

International Symposium in Korea on the Takeshima Dispute

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1. Introduction

On November 25, 2011, Seoul National University hosted an international symposium commemorating the sixtieth anniversary of the Syngman Rhee (Yi Seung-man) Line at the university's School of Law. Chaired by Professor Lee Keun-gwan of SNU, the symposium featured lectures by Professor Stuart Kaye of the University of Western Australia, Shin Chang-hoon, a research fellow at the Asan Institute for Policy Studies, and myself. Professor Kaye spoke on the significance of the Rhee Line in the evolution of the law of the sea, and Dr. Shin discussed the legacy of the Rhee Line, while I presented an overview of the positive and negative aspects of the 1952 line.

Following the presentations, additional comments on the Rhee Line were made by the three presenters, along with Associate Professor Huh Sook-yeon of Rikkyo University. The session was chaired by SNU's Lee Keun-gwan. This was followed by questions from panelists as well as from the floor.

SNU's aim in organizing the symposium was to promote a positive reevaluation of the Rhee Line as a precursor to the concept of the exclusive economic zone, embraced by the UN Convention on the Law of the Sea—considered the “maritime constitution.”

But as I pointed out in my presentation, this line is fundamentally at odds

with the Truman Proclamation of September 28, 1945, which outlined US policy concerning natural resources of the seabed and fisheries. Along with this famous proclamation with respect to the continental shelf, President Harry Truman also issued Proclamation 2668 concerning coastal fisheries in certain areas of the high seas, the aim of which was to establish “conservation zones” in those areas of the high seas contiguous to the coasts of the United States to develop and maintain fishing activities on a sustainable scale.

The proclamation also noted that (1) in areas in which only US nationals undertake fishing activities, “the United States regards it as proper to establish explicitly bounded conservation zones in which fishing activities shall be subject to the regulation and control of the United States” and (2) Where such activities are conducted jointly with nationals of other countries, “explicitly bounded conservation zones may be established under agreements between the United States and such other States; and all fishing activities in such zones shall be subject to regulation and control as provided in such agreements.” It is self-evident that states may exercise jurisdiction over the activities of its citizens, even when such activities take place in international waters, and so a proclamation is hardly needed for the United States to exercise “regulation and control” over fishing activities involving only US nationals. Proclamation 2668 contends that where nationals of other states are involved, regulation and control may still be exercised in accordance with agreements with those other states. This US assertion is in line with international law,¹ but the claims made by the Rhee Line, which I cite below, unilaterally seek to establish sovereignty over international waters and were thus aimed at banning the fishing activities of other nationals—namely Japanese—through the extension of territorial waters.

Indeed, Jean Pierre Adrien François, who was appointed special rapporteur by the International Law Commission for its 1958 codification of the Convention on the High Seas, had earlier noted that while the Truman

¹ Oda Shigeru, *Kaiyo no kokusaiho kozo* (Structure of the International Law of the Sea) (Tokyo: Yushindo, 1956), pp. 65–66; originally published in 1953 as *Ri Shoban Rain no Ihosei* (The Illegality of the Rhee Syngman Line).

Proclamation alludes to negotiations on agreements with other countries, this does not change the fact that Washington is making claims to waters where US nationals enjoy special rights; he thus took a negative position on prohibiting fishing activities by other nationals in jurisdictional waters.² Humphrey Waldock also warned against unilateral claims, noting that the proclamation is clearly a retrogression in the evolution from the *Mare Clausum* of John Selden to the *Mare Liberum* of Hugo Grotius and maintaining that the agreed-upon nature of seafaring rights must not be weakened.³ Wilbert McLeod Chapman, then special assistant to the under secretary of state for fish and wildlife, countered these arguments by saying that “the purpose of the proclamation was to provide for new means, under law, to protect fishery resources lying in international waters from overexploitation. One nation by itself cannot change international law,” he maintained, so the “proclamation by the United States does not bind other nations to accept the new principle into the body of international law.”⁴

2. Problems with the Syngman Rhee Line

Article 21 of the 1951 San Francisco Peace Treaty states, “Notwithstanding the provisions of Article 25 [defining the Allied Powers] of the present Treaty, . . . Korea [shall be entitled] to the benefits of Articles 2, 4, 9 and 12 of the present Treaty.” Article 9 includes a fishing clause, saying, “Japan will enter promptly into negotiations with the Allied Powers so desiring for the conclusion of bilateral and multilateral agreements providing for the regulation or limitation of fishing and the conservation and development of fisheries on the high seas.”⁵

² *Yearbook of the International Law Commission*, 1951, vol. I, p. 303, para. 2 and p. 315, para. 43.

³ Humphrey Waldock, “The Anglo-Norwegian Fisheries Case,” *British Yearbook of International Law*, vol. 28 (1951), pp. 114–71.

⁴ W. M. Chapman, United States Policy on High Seas Fisheries, *Department of State Bulletin*, vol. 20, no. 493 (January 16, 1949), pp. 67–71; Oda, *Kaiyo no kokusaiho kozo*, p. 66.

⁵ Kawakami Kenzo, *Sengo no kokusaigyogyo seido* (Postwar International Fishery System) (Tokyo: Japan Fisheries Association, 1972), p. 237. Incidentally, the International Convention for the High Seas Fisheries of the Northern Pacific Ocean, which entered into

Japan and South Korea launched negotiations to establish formal diplomatic ties on February 15, 1952, through the mediation of the General Headquarters of the Supreme Commander for the Allied Powers. On January 18, though, a month prior to the start of negotiations, Seoul unilaterally declared the Rhee Line that claimed sovereignty over a vast ocean area reaching up to 190 nautical miles from its coast.⁶ The second clause in the declaration states, “The Government of the Republic of Korea holds and exercises the national sovereignty over the seas adjacent to the coasts of the peninsular and islands of the national territory, no matter what their depths may be, throughout the extension.”⁷ The aims of this declaration, Korean President Syngman Rhee commented, were (1) to protect valuable fishery resources in South Korea’s coastal waters; (2) to prevent future disputes with Japan regarding fishery resources; and (3) to erect a maritime defense against the penetration of communism.⁸

In the years following World War II, many Japanese fishing operators who had returned from the Korean Peninsula, China, and Taiwan settled in Kyushu, trolling and trawling the waters in the East China Sea and Yellow Sea west of 130 degrees east longitude and hauling catches far exceeding prewar levels. The Korean government sought to unilaterally prohibit Japanese fishing activity near the Korean Peninsula, pointing to the differential in the two countries’ fishing capacity. Japan, naturally, vehemently protested based on the principle of the freedom of the high seas.⁹ But on December 12, 1953, Seoul enacted a

force in 1953, is the first international fishing agreement based on Article 9 of the San Francisco Peace Treaty. See Fujiwara Koki, “Kakkoku to no gyogyo kyotei no gaiyo” (Summary of Fishing Agreements with Various Countries), *Toki no horei* 522, p. 38.

⁶ See Fujii Kenji’s “Heiwasen’ no riron no kento” (Examination of the Logic of the “Peace Line”), *Chosenshi kenkyu kaiho* 150 (2003), pp. 4–6 for reasons behind the hasty establishment of the Rhee Line by the Korean Ministry of Foreign Affairs.

⁷ For details about the Rhee Line, refer to Hirobe Kazuya and Tanaka Tadashi, “Shiryō: Nik-Kan kaidan juyonen no kiseki” (Materials on the 14-Year Japan-Korea Talks), *Horitsu jiho*, vol. 37, no. 10, p. 45.

⁸ For a detailed analysis of the Syngman Rhee Line, see *Ri Shoban Rain to Chosen boei suiiki* (The Syngman Rhee Line and the Korean Maritime Defense Zone), published by the Legislative Bureau of Japan’s House of Councillors.

⁹ Yamanouchi Yasuhide, *Kosho no honshitsu: Kaiyo rejimu no tenkan to Nihon gaiko* (The

fishery resources protection law, seizing Japanese fishing boats that violated this law by crossing over the Rhee Line. The central issue in bilateral fishery talks that dragged on for 14 years was this line, which resulted in 326 Japanese fishing boats being seized (of 185 were either sunk or never returned) and 3,904 crew members detained (of whom 8 died in detention).

In response to the placement of Takeshima inside the Rhee Line, the Japanese government issued a note verbal on January 28, 1952, asserting that the contents of the Proclamation “are entirely incompatible with the long internationally established principles of the high seas.” In the proclamation, “the Republic of Korea appears to assume territorial rights over the islets in the Japan Sea known as Takeshima (otherwise known as Liancourt Rocks). The Japanese Government does not recognize any such assumption or claim by the Republic of Korea concerning these islets which are without question Japanese territory.”¹⁰

South Korea countered that SCAPIN (Supreme Commander for the Allied Powers Instruction Note) 677, issued on January 29, 1946, explicitly excluded Takeshima from Japanese territory and that the islands were placed outside of the MacArthur Line delineating the area authorized for Japanese fishing. These facts, South Korea said, concur with and confirm its claims to the islands, and thus the Japanese government should be reminded there is no room for debate.¹¹ Indeed, SCAPIN 677, a Memorandum for the Imperial Japanese Government on the subject of “Governmental and Administrative Separation of Certain Outlying Areas from Japan,” notes that along with “Utsuryo (Ullung) Island” and “Quelpart (Saishu or Cheju) Island,” the “Liancourt Rocks (Take Island)” are excluded from the governmental and administrative jurisdiction of the Imperial Japanese Government. SCAPIN 1033 of June 22, 1946, on “Area Authorized for Japanese Fishing and Whaling,” moreover, states, “Japanese vessels or personnel thereof will not approach closer than twelve (12) miles to

Essence of the Negotiations: Transformation of the Maritime Regime and Japanese Diplomacy) (Tokyo: University of Tokyo Press, 1995), p. 46.

¹⁰ Kokusaiho Jirei Kenkyukai (Yokokawa Arata), *Ryodo* (Tokyo: Keio Tsushin, 1990), p. 173.

¹¹ *Ibid.*, p. 174.

Takeshima (37°15' North Latitude, 131°53' East Longitude) nor have any contact with said island," placing Takeshima outside the MacArthur Line.¹² For these reasons, South Korea insisted that the MacArthur Line be maintained and requested that a clause restricting Japanese fishing activities in waters near the Korean Peninsula be included in the San Francisco Peace Treaty. Both of these requests were rejected by Washington.¹³

According to meticulous research of resources at the US National Archives and Records Administration conducted by Tsukamoto Takashi, the State Department drafts of March 19 and August 5, 1947; January 2, 1948; and October 13 and November 2, 1949, indicate that Takeshima was among the islands to be renounced by Japan. But William J. Sebald, Tokyo-based political adviser to General Douglas MacArthur, telegraphed Assistant Secretary of State for Far Eastern Affairs W. Walton Butterworth on November 14, 1949, to recommend the reconsideration of the Allied decision on the Liancourt Rocks (Takeshima): "Japan's claim to these islands is old and appears valid. Security considerations might conceivably envisage weather and radar stations thereon." In its draft of December 29, 1949, the State Department revised the relevant provisions of the San Francisco Peace Treaty to include Takeshima among the islands to be retained by Japan. A July 1950 commentary to Article 3 (on areas to be retained by Japan) of the draft treaty points out, "The two uninhabited islets of Takeshima, almost equidistant from Japan and Korea in the Japan Sea, were formally claimed by Japan in 1905, apparently without protest by Korea, and placed under the jurisdiction of the Oki Islands Branch Office of Shimane Prefecture. They are breeding ground for sea lions, and records show that for a long time Japanese fishermen migrated there during certain seasons. Unlike Dagelet [Utsuryo] Island, Takeshima has never been claimed by Korea."

The draft was later shortened by John Foster Dulles—appointed adviser to

¹² SCAPIN 2046 of September 19, 1949, revised the distance to three miles. For details, see *Ibid.*, p. 172.

¹³ Fujii Kenji, "Kankoku no kaiyo ninshiki: Ri Shoban Rain o chushin ni" (Maritime Perceptions of South Korea: Centered on the Syngman Rhee Line Problem), *Kankoku Kenkyu Sentā nenpo* 11 (2011), p. 55

the secretary of state—and reference to the islands to be retained by Japan was deleted, but there was no change in the intention for Takeshima to be left as part of Japanese territory. This is clear from the Answers to Questions Submitted by the Australian Government Arising Out of the Statement of Principles Regarding Japanese Treaty Prepared by the United States Government: “It is thought that the island of the Inland Sea, Oki Retto, Sado, Okujiri, Rebun, Rishiri, Tsushima, Takeshima, the Goto Archipelago, the northernmost Ryukyus, and the Izus, all long recognized as Japanese, would be retained by Japan.”¹⁴

The Korean government, in a letter from Ambassador Yang You-chan to US Secretary of State Dean Acheson, “requests that the word ‘renounces’ in Paragraph a, Article Number 2, 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 islands [of] Quelpart, Port Hamilton, Dagelet, Dokdo and Prangdo.’” In a reply dated August 10, 1951, to the Korean embassy, however, Assistant Secretary of State for Far Eastern Affairs Dean Rusk states, “the United States Government regrets that it is unable to concur in this proposed amendment. . . . 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.”¹⁵

It goes without saying that Takeshima, which was part of Japan prior to the annexation of the Korean Peninsula, is not among the territories that Japan “has taken by violence and greed” referred to in the 1943 Cairo Declaration. And as seen above, the islands renounced by Japan in Article 2 (a) of the San Francisco Peace Treaty (“Japan, recognizing the independence of Korea, renounces all right, title and claim to Korea, including the islands of Quelpart, Port Hamilton and Dagelet”) does not include Takeshima. Again, in response to Korean

¹⁴ Tsukamoto Takashi, “Heiwa joyaku to Takeshima” (The Peace Treaty and Takeshima), *Refarensu* 518 (1994), pp. 39–45.

¹⁵ *Ibid.*, pp. 48–50.

requests for revisions to the peace treaty, Japan argued that SCAPIN 677 of January 29, 1946, only ordered a halt in Japanese governmental and administrative jurisdiction or attempts to exercise jurisdiction over Takeshima and was not a statement of ownership and that, similarly, the MacArthur Line was not a final statement of Allied policy regarding national jurisdiction, international boundaries, or fishing rights.¹⁶ Indeed, Paragraph 6 of SCAPIN 677 explicitly states, “Nothing in this directive shall be construed as an indication of Allied policy relating to the ultimate determination of the minor islands referred to in Article 8 of the Potsdam Declaration,” and Paragraph 5 of SCAPIN 1033, which established the MacArthur Line, notes, “The present authorization is not an expression of allied policy relative to ultimate determination of national jurisdiction, international boundaries or fishing rights in the area concerned or in any other area.”¹⁷ Japan’s arguments were based on the fact that the Allied powers had not acquiesced to Korean demands.

The point I emphasized at the international symposium in Seoul was that the United States itself was strongly opposed to the Rhee Line.

3. US Assessment of the Rhee Line

It is an undeniable fact that many countries, South Korea included, sought to extend the reach of their fishery jurisdiction beyond territorial waters following World War II. Usually, they aimed to do this without actually expanding their territory. South Korea, though, drew an arbitrarily line and unilaterally declared “sovereignty” over the waters within that line. The word it chose to use was not “jurisdiction” but “sovereignty,” which implied an extension of territorial waters. This naturally triggered objections not only from Japan but also from the United States, Britain, and other countries. Japan contended that the Rhee Line had no basis in international law and that the seizure of Japanese fishing vessels was an illegal act in violation of the principle of the freedom of the high

¹⁶ Kokusaiho Jirei Kenkyukai, *Ryodo*, p. 174.

¹⁷ Tsukamoto, “Heiwa Joyaku to Takeshima,” p. 33.

seas. As I will show in the following, the US reaction was much the same.¹⁸

In his letter of February 11, 1952, to Korean Foreign Minister Pyun Yung-tai, US Ambassador to Korea John J. Muccio criticized the declaration, stating, "I am directed to inform your Excellency that the Government of the United States of America regards with deep concern the provisions of this Proclamation. If carried into execution, this Proclamation would bring within the exclusive jurisdiction and control of the Republic of Korea wide ocean areas which have hitherto been regarded as high seas by all nations, and would in these waters and in the air space above supplant the free and untrammled navigation of foreign vessels and aircraft by such controls as the Republic of Korea, in the exercise of the sovereignty claimed, might apply.

"Although the Proclamation purports to be supported by well-established international precedents, my Government is not aware of any accepted principle of international law which would qualify as a legitimate precedent for this purported extension of Korean sovereignty. In this regard, my Government wishes to call to the attention of the Republic of Korea, that, unlike the two Proclamations issued by the President of the United States of America on September 28, 1945 concerning United States policy with respect to the resources of the continental shelf and conservation of contiguous high sea fisheries, the Korean Proclamation relates to Korean national sovereignty over the areas specified therein.

"The two United States Proclamations did not contemplate, nor in fact effect, any extension of the pre-existing territorial waters of the United States. With the foregoing considerations in mind, the Government of the United States of America desires to inform the Government of the Republic of Korea that it reserves all its interests and the interests of its nationals and vessels under the provisions of the Korean Proclamation in question, and under any measures designed to carry them out into execution."¹⁹

¹⁸ Oda, *Kaiyo no kokusaiho kozo*, p. 53.

¹⁹ "Letter from American Embassy, Pusan, February 11, 1952, to Yung-tai Pyun, Minister of Foreign Affairs, Republic of Korea." Records of the US Department of State relating to the Internal Affairs of Korea, 1950-54, Department of State Decimal File 795. I wish to express

In response, Foreign Minister Pyun explained: “1. The term ‘sovereignty’ was rather loosely employed in the Proclamation and need not be construed as sovereignty [in] the usual absolute sense of the word. The term is interchangeable with the phrase ‘jurisdiction and control.’

“2. The marine zone declared around Korea by the said Proclamation is, as in the case of the United States proclamations, never meant to be the extension of the Korean territorial waters which should remain, as [a] matter of course, of the internationally accepted width, irrespective of the Proclamation. It is exactly to avoid a possible confusion on this score that the Korean Proclamation provides in its ending article that it does not interfere with the right of navigation over the high seas.”²⁰

Following criticism by the United States and other countries that the declaration pushed out the boundaries of territorial waters into the high seas, South Korea, from September 11, 1952, began using the term “Peace Line” to refer to the Rhee Line. Most Korean nationals, though, continued to firmly believe that the line demarcated its territorial waters. Thus, after the South Korean government was forced to repeal the Rhee Line and adopt the 12-nautical-mile fishing zone rule during negotiations for the June 22, 1965, Japan-Korea Fishery Agreement, the then ruling party, the Democratic Republican Party, called for understanding from people who were demanding that the Rhee Line be defended at all costs in a March 1964 pamphlet, stating that while the patriotic desire for an extension of the country’s territorial waters is a matter of course for the South Korean people, international law cannot be disregarded if the country is to act as a dutiful member of the international community.²¹

4. The Rhee Line and the Takeshima Dispute

my gratitude to Fujii Kenji for sharing this and other valuable documents with me.

²⁰ “Letter from Ministry of Foreign Affairs of ROK to Ambassador of the US, Pusan, February 13, 1952,” *ibid.*

²¹ Fujii, “Kankoku no kaiyo ninshiki,” p. 61.

The equally illegal occupation of Takeshima in violation of international law has continued thereafter, however, and ongoing efforts have been made to turn Korean control of the islands into an accomplished fact, such as by erecting signs of territorial claims, constructing a lighthouse, and stationing coastal security forces. The official government perception of the Takeshima issue, therefore, appears no different from those of people screaming for the “defense of Dokdo at all costs.” In the wake of the July 12, 1953, firing by the South Korean armed police occupying Takeshima on the Japan Coast Guard patrol vessel *Hekura*, which demanded that the occupiers leave, the Japanese government proposed that the territorial dispute be settled by the International Court of Justice. A note verbal issued by Japan on September 12, 1954, reads, “[The Takeshima issue] is a territorial dispute touching on one of the key principles of international law; thus, the only fair mode of settlement is to refer the dispute to the International Court of Justice and to receive its ruling. The government of Japan eagerly desires a peaceful resolution and so proposes to the government of the Republic of Korea that this dispute be submitted to the International Court of Justice under an agreement between the two governments.

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

“The government of Japan hereby pledges to faithfully abide by whatever judgment the International Court of Justice reaches.”²²

The ICJ does not have compulsory jurisdiction, and cases may be brought before it by any one country only when all parties to a dispute have declared their acceptance, in advance, of provisions recognizing such jurisdiction. Japan made a declaration on September 15, 1958, stipulating that it accepts the compulsory jurisdiction of the ICJ over “all disputes arising on and after

²² Kokusaiho Jirei Kenkyukai, *Ryodo*, p. 178.

September 15, 1958 with regard to situations or facts subsequent to the same date." If the Takeshima territorial dispute arose as a result of the 1952 Rhee Line, therefore, Japan would be hindered from referring the case to the ICJ on its own, even if South Korea makes a declaration recognizing the ICJ's jurisdiction at a future date. Under the circumstances, in order to refer the case to the ICJ, the only option would be for both parties to agree to do so.²³

The South Korean government flatly rejected Japan's proposal in a diplomatic memorandum dated October 28, 1954, stating that Dokdo [Takeshima], as the government of the Republic of Korea has made clear at every opportunity, has been part of Korean territory since ancient times and remains so today. "The proposal of the Japanese Government that the dispute be submitted to the International Court of Justice is nothing but another attempt at the false claim in judicial disguise. Korea has territorial rights *ab initio* over Dokdo and sees no reason why she should seek the verification of her rights before any international court of justice. It is Japan who conjures up a quasi territorial dispute where none should exist. . . .

"The people of the Republic of Korea are determined to protect Dokdo and thereby maintain the integrity of our nation. In that sense, the government of the Republic of Korea has no need to refer the question of Dokdo's sovereignty to a verdict of the International Court of Justice."²⁴ The report (declassified in 1986) of the US mission to the Far East led by James Van Fleet, who visited South Korea between April 26 and August 7, 1954, states that Van Fleet "informally conveyed to the Republic of Korea" that "Though the United States considers that the islands are Japanese territory, . . . Our position has been that the dispute might properly be referred to the International Court of Justice." The Korean side, the report notes, argued that "Dokdo" was part of Utsuryo Island.²⁵

²³ Ashida Kentaro, "Takeshima o 'kesu' koto ga yuiitsu no kaiketsuho da" ("Erasing" Takeshima Is the Only Way to Settle the Dispute) (Tokyo: *Chuo Koron*, November 2006), pp. 272–73.

²⁴ *Ibid.*, p. 178.

²⁵ Ministry of Foreign Affairs, *Takeshima: Takeshima mondai o rikai suru tame no 10 no pointo* (*Takeshima: 10 Issues of Takeshima*), p. 14. See www.mofa.go.jp/region/asia-paci/takeshima.

Japanese Foreign Minister Kosaka Zentaro made a similar proposal to his South Korean counterpart Choi Duk-shin in March 1962 during bilateral normalization talks, but this was again rejected.²⁶ When the Treaty on Basic Relations between Japan and the Republic of Korea was signed on June 22, 1965, Japanese Foreign Minister Shiina Etsusaburo and South Korean Foreign Minister Lee Tong-won also signed the Exchange of Notes Constituting an Agreement between Japan and the Republic of Korea Concerning the Settlement of Disputes, which reads, “Unless otherwise agreed, the two Governments shall settle disputes between the two countries primarily through diplomatic channels and, when they fail to do so, shall seek settlement by conciliation in accordance with procedures to be agreed upon between the two Governments.”²⁷ While the Japanese government understands that “disputes” include the Takeshima issue, the South Korean government asserts that inasmuch as Dokdo is Korean territory, it is not part of the dispute between the two nations.²⁸ This, effectively, has doomed any prospects for “conciliation” without the agreement of the two governments.²⁹

During deliberations on October 27, 1965, regarding the Treaty on Basic Relations between Japan and the Republic of Korea and other bilateral agreements in a special committee of the Japanese House of Representatives, Japan Socialist Party member Matsumoto Shichiro introduced the comments made by South Korean Foreign Minister Lee Tong-won to the National Assembly to the following effect: “It is a fact that an exchange document exists for the peaceful settlement of disputes. But this is a common convention in

²⁶ Ibid.

²⁷ Kajima Institute of International Peace, ed., *Nihon gaiko shuyo bunsho, nenpyo* (Major Diplomatic Documents and Chronologies), vol. 2 (Tokyo: Hara Shobo), pp. 606–7.

²⁸ Takeshima was not identified by name in this exchange of notes. For background, see Taijudo Kanae, *Ryodo kizoku no kokusaiho* (International Law on Territorial Ownership), (Tokyo: Toshindo Publishing, 1998), pp. 125–26; originally published in 1966 as *Takeshima Funso* (The Takeshima Dispute).

²⁹ Former Hitotsubashi University Professor Minagawa Takeshi criticized this exchange of notes as virtually eliminating any prospects of reclaiming Takeshima as Japanese territory. See Minagawa Takeshi, “Takeshima funso to sono kaiketsu tetsuzuki” (The Takeshima Dispute and Settlement Procedures), *Horitsu Jiho*, vol. 37, no. 10 (1965), p. 38.

international discourse. Historical evidence shows that even treaties between very friendly countries can become a source of misunderstanding and friction after a certain period of time. So, in the remote chance that a misunderstanding does emerge, particularly over fishing issues or compensation claims, we can refer to the document for guidance on how to resolve such disputes. Both Foreign Minister Shiina and Prime Minister Sato [Eisaku] expressed understanding that the Dokdo issue was not an object of dispute.”

In response, Prime Minister Sato clearly repudiated Foreign Minister Lee’s remarks: “I’m sure that all citizens are well aware, in the light of the statement just read by Mr. Matsumoto, that there is a real dispute over this issue. The statement alleges that Foreign Minister Shiina and I agreed before the documents were signed that no dispute exists. There is absolutely no truth to such a claim. If I may add, we do have an exchange of notes on the settlement of disputes. This is a fact. But it should be clear that this was not added to deal with disputes related to fishing rights or economic cooperation, since the provisions for settling such disputes are contained in the agreements for those issues themselves.”³⁰

Irregardless of claims to the contrary, there does exist a territorial dispute over Takeshima. According to international law, the presence or absence of a dispute is not determined by the claims of any one country. In its August 30, 1924, ruling on the *Mavrommatis Palestine Concessions* case, the Permanent Court of International Justice—the predecessor of the International Court of Justice—defined a dispute as being “a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons.” And the *Advisory Opinion on the Interpretation of Peace Treaties with Bulgaria, Hungary, and Romania* of March 30, 1950, notes, “Whether there exists an international

³⁰ Transcripts of the House of Representatives Special Committee on the Basic Treaty and Agreements between Japan and the Republic of Korea (October 27, 1965). In the same committee, Matsumoto introduced another remark by Foreign Minister Lee: “You know, Mr. Shiina, Dokdo is a place where not even dogs, let alone humans, would want to live. But it’s our territory, so we have no choice but to protect it. But I don’t understand why the Japanese people get so worked up over this issue.” Matsumoto added that Shiina never mentioned the Dokdo question again on his subsequent visits to South Korea.

dispute is a matter for objective determination. The mere denial of the existence of a dispute does not prove its non-existence.” Based on such judicial precedent, a dispute over Takeshima veritably exists between Japan and South Korea, for both countries are claiming it as their own territory, and there is a conflict of legal opinion over territorial rights.

In anticipation of the dispute actually being referred to the ICJ, many factors need to be considered that would have a significant influence on the outcome of its ruling, such as critical dates, periods of prescription, and tacit approval.³¹

5. Conclusion

As I pointed out at the international symposium at Seoul National University, a positive reappraisal of the Syngman Rhee Line as a precursor to the concept of exclusive economic zone would be difficult, even in comparison with the 1952 Santiago Declaration, which was the first international instrument to proclaim a 200-mile limit. I concluded my remarks by noting that the Rhee Line, in fact, caused a deep schism in bilateral relations by giving rise to a territorial dispute over Takeshima. A question from an NGO member in the audience referred to SCAPIN 677, to which I retorted with arguments like those I presented above.

My thoughts on attendance at the symposium were that even a policy like the Rhee Line, which to most Japanese appears as nothing short of an outrage, was being actively promoted internationally by the Korean side as a legitimate concept through conferences like this one. One clearly perceives, moreover, that South Korea is seeking to strengthen its Dokdo claims through a positive reappraisal of this line. By comparison, Japan is doing very little to assert its case on the Takeshima issue. Japan must use every opportunity to inform the world of the grounds for its territorial claims and demonstrate the problems

³¹ On this point, a detailed explanation is contained in Nakano Tetsuya, “Takeshima no ryoyuken o meguru sengo no doko ni tsuite” (Postwar Trends in Territorial Claims over Takeshima), *Midterm Report of the Second Research Study on the Takeshima Issue* (February 2011), pp. 36–46.

with the Korean policy of turning its illegal occupation of Takeshima into a fait accompli. Some may demur at too loudly criticizing a friendly nation like South Korea, but I am of the opinion that we should share our frank opinions with one another precisely because we are friends, and if diplomatic negotiations prove unable to resolve the dispute, we need to then show our resolve to take the matter to the ICJ or find some other method of peaceful settlement. As members of the United Nations, both countries should be reminded of the organization's core principles, as stipulated in Article 2, Paragraph 3, of the UN Charter: "All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered." The UN Charter refers to the ICJ in Chapter XIV, saying, "The International Court of Justice shall be the principal judicial organ of the United Nations" in Article 92. As a UN member, Japan should naturally refer its Takeshima dispute with South Korea to this court and should, at the same time, make an effort to state its case internationally that the fault lies with the South Korean side for refusing to do so.

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