Huber, arbitration judge in the Island of Palmas case. *Reports of International Arbitral Awards,* Vol. II, p. 867, cf. ibid, p. 839.

[23] In the Eastern Greenland Case, the validity of prior occupation by Norway was not accepted. The ruling took into consideration the polar location of the disputed region, and the fact that no country other than Denmark had made territorial claims up until the dispute. Title was awarded to Denmark based on its very minor display of sovereignty. L.C. Green, *International Law through the Cases* (1951), p. 127 ff.

[24] In a 1959 ruling addressing the issue of sovereign title in Frontier Land, the International Court of Justice considered sovereignty over enclaves located at the border of Belgium and the Netherlands. The Court found that the disputed land had been assigned to Belgium in boundary conventions entered into by the two countries and determined that Belgium had at no time expressed the intent to abandon its claim. Therefore, although the Netherlands had a stronger claim in terms of actual acts of sovereignty, its claim was rejected. *International Court of Justice Reports,* 1959, p. 209 ff. Eiichi Fukatsu, "Kokkyo chiku no shuken ni kansuru jiken" [Case of sovereignty over Frontier Land] in Yuichi Takano, ed., *Hanrei kenkyu kokusai shiho saibansho* [Research on judicial precedents of the International Court of Justice] (1965), pp. 190–199.

[25] Takeshi Minagawa, "Takeshima funso to kokusai hanrei" [Takeshima dispute and international law precedents] in *Maehara kyoju kanreki kinen kokusai hogaku no shomondai,* [Festschrift in honor of Professor Maehara's 60th birthday: Issues in international law] (1963) p. 352.

[26] *International Court of Justice Reports,* 1953, p. 53.

[27] Sin, op. cit.

[28] See Jennings, op. cit., p. 28.

[29] Kanae Taijudo, "Kokusaiho-jo no sensen ni tsuite—sono rekishiteki kenkyu" [Prior occupation in international law—a historical study] in *Hogaku Ronso,* Vol. 61, No. 2, pp. 82–86.

[30] Huber accepts discovery as an inchoate title but theorizes that it expires shortly unless accompanied by effective occupation. *Reports of International Arbitral Awards,* Vol. II, p. 846.

[31] *International Court of Justice Reports,* 1953, p. 56. This is unavoidable by reason of the principle of intertemporal law.

[32] Ibid., p. 57.

[33] This is due to the following. The petition for incorporation submitted by Yozaburo Nakai contains the statement, "Territorial sovereignty of this island remains indeterminate." Adopting this statement, the Cabinet Decision contains the following wording. "There is no recognizable evidence that the uninhabited island located 85 *ri* northwest of Oki Island has been occupied by other countries… In light of the present need to determine the sovereignty and the name of the island, the island shall be named Takeshima… It is clear from related documents that a man by the name of Yozaburo Nakai has lived on this island and engaged in fishing activities since 1903. Finding that these actions constitute occupation under international law, we hereby incorporate the island into Japanese territory and place it under the jurisdiction of the local government of Oki Island in Shimane Prefecture."

[34] Toshio Ueda, "Ryodo kizoku kankeishi" [History of territorial sovereignty] in Kokusai Ho Gakkai, *Heiwa joyaku no sogo kenkyu* [Comprehensive study on the Treaty of Peace], Vol. I (1952), pp. 135–137.

[35] Ministry of Foreign Affairs, ed. *Kokusai ho senrei ishu (2), Tosho sensen* [Collected precedents in international law (2), occupation of islands], pp. 39–42.

[36] M.F. Lindley, *The Acquisition and Government of Backward Territory in International Law* (1926), p. 295.

[37] See the Island of Palmas case. *Reports of International Arbitral Awards*, Vol. II, p. 868.

[38] Ueda, op. cit., pp. 141–142.

[39] Korea did not become a protectorate of Japan until the Second Japan-Korea Agreement of November 1905. Therefore, if it had chosen to do so, Korea was in a position to file a protest between February and November 1905.

[40] For the legal significance of geographical contiguity, see Kanae Taijudo, "Kyokuchi no shozoku" [Sovereign title in polar region] in *Hogaku Ronso,* Vol. 63, No. 2, pp. 38–43.

[41] *Reports of International Arbitral Awards,* Vol. II, pp. 854–855.

[42] The Minquiers are located 9.8 nautical miles from Jersey Island and 16.2 nautical miles from the French mainland. The Chausey Isles are 8 nautical miles from the Minquiers. *International Court of Justice Reports,* 1953, p. 53.

[43] This point is discussed in detail in Toshio Ueda, "Takeshima no kizoku wo meguru nikkan funso" [The Japan-Korea dispute concerning Takeshima] in *Hitotsubashi Ronso,* Vol. 54, No. 1, pp. 22–26.

[44] This view is also expressed by Yuichi Takano in *Nihon no ryodo* [The territory of Japan] (1962), p. 69.

[45] Takeshi Minagawa, "Takeshima funso to sono kaiketsu tetsuzuki" [Procedures for settlement of the Takeshima dispute] in *Horitsu Jiho,* Sept. 1965, p. 38.

[46] It has been reported that the Republic of Korea refuses to refer the dispute to the International Court of Justice on the grounds that some of the judges of the International Court of Justice are from socialist countries (*Asahi Shimbun,* morning edition of June 16, 1965, p. 1). This cannot be accepted as a valid reason. Such judges are a small minority, accounting for only two of the 15 judges. Furthermore, there is no reason to think that these two judges would be burdened by prejudices that would act to the disadvantage of the Republic of Korea. Also, it should not be forgotten that the Republic of Korea would be able to nominate the national judges for the case.

[47] Statement of the Director-General of the Fisheries Agency in the November 5, 1965 session of the House of Representative's Special Committee on Japan and Republic of Korea. *Asahi Shimbun,* morning edition of November 6, 1965, p. 3.

[48] Takuzo Itakura, "Fokurando-to no kizoku mondai (3)" [Sovereign title to the Falkland Islands] in *Hogaku Kenkyu*, Vol. 13, No. 1, pp. 15–16. Dr. Itakura has sought to base British title to the Falklands on the principle of acquisitive prescription.

[49] After the completion of writing this paper, it was reported that the Cabinet in its December 17, 1965 meeting adopted "Cabinet order concerning the establishment of maritime zones related to fisheries." According to this, Japan will establish a 12 nautical mile exclusive zone extending from the mainland and isles of Shimane Prefecture and four other prefectures of western Japan. While Takeshima is not explicitly named in this order, the order effectively establishes an exclusive zone in the waters surrounding Takeshima. This should be thought of as an appropriate but minimal measure. *Asahi Shimbun*, evening edition of December 17, 1965, p. 1.

[50] Government of Republic of Korea, *Kan-nichi kaigi hakusho* [Whitepaper on Republic of Korea-Japan meeting] in *Sekai Shuho*, April 20, 1965, p. 40.

[51] "Interpretation of Peace Treaties with Bulgaria, Hungary and Romania Case (First Phase)," *International Court of Justice Reports*, 1950, p. 74. Takeshi Minagawa, *Kokusaiho hanrei yoroku* [Digest of international law rulings] (1962), p. 203.

[52] Park Guan-sook, "Dokdo no kokusai-ho jo no chii" [Status of Dokdo under international law], in *Shiso Kai*, August 1960 (translated by Northeast Asia Bureau of the Ministry of Foreign Affairs).