

The Meaning of the Territorial Incorporation of Takeshima (1905)

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1. Introduction

On January 28, 1905, the Japanese cabinet decided to incorporate Takeshima into Japanese territory. The cabinet decision acknowledges that while there are no traces of the “uninhabited island” specified by the geographic coordinates having been occupied by any other country, sea lion hunting at the island by the Japanese citizen Nakai Yozaburo since 1903 constitutes occupation, and therefore the island is under the jurisdiction of the Oki Islands magistrate, as part of Shimane Prefecture. In short, the incorporation of Takeshima into Japanese territory was performed utilizing “title by occupation” of *terra nullius*, which is one method of territorial acquisition under international law. This was soon followed by a series of administrative measures, starting with the announcement of the island’s name and affiliation by the governor of Shimane Prefecture, revisions to fishing regulations (to permit the hunting of sea lions on Takeshima), registration in the state-owned land ledger and the levy of fees for the use of government owned land, and so on.

Korea, on the other hand, has a number of objections to Japan’s incorporation of Takeshima (Korean name Dokdo). It now insists that (1) the island was historically Korean territory and (2) Korean Imperial Edict 41 assigned it to the jurisdiction of Uldo-gun (county) in 1900, even earlier than Japan’s cabinet decision. They argue that the magistrate of Uldo County, referring to “Dokdo, belonging to this county,” reported to Gangwon-do (province) in 1906 that he had heard about the incorporation from visiting Shimane Prefectural officials, and the State Council issued an order denying the claim that Dokdo had become Japanese territory.

In this paper I will verify the cabinet decision on territorial incorporation and the subsequent displays of state authority by Japan (examples of effective control). I will then examine Korean objections (1) and (2) above.

2. The Cabinet Decision on Territorial Incorporation (1905)

1) Petition to Incorporate Ryanko Island into Japan and Lease It

The incorporation of Takeshima into Japanese territory was led by a “Petition to incorporate Ryanko Island into Japan and lease it” submitted by Nakai Yozaburo, a Japanese entrepreneur residing in the Oki Islands, to the Home Ministry, the Foreign Ministry, and the Ministry of Agriculture and Commerce on September 29, 1904. Nakai started catching sea lions at Ryanko Island (he was borrowing the Western name for Takeshima, the Liancourt Rocks) in 1903.¹ There were several newcomers in the following fishing season, in 1904. That fall, Nakai journeyed to Tokyo where, with help from government officials from the Oki Islands, he obtained consent of the relevant authorities and submitted the aforementioned petition. His petition stated that as Takeshima was an isolated and uninhabited island, it had not been previously exploited, but it was a fine spot for sea lion capture, with hide suitable as a substitute for cow leather, fat as good as whale blubber, and meat and bones that could be ground into fertilizer. He wrote that he wished to invest his own resources to develop this natural resource, but due to the undetermined territorial affiliation of the island this would risk interference from other countries; he also stated that too many other parties also engaging in development would lead to resource depletion. For those reasons, he asked for Takeshima to be incorporated into Japanese territory, and then to be leased to him for a period of ten years.²

2) Text of Cabinet Decision

Adopting the home minister’s proposal, the Japanese cabinet decided to incorporate Takeshima on January 28, 1905. The text of the cabinet decision states as follows:

As regards the attached proposal from the Minister of Home Affairs on the affiliation of an uninhabited island, the point of the proposal is as follows: The uninhabited island located at 37 degrees 9 minutes and 30 seconds north, 131 degrees 55 minutes east, and 85 nautical miles northwest of the Oki Islands, bears no trace of prior occupation by any other country. Two years ago, in Meiji 36 [1903], one Nakai Yozaburo, a citizen of our nation, established a fishing outpost, transferred workers, gathered hunting gear, and commenced the hunting of sea lions, and has now submitted a petition for the nation to

¹ More detailed information on what is written in this paragraph can be found in Tamura Seizaburo, *Shimane-ken Takeshima no shinkenkyu* (New Research on Takeshima, Shimane Prefecture), (Shimane Prefectural government, 1965; reprinted and revised, 2010), pp. 40–52; and Kawakami Kenzo, *Takeshima no Rekishi chirigakuteki kenkyu* (Historical Geographic study on Takeshima) (Tokyo: Kokon Shoin, 1966), pp. 208–15.

² Copies of the “Petition to incorporate Ryanko Island into Japan and lease it” are in *Teikoku hanto kankei zakken* (Miscellaneous documents concerning the territory of Japan) kept by the Foreign Ministry Diplomatic Archives and *Takeshima*, a document file kept by Shimane Prefecture. *Takeshima* is reprinted in Shimane Prefecture Department of General Affairs, General Affairs Division, ed., *Shimane-ken shozo gyosei bunsho 1* (Shimane Prefectural Archives, Administrative Documents 1), Takeshima related materials collection No. 2 (2012), pp. 50–54.

incorporate the island into Japanese territory and lease it to him. There now being a necessity to determine the affiliation and name of this island, we should give it the name of Takeshima and assign it from henceforth to the jurisdiction of the magistrate of the Oki Islands under Shimane Prefecture. In examining this matter, since it is evident, as relevant documents show, that Nakai Yozaburo relocated to the island and has been engaged in fishing since Meiji 36, and since this constitutes occupation under international law, we believe that there is no impediment to making the island territory of our nation and placing it under the jurisdiction of the magistrate of the Oki Islands, belonging to Shimane Prefecture. We therefore acknowledge that it is appropriate to resolve the matter as proposed by the Minister of Home Affairs.³

3) Public Notice of Territorial Incorporation

After the cabinet decision to incorporate Takeshima into Japanese territory, the home affairs minister issued Instruction No. 87 to the Shimane prefectural governor on February 25, 1905. This read: “The island located at 37 degrees 9 minutes and 30 seconds north, 131 degrees 55 minutes east, and 85 nautical miles northwest of the Oki Islands shall be known as Takeshima and shall henceforth be placed under the jurisdiction of the magistrate of the Oki Islands, and you shall make an official announcement to this effect.”⁴ Based on this, the Shimane Prefectural governor issued the Shimane Prefectural Notice No. 40 on February 22 of that year, reading, “It has been ordained that the island located at 37 degrees 9 minutes and 30 seconds north, 131 degrees 55 minutes east, and 85 nautical miles northwest of the Oki Islands shall be known as Takeshima and shall henceforth be placed under the jurisdiction of the magistrate of the Oki Islands.” The content of this notice was conveyed as an instruction to the Oki Islands Government (Shimane Prefecture General Affairs No. 11), dated as the above notice, and was reported in the February 24, 1905 edition of the *San'in Shinbun* newspaper with the headline “A new island in the Okis.”⁵

4) The Cabinet Decision Text and Occupation

³ *Kobun ruiju* (Records of Cabinet Decisions) Vol. 29, Book 1 Public Policy department administration division (National Archives). Images are on the website of the Japan Center for Asian Historical Archives. JACAR Ref. A01200222600. Note that the current location of the island according to the Geospatial Information Authority of Japan is 37 degrees 14 minutes north, 131 degrees 52 minutes east.

⁴ The original of the instruction is held in the Shimane Prefectural Archive collection, *Reikun* (Orders and instructions: 1901–5).

⁵ An image of the Shimane Prefectural Notice (from the Aikamura Village Hall Archives) can be found on the prefectural website at http://www.pref.shimane.lg.jp/soumu/web-takeshima/takeshima_photo/#a04 (accessed on August 29, 2014; in Japanese). An image of the *San'in Shinbun* article can be found at http://www.pref.shimane.lg.jp/soumu/web-takeshima/takeshima06/takeshima06_05.html (accessed on August 29, 2014; in Japanese).

The cabinet decision says that (a) there is no trace of prior occupation by any other country and (b) the fact that Nakai Yozaburo relocated to the island and has there been engaged in fishing constitutes occupation under international law. The term “occupation” used here does not refer to the occupation of territory by another country’s military force in wartime, or in peacetime, but rather is being used to refer to the “title of occupation,” a method of acquiring territory, or to the act of taking possession, which is a requirement for that.⁶ In short, the requirements for occupation are that the land in question be *terra nullius*, that a state have an intent to claim it and the intent be demonstrated, and that a state actually occupy it. (a) is saying that the fact of *terra nullius* – that is, that the authority of no other state extends to Takeshima and that no other country has ever effectively occupied it, and it is therefore not the territory of any other country, and (b) is saying that regarding the actual occupation, Japan acted to take possession of Takeshima, and further that Japan makes the island its territory by the title of occupation.

Takeshima was “discovered” by Western explorers in the mid-nineteenth century, and given names like Liancourt, Hornet, and Olivutsa Melelai (Оливуца Менелай). However, discovery only creates an “inchoate” title, and will not be ground of territorial right unless it is converted into a definitive title within a reasonable period of time by planting settlements, etc., or local acts showing an intention of continual claim are repeated.⁷ Western countries did not take these steps regarding Takeshima. The island was not Korean territory either. It was not historically Korean territory (see section 4 below). As for the argument that it was placed under the jurisdiction of Ulleung County by the Korean Empire in a 1900 edict, ahead of Japan, evidence has not been demonstrated that this measure was taken in regard to Takeshima (see section 5 below). Therefore, Takeshima was the territory of no other country at this time. The intent to claim Takeshima was demonstrated not only in the explicit form of the aforementioned notice issued by Shimane Prefecture and the relevant newspaper report, but also implicitly, by the subsequent exercise of powers of administration, such as regulation of fishing around the island. For actual occupation, the occupying body must be a state. It is not sufficient for a private citizen to have engaged in economic activity on the territory in question. For a contemporary example we can look at the International Court of Justice decision (December 13, 1999) in the Kasikili/Sedudu Island dispute, between Botswana and Namibia. In response to Namibia’s alternative argument that they had prescriptive title over the island owing to the continuous and exclusive control and usage of it, the court ruled that since the usage of the island by local residents for agricultural purposes does not constitute a state acting as a sovereign, and therefore does not constitute a basis for

⁶ For more on occupation, see Ozaki Shigeyoshi, “The Senkaku Islands and Japan’s Territorial Rights,” Part 1. *Review of Island Studies*, June 10, 2013, <http://islandstudies.oprf-info.org/research/a00001/>. Translated from “Senkaku Shoto to Nihon no ryoyuken,” *Tosho Kenkyu Journal*, Vol. 1 (June 2012), pp. 8–17 (especially pp. 10–13). For explanations of occupation at the time the cabinet decision was made, see William Edward Hall, *A Treatise on International Law*, 4th ed. (Oxford: Clarendon, 1895), pp. 106–7.

⁷ Hall, *ibid.*, pp. 107–10.

title.⁸ Although the laborers that Nakai Yozaburo dispatched in 1903 to hunt sea lions did construct a cottage and raise the national flag on Takeshima,⁹ this was private activity. A state may, however, “ratify” an act of occupation by citizens.¹⁰ The Japanese government ratified the act of occupation by its citizens via the January 1905 cabinet decision.

3. Displays of State Authority by Japan

1) The Significance of Displays of State Authority

There is an argument that occupation is established at once when the action involving occupation is taken by a state. For example, France insisted, in its communication to Japan concerning the Spratly Islands, in July 1938 as follows:

[In Japan’s notes,] it is alleged that the occupation of the Spratly Islands by France would not be sufficient to found her rights of sovereignty because it was not accompanied by effective occupancy in terms of international law. [The Government of France cannot admit this argument, since] it is *jurisprudence constante* in international law that “res nullius” becomes possession of a State the very moment an occupant appears; the taking possession must be considered as completed at this moment, and the occupation is entirely achieved. This is also what is expressed in the arbitral award of January 28, 1931 by the King of Italy in the Clipperton Island Case (France v Mexico). The award declares that “not having actively exercised its authority does not involve forfeiture of the acquisition already definitely achieved.”¹¹

⁸ Kasikili/Sedudu Island (Botswana/Namibia), Judgment 1999, I.C.J. Reports, pp. 1045–1109, in particular paras. 90–99, pp. 1101–1106. <http://www.icj-cij.org/docket/files/98/7577.pdf> (accessed on August 29, 2014).

⁹ The end of Nakai’s “Petition to incorporate Ryanko Island into Japan and lease it” (held in the Shimane Prefectural Archives *Takeshima* collection) reads, “The party that first erected a structure and raised the national flag over this island was, in fact, a group led for my sake by Sergeant Ohara Iwazo, a reservist who is now in the Fourth Army Expeditionary Force.” A reprint of the explanatory document is in *Shimane Prefectural Archives Administrative Documents 1* (note 2), pp. 56–67. Also see Tamura, *op. cit.* (supra note 1), pp. 44–50.

¹⁰ Hall, *op. cit.* (supra note 6) p. 109.

¹¹ “Shin nan gunto ni kansuru Futsu taishi moshiire” (Communication by the French Ambassador Concerning the Spratly Islands), July 25, 1938, in *Kakkoku ryodo hakken oyobi kizoku kankei zakken—Minami Shina Kai shoshoto kizoku kankei, dai 3 kan* (The Territorial Discoveries of Various Nations and Assorted Matters Concerning Jurisdiction: Concerning the Affiliation of the Various Atolls in the South China Sea, Vol. 3), from January 1938 on, in Foreign Ministry Diplomatic History Archives, diplomatic record A-4-1-0-2-1. The Ambassador’s letter is reproduced as a document of May 1938 (no.333) in *DOCUMENTS DIPLOMATIQUES FRANCAIS 1932-1939*, 2e Série Tome IX, pp.722-724 (as for the date, see *ibid.*, vol. 10, p. 698, note 2.) The quoted passage of the Clipperton Island case award—“le fait de n’y avoir pas exercé son autorité d’une manière positive n’implique pas la déchéance d’une acquisition déjà définitivement achevée.”—can be found at *Reports of International Arbitral Awards*, Vol. 2, p. 1111, <http://www.un.org/law/riaa/>.

In 1933, France dispatched naval vessels and declared occupation of Titu-Aba and other islands, where the Rasa Island Phosphate Ore Company of Japan had been exploring and excavating phosphate ore since 1918, but which had suspended operations due to the Great Depression.¹²

However, it is widely believed that the necessity of effective occupancy for occupation was established in the latter half of the nineteenth century, and in the twentieth century came to be further emphasized.¹³ In cases where territorial disputes were settled in international tribunals, they often came to be decided based on the “peaceful and continuous display of State authority.”¹⁴ That is, many cases were decided based on which state could demonstrate more evidence of effective occupancy (control). Among judgments of the International Court of Justice after World War II, evidence of direct involvement in the occupancy of the island in question was emphasized in the *Minquiers and Ecrehos Case* (France/United Kingdom, decided on November 17, 1953). The ICJ attached importance to the United Kingdom’s activities such as the exercise of criminal jurisdiction, taxation, the registration of real estate transactions, the establishment of customs, and conducting of censuses. In this case, the court also considered as evidence the activities which were not actions taken in order to improve a certain country’s own legal standing after the dispute arose but were being continued as they had been prior to the dispute.¹⁵ In the case on the sovereignty of Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia, decided on December 17, 2002), the relative level of effective control by the two countries was weighed, and the argument by Malaysia concerning its establishment of regulations on the collection of turtles and turtle eggs and the establishment of a bird conservation zone was given greater weight as evidence than the Indonesian argument about the activity of Indonesian fishers in the surrounding waters and patrols by the Dutch navy. Note that although Malaysia had been developing Pulau Sipadan as a resort island in recent years, this fact was not considered as evidence because it was action taken after the dispute arose.¹⁶ In the territorial and maritime dispute between Nicaragua and Honduras in the Caribbean Sea (decided October 8, 2007), the court tested the “effectivités” of the two countries, following independence, and determined that owing to the actions taken by

¹² A French Foreign Ministry notice dated July 19, 1933, concerning the occupation of several islands by the French Navy, notes: “The French government has ordered the Navy to establish occupation of the islands and islets specified below. 1. Spratly Island, located at 8 degrees, 39 minutes north and 111 degrees, 55 minutes east of Greenwich longitude, as well as islets belonging to that island (sovereignty acquired April 13, 1933); 2. . . . The above islands and islets are henceforth under the jurisdiction of France.” “Avis relatif à l’occupation, le 19 juillet 1933, de certaines îles par des unités navales françaises,” in *Journal Officiel*, July 25, 1933, p. 7794.

¹³ For details see Ozaki, *op. cit.* (supra note 6)

¹⁴ This term is used in “Island of Palmas case (Netherlands/USA), 4 April 1928,” in *Reports of International Arbitral Awards*, Vol. 2, p. 867. The term “continuous and peaceful display of territorial sovereignty” is also listed in *ibid.*, p. 839. <http://www.un.org/law/riaa/>.

¹⁵ The *Minquiers and Ecrehos case*, Judgment of November 17th, 1953: I.C.J. Reports 1953, pp. 47–73, especially pp. 65–66. <http://www.icj-cij.org/docket/files/17/2023.pdf> (accessed on August 29, 2014).

¹⁶ *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*, Judgment, I.C.J. Reports 2002, pp. 625–86, especially paras. 130–45, pp. 679–84. <http://www.icj-cij.org/docket/files/102/7714.pdf> (accessed on August 29, 2014).

Honduras concerning the application of criminal and civil law, controlling entrance to the region, and the permission of fishing and construction, the island was Honduran territory.¹⁷ In the case on the sovereignty of Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore, decided on May 23, 2008), in determining the sovereignty of Pedra Branca the court considered such things as various forms of exercise of powers of administration by Singapore, including the investigation of shipwreck incidents and the approval or non-approval of oceanographic surveys that Malaysia had planned in the vicinity of the island.¹⁸

Looking at the text of the cabinet decision to incorporate Takeshima into Japanese territory, we can consider that the occupation was completed that instant, when the government “ratified” Nakai Yozaburo’s act of occupation and announced the decision through a Shimane Prefectural Notice. However, we can also consider Takeshima to have become more firmly Japanese territory by means of the subsequent string of displays of state authority. Below, I will examine the measures that Japan took following the cabinet decision, while keeping this consideration in mind.¹⁹

2) Takeshima Fishing Permits

Shimane Prefectural Order No. 18, issued on April 14, 1905, revised the “Fishing Industry Control Regulations” that had been established by Shimane Prefectural Order No.130 of November 28, 1902. This revision added sea lion hunting in Takeshima to the list of industrial fishing activities, specifying that authorization from the prefectural governor was required. Specifically, in Article 1 of the regulations, reading “Any person wishing to engage in the below listed fishing activities must obtain authorization from the governor,” “sea lion fishing (limited to Takeshima, in the Oki Islands)” was added to the list of items, immediately following “floating net fishing.” Similarly, “sea lion fishing” was added to the list in Article 2, just after “The term of authorization for fishing using diving apparatus shall be one year, and the period of authorization for icefish stretched net fishing or floating net fishing shall be three years.” In Article 3, where it read “persons wishing to receive authorization for industrial fishing shall record on the application document the term of authorization (limited to icefish stretched net fishing, floating net fishing, and fishing using diving apparatus) and the location of the industrial fishing activity,”

¹⁷ Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua/Honduras), Judgment, I.C.J. Reports 2007, pp. 659–764, especially paras. 182–196, pp. 714–18. <http://www.icj-cij.org/docket/files/120/14075.pdf> (accessed on August 29, 2014).

¹⁸ Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore), Judgment, I.C.J. Reports 2008, pp. 12–102, especially paras. 231–39, pp. 82–88. <http://www.icj-cij.org/docket/files/130/14492.pdf> (accessed on August 29, 2014).

¹⁹ For details on the measures that Japan took, see Tamura, *op. cit.*, p. 51 and Kawakami, *op. cit.*, p. 215 (both in *supra* note 1).

“sea lion fishing” was added to the parenthetical list, “fishing using diving apparatus.”²⁰

After that, talks were held between the prefecture and the local Oki Islands government over the selection of applicants for authorization to hunt sea lions on Takeshima, and Nakai Yozaburo and three other applicants were granted authorization on June 5, 1905. The Fishing Industry Control Regulations were revised again by Shimane Prefectural Order No. 48, issue on June 30, 1908, industrial fishing activities other than sea lion hunting were banned on Takeshima and the surrounding territory, to a distance of 20 *cho* (about 2.2 kilometers). The Shimane Prefecture Fishing Industry Control Regulations that had been established by Shimane Prefectural Order No. 54 of 1911 were then revised by Shimane Prefectural Order No. 21, issued April 1, 1921, to allow authorized sea lion hunters to also harvest seaweed in a specified region around Takeshima.²¹

During the occupation period following World War II, Takeshima was placed outside the MacArthur Line (the line demarcating ocean area within which Japanese ships could travel without individual authorization). Therefore, sea lion fishing was removed from the Shimane Prefecture Fishing Industry Control Regulations on July 26, 1946, by Shimane Prefectural Order No. 49. However, “sea lion fishing” was once again made a form of industrial fishing that required gubernatorial authorization after the end of the occupation, when the “Shimane Prefecture Ocean Surface Fishing Industry Rectification Regulations” (August 29, 1951, Shimane Prefecture Regulation No. 88) were revised by Shimane Prefectural Order No. 29, dated May 16, 1952. After a joint Japan-US commission decided on March 19, 1953, to eliminate a US military bombing practice range that had been established around Takeshima, the governor of Shimane Prefecture authorized three fishermen to hunt sea lions on Takeshima, and granted a license for the harvesting of seaweed to the Oki Islands Federation of Industrial Fishing Cooperative Associations, based on the provision in Article 10 of The Fisheries Act (1949, law no. 267).²² These cooperative harvest rights granted to the Federation have been renewed every 10 years through the present day (most recently, on September 1, 2013).

3) Registration in the State-Owned Land Ledger

Shimane Prefecture ordered the Oki Islands government on May 3, 1905 to perform a land area survey and the Oki Islands Magistrate responded on May 17. Based on this response, Takeshima was registered in the *Ledger of State-Owned Land in the Oki no Kuni Counties of Suki/Ochi/Ama/Chibu* as “Takeshima: location, northern latitude . . . area, 23 *cho* 3 *dan* 3 *sebu*; notification of registration by the Oki Islands Magistrate on May 17, 1905.” Takeshima became naval land on August 17, 1940, and a note reading, “Public use is eliminated as of August 17, 1940, and it shall now be Imperial Navy land under the Maizuru Naval District” was added in blue pen in the aforementioned

²⁰ *Shimane Prefectural Archives, Administrative Documents 1* (supra note 2) pp. 157–59.

²¹ Tamura, op. cit. (supra note 1), pp. 71–73 and end of volume “errata,” pp. 6–7.

²² *Ibid.*, pp. 73–80.

Ledger.²³ With the elimination of the Ministry of the Navy, the island was transferred to the Ministry of Finance as state-owned land on November 1, 1945.²⁴

4) Field Survey

Shimane Prefecture Governor Matsunaga Bukichi went on a visit to Takeshima on August 19, 1905, which was reported by the *San'in Shinbun* newspaper as "Takeshima visitation by Governor Matsunaga" and "Sea lions swim in the pond of the prefectural capital." Jinzai Yoshitaro, director of third department, Shimane Prefecture, was assigned on March 27, 1906, to lead a field survey of Takeshima conducted by a team of around 40 specialists in areas such as fisheries, agriculture, public health, and surveying, including Oki Islands Magistrate Higashi Bunsuke.²⁵

5) Taxation

Shimane Prefectural Order No. 11 of March 1901, "Regulations on the Assessment of Prefectural Taxes," was revised by Shimane Prefectural Order No. 8, issued on March 1, 1906 (after passing a prefectural assembly resolution and receiving permission from the Minister of the Interior and Minister of Finance), adding "1.5% of total value of sea lions caught in the year" to the list of items and tax amounts in Article 11 (Miscellaneous taxes) and stipulating that, "this tax will also be assessed for capture by those other than the authorized fisher" (in effect from 1906).²⁶

6) Levy of Usage Fees for State-Owned Land

Starting in 1906, "rent" (usage fees) for the leasing of state-owned land were paid by those who had been authorized to engage in sea lion hunting. This rent was an annual rate of 4 yen, 20 sen during the "continued lease term" (period for which sea lion hunting was authorized) of July 1906 to June 1911. After that, sea lion fisheries licenses were issued every five years (the holder of these licenses varied), with usage fees collected annually. The usage fee was 4 yen, 70 sen annually, starting in 1916. Although Takeshima became naval land on August 17, 1940, as mentioned above, sea lion hunting continued to be authorized and the annual usage fee was 4 yen, 70 sen from October 1, 1941 through March 31, 1945.²⁷

4. Was Takeshima Historically Korean Territory?

1) The Korean Argument

²³ *Shimane Prefectural Archives, Administrative Documents 1* (note 2), p. 160. The *Oki no Kuni* ledger of state-owned land is kept by Shimane Prefecture.

²⁴ Tamura, op. cit. (supra note 1), pp. 65–66.

²⁵ Ibid. pp. 58–62.

²⁶ *Shimane Prefectural Archives, Administrative Documents 1* (note 2), pp. 161–163.

²⁷ Tamura, op. cit. (supra note 1), pp 53–56, 64.

In relation to Japan's cabinet decision of 1905 the text of which refers to occupation as the title to incorporate Takeshima into its national territory, Korea argues that Takeshima was not *terra nullius*, but rather had historically been Korean territory. The Korean government lays out this argument as follows, in the pamphlet *Korea's Beautiful Island, Dokdo*. (Underlining is by this author.)

2. Geographical Recognition of Dokdo and Relevant Historical Evidence

A. Dokdo has been recognized geographically as a part of Ulleungdo.

On a clear day, Dokdo is visible to the naked eye from Korea's Ulleungdo (Ulleung Island), the island which lies in the 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 around Ulleungdo, Dokdo is the only one visible to the naked eye from Ulleungdo on a clear day.

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

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 Uljin-hyeon (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 extends 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 Enlarged Edition of the 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] 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 present-day Dokdo and that it is Korean territory.²⁸

2) Evaluating the Korean Assertions

In studying these claims, we must first point out that, in addition to it being legally meaningless that Takeshima/Dokdo can be seen with the naked eye from Ulleungdo (there is no doctrine that being visible makes an island territory of the same country), this argument is interpreting the *Sejong sillok jiriji* mistakenly. It is written in *Sejong sillok jiriji* that, “The two islands of Usan and Mureung are located in the sea directly east of the prefecture. The two islands are not far apart. On a windy day when the sky is clear, it is possible to see them. In the time of Silla, it was called Usan-guk (Usan State). Another name is Ulleungdo.” This section is explained as follows: That the two islands of Usan and Mureung being directly east refers to the direction from Uljin prefecture, and visibility on clear days refers to the distance from the prefecture. That is, it does not say here that Usan (island) and Mureung (Ulleungdo) are visible from one another, or that Usan is visible from Mureung, but that the two islands of Usan and Mureung are both visible from the prefecture (the Korean mainland).²⁹ Or conversely, “Usan,” at a distance that can be seen in the direction of directly east from Uljin prefecture, is Ulleungdo (or an imaginary island), and is not Takeshima/Dokdo. In the *Sinjeung dongguk yeoji seungnam* that is being cited in the Korean government’s pamphlet it says, “Usan-do, Ulleungdo: also called Mureung, U-reung. Two islands are located in the sea directly east of the prefecture. On a windy day when the sky is clear, trees at the mountaintop and beach at the mountain base can be seen plainly. . . . One says Usan and Ulleung are originally the same island” (Takeshima is a rock formation and has no trees). Looking at this additional text makes it even clearer that

²⁸ Korean Ministry of Foreign Affairs, *Korea’s Beautiful Island, Dokdo*, pp. 5–6. This document can be downloaded from <http://dokdo.mofa.go.kr/eng/pds/pdf.jsp> (accessed on August 29, 2014).

²⁹ This fact is shown clearly in an explanation based on the concept of “*kishiki* (*kyusik*)” by Professor Shimojo Masao. See Shimojo Masao, *Takeshima wa Nik-Kan dochira no mono ka* (Is Takeshima Japanese or Korean?) (Tokyo: Bungeishunju, 2004), pp. 162–66. *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).

the article means one can see Ulleungdo from the prefecture (the mainland).³⁰

The Korean government-issued pamphlet insists that it is recorded in the *Sejong sillok jiriji* that the two islands were territory of the Usan State, which came under Silla rule in the early sixth Century, and therefore the history of rule over Dokdo can be traced back to the Silla Period. *Sejong sillok jiriji* does mention that the Usan State came under Silla rule, based on an article in the *Samguk sagi* (History of the Three Kingdoms, twelfth century), but *Sejong sillok jiriji* never says that two islands were territory of the Usan State. Rather, the source book *Samguk sagi* says that Ulleungdo is an alternate name for Usan State. ("Usan State is located on an island in the ocean to the east of Myeongju. Another name for it is Ulleungdo. Its area is 100 *ri* square.")³¹

The Korean pamphlet further insists that sources such as the *Yeojigo* (Geography) volume of the *Dongguk munheon bigo* (1770) say, "Ulleung (Ulleungdo) and Usan (Dokdo) are all the territory of the State of Usan, and Usan (Dokdo) is called Matsushima in Japan." However, the passages in documents from the eighteenth century onward which link Usan to Japan's Matsushima are based on the statements made by a An Yong-bok, who came to Japan at the end of the seventeenth century, recorded in the *Sukjong sillok* (Annals of King Sukjong's Reign), whereas the same book reports that the Korean government denied An's activity, having said "it has nothing to do with what An did."³² The compiler of books like *Dongguk munheon bigo* could not have possessed actual knowledge of "Usan" or "Matsushima" (the name Takeshima was called during the Edo Period) that exceeded what is found in *Sukjong sillok*.

Note that an island with the name "Usan(do)" does appear on old Korean maps. However, this is either (1) an imaginary island – the Usando seen on a map in the *Sinjeung dongguk yeoji seungnam*, which depicted Usando and then Ulleungdo to the east of the Korean Peninsula, as per the description in that text of how two islands of Usando and Ulleungdo lie directly east of Uljin prefecture, Kangwon province; or (2) an islet that lies 2 kilometers offshore of Ulleungdo (which has the modern Korean name of "Jukdo," from the Chinese characters meaning "bamboo island," the same ones used in Japanese to write "Takeshima"), called Usan(do) or "so-called Usando."

³⁰ The relevant passage from *Sejong sillok jiriji* (vol. 153, section 11) can be found, for example, in National History Editorial Committee, ed., *Joseon wangjo sillok* (Annals of the Joseon Dynasty) (Seoul: Dongguk Munhwasa, 1956), p. 680; the passage from *Sinjeung Dongguk Yeoji Seungnam* (vol. 45, section 26) can be found, for example, in the 1958 facsimile reprint of the book by Dongguk Munhwasa, p. 814.

³¹ See, for example, *Samguk sagi* (History of the Three Kingdoms), facsimile edition from The Research Institute for Oriental Cultures, Gakushuin University (1968), p. 32.

³² *Sukjong sillok* (Annals of King Sukjong's Reign) vol. 31, fol. 10–11, etc. For details, see Tsukamoto Takashi, "The Late-Seventeenth-Century 'Takeshima' Dispute, with Reference to the Dajokan Order of 1877," *Review of Island Studies*, August 29, 2014, <http://islandstudies.oprf-info.org/research/a00012/>. Translated from "Genroku Takeshima Ikken o megutte: Tsuketari, Meiji junen Dajokan shirei," *Tosho Kenkyu Journal*, Volume 2 No. 2 (May, 2013), pp. 34-55; published by the OPRF Center for Island Studies.

(After the late-seventeenth century negotiations between Japan and Korea over fishing from Ulleungdo,³³ the Korean government began to patrol Ulleungdo, learned of the existence of “Jukdo,” and gave this islet the name Usan.) This has been depicted slightly east of Ulleungdo on maps and charts since the eighteenth century. Ultimately, neither Usando (1) nor (2) is Takeshima/Dokdo. There is no Korean map that depicted Takeshima/Dokdo.³⁴

In the end, it is most likely that Korea was not even aware of Takeshima. Takeshima was not historically Korean territory.

5. Korean Imperial Edict 41 and State Council Directive No. 3

1) The Korean Argument

There is one more assertion in Korea responding to Japan’s invocation of the legal doctrine of occupation in the 1905 cabinet decision to incorporate Takeshima into its national territory. That is, the argument that the Korean Empire placed Takeshima/Dokdo under its jurisdiction even earlier than Japan, when Imperial Edict 41 of October 25, 1900, “The matter of renaming Ulleungdo as Uldo and revising the *Do-gam* (Island Administrator) to be a *Gun-su* (County Magistrate)” was proclaimed; that a 1906 report by the Uldo County Magistrate mentions “Dokdo, which belongs to this county (*gun*);” and that the State Council issued an order denying that Dokdo had become Japanese territory. The Korean government-issue pamphlet we cited above says the following.³⁵ (Underlining is by this author.)

4. The Empire of Korea’s Effective Control over Dokdo and Restoration of Sovereignty over Dokdo after World War II

A. Through Imperial Edict 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.

On October 27, 1900, the Empire of Korea issued Imperial Edict No. 41, proclaiming the renaming of Ulleungdo as Uldo and the elevation of the post of Ulleungdo inspector to county magistrate. In the second article of the same edict, 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)].”

³³ See Tsukamoto, *ibid.*

³⁴ For more on old Korean maps, see Funasugi Rikinobu, “Ezu/chizu kara miru Takeshima (Takeshima as Seen in Charts and Maps)”, Shimane Prefecture {Period 1} , Takeshima Mondai Kenkyukai of Shimane Prefecture, *Takeshima mondai ni kansuru chosa kenkyu: Chukan hokokusho* (Interim Report of the Research Study on the Takeshima Issue), March, 2006, pp. 43–50, *ibid.* “*ibid* (II)” *ibid.*, *Takeshima mondai ni kansuru chosa kenkyu: Saishu hokokusho* (Final Report of the Research Study on the Takeshima Issue), March 2007, pp. 103–, *ibid.* “*Ibid* III” Shimane Prefecture Web Takeshima Mondai Kenkyukai, *Takeshima mondai ni kansuru chosa kenkyu hokokusho: Heisei 19* (2007 Report of the Research Study on the Takeshima Issue), July, 2008. pp. 83–. All are available on the Shimane Prefecture website (See note 5).

³⁵ Korean Ministry of Foreign Affairs (*supra* note 28), p. 9.

On March 28, 1906, a Japanese survey team comprised of officials and civilians from Shimane Prefecture visited County Magistrate Sim Heung-taek of Uldo-gun and mentioned during conversation with him that Dokdo had been incorporated into Japanese territory. Sim Heung-taek submitted a report to the 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 Edict No. 41 of 1900.

On April 29, 1906, Yi Myeong-rae, the county magistrate of Chuncheon-gun (Chuncheon county) and the acting governor of Gangwon-do, reported the matter in the “Special Report” to the Uijeongbu (State Council of the Empire of Korea), Korea’s top decision-making body at the time. Thereupon, on May 20, 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 Edict No. 41 issued in 1900.

2) Korean Empire Imperial Edict 41

The Korean Government’s pamphlet says that the 1900 Edict No. 41 clearly expressed that “Dokdo” was under the jurisdiction of Uldo-gun, and also clearly indicated that “Stone Island (Dokdo)” was under the jurisdiction of Uldo-gun, but the place name “Dokdo” does not actually appear anywhere in the text of the edict. Article 2 of the edict states that, “The county seat shall be Daehadong, and its jurisdictional area shall be the entire island of Uldo and Jukdo [and] Seokdo.” It argues that Jukdo (“Bamboo Island” in Chinese characters) is the aforementioned islet off of Ulleungdo, and that “Seokdo” (“Stone Island” in Chinese characters) is Takeshima/Dokdo. As for the relationship between Seokdo and Dokdo, the Korean Government issued an official interpretation on September 9, 1953, arguing that, “According to the dialect of Kyungsang province of Korean [*sic.*] Dok means stones or rocks. Dokto [*sic.*] means an island of stones or rocks. It happens that the pronunciation of the present Dokto [*sic.*] . . .”³⁶ However, not only does a survey of Ulleungdo carried out by Inspector Yi Gyu-won in 1882, before the enactment of the Imperial Edict, not mention an island by the name of “Seokdo,” but Takeshima/Dokdo is not even mentioned at all. A 1900 survey performed by Ulleong Commissioner U Yong-jeong is the same. The scope of Ulleungdo written in the proposal for the Imperial Edict also does not include Takeshima/Dokdo.³⁷ Furthermore, the *Daehan Jeondo* (Complete Map of Korea) made

³⁶ Korean Ministry of Foreign Affairs, Political Bureau, *Dokdo Munje Gae-Ron* (Dokdo Problem Summary) (1955), English text in appendix, p. 37. The Japanese text of a September 26, 1953 *To-a Shinbun* article reads, “the meaning of the present Dokdo, ‘lonely island.’”

³⁷ Shimojo, op. cit. (note 29), pp. 105–116. Also see Tsukamoto Takashi, “*Kankoku no hogo/heigo to Nik-Kan no ryodo ninshiki—Takeshima o megutte* (Korean Protectorates and Annexation and

by the Korean Government's Academic Department Publishing Office in 1899, one year ahead of the Imperial Edict (also widely published in Hyeon Chae, *Daehan Jiji*, 1901), only depicts Jukdo – which has “Usan” written on it – and does not show Takeshima/Dokdo at all (that is, the island itself does not appear, and neither does the place name “Seokdo”). Therefore, it is not self-evident that the Seokdo mentioned in the Imperial Edict is Takeshima/Dokdo, and more evidence is needed to prove this connection.

Supposing that it is eventually proven that Seokdo is Takeshima/Dokdo, the fact that the Imperial Edict included the island in the jurisdiction of Uldo-gun would be significant in terms of displaying intent of possession towards the island by the Korean Empire. However, since there had been no act of taking possession as of 1900 (see section 3 above), the Korean Empire's territorial claim had not been established. Again, even though the Imperial Edict shows intent to take possession, merely enacting a law which has a provision about administrative jurisdiction would not furnish Korea with “inchoate title” (see section 2 above) that must be respected by other countries so that it could convert it into a definitive title within a rational span of time (like “discovery,” the traditional accompanying actions are that an authorized explorer makes landfall and raises a flag to claim that land in the name of their king).

3) State Council Directive No. 3

I will next examine the mention of “Dokdo, which belongs to this county (*gun*)” in the 1906 report by the Uldo County Magistrate, and the issuance of “an order denying the claim that Dokdo had become Japanese territory” by State Council of Korean Empire. Uldo-gun (county) magistrate Sim Heung-taek wrote in his report to Gangwon-do (province), “Dokdo, which belongs to this county, lies about 100 *ri* over the sea from this country. A party of government officials of Japan visited our government hall and said themselves that Dokdo is now territory of Japan, and that they dropped in on their occasion of the inspection of the island.” Having received the report via Ganwondo, the State Council ordered in Directive No. 3, “the allegation of Dokdo [being Japanese] territory has no basis whatsoever; you shall further study and report on the situation and what action the Japanese take.”³⁸ However, there is no record that Sim Heung-taek ever told the survey team that was visiting Ulleungdo that Takeshima/Dokdo belongs to Uldo-gun. Also, while the government of the Korean Empire did order a study of and report on the situation, there is no record of Korea ever having made to Japan any request for clarification, or lodged any protest.³⁹

Japanese/Korean Understandings of Territory: Regarding Takeshima)”, *Higashi Ajia kindaiishi* (Modern East Asian History) 14 (March 2013), pp. 52–67.

³⁸ Directive No. 3 is written in handwriting on a report paper sent from the acting governor of Gangwon-do to the ministers in the State Council. The report of the Uldo-gun magistrate is quoted in the report's text. There is a photograph in Lee Sang-Tae, *Historical Evidence of Korean Sovereignty over Dokdo*, (Paju: Kyongsawon) 2007, p. 197.

³⁹ Regarding the Korean Empire not having performed any requests or protests, there is research concluding that, in comparison with the fact that during the same period, the government of the

Supposing that the assertion by the county magistrate of Uldo-gun that Takeshima/Dokdo belonged to his county is based on the aforementioned Imperial Edict 41 of 1900 that established the county, specifically the text in Article 2 reading, “its jurisdictional area shall be the entire island of Uldo and Jukdo [and] Seokdo”, then it raises the question of why that report did not use the same language as that Imperial Edict and name the island of Seokdo. It was in 1906 that the Uldo-gun county magistrate made his report. In 1904, in addition to Nakai Yozaburo and the other Japanese fishers mentioned before as operating in the Oki Islands, there was a Japanese fishing unit (the Iwasaki Gumi) that was using Ulleungdo as a base and hiring Koreans to hunt sea lions. By 1905 there were several units doing so.⁴⁰ It would be a rational supposition that the county magistrate wrote “Dokdo, which belongs to this county” on the basis of the Imperial Edict establishing his county, but if this were a supposition, then there is also a possibility to suppose the other way. That is, Koreans who were employed by Japanese and engaged in sea lion hunting, starting in 1904, named the island “Dokdo,” and the increased awareness of “Dokdo” among “residents” of Ulleungdo led to the county magistrate thinking that the island was part of his county. In this case, then the mention of “Dokdo, which belongs to this county” in the Uldo-gun county magistrate’s report was not based on the law, which means that the understanding of the island expressed by the State Council after receiving this report is based on its description of the island belonging to the county (meaning that it was an ad-hoc response with no legal basis).⁴¹

Even if one supposes that the mention by the Uldo-gun magistrate of “Dokdo, which belongs to this county” and the State Council’s assertion that “the allegation of Dokdo [being Japanese] territory has no basis whatsoever” represent Korean intent of

Korean Empire did lodge protests with the Japanese government regarding other issues and also solved the problem, such as the sale of a ruined Japanese naval observation post in Uljin-gun, it is most natural to conclude that Korea determined that the study concluded “Dokdo” was an island outside of Korean territory and therefore did not lodge any protest. Yamazaki Keiko, “Kankoku seifu ni yoru Takeshima ryoyu konkyo no sosaku” (The Fabrication of a Basis for the Possession of Takeshima by the Korean Government), in *Dai 2-ki "Takeshima mondai ni kansuru chosa kenkyu" Saishu hokokusho* (Final Report of the Research Survey on the Takeshima Issue, Second Period), March 2012, pp. 61–79. <http://www.pref.shimane.lg.jp/soumu/web-takeshima/takeshima04/saishuhokokusyo2.data/06.pdf> (accessed on August 29, 2014; in Japanese). Note that since no protests were made, as of this time there had been on territorial conflict over Takeshima between the Japanese and Korean governments. The genesis of the conflict was January 1952, when Korea put Takeshima within the “Syngman Rhee Line,” and Japan responded by protesting.

⁴⁰ Kawakami, op. cit. (supra note 1), pp. 184, 189. Iwasaki Gumi: 7 Koreans, 3 Japanese; Numata Gumi: 6 Koreans, 3 Japanese; Urago Gumi: 3 Koreans, 7 Japanese. These numbers come from Nakai Yozaburo’s “Memorandum on the Status of Takeshima Sea Lions” in the Shimane Prefecture Archives collection *Takeshima*. It is reprinted in *Shimane Prefectural Archives, Administrative Documents 1* (supra note 2), pp. 91–92. Note that “Current conditions of Korea’s Ulleungdo,” *Kanpo* (Government Gazette) No. 6667, May 18, 1905, lists the population of Ulleungdo, including Japanese, and lists the Japanese working there by industry. This document says regarding the animal harvesting industry that “there are 30 persons employed in this industry, and three groups of fishing boats.” These numbers are in line with the Nakai’s “Memorandum.”

⁴¹ For the consequences of this decision, see Yamazaki, op. cit. (supra note 39). Incidentally, the Uldo County Magistrate’s report is the first Korean source to mention the name “Dokdo.”

possession regarding Takeshima/Dokdo, they do not indicate that the Korean Empire performed effective control of the island. Peaceful and continuous displays of state authority are needed. The Korean government's pamphlet says that "the fact is clear that the County Magistrate of Uldo (Ulleungdo) followed the stipulations of "Imperial Edict 41," issued in 1900, in continuing to exercise jurisdiction over Dokdo while asserting sovereignty," but how did it exercise jurisdiction? If there are no actual examples of Korea having exercised powers of administration then this is no basis for claims of territorial rights.

6. Conclusion

The 1905 territorial incorporation of Takeshima is based on "occupation," according to the text of the Japanese cabinet decision. Takeshima was not the territory of any other country; Japan intended to possess the island and the intent was demonstrated; and Japan actually occupied it. That is, all of the requirements necessary for occupation were fulfilled. After the cabinet decision, Japan peacefully and continually exercised powers of administration directly connected with the island, such as regulating the fishing industry around Takeshima and charging usage fees for it as state-owned land. This constitutes territorial title by effective control or display of state authority.

In the seventeenth century, the families Oya and Murakawa of Yonago sailed to Ulleungdo (which Japan then called "Takeshima") with the permission of the shogunate government to collect abalone. The island known today as Takeshima (then called "Matsushima") lies directly on the path from Yonago to Ulleungdo via the Oki Islands, and was used as a stopover and fishing location. According to Oya family documents, they also formally traveled to "Matsushima" (today's Takeshima) starting in 1661, with authorization from the government.⁴² In 1693, Japanese and Korean civilians clashed over fishing activities in Ulleungdo, and as a result of diplomatic negotiations, in 1696 the shogunate banned travel to Ulleungdo by the Oya and Murakawa families. However, the island today known as Takeshima was not subject to diplomatic talks at that time.⁴³ As international law had no application to Japan before the opening of the country to foreign intercourse, it can be considered that Japan has sufficient grounds for possession of the territory if Japan regarded and treated it as her own territory and if this was not disputed by any other country.⁴⁴ At the time, Korea had no knowledge of the island known today as Takeshima (see section 4 above).

When we conclude from the above that Takeshima was historically Japanese territory, the relationship with the 1905 cabinet decision on territorial incorporation being

⁴² Kawakami, *op. cit.* (supra note 1), pp. 71–83.

⁴³ See Tsukamoto, *op. cit.* (supra note 32).

⁴⁴ "Views of the Japanese Government in refutation of the position taken by the Korean Government in the note verbale of the Korean mission in Japan, September 9, 1953, concerning territoriality over Takeshima (February 10, 1954)," in *Dokdo Munje Gae-Ron* (*op. cit.* note 36), appendix p. 60.

based on occupation may be questioned. This will be explained in the following way. Although Japan did have possession of the island in the seventeenth century, activity on and around the island known today as Takeshima was curtailed from 1696 (the order banning travel to Ulleungdo) onward.⁴⁵ Therefore, there was a possibility that if at a later date some other country performed an act of taking possession of this island with the intent to claim it, then that country's claim based on effective control might prevail over Japan's historical claim. By incorporating the island in accordance with the territorial acquisition methods of modern international law Japan's sovereignty over Takeshima became conclusive.

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⁴⁵ The island today known as Takeshima by itself had no economic value at that time. However, there were records mentioning the island today known as Takeshima, showing that Japan had a continued awareness of the territory, such as the *Chosei Takeshima ki* (Chosei Record of Takeshima), which notes, "En route to Matsumae [note: a location on Hokkaido] we were battered by a typhoon. We saw what appeared to be the rumored Matsushima in the distance, the western most of Japan"; or the record of the 1836 court decision on the Imazuya Hachiemon Incident, which states, "Under the pretext of traveling to the nearby Matsushima, he traveled to Ulleungdo." Kawakami, op. cit. (supra note 1), pp. 54, 191-93.