

The Treaty of Peace with Japan and Takeshima's Legal Status

Tsukamoto Takashi

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1. Introduction: Overview of the Peace Treaty

The Treaty of Peace with Japan, which was signed in San Francisco on September 8, 1951, and came into force on April 28, 1952, legally ended World War II as relating to Japan and also ended the Allied occupation of Japan, which regained its sovereignty.

Peace treaties generally include provisions for the restoration of diplomatic ties, reparations, territorial concessions, the treatment of expired commerce and navigation treaties, and other issues to resolve war-instigated problems and lay out the principles for postwar relations. The Treaty of Peace with Japan, too, includes clauses for the termination of the state of war (Article 1), renunciation of territorial claims to Korea, Taiwan, the Kuril Islands, and elsewhere (Article 2), US administration of the Nansei and Nanpo Islands (Article 3), disposition of property in the renounced territories, etc. (Article 4), security (Article 5), treaties and agreements regarding trading, maritime and other commercial ties (Article 12), reparations (Article 14), and the waiving of all claims against the Allied powers (Article 19).

Forty-five Allied countries, including the United States, Britain, and France,

became parties to the San Francisco Peace Treaty. Those that did not become party to the treaty concluded separate agreements.¹ As regards South Korea, until around January 1951 the country was considered a party to the treaty as it was being drafted in the United States but ultimately was not allowed to sign it for legal reasons.²

2. Territory-Related Provisions

As mentioned above, Article 2 of the treaty stipulates renunciation of Korea, Taiwan, the Kuril Islands, and other territories by Japan, while Article 3 stipulates the US administration of the Nansei and Nanpo Islands.

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. (b) Japan renounces all right, title and claim to Formosa and the Pescadores. (c) Japan renounces all right, title and claim to the Kurile Islands, and to that portion of Sakhalin and the islands adjacent to it over which Japan acquired sovereignty as a consequence of the Treaty of Portsmouth of 5 September 1905. (d) Japan renounces claims to territories in the League of Nations Mandate System and accepts the UN (US) trusteeship system; (e) Japan renounces claims to the Antarctic area; and (f) Japan renounces claims to the Spratly and Paracel Islands.

¹ The Republic of China signed a separate Treaty of Peace with Japan on April 28, 1952 (which took effect on August 5); later, the Joint Communiqué of the Government of Japan and the Government of the People's Republic of China was signed on September 29, 1972, establishing diplomatic relations between Tokyo and Beijing. On October 19, 1956, Japan and the Soviet Union signed a Joint Declaration (which took effect on December 12) providing for the end of the state of war and restoration of diplomatic relations. Because of the unresolved territorial issue, negotiations on a peace treaty are still underway. A peace treaty with India was signed on June 9, 1952, and took effect on August 27; that with Burma was signed on November 5, 1954, and took effect on April 16, 1955; and that with Indonesia was signed on January 20, 1958, and took effect on April 15. An agreement to resume diplomatic relations was signed with Poland on February 8, 1957, and took effect on May 18, and a protocol to resume diplomatic relations was signed with Czechoslovakia on February 13, 1957, taking effect on May 8.

² For background on the decision to exclude Korea, see my "Kankoku no Tai-Nichi Heiwa Joyaku shomei mondai" (South Korea and the Issue of Signing the Treaty of Peace with Japan) in *Refarensu*, no. 494 (March 1992), pp. 95–100.

Article 3

Japan will concur in any proposal of the United States to the United Nations to place under its trusteeship system, with the United States as the sole administering authority, Nansei Shoto south of 29° north latitude (including the Ryukyu Islands and the Daito Islands), Nanpo Shoto south of Sofu Gan (including the Bonin Islands, Rosario Island and the Volcano Islands) and Parece Vela and Marcus Island. Pending the making of such a proposal and affirmative action thereon, the United States will have the right to exercise all and any powers of administration, legislation and jurisdiction over the territory and inhabitants of these islands, including their territorial waters.

These provisions indicate the territories that Japan was to renounce or relinquish control over (administrative rights over the territories in Article 3 were returned to Japan over time in accordance with a subsequent bilateral agreement), but the treaty has no provisions for the territories that Japan was to retain (as territories belonging to Japan prior to the war and which the country would continue to administer).

3. Points at Issue in the Takeshima Dispute

The Takeshima territorial dispute involves a number of issues relating to (1) historical title, (2) efforts by the Japanese and Korean governments to incorporate the islands into their respective territories, and (3) postwar developments.

The first group of these issues focuses on whether the Usando referred to in ancient Korean documents and maps corresponds to modern-day Takeshima (Dokdo). Do these historical documents show that Takeshima is Korean territory? Can the fact that residents of Yonago (now in Tottori Prefecture) received permission from the shogunal government in the early Edo period (1603–1868) to fish for abalone around the island of Utsuryoto (Ulleungdo or Dagelet)—and also fished on and around what is now Takeshima—be construed to mean that Takeshima was part of Japanese territory? And how did the shogunal government's ban on travel to Utsuryoto, issued on March 1, 1696, affect the status of Takeshima?

The second group of issues includes the Japanese cabinet decision of January 28, 1905, to incorporate Takeshima into the territory of Japan and whether the islands were Korean territory at the time. Also, does the March 29, 1877, Japanese Supreme Council (Dajo-kan) order to exclude “Takeshima and one other island” from the Japanese National Land Registry constitute evidence that the council did not consider what is now known as Takeshima to be part of Japanese territory? And does Korean Imperial Decree No. 41 of 1900 renaming Ulleungdo as Ul-do and elevating it to the status of a county with jurisdiction over “Seokdo” indicate that the Korean government considered Takeshima part of its own territory?

The third group of issues, meanwhile, deals with the postwar Allied occupation of Japan, the measures taken by the Allied powers, the establishment of South Korea, and changes, if any, to Takeshima’s legal standing (as Japanese territory) following the signing of the Treaty of Peace with Japan.³

The treaty is without doubt an important document in the territorial dispute inasmuch as it supersedes all earlier arguments. If it effected a change in Takeshima’s legal status, then any older evidence backing up a territorial claim would essentially be moot; in other words, if the treaty provides for Japan’s renunciation of Takeshima, then there is no overturning this fact, regardless of what historical title it had or how valid the 1905 cabinet decision may be under international law. If, on the other hand, the treaty does nothing to change Takeshima’s legal status, the fact that Japan possessed these islands prior to World War II⁴ also remains unchanged, and the treaty, in short, would confirm Japan’s territorial claims.

³ For a discussion of the various issues in the Takeshima dispute, see Tsukamoto Takashi, “Takeshima ryoyuken mondai no keii” (Outline of the Takeshima Territorial Issue), third edition, *Chosa to Joho Issue Brief*, no. 701 (February 22, 2011), www.ndl.go.jp/jp/data/publication/issue/pdf/0701.pdf (accessed on March 14, 2013).

⁴ Takeshima’s status as Japanese territory can be said to have been firmly established prior to World War II based not only on historical rights but also on the rights conferred through the effective control of the islands under modern international law. See Tsukamoto Takashi, “Kokusaiho kara mita Takeshima mondai” (The Takeshima Dispute from the Perspective of International Law), fifth in a series of lectures on the Takeshima issue delivered in Shimane Prefecture on October 26, 2008. www.pref.shimane.lg.jp/soumu/web-takeshima/H20kouza.html (accessed on March 14, 2013). It can also be argued that the whole area of Japan and Korea was integrated as Japanese territory following the 1910 annexation of the Korean Peninsula, but this would raise new issues relating to the validity of the annexation, so here I will only introduce this argument in passing.

4. Interpretations of Article 2(a)

The question of whether the treaty altered Takeshima's legal status hinges on what "Korea" stipulated in Article 2(a) means: "Japan recognizing the independence of Korea, renounces all right, title and claim to Korea, including the islands of Quelpart, Port Hamilton and Dagelet." If "Korea" includes Takeshima, then Japan will have forfeited the islands, and if it does not, then Japan retains ownership.

Interpretations of treaties are prescribed by the Vienna Convention on the Law of Treaties, adopted on May 23, 1969, and which came into force on January 27, 1980:

Article 31. General Rule of Interpretation

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

Article 32. Supplementary Means of Interpretation

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of Article 31, or to determine the meaning when the interpretation according to Article 31: (a) leaves the meaning ambiguous or obscure; . . .

The provisions on interpretation of treaties contained in Article 31 and 32 of the Vienna Convention reflect pre-existing international law and may be applied to treaties concluded before the entering into force of the convention.⁵ That Article 31 is an expression of international customary law has been confirmed in subsequent rulings of the International Court of Justice, such as the 1994 territorial dispute between Libya and Chad⁶ and the 1999 incident

⁵ Richard Gardiner, *Treaty Interpretation*, Oxford University Press, 2008 (paperback 2010), p. 12.

⁶ Territorial Dispute (Libyan Arab Jamahiria/Chad), Judgment, ICJ Reports 1994, pp. 6–, especially p. 21, para. 41. <http://www.icj-cij.org/docket/files/83/6897.pdf>

between Botswana and Namibia involving Kasikili/Sedudu Island.⁷ What would be the implications of Article 2(a) of the Peace Treaty with Japan if such rules of interpretation were applied?

First of all, the “Korea” referred to in the peace treaty would be that state that was annexed by Japan in 1910 and was now being disjoined from it. This can be gleaned from the treaty’s “context,” “object,” and “purpose” — as mentioned in the first paragraph of the Vienna Convention’s Article 31 — namely, the Korean Empire’s loss of independence in 1910, the reference in the Cairo Declaration of December 1, 1943, that the “three great powers . . . are determined that in due course Korea shall become free and independent” (the Cairo Declaration was referred to in Clause 8 of the Potsdam Declaration of July 26, 1945), and the establishment of the Republic of Korea (along with the Democratic People’s Republic of Korea) in 1948. The article contains nothing that would suggest that Japan is to make any new territorial concessions to Korea upon de-annexation, and Takeshima was not part of the Korea that Japan annexed in 1910. Takeshima did not become Japanese territory as part of the annexation of the Korean Peninsula, nor was it ever placed under the jurisdiction of the Governor-General of Korea under Japanese rule. One can conclude, then, that the “Korea” in Article 2(a) to which Japan renounces “all right, title and claim” does not include Takeshima.

While it is already clear from the Vienna Convention’s rule of interpretation in Article 31 that the territory renounced by Japan does not include Takeshima, this can be further reconfirmed and any ambiguity or obscurity eliminated through recourse to the “supplementary means of interpretation” — as stipulated in Article 32 of the convention — by examining the “preparatory work of the treaty and the circumstances of its conclusion.”

5. State Department Drafts

The process of drafting the Treaty of Peace with Japan can broadly be differentiated into two distinct periods: before and after summer 1950. Until then, the task was in the hands of officials at the State Department, who created a working draft for review within the US government. Thereafter, John Foster

⁷ Kasikili/Sedudu Island (Botswana/Namibia), Judgment, ICJ Reports 1999, pp. 1045–, especially p. 1059, para. 18, and p. 1060, para. 20. <http://www.icj-cij.org/docket/files/98/7577.pdf>

Dulles—working as a consultant to the secretary of state after stepping down as interim senator in November 1949—took over and began conferring with other governments to finalize the document. Britain was preparing its own draft, and working-level consultations were held in Washington in May 1951 to produce a joint document. This was further revised the following month when Dulles visited London, and this basically became the treaty that was signed in San Francisco in September, although minor amendments continued to be made after July.⁸

The preparation of a draft by the State Department began in March 1947 with several territorial and other clauses. By August 5 the same year, a full draft (though still considered tentative) from the preamble to final provisions was completed. This was the year when a peace treaty with Italy was concluded, and so Japan was no doubt considered next. Subsequent versions include a draft that includes the territorial clauses with a handwritten memo reading “Re-draft 2 January [1948]”; the draft of October 13, 1949; that of November 2, 1949; and that of December 29, 1949.⁹

The territory-related articles of the State Department drafts begin with a list of islands that Japan is to retain, which are also identified in an accompanying map, and continue to a list of territories that Japan is to concede to other countries or to renounce. Drafts of November 2, 1949, and earlier do not include

⁸ For details, see three articles by the author, published in the journal *Refarensu*: “Heiwa Joyaku to Takeshima (sairon)” (The Peace Treaty and Takeshima, Reconsidered), no. 518, March 1994, pp. 31–56; “Bei Kokumusho no Tai-Nichi Heiwa Joyaku soan to Hoppo Ryodo mondai” (The US State Department’s Peace Treaty Draft and the Northern Territories Issue), no. 482, March 1991, pp. 113–20; and the section on “Heiwa Joyaku kisosha no kenkai” (The Opinions of the Peace Treaty’s Authors) in *Nihon to ryodo mondai* (Territorial Issues Involving Japan), Part I, no. 504, January 1993, pp. 68–72.

⁹ The drafts listed here were identified by the author at the US National Archives and Records Administration in autumn 1990 and introduced in the Takeshima article cited in note 8. The documents checked were largely from the main Decimal Files and a few Lot Files—namely, the “Japanese Peace Treaty Files of John Foster Dulles,” Lot 54 D 423, and the “Records of the Office of Northeast Asian Affairs relating to the Treaty of Peace with Japan,” Lot 56 D 527. Many of the documents held by NARA are now available in microform, and variations other than those cited here will no doubt emerge upon close inspection. For instance, the National Diet Library’s Modern Japanese Political History Materials Room holds a draft dated September 7, 1949 (microfilm number R06: 0488-0499, request code YF-A10), and another with a handwritten date of December 15, 1949 (microfilm number R04: 0266-0271, request code YF-A11). Some Japanese and overseas researchers have recently begun assigning numbers, referring to the versions as the “first draft” or “second draft,” but it should be noted that such numbering did not exist in the original.

Takeshima as being within the territorial limits of Japan and stipulates that Japan is to renounce Takeshima to Korea. Article 3 of the November 2 draft reads:¹⁰

Article 3

1. The Territory of Japan shall comprise the four principal Japanese islands of Honshu, Kyushu, Shikoku and Hokkaido and all adjacent minor islands, including the islands of the Inland sea (Seto Naikai), Sado, Oki Retto, Tsushima, the Goto Archipelago, the Ryukyu Islands north of 29° N. latitude, and the Izu Islands southward to and including Sofu Gan (Lot's Wife), and all other islands within a line beginning at a point in 45° 45' N. latitude, 140° longitude east of Greenwich, . . .
2. This line of allocation is indicated on the map attached to the peace Treaty.

Article 6

1. Japan hereby renounces in favor of Korea all rights and titles to the Korean mainland territory and all offshore Korean islands, including Quelpart (Saishu To), the Nan How group (San To, or Komun Do) which forms Port Hamilton (Tonaikai), Dagelet Island (Utsuryo To, or **Matsu Shima**), Liancourt Rocks (Takeshima), and all other islands and islets to which Japan has acquired title lying outside the line described in Article 3 and to the east of the meridian 124°15' E. longitude, . . .
2. This line is indicated on the map attached to the present Treaty.

In a November 14, 1949, telegram to the secretary of state, Acting Political Adviser in Japan William J. Sebald recommended that the inclusion of the Liancourt Rocks (Takeshima) be reconsidered: "Japan's claim to these islands is old and appears valid."¹¹ The recommendation was incorporated in the

¹⁰ "November 2, 1949 Treaty of Peace with Japan," NARA: RG59, Decimal File 1945-49, Box 3515, 740.0011 PW (PEACE)/11-248. In microform, it can be found in the Modern Japanese Political History Materials Room's peace-treaty-related State Department documents (microfilm number R06: 0433-0499, request code YF-A10) and the Records of Japan, Tokyo Embassy; Records of Japan, Tokyo Consulate General; and Records of Office of the US Political Advisor for Japan, Tokyo (request code FSP1377).

¹¹ The November 14 telegram from "The Acting Political Adviser in Japan (Sebald) to the

December 29, 1949, draft¹²—the final State Department draft—whose Article 3 now explicitly cited “Takeshima (Liancourt Rocks)” as being part of the territory of Japan and whose Article 6 no longer referred to Takeshima as territory to be renounced.

Article 3

1. The Territory of Japan shall comprise the four principal Japanese islands of Honshu, Kyushu, Shikoku and Hokkaido and all adjacent minor islands, including the islands of the Inland sea (Seto Naikai); **Tsushima**, Takeshima (Liancourt Rocks), Oki Retto, Sado, Okujiri, Rebun, Riishiri and all other islands in the Japan Sea (Nippon Kai) within a line connecting the farther shores of **Tsushima**, Takeshima and Rebun; the Goto archipelago, the Ryukyu Islands north of 29° N. latitude, and all other islands of the East China Sea east of longitude 127° east of Greenwich and north of 29°N. latitude; the Izu Islands southward to end including Sofu Gan (Lot's Wife) and all other islands of the Philippine Sea nearer to the four principal islands than the islands named; and the Habomai group and Shikotan lying to the east and south of a line extending from a point in 43°35' N. latitude, 145°35' E. longitude to a point in 44°N. latitude, 146°30' E. longitude, and to the south of a line drawn due east on the parallel in 44° N. latitude. . . .

Secretary of State” is contained in *Foreign Relations of the United States 1949*, vol. 7, pp. 898–900. Also, see my article on Takeshima, cited in note 8, and “San Furanshisuko Joyaku to Takeshima” (The San Francisco Peace Treaty and Takeshima), *Refarensu*, vol. 389, June 1983, pp. 51–63. The original document is available from NARA, RG59, Decimal File 1945-49, Box 3515, 740.0011 PW (PEACE)/11-1449. In microform, it is contained in the Modern Japanese Political History Materials Room’s peace-treaty-related State Department documents (microfilm number R04: 0371-0373, request code YF-A11) (see note 9). Comments, in document form, are included in the “Detailed Comment on November 2 Draft Treaty,” NARA: RG59, Decimal File 1945-49, Box 3515, 740.0011 PW (PEACE)/11-1949, while in microform, they are contained, for instance, in the peace-treaty-related State Department documents (microfilm number R04: 0514-0523, request code YF-A11) (see note 9).

¹² “Draft Treaty of Peace with Japan (December 29, 1949),” NARA: RG59, Lot 54 D 423, Japanese Peace Treaty Files of John Foster Dulles, Box 12, Treaty Drafts 1949–March 1951. In microfilm, Gregory Murphy ed., “Confidential U.S. State Department Special Files JAPAN 1947–1956,” Lot Files (Bethesda: University Publications of America, [ca.1990]), Reel 14, Frame 0196–, Modern Japanese Political History Materials Room (request code LOT). It can also be found among the Records of Japan, Tokyo Embassy; Records of Japan, Tokyo Consulate General; and Records of Office of the U.S. Political Advisor for Japan, Tokyo (request code FSP1378–1379). Incidentally, the December 15, 1949, draft referred to in note 9 also reflects Sebald’s opinions.

2. All of the islands mentioned above are shown on the map attached to the present Treaty.

Article 6

Japan hereby renounces in favor of Korea all rights and titles to the Korean mainland territory and all offshore Korean islands, including Quelpart (Saishu To), the Nan How group (San To, or Komun Do) which forms Port Hamilton (Tonaikai), Dagelet Island (Utsuryo To, or **Matsu Shima**), and all other offshore Korean islands and islets to which Japan had acquired title.

6. The Dulles Revisions

After John Foster Dulles was named consultant to the secretary of state in April 1950 and joined the treaty drafting process, a version simpler than the State Department drafts was drawn up on August 7, 1950.¹³ The gist of this draft, revised on September 11,¹⁴ was subsequently summarized into seven points and presented to other concerned countries. The summary was also released to the media in November and became known as the Seven Principles of the Treaty with Japan.¹⁵ The reactions of foreign governments and the conclusions of a review within the US government were incorporated into the provisional US draft of March 23, 1951.¹⁶ This was presented to other governments and, as noted above, integrated with the British draft to produce the Joint United States–United Kingdom Draft Peace Treaty of May 3, 1951,¹⁷ and the Revised United States–United Kingdom Draft of a Japanese Peace Treaty of June 14.¹⁸

After Dulles joined the drafting process, the wording became simplified, and the list of islands Japan was to retain was deleted. In the Seven Principles, Japan's renunciation of Korea was reworded as just "Japan would recognize the

¹³ "Draft no. 2," FRUS 1950, vol. 6, pp. 1267–.

¹⁴ "Draft of a Peace Treaty With Japan," *ibid.*, pp. 1297–.

¹⁵ "Unsigned Memorandum Prepared in the Department of State," *ibid.*, pp. 1296–1297; "U.S. Sets Forth Principles for Japanese Peace Treaty [Released to the press November 24]," *Department of State Bulletin*, December 4, 1950, p. 881.

¹⁶ "Provisional United States Draft of a Japanese Peace Treaty," FRUS 1951, vol. 6, part 1, pp. 944–.

¹⁷ "Joint United States–United Kingdom Draft Peace Treaty," FRUS 1951, *ibid.*, pp. 1024–.

¹⁸ "Revised United States–United Kingdom Draft of a Japanese Peace Treaty," *ibid.*, pp. 1119–.

independence of Korea"; the US draft notes, "Japan renounces all rights, titles and claims to Korea, Formosa and the Pescadores"; the Joint US-UK draft says, "Japan renounces all rights, titles and claims to Korea (including Quelpart, Port Hamilton and Dagelet)"; and the Revised US-UK draft notes, "Japan, recognizing the independence of Korea, renounces all right, title and claim to Korea, including the islands of Quelpart, Port Hamilton and Dagelet." Only those territories to be forfeited by Japan were included, and the provisions containing the territories to be retained were deleted; thus there was no longer any mention of Takeshima, but there was no change in the understanding that the islands would be retained by Japan. In response to questions about the Seven Principles submitted by the Australian government requesting "more precise information concerning the disposition of former Japanese territories," the United States wrote, "It is thought that the islands of the Inland Sea, Oki Retto, Sado, Okujiri, Rebun, Riishiri, Tsushima, Takeshima, the Goto Archipelago, the northernmost Ryukyus, and the Izus, all long recognized as Japanese, would be retained by Japan."¹⁹

7. US Rejection of Korean Revision Requests

On July 19, 1951, Korean Ambassador to the United States Yang You-chan visited Dulles and handed him a letter addressed to US Secretary of State Dean Acheson requesting revisions to the draft treaty. The letter makes three requests, the first of which was for Takeshima (Dokdo) to be included among the islands to be renounced by Japan. Specifically, it asked that Article 2, Paragraph a, which in the Revised US-UK Draft read, Japan, recognizing the independence of Korea, "renounces all right, title and claim to Korea, including the islands of Quelpart, Port Hamilton and Dagelet," 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 Parangdo."²⁰ In response,

¹⁹ "Undated Memorandum by Mr. Robert A. Fearey of the Office of Northeast Asian Affairs," FRUS 1950, Vol. 6, p. 1327-. See also my article on the San Francisco Peace Treaty and Takeshima (note 11).

²⁰ "The Korean Ambassador (Yang) to the Secretary of State," FRUS 1951, vol. 6, part 1, p. 1206 (NARA: RG59, Lot 54 D 423 [note 12], Box 8, Korea). In microform, "Confidential U.S. State Department Special Files JAPAN 1947-1956," Lot Files [note 12], Reel 9, Frame 0577-.

Dulles inquired as to the location of the two islands, Dokdo and Parangdo. First Secretary Han Pyo-wook of the Korean Embassy, rather than Ambassador Yang, stated that “these were two small islands lying in the Sea of Japan, he believed in the general vicinity of Ullungdo. Mr. Dulles asked whether these islands had been Korean before the Japanese annexation, to which the Ambassador replied in the affirmative. If that were the case, Mr. Dulles saw no particular problem in including these islands in the pertinent part of the treaty which related to the renunciation of Japanese territorial claims to Korean territory.”²¹

The US reply to the Korean request of July 19, 1951, was made in the form of a letter, dated August 10, to the Korean ambassador from Assistant Secretary of State for Far Eastern Affairs Dean Rusk, writing on behalf of the secretary of state. The reply reads:

“. . . 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.”²²

Thus Article 2, Paragraph (a) on the renunciation of territory to Korea in the Revised US-UK Draft remained unchanged, and it became the wording found in the final treaty.

8. Summary of Article 2(a) Debate

²¹ “Memorandum of Conversation by the Officer in Charge of Korean Affairs in the Office of Northeast Asian Affairs (Emmons),” FRUS 1951, vol. 6, part 1, pp. 1202– (NARA: RG59, Lot 54 D 423, Box 8, Korea [note 20]). Also in microform of same note.

²² NARA: RG59, Lot 54 D 423, Box 8, Korea. In microform (note 12), FRUS 1951, vol. 6, part 1, p. 1203, footnote 3. The second request in the Korean ambassador’s letter dated July 19, 1951, incidentally, pertained to the disposition of Japanese property in Korea and the third called for the continuation of the MacArthur Line delimiting Japanese fishing activities established by the Supreme Commander for the Allied Powers. The third request was likewise rejected, but the second was incorporated into Article 4, Paragraph (b) of the final treaty.

As explained in section 4 above, the “Korea” Japan renounced in the peace treaty’s Article 2(a) is that Japan annexed in 1910. While this is clear from the “context,” “object,” and “purpose” — as described in the first paragraph of the Vienna Convention’s Article 31 on the “general rule of interpretation” — I have made an attempt to reconfirm this fact and eliminate any ambiguity or obscurity through recourse to the “supplementary means of interpretation” — as stipulated in Article 32 of the convention — by examining the “preparatory work of the treaty and the circumstances of its conclusion” in sections 5 to 7. Section 7, in particular, clearly shows that the “Korea” renounced in Article 2(a) does not include Takeshima.

Clause 8 of the Potsdam Declaration of July 26, 1945, specifies that Japanese sovereignty “shall be limited to the islands of Honshu, Hokkaido, Kyushu, Shikoku and such minor islands as we determine,” meaning that Japan could have been stripped even of those islands that were historically part of the country depending on the wording of the peace treaty. But as the treaty stipulated no change in the legal standing of Takeshima, the islands were confirmed as Japanese territory.

9. Supplemental Remarks

Several divergent views have been expressed in response to the historical documents this author introduced in “Heiwa Joyaku to Takeshima (sairon)” (see note 8). They include, (1) the argument that Takeshima was separated from Japan by SCAPIN (Supreme Commander for the Allied Powers Instruction Note) 677 on “Governmental and Administrative Separation of Certain Outlying Areas from Japan” and SCAPIN 1033 on “Area Authorized for Japanese Fishing and Whaling” and remained separate when the peace treaty was concluded; (2) the argument that countries recognized Dokdo as being part of the Republic of Korea when it was established; (3) the argument that while Japan successfully lobbied for Takeshima to be included as Japanese territory in the December 1949 draft treaty, this clause was not included in the final draft, and thus the status of Takeshima remained undefined; and (4) the argument, again, that Japanese lobbying persuaded the United States to regard Takeshima as being Japanese territory but that Washington subsequently changed its mind. I would like to supplement my paper by considering these arguments in the

space remaining.²³

First, regarding arguments (1) and (2), it must be pointed out that the General Headquarters of SCAP was an administrative organization for Japan's occupation and had no authority over territorial disposition. In addition, 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 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."²⁴ That territorial disposition would be addressed in the peace treaty was well understood, as evidenced by the February 1946 remarks by a GHQ official and an August 1947 report by the interim US military government in Korea.²⁵

As for points (3) and (4), I have referred repeatedly in this paper to the fact that the Dulles drafts mentioned only those territories to be renounced by Japan. Thus the question is not one of Takeshima not being included as Japanese territory in the peace treaty; provisions itemizing the territories retained by Japan do not exist. Despite this, it is clear that Takeshima belongs to Japan (section 6) and that the islands have not been separated from Japan (section 8). The "lobbying activities" presumably refer to Political Adviser Sebald's

²³ These objections have been made in various papers and on websites by such scholars as Jeong Gab-yong, Sin Yong-ha, and Kim Byeong-ryeol and are also presented on the website of the Korean Embassy in Japan.

²⁴ Nihon Kanri Horei Kenkyu, vol. 8, no. 12.

²⁵ Yamazaki Yoshiko, "Kankoku seifu ni yoru Takeshima ryoyu konkyo no sosaku" (The Fabrication of Claims to Takeshima by the Korean Government), final report of the second Shimane prefectural research committee on the Takeshima issue, March 2012, pp. 61–78. The GHQ official is quoted (on page 66) as saying that the instructions issued on Japan's demarcation have nothing to do with the territorial issue, which will be dealt with in a separate peace treaty (microfilm of the Ministry of Foreign Affairs, A'3.0.0.6, reel number A'-0121, frame 0154-0161). An image of the US military report noting, "Formerly belonging to Japan, a recent occupation directive which drew an arbitrary line demarcating Japanese and Korean fishing waters placed Tok-to within the Korean zone. Final disposition of the islands' jurisdiction awaits the peace treaty" (p. 7), held by the Modern Japanese Political History Materials Room (request code AG [D] 03098), can be accessed from Shimane Prefecture's Web Takeshima Mondai Kenkyujo website: <http://www.pref.shimane.lg.jp/soumu/web-takeshima/takeshima08/iken-C.data/1947.8archives.pdf> (accessed on March 14, 2013).

recommendations on the November 2, 1949, draft (section 5) or to English reference materials prepared and presented by the Japanese Ministry of Foreign Affairs²⁶ for the eventual drafting of a peace treaty. The argument that Washington changed its mind refers to a discovery of a document²⁷ in the State Department's records created after the peace treaty was concluded that is at odds with the Dean Rusk letter (section 7). The important question here, though, is not whether Japan did or did not carry out lobbying activities or whether or not a party to the treaty had a change of heart after signing the document but what was decided by the treaty: Takeshima remained part of Japan.

10. Conclusion

This year (2012) marks the sixtieth anniversary of the coming into force of the San Francisco Peace Treaty that restored Japan's sovereignty. The Takeshima territorial dispute became explicit (came about between the governments of Japan and South Korea) because the South Korean demand for the continued enforcement of the MacArthur Line was rejected during the drafting of the peace treaty (note 22), upon which the South Korean government unilaterally proclaimed the Syngman Rhee Line—inside of which Takeshima was included—on January 18, 1952. In that sense, this year is also the sixtieth anniversary of the Takeshima dispute.

The Takeshima dispute entered in a new phase when the South Korean president visited Takeshima in August, and the Japanese government renewed its proposal to settle the dispute through the International Court of Justice. To truly solve the dispute, both the governments and people of the two countries must deepen dialogue on this issue by broadly sharing historical documents—including those, as referred to in section 3—and by proceeding in accordance with international law.

²⁶ Nishimura Kumao, "San Furanshisuko Heiwa Joyaku," *Nihon gaiko-shi* (Diplomatic History of Japan), vol. 27, (Kajima Institute of International Peace, 1971), pp. 40–47.

²⁷ See Tsukamoto Takashi, "Takeshima ryoyuken funso ni kanrensuru Beikoku Kokumusho bunsho (tsuiho)" (US State Department Documents on the Takeshima Territorial Dispute [Supplement]), final report of the Shimane prefectural research committee on the Takeshima issue, March 2007, pp. 79–89 (also available on the Web Takeshima Mondai Kenkyujo website: http://www.pref.shimane.lg.jp/soumu/web-takeshima/takeshima04/takeshima04_01/index.data/09.pdf; accessed on March 14, 2013).

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TSUKAMOTO Takashi

Professor, School of Law, Tokai University. Born in 1952. Graduated from the School of Law, Waseda University. Was director general of the Research and Legislative Reference Bureau of the National Diet Library. Is the author of many articles on the Takeshima issue in the journal *Refarensu*, published by the National Diet Library, and in *Higashi Ajia Kindaishi*, a journal published by Yumani Shobo.