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# **Examining the Korean Government's Claims with Regard to Sovereignty over Takeshima: A point-by-point analysis of the official publicity pamphlet "Dokdo, Beautiful Island of Korea" \***

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## **Introduction**

In 2005, Shimane Prefecture enacted an ordinance declaring an official "Takeshima Day," and set up the Takeshima Issue Research Group. Increasing numbers of people both in Japan and the Republic of Korea have unearthed historic materials and are reexamining previously known documents relating to the issue. Between 1953 and 1962, the two governments exchanged diplomatic documents several times detailing their positions regarding their grounds for territorial rights over the island<sup>1</sup>, and today both countries use information pamphlets and websites to promote these views, incorporating a number of updates based on the results of recent research.

This paper aims to look at the claims of the Korean government as set out in a pamphlet published by the Ministry of Foreign Affairs under the title "Dokdo, Beautiful Island of Korea,"<sup>2</sup> (Henceforth, this pamphlet is referred to as "the pamphlet." Dokdo is the Korean name for Takeshima) and to examine whether these claims have any proof to support them in light of the facts and international law. The pamphlet is made up of four sections: 1. The Korean Government's Basic Position on Dokdo, 2. Geographical Recognition of Dokdo and Relevant Historical Evidence, 3. The Ulleungdo Dispute between Korea and Japan and Confirmation of

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<sup>1</sup> See Korean Ministry of Foreign Affairs, *Compilation of Materials on Dokdo (I): Diplomatic Correspondence (1952-1976)* (1977).

<sup>2</sup> Available online at: <http://dokdo.mofa.go.kr/jp/pds/pdf.jsp>

Korea's Sovereignty over Dokdo, and 4. The Empire of Korea's Sovereignty over Dokdo and its Restoration, as well as a supplementary 15-part Q&A on Dokdo based on historical materials. In the following, I will quote from each of the four sections of the pamphlet and consider them in turn. I have published several papers on important issues relating to Takeshima in the past, considering the island in connection with the San Francisco peace treaty, measures taken after its incorporation into Japanese territory, and the historical sources of territorial sovereignty.<sup>3</sup> The interested reader is directed to these previous papers for more detailed discussion of particular issues.

1. The Korean Government's Basic Position on Dokdo (quoted from p.4 of the pamphlet)

Dokdo, the easternmost island in the East Sea, is an integral part of Korean territory historically, geographically, and under international law. No territorial dispute exists regarding Dokdo, and therefore Dokdo is not a matter to be dealt with through diplomatic negotiations or judicial settlement.

The Government of the Republic of Korea exercises Korea's irrefutable territorial sovereignty over Dokdo. The Government will deal firmly and resolutely with any provocation and will continue to defend Korea's territorial integrity over the island.

### 1.1 Integral part of territory

The Korean government claims that Takeshima is an integral part of Korean territory historically, geographically, and under international law. It is not certain what is intended by the expression "integral part of Korean territory" in this context. The appeals to history and geography presumably refer to the claims made in Section 2 to the effect that Takeshima is part of Ulleungdo, and that it has been recorded since the fifteenth century in Korean documents as Usan (Usando). The reference to international law presumably refers to the claim in the second paragraph of Section 1 that the government exercises sovereignty over Takeshima and the claim in Section 4 to the effect that Korea governed the island as part of Uldo-gun (Uldo county) prior to the island's incorporation into Shimane prefecture and that the Japanese incorporation of the island into its territory was therefore null and void. This would seem to be fundamentally the same as merely claiming that Takeshima is part of Korean territory historically, geographically, and under international law. The word "integral" can probably be understood as primarily emphatic.<sup>4</sup> In any case, what I aim to do in this paper is to examine the claims themselves. Is it really true that the island is a part of Ulleungdo, that it was historically called Usan, and that it was controlled by Korea prior to its incorporation into Japanese territory?

### 1.2 Existence of a dispute

The government of the Republic of Korea argues that no territorial dispute exists regarding Takeshima, and that the island is not to be subject to diplomatic negotiations or judicial settlement. However, the mere fact that one country denies the existence of a dispute is

<sup>3</sup> Several papers have been published in the journal *Review of Island Studies* and are available online in English at <https://www.spf.org/islandstudies/>

<sup>4</sup> The term "inherent part of the territory of Japan" is used by the Japanese government to describe Japan's position on the Northern Territories occupied by Russia, but in this case the term carries a somewhat specific (legal) sense. The term relates to the principle of "no territorial aggrandizement" laid out by the Allies in the Atlantic Charter and the Cairo Declaration during World War II, and underlines the fact that the islands in question were not taken by force in war or other act of aggression, and also that they have never belonged to any other country.

not sufficient proof that no such dispute exists. This is a question that needs to be decided objectively, as has been shown by a decision of the International Court of Justice (ICJ). In the advisory opinion of March 30, 1950 (first phase) regarding the interpretation of peace treaties with Bulgaria, Hungary and Romania, the ICJ ruled that: “Whether there exists an international dispute is a matter for objective determination. The mere denial of the existence of a dispute does not prove its non-existence.”<sup>5</sup> This was confirmed in the judgment of June 11, 1998 on preliminary objections (Preliminary Objection 5) in the case concerning the land and maritime boundary between Cameroon and Nigeria.<sup>6</sup>

In January 1952, a dispute arose (came to the surface) between the Japanese and Korean governments with regard to territorial sovereignty over Takeshima. On January 18 that year, the Korean government declared the establishment of the so-called Syngman Rhee Line outlining its claims over neighboring maritime waters, including Takeshima. The Japanese government on January 28 protested this attempt to establish control over the high seas and announced that it did not recognize Korea’s claim of sovereignty over Takeshima. As noted above (in the introduction), between 1953 and 1962 the two governments exchanged several diplomatic communications detailing their respective claims over Takeshima and the evidence that purportedly supported these claims. In 1954, Japan proposed referring the dispute to the ICJ, but this was refused by Korea.<sup>7</sup> There were protests and counter-protests regarding actions that Korea had taken—firing on Japanese patrol vessels, a maritime notification that it had established a lighthouse on the island, and issuing stamps showing pictures of Takeshima, among other provocations. These protests and counter-protests continue to the present day. In one recent example, Japan repeated its suggestion that the issue should be referred to the ICJ in 2012, but this too was rejected by Korea.<sup>8</sup> Taking these factors into account, it is objectively clear that a dispute does exist.

In Q14 of the Q&A section of the pamphlet, the Korean government comments on its refusal to refer the issue to the ICJ in the following terms: “The proposal of the Japanese government is nothing but another attempt disguised in the form of judicial procedures. Korea has the territorial rights *ab initio* over Dokdo and sees no reason why she should seek the verification of such rights before any international court. . . . Dokdo was the first Korean territory which fell victim to the Japanese aggression. Now, in view of the unreasonable and persistent claim of the Japanese government over Dokdo, the Korean people are seriously concerned that Japan might be repeating the same course of aggression. To Korea, Dokdo is not merely a tiny island in the East Sea. It is the symbol of Korean sovereignty.” But this rhetoric provides no explanation. It is merely an insistence that despite the evident existence of a territorial dispute, Korea has no need to prove its claim because the island belongs to Korea: Takeshima is sovereign Korean territory, and that is it. If Korea wants to argue that Takeshima fell victim to Japanese invasion, Korea

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<sup>5</sup> Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, Advisory Opinion of March 30th, 1950, first phase, I.C.J. Reports 1950, pp. 65–119, especially p. 74. <http://www.icj-cij.org/docket/files/8/1863.pdf>

<sup>6</sup> Case concerning the Land and Maritime Boundary between Cameroon and Nigeria, Preliminary Objections, Judgment of 11 June 1998, I.C.J. Reports 1998, pp. 275–327, in particular, para. 87, pp. 314–315. <http://www.icj-cij.org/docket/files/94/7473.pdf>

<sup>7</sup> See note 1.

<sup>8</sup> Ministry of Foreign Affairs press release (August 21, 2012), Proposal to the Government of the Republic of Korea to Institute Proceedings before the International Court of Justice by a Special Agreement: [http://www.mofa.go.jp/announce/announce/2012/8/0821\\_01.html](http://www.mofa.go.jp/announce/announce/2012/8/0821_01.html)  
Statement by the Minister for Foreign Affairs of Japan on the Refusal by the Government of the Republic of Korea of the Government of Japan’s Proposal on the Institution of Proceedings before the International Court of Justice by a Special Agreement (August 30, 2012): [http://www.mofa.go.jp/announce/announce/2012/8/0830\\_02.html](http://www.mofa.go.jp/announce/announce/2012/8/0830_02.html)

needs to prove that it had been a part of Korean territory prior to that. This question represents the true crux of the matter that we need to address.

### 1.3 Exercise of sovereignty

The Korean government argues that the Republic of Korea exercises territorial sovereignty over Takeshima. Following the establishment of the Syngman Rhee Line in 1952 (and the inclusion of Takeshima on the Korean side of the line), a battle of wills continued for a time, with Japan and Korea repeatedly erecting boundary markers on the island and these being repeatedly removed. Eventually, in 1954 Korea stationed armed personnel on the island. Korea subsequently built a number of structures on Takeshima, carried out surveys and drew up maps, and in recent years has constructed a wharf and heliport. In the pamphlet, Q15 of the Q&A section asks: “How is the Republic of Korea exercising its sovereignty over Dokdo?” The answer includes references to a police force stationed on the island, Korean military defense of the skies and waters around the island, the application of various laws and regulations, establishment and operation of a lighthouse and other government facilities, and Korean civilians residing on the island. Legally speaking, however, the crucial question concerns which country controlled the territory at time of the “critical date,” that is to say at the time when the dispute broke out (or became crystallized or became manifest at the government level). Korea’s actions were all taken after the dispute broke out (measures taken in an attempt to strengthen Korea’s legal position). They therefore do not represent evidence of effective occupation, and it is not possible to establish Korean sovereignty by such means (as long as the Japanese government continues to protest). In Takeshima, the Republic of Korea is occupying territory by military means, refusing a proposal for a judicial settlement, in the hope of establishing a *fait accompli* by de facto control.<sup>9</sup>

#### 2. Geographical Recognition of Dokdo and Relevant Historical Evidence (pp.5–6)

##### A. Dokdo has been recognized geographically as a part of Ulleungdo. (p. 5)

On a clear day, Dokdo is visible to the naked eye from Ulleungdo (Ulleung Island), the island which lies in closest proximity (87.4 km) to Dokdo. Given its geographical location, Dokdo has historically been considered to be a part of Ulleungdo.

This is well evidenced in early Korean documents. For instance, the Joseon (Korean) government publication *Sejong Sillok Jiriji* (Geography Section of the Annals of King Sejong’s Reign) (1454), which provides a geographical record of Korean territory, states, “Usan [Dokdo] / Mureung [Ulleungdo] . . . The two islands are not far apart from each other and thus visible on a clear day.”

While there are numerous adjacent islands surrounding Ulleungdo, Dokdo is the only one visible to the naked eye from Ulleungdo on a clear day.

### 2.1 Records in early Korean documents (Part 1)

The Korean government claims that Takeshima has long been regarded as “geographically” part

<sup>9</sup> For a recent study on the critical date issue, see Masahiro Miyoshi, “The ‘Critical Date’ of the Takeshima Dispute,” *Review of Island Studies*, 3-2 (April 2014), pp. 28–49. [Note: This study is available online in English. See note 3.] In recent decisions, for example in the case between Indonesia and Malaysia regarding sovereignty over Pulau Ligitan and Pulau Sipadan, the ICJ in the judgment of December 17, 2002 did not accept Malaysia’s recent development of tourist resorts on Sipadan as constituting evidence of sovereignty. Case concerning Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia), Judgment, I.C.J. Reports 2002, pp. 625–686, in particular, paras. 130–145, pp. 679–684. <http://www.icj-cij.org/docket/files/102/7714.pdf>

of Ulleungdo, and that from its geographical characteristics, Takeshima has been recognized “historically” as part of Ulleungdo. The geographical characteristics cited are the fact that the closest place to Takeshima is the Korean island of Ulleungdo (87.4 km away), and the fact that Takeshima can be seen from Ulleungdo on a clear day. However, this is given not as a reason why Takeshima is “geographically part of Ulleungdo,” but as part of the background to the claim that in early Korean documents Takeshima appears under the name Usan together with Ulleungdo (in other words that it was historically regarded as part of Ulleungdo). The following paragraphs look more closely at whether the historical record as it exists in early Korean documents actually supports the Korean government’s claims.

One of the documents the Korean government cites is *Seso Jitsuroku Chiri-shi* (the *Sejong Sillok Jiriji* (Geography Section of the Annals of King Sejong’s Reign)) (1454), which it claims says: “Usan (Dokdo) / Mureung (Ulleungdo). The two islands are not far apart from each other and thus visible on a clear day.” The original text says simply that “Usan, Mureung. The two islands are situated in the sea directly east of the prefecture. They are not far apart, and on clear days with wind, they are visible. During the Silla period this was called Usan-guk. It is also called Ulleungdo.”<sup>10</sup> The first thing we should note here is that the place name Dokdo first occurs in the 20th century, and the *Sejong Sillok Jiriji*, a text compiled in the 15th century, does not make mention of a place called “Usan (Dokdo).” The identification of Usan with Dokdo (Takeshima) is merely the interpretation of the Korean government. This interpretation seems to be based on the following argument. 1. It is built on the premise that the two islands situated in the sea to the east of the “prefecture” mentioned in the text, i.e. Uljin Prefecture of Gangwon Province, are Ulleungdo and “Dokdo,” and that therefore the “two islands of Usan and Mureung” must refer to these two islands. 2. *Shinzo togoku yochi shoran* (The *Sinjeung Dongguk Yeoji Seungnam*) (Revised and Augmented Edition of the Survey of Geography of Korea) (1531) records that Ulleungdo is also called Mureung [Q1 in the Q&A section of the pamphlet]; this means that the other island (Usan) must be Dokdo. 3. There are numerous adjacent small islands in the surrounding vicinity of Ulleungdo, but Dokdo is the only one of these that can be seen only on clear days (the other surrounding islands are much closer and can therefore be seen discerned even when the weather is not clear) [Pamphlet 2-A]. 4. In *Togoku bunken biko* (the *Dongguk Munheon Bigo* (Reference Compilation of Documents on Korea)) (1770) and other documents, it is recorded that Usan is what Japan refers to as Matsushima [Pamphlet 2-B].

However, this interpretation is problematic for a number of reasons. The claim made in point 1 that Ulleungdo and Takeshima are situated in the Sea of Japan is based on today’s more precise and detailed geographical information. As for the record in the *Sinjeung Dongguk Yeoji Seungnam*, saying “Usando/Ulleungdo: Also called Mureung or Ureung, the two islands are located in the middle of the sea due east of the prefecture,” in point 2, this is followed by another sentence that says “on a clear day when there is wind, the trees on the mountain peaks and the shores at the foot of the mountains can be clearly seen; with a following wind it can be reached in two days. Some people say that Usan and Ulleung are the same one island. The area is 100 *ri* square (100 *ri* was approximately 40 kilometers).”<sup>11</sup> The trees on the mountains and the beaches below them can be seen on a sunny day. In other words, this text is saying that Ulleungdo can be seen from the mainland of the prefecture (the Korean Peninsula), and not that Takeshima can be seen from Ulleungdo. (Takeshima is a rocky island where no trees grow.) Under the heading “Usando/Ulleungdo” in the *Sinjeung Dongguk Yeoji Seungnam*, only Ulleungdo is mentioned. There is no

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<sup>10</sup> *Sejong Sillok Jiriji*, vol. 153, folio 11. Facsimile edition, National Institute of Korean History, *Joseon wangjo sillok* [Annals of the Joseon Dynasty], vol. 5 (Seoul: Dongguk Munhwasa, 1956), p. 680.

<sup>11</sup> *Sinjeung Dongguk Yeoji Seungnam*, vol. 45, folio 26. Facsimile edition (Seoul: Dongguk Munhwasa, 1958), p. 814

information about Usando, and this is why there is an explanation that some people argue that Usan and Ulleung are originally one island. This makes it quite possible that the Usan mentioned in the *Sejong Sillok Jiriji* is also a reference to Ulleungdo (the same island with a different name). Point 3 follows from an assumption based on points 1 and 2 that Usan is the place now known as Dokdo. We therefore need to consider the possibility that the reference in the *Sejong Sillok Jiriji* to visibility is a reference not to Usan's being visible from Mureung but to the distance from the prefecture.<sup>12</sup> I will consider point 4 later on in this paper, in Section 2.3.

And even if we did read the lines in the *Sejong Sillok Jiriji* as saying that Usan and Mureung are not far apart and that one can be seen from the other, and even if we accepted the premise that Usan is indeed Takeshima, we should remember that simple proximity itself does not constitute evidence to support claims of sovereignty. The arbitration award of the Island of Palmas case rejected geographical proximity as evidence for a territorial sovereignty claim.<sup>13</sup> In the Case concerning the Land, Island and Maritime Frontier Dispute, the ICJ decided that since the island of Meanguera was part of the sovereign territory of El Salvador, the small islet adjacent to it was also part of the same country's sovereign territory as a dependency of the larger island.<sup>14</sup> But it is not possible to regard Takeshima, 87.4 km distant, as part of Ulleungdo.

B. Korean government publications record that Korea has long recognized Dokdo as Korean territory and exercised effective control over the island. (p. 6)

In the Joseon (Korean) government publication *Sejong Sillok Jiriji* (Geography Section of the Annals of King Sejong's Reign), 1454, it is recorded that Ulleungdo (Mureung) and Dokdo (Usan) are two islands that are part of Joseon's Uljinhyeon (Uljin prefecture). It is also recorded that the two islands had been territories of Usan-guk (Usan State), which was subjugated to Silla (former kingdom of Korea) in the early 6th century (AD 512), indicating that Korea's effective control over Dokdo dates back to the Silla period.

Consistent records pertaining to Dokdo are also found in other government publications, including *Sinjeung Dongguk Yeoji Seungnam* (Revised and Augmented Survey of the Geography of Korea), 1531; *Dongguk Munheon Bigo* (Reference Compilation of Documents on Korea), 1770; *Man'gi Yoram* (Manual of State Affairs for the Monarch), 1808; and *Jeungbo Munheon Bigo* (Revised and Augmented Reference Compilation of Documents on Korea), 1908. Particularly noteworthy is the record in the volume "Yeojigo" in *Dongguk Munheon Bigo* (Reference Compilation of Documents on Korea), 1770, which states, "Ulleung [Ulleungdo]

<sup>12</sup> See the explanation of the concept of "kishiki (*kyusik*)" by Professor Masao Shimojo. See Masao Shimojo, *Takeshima wa nikkans dochira no mono ka* [Is Takeshima Japanese or Korean?] (Tokyo: Bungeishunju, 2004) (Bunshun Shinsho 377), pp. 162–166. *Kishiki* is a set of rules for compiling geographic records that was issued to provinces by the central government, and has been passed down to the present recorded in books such as the *Gyeongsangdo sokchan jiriji* (Renewed compilation of geography of Gyeongsangdo Province). *Kishiki* is quoted in the preface of this book, which reads: the description of oceanic islands shall include their location, meaning the direction from the principal city of the prefecture and distance along the sailing route; their area, including the distance around the island; and the area of their fields, population, and other factors. (Reprinted by the Government General of Korea, *Keishodo chirishi / Keishodo zokusen chirishi* [Compilation of geography of Gyeongsangdo Province and Renewed compilation of Geography of Gyeongsangdo Province] (1938).

<sup>13</sup> Island of Palmas case (Netherlands, USA), April 4, 1928, *Reports of International Arbitral Awards*, Vol. 2, pp. 829–871, in particular, p. 854. Reports can be consulted on the UN website (<http://legal.un.org/riaa/>).

<sup>14</sup> ICJ Reports 1992, pp. 351–761, Case concerning the Land, Island and Maritime Frontier Dispute (El Salvador / Honduras: Nicaragua intervening), Judgment of 11 September 1992, in particular, para. 356, p. 570. <http://www.icj-cij.org/docket/files/75/6671.pdf>

and Usan [Dokdo] are both territories of Usan-guk [Usan State], and Usan [Dokdo] is what Japan refers to as Matsushima [the old Japanese name for Dokdo].” This passage makes it evident that Usando is the present-day Dokdo and that it is Korean territory.

## 2.2 Records in early Korean documents (Part 2)

The Korean government claims that the *Sejong Sillok Jiriji* (1454) says that “Ulleungdo (Mureung) and Dokdo (Usan) are two islands that are part of Joseon’s Uljinhyeon (Uljin prefecture),” and that “it is also recorded that the two islands had been territories of Usan-guk (Usan State), which was subjugated to Silla (former kingdom of Korea) in the early 6th century (AD 512), indicating that Korea’s effective control over Dokdo dates back to the Silla period.” However, as I have explained in Section 2.1 above, the original text makes no mention of the name of Dokdo, merely saying that: “The two islands of Usan and Mureung are situated in the sea directly east of the prefecture. They are not far apart, and on clear days with wind, they are visible. During the Silla period [this was] called Usan-guk. [It is] also called Ulleungdo.” The equivalence between Usan and Dokdo (Takeshima) is merely the interpretation of the Korean government. As I have said, this interpretation falls apart as a result of the record in the *Sinjeung Dongguk Yeoji Seungnam*, and it is likely that Usan is Ulleungdo (different in name only). Here, I will consider the contention that in the *Sejong Sillok Jiriji*, “it is also recorded that the two islands had been territories of Usan-guk (Usan State), which was subjugated to Silla (former kingdom of Korea) in the early 6th century (AD 512).”

In the original text of the *Sejong Sillok Jiriji*, there is nothing that corresponds to this claim. This interpretation takes the single line of text reading “during the Silla period [this was] called Usan-guk,” and interprets the subject of this sentence to be “the two islands of Usan and Mureung” (based on the premise that Usan is Takeshima and that Mureung is Ulleungdo). Then, this interpretation reinterprets the note that “during the Silla period [this was] called Usan-guk” to mean that two islands belonged to Usan-guk territory at that time. However, there is a source for this line in *Sangoku shiki* (the *Sejong Sillok Jiriji*: a line in the *Samguk Sagi* (History of the Three Kingdoms)) (1145), in *Shiragi honggi* (the *Silla Honggi* (History of Silla)), Part 4, Year 13 of the reign of King Jijeung, where it says, “Usan-guk is on an island in the sea to the east of Myeongju, another name is Ulleungdo, the area is 100 *ri* square.”<sup>15</sup> In other words, the text says that in the Silla period Usan-guk was on the island of Ulleungdo (Usan-guk = Ulleungdo), and not that Ulleungdo and Usando together were called Usan-guk. It is certainly not possible to read this line to mean that Ulleungdo and Dokdo were territory belonging to Usan-guk. In fact, this is something that appears in the *Dongguk Munheon Bigo* (Reference Compilation of Documents on Korea) (1770), a later document mentioned in the third paragraph of Section 2-B of the pamphlet (see Section 2.3 below), and is not something that is recorded in the *Sejong Sillok Jiriji*.

## 2.3 Records in early Korean documents (Part 3)

The Korean government claims that “consistent records pertaining to Dokdo are also found in other government publications, including *Sinjeung Dongguk Yeoji Seungnam* (Revised and Augmented Survey of the Geography of Korea), 1531; *Dongguk Munheon Bigo* (Reference Compilation of Documents on Korea), 1770; *Man’gi Yoram* (Manual of State Affairs for the Monarch), 1808; and *Jeungbo Munheon Bigo* (Revised and Augmented Reference Compilation of Documents on Korea), 1908.” It mentions as particularly noteworthy a mention in the *Dongguk Munheon Bigo* and other sources that: “Ulleung [Ulleungdo] and Usan [Dokdo] are both

<sup>15</sup> *Samguk Sagi*, vol. 4. Facsimile edition (Tokyo: Research Institute for Oriental Cultures, Gakushuin University, 1984) (*Gakuto sosho*, vol. 1), p. 33.

territories of Usan-guk [Usan State], and Usan [Dokdo] is what Japan refers to as Matsushima.” Let us consider this mention in the *Dongguk Munheon Bigo* (and the same sentence in *Manki yoran (Man’gi Yoram)*; Q1 in the pamphlet’s Q&A section). *Zoho bunken biko* (The *Jeungbo Munheon Bigo*) is a 20th-century source, and it only says, “Usando and Ulleungdo . . . Of these two islands, one is Usan. They have now become Uldo-gun (Q1 in the pamphlet’s Q&A section).”

The original text of the *Dongguk Munheon Bigo* reads: “In the second year of the reign of Seongjong, there was a person who gave a report of an island called Sambongdo. Park Jongwon was sent to go and inspect, but the seas were rough and he was not able to reach the island. One of his boats stopped at Ulleungdo and collected samples of large bamboo and abalone. They reported to the king that the island was uninhabited. (Interpolated note) According to *Yochishi* (the *Yeojiji*), it is said that Ulleung and Usan are both lands in Usan-guk and Usan is what the Japanese refer to as Matsushima. In the seventh year of the reign of Gwanhaegun . . .”<sup>16</sup> This document too makes no mention of “Usan (Dokdo).” Nevertheless, the Republic of Korea uses this line as evidence to support its following argument. 1. The document records that “Usan is what the Japanese refer to as Matsushima.” Matsushima was a name used in Japan during the Edo period to refer to Dokdo (Takeshima). Therefore, Usan equals Dokdo. 2. It is also said that Ulleung and Usan (Usando) are both lands in Usan-guk.

Claim 1 depends on *Shukuso jitsuroku* (the *Sukjong Sillok* (Annals of King Sukjong’s Reign)) (1728), which recorded the narrative of An Yong-bok, a key figure during the Genroku Takeshima Incident (known in Korea as the Ulleungdo Dispute). (For a detailed discussion on the Genroku Takeshima Incident, see Section 3.1 below.) In the Edo period Ulleungdo was known in Japan as Takeshima, and during the 17th century the Oya and Murakawa families of Yonago were granted permission by the shogunate for many years to carry out abalone fishing and other activities on the island.<sup>17</sup> When retainers of the Oya household visited Ulleungdo (traditionally Takeshima) in 1693, they encountered Korean fishermen on the island, and took two of them back to Japan as hostages (to explain why they had not been able to gather abalone as planned). The two Koreans (one of whom was An Yong-bok) spent time at the Oya family residence, then moved to Tottori, Nagasaki, and Tsushima before eventually being returned home. With this event, diplomatic negotiations began between Japan and Korea regarding fishing in Takeshima (Ulleungdo). After a series of twists and turns, during the first month of the ninth year of Genroku (1696) the shogunate eventually placed a prohibition on the Oya and Murakawa families traveling to Ulleungdo. Meanwhile, in 1696, An Yong-bok, who had been brought to Japan as a hostage in 1693, returned to the Tottori domain, this time by his own volition. Following his return to Korea, An Yong-bok was interrogated by the Bibyeonsa, a government body. The account he gave at that time is recorded in the *Sukjong Sillok* as follows:<sup>18</sup>

The Bibyeonsa interrogated An Yong-bok, who said that [when he went to Ulleungdo], “Many Japanese ships were moored there. My companions were afraid, but I yelled at them, saying ‘Ulleungdo belongs to Korea. Why do you Japanese dare cross the border and intrude into foreign territory? We’ll have you arrested.’ The Japanese replied that they lived on Matsushima and had just happened to be on the island for fishing, adding they were now heading back home. I retorted, ‘Matsushima is Jasando and it, too, belongs to Korea. How dare you live there?’”

An Yong-bok said that he chased the Japanese and proceeded via Oki to Tottori, where he had

<sup>16</sup> The *Dongguk Munheon Bigo (Yeojigo, Gwanbang, Haebang, Donghae, Uljin)* can be consulted in facsimile (Seung Jung Jun edition) at the National Diet Library (request number W941-37).

<sup>17</sup> For a detailed discussion of subsequent developments in the Edo period, see Kenzo Kawakami, *Takeshima no rekishi-chirigaku teki kenkyu* [Historical-geographical study of Takeshima] (Tokyo: Kokon Shoin, 1966).

<sup>18</sup> *Sukjong sillok* [Annals of King Sukjong’s Reign], vol. 30, folios 53–54. Facsimile edition. National Institute of Korean History, *Joseon wangjo sillok* [Annals of the Joseon Dynasty], vol. 39 (Seoul: Dongguk Munhwasa, 1957), pp. 432–433.

negotiations. His story of having shouted at the Japanese fishermen is a fabrication because no Japanese fishermen sailed to Ulleungdo that year. But nonetheless, that An Yong-bok recognized Matsushima as Jasando, and that he traveled to Japan and made an appeal of some kinds are true. However, the same document (*Sukjong Sillok*) tells us that the Korean government of the time did not share his view of the islands, and did not endorse his conduct.<sup>19</sup> According to this record, Dongraebu official Yi Sejae said to the king that an emissary from Tsushima is asking whether a person who crossed over to make an appeal last year did so on orders from the Court. Yi Sejae said, “If there is something we need to say, we will dispatch an interpreter to Edo; we have no reason to send a noisy fisherman.” The Bibyeonsa official emphasized: “The Court has nothing to do with the actions of a foolish commoner who has drifted ashore.” After this discussion of the reply that ought to be given to the Tsushima envoy, the king gave his approval.<sup>20</sup>

Research by Professor Masao Shimojo (Takushoku University) has shown that the interpolated note in the *Dongguk Munheon Bigo*, which records that “Ulleung and Usan (Usando) are both lands in Usan-guk” (Claim 2), was originally copied from an explanatory note (opinion of the author) found in another text.<sup>21</sup> According to Professor Shimojo, in Shin Gyeong-jun’s *Kyokai ko* (*Ganggyego* (Study of national boundaries)) (1756), it says: “I believe in the *Yeoji* it says that according to one theory Usan and Ulleung were originally one island. However, considering various charts, it should be two islands. One of these must therefore be the one known as Matsushima, while both islands probably belong to Usan-guk.” In the *Dongguk Munheon Bigo*, this part, which the author of the *Ganggyego* clearly notes is his personal opinion, was added as an interpolated note. This note claims that: “According to the *Yeoji*, it is said that Ulleung and Usan are both lands in Usan-guk and Usan is what the Japanese refer to as Matsushima.” But this contradicts the original source of the note.

An Yong-bok thought that “Matsushima is Jasando,” presumably because he had formed an association in his mind between the information he obtained about Matsushima during his time at the Oya residence in Japan in 1693 and the traditional mentions of Usan in Korea (though An Yong-bok called the island Jasando rather than Usan). He stated this view to the Bibyeonsa, but the Korean government considered his actions and statements those of a foolish commoner and denied any responsibility for them. In later years, based on the record of An Yong-bok’s account in the *Sukjong Sillok*, it came to be written that “Ulleung and Usan are both lands in Usan-guk and Usan is what the Japanese refer to as Matsushima.” But this was originally a note that was nothing more than the personal view of the editor of an old text. Therefore, the record in the *Dongguk Munheon Bigo* (1770) cannot be used as evidence that Takeshima was Korean territory at the time (i.e. in the 18th century). It goes without saying that it is not possible to claim on the same basis that the Usan (Usando) mentioned in older documents such as the *Sinjeung Dongguk Yeoji Seungnam* (16th century) and the *Sejong Sillok Jiriji* (15th century) referred to Takeshima, or still less to claim that Korea’s exercise of control over Takeshima can be traced back to the Silla period because Usan-guk swore allegiance to Silla.

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<sup>19</sup> *Sukjong sillok*, vol. 31, folios 10–11 (Second month of the 23rd year of King Sukjong), *Joseon wangjo sillok*, vol. 39 (see note 18), pp. 449–450.

<sup>20</sup> The same message was also conveyed in a written message from Yi Seon-bak, Deputy Vice-Minister for Protocol, to the daimyo of Tsushima. “As for the man who drifted ashore last year, coastal residents use boats for a living and they may be carried over the border into your country should they meet strong winds. If the man made an appeal, he should be charged with the crime of fabrication.” *Takeshima kiji* [Records of Takeshima], vol. 5, available in (*Dai ikki*) *Saishu hokokusho, shiryō hen* [Final report of the research study on the Takeshima issue (first series), Document part], published by the Takeshima Mondai Kenkyukai of Shimane Prefecture (2007), p. 213. This report can be viewed on the website run by Shimane Prefecture (Web Takeshima Issue Research) at <http://www.pref.shimane.lg.jp/admin/pref/takeshima/web-takeshima/takeshima04/>

<sup>21</sup> Masao Shimojo, op. cit., pp. 100–103 (see note 12).

### 3 The Ulleungdo Dispute between Korea and Japan and Confirmation of Korea's Sovereignty over Dokdo (pp. 7–8)

#### A. Korea's territorial sovereignty over Ulleungdo and its ancillary, Dokdo, was confirmed through the diplomatic negotiations between the Korean and Japanese governments (Ulleungdo Dispute) in the 17th century. (p.7)

In the 17th century, while illegally fishing on Ulleungdo, a territory of Joseon (Korea), the Oya and Murakawa families of the Tottori-han (feudal clan of Tottori) of Japan had a run-in with Korean fishermen, one of which was An Yong-bok, in 1693.

The two Japanese families petitioned the Japanese government (Edo shogunate) to prohibit Koreans' passage to Ulleungdo. The Edo shogunate ordered Tsushima to negotiate with the Joseon government. Thus began the negotiations between the two countries, which is known as the "Ulleungdo Dispute."

The Edo shogunate sent an inquiry to the Tottori-han on December 25, 1695. Upon receiving a reply that neither Takeshima (Ulleungdo) nor Matsushima (Dokdo) belonged to the Tottori-han, the Edo shogunate issued a directive on January 28, 1696, prohibiting all Japanese from making passage towards Ulleungdo.

The dispute between Korea and Japan thus came to a close. Through the Ulleungdo Dispute, Ulleungdo and Dokdo were confirmed to be Korean territory.

### 3.1 The Genroku Takeshima Incident

The Korean government claims that the negotiations between the two governments in the 17th century (the Genroku Takeshima Incident, or the Ulleungdo Dispute as it is known in Korea) led to a recognition that Ulleungdo and its ancillary island Dokdo (i.e. Takeshima) were Korean territory. The pamphlet claims that the shogunate made inquiries to the Tottori domain and confirmed that Matsushima (present-day Takeshima) did not belong to the Tottori domain, and thereafter prohibited all Japanese from "making passage towards Ulleungdo." The negotiations between the two governments in the 17th century were sparked by the fishing dispute in Ulleungdo mentioned in Section 2.3 above. In 1693, the Oya family of Yonago brought back two Korean fishermen from Ulleungdo, known as Takeshima in Japan at the time, as proof that they had not been able to fish for abalone. After these men were sent back to Korea through Tsushima, the Tsushima domain, having received orders from the shogunate, issued a request to Korea to put a stop to Korean fishermen's traveling to "Takeshima" for fishing. The Korean government replied that Takeshima was Ulleungdo, and that since Ulleungdo was listed with its produce in the *Dongguk Yeoji Seungnam* (Survey of Geography of Korea), the island belonged to Korea. In 1695, Tsushima proposed to the shogunate that it should wind up the negotiations. The shogunate asked the Ikeda family of the Tottori domain, which governed the two provinces of Inaba and Hoki, to provide information on the question of when "Takeshima" had become attached to these two provinces. In its response, there was the view of Tottori domain that Takeshima or Matsushima did not belong to either Inaba or Hoki. Following this, in 1696 the shogunate ordered the Tottori domain to place a prohibition banning the Oya and Murakawa families from traveling to "Takeshima" for fishing, and instructed Tsushima to inform Korea of

this decision.<sup>22</sup> The statement that was passed to the Korean envoy in Tsushima was as follows.<sup>23</sup>

Several years ago, Governor of Tsushima made a request regarding “Takeshima” by sending an envoy to your country. The envoy told us what had been conveyed to him by your representative when he came back to this country. I explained the content of what I had heard to the member of the council of elders in Edo. That island does not belong to Inaba or Hoki; we did not make it Japanese; people from Hoki merely travel there for fishing because it is an uninhabited island. However, in recent years Koreans have traveled to the island and fishermen from the two countries confront each other. This is the reason why we sent the message. Now, the Edo government says the island is close to Korea and far from Hoki, so it will issue an order that no fishermen from this country should travel to the island. In view of this, you should be grateful to the shogunate for its sincerity.

The first thing to note is that there is no record of any discussion having taken place on the subject of present-day Takeshima (Dokdo) during the negotiations with Korea that were conducted via the So daimyo family of Tsushima. The statement to the Korean envoy quoted above also makes no mention of present-day Takeshima (The “Takeshima” mentioned in the message was the name used in Japan during the Edo period for Ulleungdo). No dispute existed over present-day Takeshima at that time, not least because the Korean side had no awareness of today’s Takeshima at the time. Usan is not the island known today as Takeshima (See my argument in Section 2 above). There are no records in Korea of Koreans traveling to and landing on present-day Takeshima. (For travelers from Japan, Matsushima (present-day Takeshima) was on the route toward the island traditionally known as Takeshima, but for Koreans there would have been no reason to travel beyond Ulleungdo to land on a bare rocky islet. The only person who may possibly have visited the island is An Yong-bok.) The Korean government goes on to say that through the Ulleungdo Dispute, Ulleungdo and “its ancillary”, Dokdo, were confirmed to be Korean territory, and that the shogunate issued a directive prohibiting all Japanese from making passage “towards” Ulleungdo. But as we have seen, the argument that Takeshima (Dokdo) is an ancillary dependency of Ulleungdo does not stand up, either on the grounds of “proximity” or on the grounds that certain historical documents supposedly say that “Ulleung and Usan are both lands in Usan-guk” (see Sections 2.1 and 2.3). Also, in the statement quoted above, the shogunate places its prohibition on travel to the island because “in recent years Koreans have traveled to the island” and because it is worried that trouble might arise when “fishermen from the two countries confront each other.” No such problems arose regarding present-day Takeshima, and the island to which travel is prohibited must therefore be the island traditionally known as Takeshima (Ulleungdo); it is not possible to read the prohibition on “passage towards Ulleungdo” to include today’s Takeshima.

The Korean government claims that the shogunate sent “an inquiry to the Tottori-han” and received “a reply that neither Takeshima (Ulleungdo) nor Matsushima (Dokdo) belonged to the Tottori-han.” It is true that Masatake Abe, Lord of Bungo and one of the members of the shogun’s council of elders, wrote to the Tottori domain’s official residence in Edo on the 24th day of the 12th month, the eighth year of Genroku (January 27, 1696 in the Western calendar) to ask “when the appertaining island of Takeshima of the Inaba and Hoki provinces became a part of either of these two provinces,” and whether “any other islands besides Takeshima are

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<sup>22</sup> For the development of this case, see Kenzo Kawakami, *op. cit.* (see note 17). For more detail, see *Takeshima kiji*, vols. 1–5, *op. cit.* (see note 20).

<sup>23</sup> *Takeshima kiji*, vol. 4, available in *(Dai ikki) Saishu hokokusho, shiryō hen*, published by the Takeshima Mondai Kenkyukai, *op. cit.*, p. 83 (see note 20).

attached to these provinces.” The following day, Heima Yoshida, the representative of Tottori domain in Edo, replied to say that “Takeshima does not belong to either Inaba or Hoki,” and that “Takeshima, Matsushima, and other islands do not belong to either province.”<sup>24</sup> However, even if the shogunate did place a prohibition on travel to “Takeshima” (traditional Takeshima, Ulleungdo) after receiving information that Matsushima (present-day Takeshima) did not belong to either Inaba or Hoki, this would not mean that the shogunate had acknowledged that Matsushima (present-day Takeshima) was Korean territory, or that it had handed over the island to Korea. In the case contesting the legal status of Eastern Greenland, the Permanent Court of International Justice ruled on April 5, 1933, in favor of Denmark, which had claimed sovereignty over the whole of Greenland and had sued Norway for occupying and claiming parts of Eastern Greenland as *terra nullius*. One factor that led to the judgment was a remark by the Norwegian minister of foreign affairs that “the Norwegian Government would not make any difficulties in the settlement of this question” in reply to a question by a Danish diplomatic representative, as Denmark sought to extend its political and economic interests throughout Greenland.<sup>25</sup> In a dispute between Singapore and Malaysia regarding the sovereignty over the island of Pedra Branca (Malay name Pulau Batu Puteh) and other nearby islands in the Singapore Straits, the fact that the Acting State Secretary of Johor (now part of Malaysia) had previously written in reply that “the Johore Government does not claim ownership of Pedra Branca” was one of the reasons for the ICJ’s decision in favor of Singapore.<sup>26</sup> Clear statements of position made to another country can therefore come to have great significance. As I have repeatedly shown, however, Japan’s statement to Korea in 1696 merely said that because encounters between fishermen from the two countries around the island traditionally known as Takeshima (the name in Japan at the time for Ulleungdo) were becoming a problem, Japan would henceforth order its fishermen not to travel to the island. The statement makes no reference to the island known as Takeshima today. The statement of the Korean Court that they did not endorse or take responsibility for the conduct and statement of An Yong-bok (see Section 2.3 above) is surely more significant in this regard.

## Addendum

Recently Satoshi Ikeuchi, a Japanese scholar, has revealed the existence of an old document (*Murakawa ke bunsho* (Murakawa family document), stored at the Yonago City Library) that suggests that the shogunate’s ban on sea travel for fishermen in 1696 actually did apply to both traditional Takeshima and Matsushima (present-day Takeshima). (The paper in question is “Kokkyo miman” [Something Short of a National Border], *Nihonshi kenkyu* [Journal of Japanese history], no. 630 (February 2015), pp. 4–23, in particular pp. 16–18.) The ban on sea travel to Takeshima and Matsushima mentioned in this document did not constitute a statement to a foreign country and therefore does not materially affect my argument here. Nevertheless, this is an important document and I will make a few brief comments.

The document in question concerns a record whose title can be translated as “Petition to Edo during the fifth month of the first year of Enkyo [1744]: Kyuemon Oya, a merchant of Yonago, in

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<sup>24</sup> Letters 2 and 3 included in *Takeshima no kakitsuke* [Documents concerning Takeshima], now stored at the Tottori Prefectural Museum. Images of the correspondence are available in section (3), “Tottori hansei shiryō” [Documents on Tottori domain administration], of (*Dai ikki*) *Saishu hokokusho, shiryō hen*, published by the Takeshima Mondai Kenkyukai. See note 20.

<sup>25</sup> PCIJ Ser. A/B No. 53, Legal status of Eastern Greenland, Judgment of April 5th, 1933, in particular, pp. 39–40. [http://www.icj-cij.org/pcij/serie\\_AB/AB\\_53/01\\_Groenland\\_Oriental\\_Arret.pdf](http://www.icj-cij.org/pcij/serie_AB/AB_53/01_Groenland_Oriental_Arret.pdf)

<sup>26</sup> Case concerning sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore), Judgment of 23 May 2008, ICJ Reports 2008, pp.12-94, in particular, paras. 192-196, pp.65-66. <http://www.icj-cij.org/docket/files/130/14492.pdf>

the province of Hoki” (*Murakawa ke bunsho*, folios 43–55). In this document, the phrase “since the ban was passed on sailing to Takeshima and Matsushima” (or similar) occurs three times. The first deals with when Kyuemon Oya (the seventh Kyuemon, Katsufusa) petitioned the Jisha-bugyo (magistrate of temples and shrines) in the fourth month of the fifth year of Genbun (1740) (folio 44), the second when he submitted a petition to the Kanjo-bugyo (commissioner of finance) in the second month of the sixth year of Genbun (1741) (folio 50), the third involved his petition to the Nagasaki-bugyo magistrate in the sixth month of the first year of Kanpo (1741) (folio 54). In the second and third instances, the phrase in question was contained in the words of Kyuemon Oya (Katsufusa), and therefore it reflects the Oya family’s understanding of the situation. Ikeuchi’s paper argues that in the first instance, the phrase was included in the words of the Jisha-bugyo, Tadasuke Ooka, Lord of Echizen, (in the form of a question to Kyuemon Oya), and therefore it represents the opinion of the shogunate. But the original text can be read as follows. “Next, he asked: It is written in the petition that since the ban was passed on sailing to Takeshima and Matsushima, the castle lord of Yonago in Hakushu has taken pity on you, and you now rely on him for your living. Does this mean you receive a stipend?” In other words, the phrase “the ban was passed on sailing to Takeshima and Matsushima” could be a quotation from the petition submitted by Kyuemon Oya. If this is the case, then this too reflects the understanding not of the shogunate but of the Oya family. Folio 51 of the Murakawa family documents says: “In the eighth year of Genroku, a letter from the king of Korea saying that Takeshima [Ulleungdo] has been controlled by Japan since ancient times was received during the time of Joken-in, the late shogun Tsunayoshi.”<sup>27</sup> Another reference is found in *Takeshima tokai yuraiki nukigaki* (Extract from an account of a voyage to Takeshima), which is related to the Oya family documents, in the Okajima family papers in the archives of the Tottori Prefectural Museum, where it is written: “Having received this official communication from the governor of Hoki, we have regretfully accepted the ban on travel by sea to Takeshima. This case began some time ago after the Korean man who had been brought here from the island was sent back to his country, at which time communications were received from Korea eagerly insisting that Takeshima [Ulleungdo] was Korean land. But [after negotiations] an understanding was reached and an official communication was received from the king of Korea admitting that Takeshima [Ulleungdo] has been controlled by Japan since long ago. In this condition, the custody of the island was handed to Korea, and a ban on our traveling by sea to Takeshima was imposed.”<sup>28</sup> In other words, even if the Oya family recognized that the ban had been passed on sailing to Takeshima and Matsushima, this recognition was based on the understanding that the island traditionally known as Takeshima was under Japanese control.

B. Until Japan’s attempt at incorporating Dokdo in 1905 through Shimane Prefecture Public Notice No. 40, the Japanese government itself had consistently acknowledged that Dokdo was non-Japanese territory, as evidenced by the Dajokan Order of 1877 and other official Japanese government documents. (p. 8)

Until the Meiji period (1868–1912), the Japanese government had consistently acknowledged that Dokdo was non-Japanese territory ever since the Ulleungdo Dispute, through which it was confirmed that Dokdo was Korean territory.

<sup>27</sup> Almost the same is recorded in folio 65 of *Oya-shi kyuki* [Old records of the Oya clan], in the collection of the Historiographical Institute of the University of Tokyo. “Fourth month of the fifth year of Genbun / Petition to the shogunate and documents regarding travel to Takeshima / a merchant of Yonago, in the province of Hoki / Ichibei Murakawa / Masataro Oya,” *Oya-shi kyuki*, section 3, folios 55–71.

<sup>28</sup> Transcription of *Takeshima tokai yuraiki nukigaki* by Yoichi Oshima, p. 4. Section (4), “Okajima ke shiryo” [Okajima family documents], of (*Dai ikki*) *Saishu hokokusho, shiryo hen*, published by the Takeshima Mondai Kenkyukai. See note 20.

This is corroborated by the absence of Japanese government documents citing Dokdo as Japanese territory prior to Japan's attempt to incorporate Dokdo in 1905 through Shimane Prefecture Public Notice No. 40. Moreover, there are even official Japanese government publications that plainly state that Dokdo is not Japanese territory.

Most significant is an 1877 directive issued to the Ministry of Home Affairs by the Dajokan (Grand Council of State), Japan's highest decision-making body during the Meiji period. In it, the Dajokan determines that it was confirmed through the negotiations between the old government [Edo shogunate] and the Joseon [Korean] government that the Ulleungdo (Takeshima) and Dokdo (Matsushima) do not belong to Japan. Thus the Dajokan sent a directive to the Ministry of Home Affairs stating as follows: "Regarding Takeshima [Ulleungdo] and one other island [Dokdo] . . . bear in mind that our country [Japan] has nothing to do with them." The [Meiji] Ministry of Home Affairs had attached *Isotakeshima Ryakuzu* (Simplified Map of Isotakeshima—Ulleungdo was referred to as Isotakeshima by Japan) as a reference in its inquiry to the Dajokan. Ulleungdo and Dokdo are shown together on the map, elucidating the fact that the "one other island" aforementioned in "Takeshima [Ulleungdo] and one other island" is Dokdo.

### 3.2 The Dajokan Order of 1877

The Korean government is of the view that in 1877 the Dajokan (Great Council of State) of Japan admitted that "it was confirmed through the negotiations between the old government [Edo shogunate] and the Joseon [Korean] government that the Ulleungdo (Takeshima) and Dokdo (Matsushima) do not belong to Japan," and emphasizes that regarding "Takeshima [Ulleungdo] and one other island [Dokdo]" the Dajokan instructed the Home Ministry to "bear in mind that our country [Japan] has nothing to do with them." This supposed directive issued refers to the following incident. In October 1876, Shimane Prefecture submitted an inquiry to the Home Ministry about the compilation of a land registry with regard to the island of Takeshima and another island in the Sea of Japan. In March 1877, the Ministry sent a request to the Dajokan, saying: "A request (attached) was submitted by Shimane Prefecture regarding the jurisdiction of Takeshima [Ulleungdo]. Having investigated the matter, it appears that since Koreans entered the island in the fifth year of Genroku [1692], as described in the summary on the documents attached, it has been said that the island does not belong to our territory, as evidenced by the following sequence of events: 1. A decision was taken following deliberations of the former government in the first month of the ninth year of Genroku [1696], 2. A communication to that effect was delivered to an envoy, 3. A communication from the country in question [Korea] came, and 4. Written and verbal replies were given by this country . . . Nevertheless, since the treatment of territory is an important matter, I submit the relevant documents for your consideration and beg your opinion and confirmation on the matter." In the same month, the Dajokan (Udaijin (the Minister of the Right)) gave instructions to instruct Shimane Prefecture that "regarding the inquiry, you may understand that Takeshima and the other island have no connection to our country."<sup>29</sup>

The Takeshima that is the subject of the inquiry from Shimane Prefecture is the island known by that name in the Edo period (Ulleungdo), and it is clear from the explanations and pictorial map attached to the letter that the other island mentioned is Matsushima. Shimane Prefecture's intention to compile a land registry on Takeshima and another island as land belonging to the

<sup>29</sup> For documents related to the incident, see "Nihonkai nai takeshima hoka itto chiseki hensan kata ukagai" [Inquiry regarding the land registration of Takeshima and another island in the Sea of Japan], *Kobunroku* [Records of the Meiji government], part 1 of the Home Ministry section (March 1877). The document can be consulted in the digital archive of the National Archives of Japan.

prefecture is based on the understanding of the Oya family already mentioned in the addendum to Section 3.1 above, which was that Takeshima (the island traditionally known by that name) was “controlled by Japan.” The explanatory notes attached to the inquiry contain similarly phrased claims to this effect, saying that “following deliberations within the shogunate, it granted fishing rights to Korea since a letter was submitted agreeing that the island was under Japanese control.” However, the Home Ministry decided that as a result of the Genroku Takeshima Incident, Takeshima (i.e. the island traditionally known by that name) had no connection to Japan. As quoted above, the Ministry noted that since it had received an inquiry from Shimane Prefecture regarding “the jurisdiction of Takeshima”, it had investigated the background to the affair, and decided that since Koreans entered the island in the fifth year of Genroku, it had been understood that the island did not belong to Japan. But it does not touch anywhere on “the other island” (that is to say Matsushima). Matsushima is also not mentioned in the documents attached to the inquiry submitted by the Home Ministry to the Dajokan. I have already explained that the island of Takeshima (present-day Takeshima, the island called Dokdo in Korea) was never the subject of discussions between the two countries during the Genroku era.

That Korea nevertheless argues that it was confirmed through the ‘Ulleungdo Dispute’ that Ulleungdo and ‘Dokdo’ do not belong to Japan is presumably based on the shogunate’s decision to place a travel ban following the reply from Tottori domain to the effect that Takeshima and Matsushima did not belong to either Inaba or Hoki. It presumably also assumes that since Matsushima is shown on the pictorial map attached to the inquiry submitted by Shimane Prefecture, and since the documents along with the map sent by Shimane were also attached to the inquiry submitted by the Home Ministry to the Dajokan, the Dajokan’s directive that “Takeshima and the other island” had no connection to Japan naturally might refer to these two islands.

However, it is important to remember the circumstances in which the directive was issued. The Home Ministry asked the Dajokan for an executive decision to a query received from Shimane Prefecture. The directive therefore reflects an exchange of communications within government circles, including the government of Shimane Prefecture. With regard to the phrase “Takeshima and the other island” in the directive, it is possible, as I will explain below, that “the other island,” i.e. Matsushima, referred not to the island known by that name in the Edo period (present-day Takeshima) but to the island known as Matsushima in the Meiji era (present-day Ulleungdo). But even if we assume for now that the document was indeed referring to the island known as Takeshima today, this was not a declaration made to an external, international audience. Neither was it widely distributed within Japan. Accordingly, nothing said in this directive creates any difficulty in terms of the government’s deciding to adopt a different position at a later date. In this respect, it differs fundamentally from the statement given by the Norwegian foreign minister regarding Greenland and the reply given by the acting state secretary of Johor regarding the status of Pedra Branca (discussed in Section 3.1 above).

As it happens, on March 1, 1883, the Dajokan (Dajodaijin (the head of the Dajokan)) issued a directive to the Home Ministry (the Home Minister) as follows.<sup>30</sup> “Regarding the island located at 37 degrees 30 minutes north and 130 degrees 49 minutes east, with the Japanese name Matsushima (also known as Takeshima) , the Korean name Ulleungdo, a preexisting agreement exists between the former government of Japan and the government of Korea, and nationals of Japan are prohibited from traveling to and landing on the island without proper authorization. The Home Ministry should tell local magistrates and governments in all regions to take steps to

<sup>30</sup> “Chosenkoku shozoku utsuryoto e waga kokumin toko kinshi no ken” [Regarding a ban on our citizens traveling to Ulleungdo, belonging to Korea], *Kobunroku*, vol. 13 (1883), Ministry of Foreign Affairs section for March–April, 1883. This document can be viewed on the digital archive of the National Archives of Japan. (The quoted extract is from frame 21.)

ensure that this is widely known and understood. We hereby notify you of this matter through internal organization.”

This directive specifically refers to “an island called Matsushima or Takeshima in Japan and also called Ulleungdo in Korea”, and therefore makes clear that Matsushima is the Japanese name for Ulleungdo. At the time of this directive, therefore, it is clear which island is being discussed: an island, its location clearly specified in terms of latitude and longitude, known as Matsushima in Japan and Takeshima (the name traditionally known locally in Shimane) and as Ulleungdo in Korea. This was the island to which travel had been prohibited following diplomatic negotiations during the Edo period, and the directive now instructs the Home Minister to tell the prefectural governors to convey this to the people so that they do not sail to and land on the island without permission. After receiving the directive, the Home Ministry then passed on the contents of the directive to the prefectures. The directive of 1883 was intended to be conveyed to the entire country, and therefore carries a greater weight than the directive issued by the Dajokan (Minister of the Right) in 1877. Also, the directive of 1877 was issued in response to an individual inquiry, and was not a legal decree. But both directives were issued by the Dajokan to the Home Ministry; if there is any discrepancy in their content, therefore, the directive of 1883 overrides that of 1877 on the principle of “*lex posterior derogat priori*” (a later law “repeals” an earlier law).

It was under the influence of Western maps that Ulleungdo came to be known as Matsushima in Japan during the Meiji era. On Western maps, Ulleungdo was shown as “Dagelet Island/Matsushima”—with another, imaginary Ulleungdo often depicted to the west of Dagelet Island. This fictional island was called “Argonaut Island/Takashima”, while today’s Takeshima was marked as “Liancourt Rocks” or “Hornet Rocks”.<sup>31</sup> Western maps entered Japan in considerable numbers during the final years of the Edo period and around the time of the Meiji Restoration, and before long maps showing Ulleungdo as Matsushima were being produced in Japan. A classic example is Kaishu Katsu’s “*Dai nihon koku enkai ryakuzu* (Concise map showing the coastal areas of Great Japan)”, published in 1867. The map is now to be found in the Cabinet Library (*Naikaku bunko*) of the National Archives of Japan (request number 178-0064), where its catalogue records show that it was previously owned by the Topography Department of the Dajokan Seiin (the head office of the Grand Council of State), the Topography Department of the Geographical Bureau, and the Geographical Bureau of the Home Ministry. The map is stamped with the ownership seal of the Topography Department of the Dajokan Seiin, but with or without a seal, the map is a printed publication that is likely to have been widely referred to at the time. Western maps in the Cabinet Library of the National Archives of Japan that carry a seal identifying them as having come from the collections of the Dajokan include, [*Black’s*] *General Atlas of the World* (1870) (request number E006776), *Map 34 China*, 1871 ed. (E000722), *Map 34 China*, 1873 ed. (E000710), *Map 34A Japan* (it shows Argonaut Is. and Dagelet Is. in the 1870 and 1871 editions, and in the 1873 edition just the dotted outline of the island marked as Argonaut, Matsu Sima (Dagelet I.), and Hornet Is.), and *The Royal Atlas of Modern Geography* (1876), *Map 34 China and Japan* (Argonaut dotted, Dagelet or Matsushima).

As a rule, when confronted with an unfamiliar place name, the first resource to which people turn is maps. The people responsible in the Home Ministry and the Dajokan would naturally have carefully consulted “*Takeshima kiji*”, which is the records of the Tsushima domain relating to the Genroku Takeshima Incident, and “*Isotakeshima jiryaku* (*Isotakeshima oboegaki*)”,<sup>32</sup> which is essentially a summary of the content of *Takeshima kiji* and mentions also the reply from Tottori

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<sup>31</sup> Ulleungdo came to be marked on Western maps as Matsushima with Siebold’s maps of Japan. Kenzo Kawakami, *op. cit.* (see note 17).

<sup>32</sup> *Isotakeshima jiryaku* (*Isotakeshima oboegaki*) is also available in (*Dai ikki*) *Saishu hokokusho, shiryō hen*, published by the Takeshima Mondai Kenkyukai. See note 20.

domain to the effect that Takeshima and Matsushima do not belong to either Inaba or Hoki. But at the same time they surely also must have consulted Kaishu Katsu's map and Western maps. And on these, what was shown as Matsushima was Ulleungdo. With regard to the directive of 1877, although the reference to "Takeshima and the other island" in the inquiry from Shimane Prefecture indeed referred to the island known as "Takeshima" in the Edo period (Ulleungdo) and "Matsushima" (present-day Takeshima), it is highly likely that the central authorities understood "the other island" to be the island known as "Matsushima" in the Meiji era (despite their separate names, in fact, both Takeshima and Matsushima referred to the island known today as Ulleungdo).

#### 4. The Empire of Korea's Sovereignty over Dokdo and its Restoration (pp. 9–11)

A. Through Imperial Decree No. 41 in 1900, the Empire of Korea placed Dokdo under the jurisdiction of Uldo-gun (Uldo county), and Dokdo came to be administered by a county magistrate. (p.9)

On October 27, 1900, the Korean Empire issued Imperial Decree No. 41, proclaiming the renaming of Ulleungdo as Uldo and the promotion of the post of inspector to county magistrate. In the second article of the same decree, it is provided that "all of Ulleungdo as well as Jukdo and Seokdo [Dokdo] shall be placed under the jurisdiction of [Uldo-gun (Uldo county)]." On March 28, 1906, a Japanese survey team comprised of officials and civilians from the Shimane Prefecture visited County Magistrate Shim Heung-taek of Uldo-gun and notified that Dokdo had been incorporated into Japanese territory. Subsequently Shim Heung-taek submitted a report to the acting governor of Gangwon-do (Gangwon province) the very next day, on March 29, 1906. The phrase "Dokdo, which is under the jurisdiction of this county" in his report clearly demonstrates that Dokdo was indeed a part of Uldo-gun as per Imperial Decree No. 41 of 1900.

On April 29, 1906, Yi Myeong-rae, the county magistrate of Chuncheon-gun (Chuncheon County) and the acting governor of Gangwondo, reported the matter in the "Special Report" to the Uijeongbu (State Council of the Empire of Korea), Korea's highest decision-making body at the time. Thereupon, on May 10, 1906, the Uijeongbu issued Directive No. 3, repudiating the claim that Dokdo had become Japanese territory. This clearly demonstrates the fact that the county magistrate of Uldo-gun had continued to govern Dokdo and exercised Korea's territorial sovereignty over Dokdo pursuant to Imperial Decree No. 41 issued in 1900.

#### **4.1 Korean Imperial Decree No. 41 (1900)**

The Korean government argues that Imperial Decree No. 41, issued in 1900, states that "all of Ulleungdo as well as Jukdo and Seokdo [Dokdo]" shall be placed under the jurisdiction of Uldo-gun (Uldo county). However, the original text refers only to "Seokdo", and it is just the Korean government's insistence to connect this island to Dokdo (Takeshima). The pamphlet does not give any reason for assuming that Seokdo (which in Chinese characters means "stone island") is equivalent to the island known as "Dokdo" in Korea today, but the Korean government has claimed that "in the dialect of Gyeongsang Province, 'dok' means 'stone' or 'rock.' 'Dokto' therefore means 'stone or rock island,' and this is the same as the pronunciation of the current

name of Dokdo.”<sup>33</sup> The argument, in other words, runs like this: The indigenous Korean word for “stone, rock” is *“dol,”* which in some dialects is pronounced as *“dok.”* And Takeshima is a rocky island without trees, and the pronunciation coincides with the official Korean name of Dokdo, which in Chinese characters means “solitary island.” But this is merely an explanation of the way of reading [pronunciation] of the island’s name, and it does not explain why the island cited in the Imperial Decree is Seokdo. After all, the Korean government has elsewhere insisted that Takeshima was traditionally known in Korea as “Usan (Usando)”. In Section 2-B of the pamphlet, the Korean government cites the *Jeungbo Munheon Bigo*’ as one of its pieces of evidence for the contention that consistent records pertaining to Usando have existed throughout the years. This was published in 1908, eight years after Imperial Decree No. 41, and makes no mention of any “Seokdo”

Next, the Korean government maintains that when a survey team from Shimane Prefecture visited Ulleungdo with news that Takeshima had been incorporated into Japanese territory, Uldo-gun County Magistrate Shim Heung-taek wrote a report to the acting governor of Gangwon-do that included the line “Dokdo, which is under the jurisdiction of this county” which the Korean government today interprets as having clearly demonstrated that Dokdo was a part of Uldo-gun as recorded in Imperial Decree No. 41 of 1900. Also, it claims that when the Uijeongbu (the top decision-making body in Korea) received the report from Gangwon-do, it promptly issued Directive No. 3 denying Japan’s claim to Dokdo (the Shim Heung-taek report and Directive No. 3, on Q10 of the Q&A section of the pamphlet). This 1906 report by Shim Heung-taek is the first occurrence of the name Dokdo in a Korean document. But in order to argue that the line in the Shim Heung-taek report clearly demonstrates that “Dokdo” was a part of Uldo-gun “as recorded in Imperial Decree No. 41”, it is necessary to explain why the county magistrate did not write Seokdo, “as recorded in Imperial Decree No. 41”, and why the Uijeongbu also did not use the same name (Seokdo) in Directive No. 3. Without any logical explanation for this discrepancy, it is hard to avoid the doubt that the island of Seokdo mentioned in the Imperial Decree of 1900 was not present-day Takeshima and that the Shim Heung-taek report of 1906 was not based on the 1900 decree. Rather, the name “Dokdo” arose spontaneously as a local name for the island when residents from Ulleungdo joined Japanese expeditions to hunt sea lions on Takeshima shortly before or after its incorporation into Japanese territory in 1905. This would mean that the Uijeongbu’s directive also had nothing to do with Imperial Decree No. 41, and the Uijeongbu merely used the same wording used in the report from Gangwon-do.

Even if the reference to Seokdo in the Imperial Decree No. 41 of 1900 was a reference to Takeshima (Dokdo), the mere fact that the Korean government issued a decree which placed the island within the jurisdiction of Uldo-gun is not sufficient to make it Korean territory. (Takeshima has never been historically Korean territory, either.) The Korean government argues that “this clearly demonstrates the fact that the county magistrate of Uldo-gun had continued to govern Dokdo and exercised Korea’s territorial sovereignty over Dokdo pursuant to Imperial Decree No. 41 issued in 1900.” Let us assume for now that the Imperial Decree did indeed define the island as lying within the jurisdiction of Uldo-gun, that the county magistrate said it belonged to his county, and that the Uijeongbu agreed with this. These facts would perhaps be sufficient to demonstrate the intention of the Korean Empire to acquire and retain sovereignty over the island. But in order for the exercise of sovereignty to be used as a claim for territorial rights, effective occupation is necessary—what the decision of the arbitral court in the Island of Palmas case refers to as a

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<sup>33</sup> See the Korean government’s response of September 9, 1953, to the Japanese government’s view on Dokdo (Takeshima) dated on July 13, 1953. See note 1. The Jukdo mentioned in Imperial Decree No. 40 (1900) is believed to be a separate small island located 2 km east of Ulleungdo (the island was marked as Chikusho in the marine charts produced by the Hydrographic Department of the Imperial Japanese Navy).

“peaceful and continuous display of state authority.”<sup>34</sup> Korea has not demonstrated that it ever exercised such sovereignty at this time (For a discussion on Japan’s claims on this point, see Section 4.2 below).

B. Japan’s attempt at incorporating Dokdo in 1905 through Shimane Prefecture Public Notice No. 40 was executed in the process of and as part of its occupation of Korea. This was an illegal act, infringing on Korea’s sovereignty over the island, thus null and void under international law. (p. 10)

Japan attempted to incorporate Dokdo into its own territory in 1905 through Shimane Prefecture Public Notice No. 40.

At the time, Japan was at war with Russia over its interests in Manchuria and the Korean peninsula. Japan had forced the Korean Empire to sign the Korea-Japan Protocol in February 1904 to secure unlimited access to Korean territory in the course of the Russo-Japanese War. Japan’s attempt at turning Dokdo into Japanese territory was also aimed at meeting its military needs in the face of possible maritime clashes with Russia.

Japan had also coerced the Korean government to appoint Japanese and other non-Korean nationals as advisors through the First Korea-Japan Agreement in August 1904. In effect, Japan had been systematically implementing its plan to take over Korea even before the forced annexation in 1910.

Dokdo was the first Korean territory to fall victim to the Japanese aggression against Korea. Japan’s attempt at incorporating Dokdo in 1905 through Shimane Prefecture Public Notice No. 40 was not only an illegal act that infringed upon Korea’s long-standing and undeniable sovereignty over the island, but also null and void under international law.

## 4.2 Incorporation into Japanese territory (1905)

The Korean government maintains that Japan’s incorporation of Takeshima into its territory in 1905 was an illegal infringement of Korea’s sovereignty and therefore null and void. It argues that Japan attempted to incorporate Takeshima based on an assessment that the island might have military value in the event of confrontation in the Sea of Japan during its war with Russia, that Japan had been implementing its plan to take over Korea in stages from before the annexation of Korea in 1910, and that Takeshima was the first part of Korean territory to fall victim to Japan’s aggression against Korea. But these claims (as I explained in Section 1.2 above) are all based on the assumption that Takeshima was a Korean territory in the first place. But historically Takeshima never belonged to Korea (Sections 2.1–2.3), and did not become Korean territory as a result of the Imperial Decree of 1900 (Section 4.1). As a result, this line of arguments is based on a false premise and therefore it is not possible. The argument (in more explicit terms on Q9 of the Q&A section of the pamphlet) that Japan attempted to incorporate the island into its territory by military aims during its war with Russia depends on an account by Yozaburo Nakai in later years. Nakai was a resident of Oki who traveled to Tokyo in 1904 and submitted a request to the government that the island be incorporated into Japanese territory and be leased to him in order to facilitate the hunting of sea lions on the island. The document which records Nakai’s account has a number of lines that call into question the document’s credibility as a reliable record of historical facts, for example, Nakai came to Tokyo with the aim of submitting his petition to

<sup>34</sup> Island of Palmas case (Netherlands, USA), 4 April 1928, *Reports of International Arbitral Awards*, Vol. 2, p. 867. Effective occupation is also described as “continuous and peaceful display of territorial sovereignty” (ibid., p. 839). See note 13.

the Residency-General of Korea (Tokanfu), but the Tokanfu did not exist in 1904.<sup>35</sup> In any case, since Takeshima was not a Korean territory, there is little to be gained by arguments linking the island's incorporation into Japanese territory with the international political situation at the time.

Even if we assumed that the Seokdo mentioned in the Korean Imperial Decree of 1900 was Takeshima, the lack of effective occupation means Korea lacks any claim to territorial sovereignty. Japan, on the other hand, having decided to incorporate the island into its territory at a cabinet meeting in January 1905, gave notice of this intention to Shimane Prefecture and had Shimane Prefecture issue a public notice in February that year, and from then on had exercised effective administrative authority and control over Takeshima.

For example, as a result of Shimane Prefectural Order No. 18 of April 14, 1905, revisions were made to the "Fishing Industry Control Regulations" enacted in 1902 (Shimane Prefectural Order No. 130), and sea lion hunting on Takeshima was added to the list of fishery activities that required the permission of the prefectural governor.<sup>36</sup> Permission to hunt sea lions on Takeshima was granted on June 5, 1905 to Yozaburo Nakai and three others. Following this, the Fishing Industry Control Regulations were amended by Shimane Prefectural Order No. 48 in June 1908, which prohibited any industrial fishing activities except sea lion hunting within 20 *cho* (about 2.2 km) of Takeshima. In April 1921, Shimane Prefectural Order No. 21 revised the Shimane Prefecture Fishing Industry Control Regulations (defined by Shimane Prefectural Order No. 54 in 1911), so that those with a license to hunt sea lions were (officially) allowed to collect *nori* and *wakame* seaweed from the vicinity of Takeshima.<sup>37</sup> After World War II, fishing for seaweed around Takeshima was licensed by the governor of Shimane Prefecture to the Oki Islands Federation of Industrial Fishing Cooperative Associations on June 18, 1953, as a fishing right under the regulations of Article 10 of the Fisheries Act (Law No. 267 of 1949),<sup>38</sup> and this has been renewed every ten years and continues to the present.

From 1906, the people who received the grant of licenses to hunt sea lions were required to pay a "lease" (usage fee) for their use of government-owned property. The amount of this lease was 4 yen 20 sen (100 sen = 1 yen) a year. From 1916, this increased to 4 yen 70 sen a year. On August 17, 1940, Takeshima was requisitioned for the naval use, but the sea lion hunt was allowed to continue and from October 1, 1941 to March 31, 1945, the annual fee for the use of naval property was set at 4 yen and 70 sen a year.<sup>39</sup>

In addition to the licenses for fishing, Takeshima was also mentioned in other official documents. For example, in May 1905, it was added to the "ledger of state-owned land in the Counties of Suki, Ochi, Ama and Chibu, Oki Province": "1. Takeshima, location: . . . north latitude, area: 23 *cho* 3 *tan* 3 *sebu* [approx. 0.231 km<sup>2</sup>], listed following the recommendation by the governor of the Oki Islands on May 17, 1905, notice: . . ."<sup>40</sup> After this, on August 17, 1940, Takeshima was requisitioned for naval use, as noted above. After the war, on November 1,

<sup>35</sup> Takashi Tsukamoto, "Okuhara hekiun takeshima kankei shiryō (okuhara hideo shozō) o megutte" [On the Hekiun Okuhara materials relating to Takeshima (in the collection of Hideo Okuhara)], in (*Dai ikki*) *Saishū hokokusho*, published by the Takeshima Mondai Kenkyukai. See note 20.

<sup>36</sup> *Shimane ken shozō gyosei bunsho 1* [Governmental administrative documents in the Shimane prefectural archives 1] (Shimane Prefecture, Department of General Affairs, 2011), ("Takeshima kankei shiryō shū dai ni shū" [Collection of materials related to Takeshima, vol. 2]), pp. 157–159.

<sup>37</sup> Seizaburo Tamura, *Shimane ken takeshima no shin kenkyū* [New study on Takeshima in Shimane Prefecture], rev. ed. (Shimane Prefecture, Department of General Affairs, repr. 2010), pp. 71–73, appendix (revised pages), pp. 6–7.

<sup>38</sup> Tamura, *ibid.*, pp. 73–80.

<sup>39</sup> Tamura, *ibid.*, pp. 53–56, 64.

<sup>40</sup> *Shimane ken shozō gyosei bunsho 1*, *op. cit.* (note 36) p. 160. The ledger itself is kept in Shimane Prefecture.

1945, it was taken over by the Ministry of Finance as national property.<sup>41</sup> On August 19, 1905 an inspection of Takeshima was carried out by the governor of Shimane Prefecture, Bukichi Matsunaga, while on March 27, 1906, a survey team visited the island. The team included Oki Islands Magistrate Bunsuke Higashi as well as specialists in fisheries, agriculture, hygiene, and chartered surveying, and was headed by Yoshitaro Jinzai, director of the third department, Shimane Prefecture.<sup>42</sup>

By means of such continuous and peaceful exercise of administrative authority, Japan made it certain that it has territorial sovereignty over Takeshima.

C. Dokdo was restored as Korean territory after World War II, and the Government of the Republic of Korea exercises legislative, administrative and judicial jurisdiction over Dokdo. (p. 11)

The Cairo Declaration of 1943, on Japan's unconditional surrender and Korea's independence, states that "Japan will also be expelled from all other territories which she has taken by violence and greed." The Potsdam Declaration of July 1945 confirms that "the terms of the Cairo Declaration shall be carried out."

Furthermore, the General Headquarters of the Supreme Commander for the Allied Powers excluded Dokdo from those territories controlled and administered by Japan through its instruction in SCAPIN (Supreme Commander for the Allied Powers Index Number) 677 in January 1946 and in SCAPIN 1033 in June 1946.

Accordingly, Dokdo was restored as an integral part of the territory of the independent Republic of Korea after World War II, as was reaffirmed by the Treaty of Peace with Japan of 1951.

The Government of the Republic of Korea exercises Korea's irrefutable territorial sovereignty over Dokdo. The Government will deal firmly and resolutely against any provocation with respect to Korea's sovereignty and will continue to defend Korea's sovereignty over Dokdo.

### **4.3 World War II and the legal status of Takeshima**

The Korean government argues that Dokdo (i.e. Takeshima) reverted to being Korean territory after World War II, and cites as evidence the Cairo and Potsdam Declarations, SCAPIN 677 and SCAPIN 1033, and the San Francisco Peace Treaty. However, all of these documents in fact demonstrate rather that the legal status of Takeshima as Japanese territory was not affected by WWII.

The Cairo Declaration (released by the United States, United Kingdom, and China on December 1, 1943) mentions various territories in connection with Japan's eventual defeat: "Japan shall be stripped of all the islands in the Pacific which she has seized or occupied since the beginning of the first World War in 1914," . . . "all the territories Japan has stolen from the Chinese, such as Manchuria, Formosa, and the Pescadores, shall be restored to the Republic of China," . . . "Japan will also be expelled from all other territories which she has taken by violence and greed," . . . "in due course Korea shall become free and independent." But Takeshima does not fit into any of these categories. Since it was never taken from that country, and therefore does not fall within the territorial sphere of an independent Korea. Korean territory in the first place, it was never The Potsdam Declaration (made by the United States, United Kingdom, and China on July 26, 1945, later endorsed by the Soviet Union) says in its eighth article that: "The terms of the Cairo Declaration shall be carried out and Japanese sovereignty shall be limited to the islands of

<sup>41</sup> Tamura, op. cit. (note 37) pp. 65–66.

<sup>42</sup> Tamura, ibid., pp. 58–62.

Honshu, Hokkaido, Kyushu, Shikoku and such minor islands as we determine.” The important thing here is that the small islands that will remain Japanese territory after the war are defined as those “as we [i.e. the United States, Great Britain, and China] determine.” Depending on the decision of “the United States, Great Britain, and China”, therefore, the possibility existed that any territory other than those specifically mentioned in the Cairo Declaration, including territories that had not been “seized, stolen, or taken by violence or greed”, might be detached from Japan. In these circumstances, the two directives were issued: SCAPIN-677 (Supreme Commander for the Allied Powers Instruction Note no. 677) “Governmental and Administrative Separation of Certain Outlying Areas from Japan”, January 29, 1946, and SCAPIN-1033 “Area Authorized for Japanese Fishing and Whaling”, June 22, 1946. SCAPIN-677 ordered the Japanese government to cease exercising political and administrative authority over the following places (in addition to numerous other territories outside the Japanese home islands): “Utsuryo (Ullung) Island, Liancourt Rocks (Take Island) and Quelpart (Saishu or Cheju) Island.” However, Paragraph 6 of this same directive made clear that: “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.”<sup>43</sup> SCAPIN-1033 directed that “Japanese vessels or personnel thereof will not approach closer than twelve (12) miles to Takeshima . . . nor have any contact with said island.” But this directive too made clear in Paragraph 5 that: “The present authorization is not an expression of allied policy relative to ultimate determination of national jurisdiction, taken from that country, and therefore does not fall within the territorial sphere of an independent Korea. international boundaries or fishing rights in the area concerned or in any other area.”<sup>44</sup>

The decision regarding which territories would remain under Japanese jurisdiction and which would be separated from Japan was made under the Treaty of Peace with Japan (San Francisco Peace Treaty), which was signed on September 8, 1951 and came into force on April 28, 1952.

The provisions dealing with the renouncement of Korea come under Article 2 (a): “Japan, recognizing the independence of Korea, renounces all right, title, and claim to Korea, including the islands of Quelpart, Port Hamilton and Dagelet.” On July 19, 1951, around two months before the signing of the treaty, the Korean ambassador to the United States, Yu Chan Yang, visited John Foster Dulles, advisor to the Secretary of State working on the draft treaty, and submitted a note to the Secretary of State raising certain points (in fact, suggesting changes) regarding the Peace Treaty with Japan. In Paragraph 1 of the note, the Korean government requested that Takeshima be added to the list of islands over which Japan was to renounce sovereignty.<sup>45</sup> Specifically, the ambassador requested: “My Government requests that the word ‘renounces’ in Article 2 (a), should be replaced by ‘confirms that it renounced on August 9, 1945, all right, title and claim to Korea and the islands which were part of Korea prior to its annexation by Japan, including the island Quelpart, Port Hamilton, Dagelet, Dokdo and Parangdo.’” The United States government reply to the Korean request for amendment was made in writing to the Korean ambassador on August 10, 1951. In the letter, Dean Rusk, Assistant Secretary of State for Far Eastern Affairs, refused the Korean request on behalf of the Secretary of State in the following terms.<sup>46</sup> “...the United States Government regrets that it is unable to concur in this proposed

<sup>43</sup> Eiji Takemae, ed., *GHQ shirei soshusei* [Comprehensive collection of GHQ directives], vol. 3 (Tokyo: MT Shuppan, 1993), pp. 1041–1042.

<sup>44</sup> *Ibid.*, vol. 5, pp. 2013–2014.

<sup>45</sup> “The Korean Ambassador to the Secretary of State,” *Foreign Relations of the United States 1951*, Vol. 6, Pt. 1, p. 1206 / NARA (The U.S. National Archives and Records Administration): RG59, Lot54 D423 Japanese Peace Treaty Files of John Foster Dulles, Box 8, Korea / Microfilm: Gregory Murphy, ed., *Confidential U.S. State Department Special Files JAPAN 1947–1956, LOT FILES*, Bethesda: University Publications of America, [ca. 1990], Reel 9, Frame 0577-.

<sup>46</sup> NARA: RG59, Lot54 D423, Box 8, Korea / Microfilm (*ibid.*) / *FRUS 1951*, Vol. 6 Pt. 1, p. 1203, note 3.

amendment. The United States Government does not feel that the Treaty should adopt the theory that Japan's acceptance of the Potsdam Declaration on August 9, 1945 constituted a formal or final renunciation of sovereignty by Japan over the areas dealt with in the Declaration. As regards the island of Dokdo, otherwise known as Takeshima or Liancourt Rocks, this normally uninhabited rock formation was according to our information never treated as part of Korea and, since about 1905, has been under the jurisdiction of the Oki Islands Branch Office of Shimane Prefecture of Japan. The island does not appear ever before to have been claimed by Korea."

These facts make clear that no alteration in the status of Japan's territorial rights over Takeshima occurred as a result of World War II.

## Conclusion

As I have discussed in the various sections of this paper, even an overview survey of the claims of the Korean government in its pamphlet brings numerous questions to the fore. Many of the Korean contentions contradict the facts or fail to demonstrate evidence sufficient to stand as proof of territorial sovereignty under international law. On the other hand, it is possible that similar doubts would emerge regarding the claims of the Japanese government if these were subjected to the same kind of point-by-point analysis. Indeed, numerous books and magazine articles critical of the Japanese government's claims have already been published and a lively and diverse debate continues to today (particularly in Japan rather than Korea). In an interview with a journalist from the *San-in Chuo Shimpo* newspaper, former Malaysian foreign minister Syed Hamid Albar, who was a key figure on the Malaysian side during the dispute before the ICJ between Malaysia and Singapore regarding Pedra Branca/Pulau Batu Puteh (decided against Malaysia, judgment May 23, 2008), said: "We did come in for some criticism regarding the result, but I think the decision was a mature one in the context of aiming for a peaceful solution. It's not all about winning and losing."<sup>47</sup> In the course of a long history, it is not unusual for disputes to arise between neighboring countries. Mature societies are able to resolve these disputes not by force but by law. If Japan and the Republic of Korea are prepared to recognize the weaknesses in their own claims and to address them, and in the course of doing this help to bring new depth to the legal discussions of these matters, they will be able to contribute to realize a mature international community in which disputes are resolved by judicial means.

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<sup>47</sup> Ryukyu Shimpo and San-in Chuo Shimpo, *Meguri no umi: Takeshima to senkaku kokkyo chiiki kara no toi* [People around the ocean rim: Takeshima and Senkaku, questions from the border regions] (Tokyo: Iwanami Shoten, 2015), p. 133.