

## The “Critical Date” of the Takeshima Dispute

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### 1. Introduction

One major pending issue in Japan’s relationship with South Korea is a territorial dispute over a group of small islands in the Sea of Japan called Takeshima in Japanese and Dokdo in Korean. There are currently no prospects for a resolution. The official Korean position is that a dispute does not exist at all, while Japan contends that there is one. Tokyo proposed on three occasions that the issue be referred to the International Court of Justice, which Seoul rejected each time, reasoning that there is no dispute to settle. At the same time, South Korea continues to reinforce what it calls the “effective control” of the islands, apparently in an attempt to turn its *de facto* possession into a *fait accompli*. It also continues to actively carry out international public relations activities to reinforce this view. While claiming territorial rights, Japan, on the other hand, has been decidedly unassertive, and some have voiced frustration with such a “weak-kneed” response.<sup>1</sup>

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1 Japanese patrol boats have been hesitant to enforce jurisdictional rights around Takeshima ever since the South Korean government unilaterally proclaimed the Rhee Line in 1952. Japan has every right to exercise jurisdiction in the seas around Takeshima if the islands belong to Japan. But when a Japan Coast Guard (then called the Maritime Safety Agency) patrol boat came across a Korean law enforcement vessel in these waters on July 12, 1953, it failed to take enforcement action, and was shot at by Korean officers. “Coast Guard Patrol Boat Shot At near Takeshima by South Koreans,” reported in the *Asahi Shimbun*, July 13, 1953,

In this paper, I will examine this Takeshima issue from the viewpoint of international law in the hope of giving readers a fuller understanding of the dispute.

## 2. Roots of the Takeshima Dispute

Briefly stated, the dispute originated with the unilateral proclamation of a “Peace Line”<sup>2</sup> on January 18, 1952, by South Korean President Syngman Rhee (Yi Seung-man) asserting maritime sovereignty over a vast area of the Sea of Japan. Takeshima was placed inside the so-called Syngman Rhee Line, thus preventing Japanese fishermen<sup>3</sup>—who, until then, had been operating in the waters near the Korean coast—from approaching those waters. Since the proclamation, Seoul has maintained that Takeshima is Korean territory from both a historical and legal viewpoint, offering a number of ancient manuscripts and maps to back up its claims.

Japan has countered these claims by noting that, in fact, Takeshima rightly belongs to Japan for both historical and legal reasons, and has produced meticulously detailed legal analysis—undertaken in both the public and private sectors—to support its claims. As early as September 25, 1954, Japan proposed in a note verbale that the matter be referred to the International Court of Justice,<sup>4</sup> but this was rejected by South Korea in a diplomatic memorandum dated October 28, 1954.<sup>5</sup> Japan again suggested that the dispute be settled by the ICJ in March 1962 during a

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evening edition, p. 1. Since this incident, Japanese patrol boats have tended to avoid approaching the waters near Takeshima.

2 The declaration by Syngman Rhee came several years after several Latin American countries established the outer limits of their respective continental shelves, which were modeled on US President Harry Truman’s proclamations on September 28, 1945, concerning the continental shelf and the establishment of “conservation zones” to protect coastal fisheries.

3 Japan at the time held to a position that the territorial sea should extend no more than 3 nautical miles and opposed the coastal state’s exercise of jurisdiction beyond that limit. Japanese fishermen thus often operated in waters just beyond 3 nautical miles from the South Korean coast.

4 Ministry of Foreign Affairs Japanese website on the Takeshima issue, “9. Kokusai shiho saibansho e no futaku no teian” (Proposal to Refer the Case to the International Court of Justice), Takeshima mondai no gaiyo (Takeshima Issue), <http://www.mofa.go.jp/region/asia-paci/takeshima/index.html> (accessed on January 6, 2015; in Japanese).

5 Tsukamoto Takashi, “Kokusaiho kara mita Takeshima mondai” (The Takeshima Dispute from the Perspective of International Law), transcript of part five of a series of lectures in fiscal 2008 on the Takeshima dispute, presented on October 26, 2008, at the Shimane Prefectural Library; p. 3 of the transcript includes a Japanese translation (from Korean by the author) of a 1955 *Survey of the Dokdo Problem*, issued by the South Korean Ministry of Foreign Affairs.

meeting of foreign ministers, but this overture, too, was dismissed by the Korean side. Japan on August 21, 2012, made the proposal for the third time, largely to protest the unannounced visit to the island by President Lee Myung-bak on August 10. The South Korean government rebuffed Japan's proposal in a note verbale dated August 30.<sup>6</sup>

The island was formally incorporated into Japan by a cabinet decision on January 28, 1905, made in response to a petition by a fisherman named Nakai Yozaburo, who requested that the Japanese government annex and then lease the island to enable the harvesting of sea lions. On February 22, the governor of Shimane Prefecture announced that the island had been named Takeshima and had come under the jurisdiction of the prefecture. It was added to the Japanese National Land Registry in May, the governor issued a sea lion hunting permit in June, a survey of the island was conducted in March 1906, and fees were collected from fishermen for the use of state-owned territory from July onward. While ownership of the island passed into the hands of the Imperial Japanese Navy in 1940, permits for fishing rights continued to be issued, and fees were collected for the use of the island.<sup>7</sup>

Excellent analyses of competing Japanese and South Korean territorial claims have already been undertaken by other scholars,<sup>8</sup> so I will not delve deeply into this topic here. Instead, I will focus on demonstrating that South Korea's "effective control" of Takeshima rests on precarious legal grounds.

### 3. Takeshima and Three Treaty Negotiations

The Takeshima issue is indirectly dealt with by these treaties between Japan and South Korea: the 1965 Treaty on Basic Relations between Japan and the Republic of

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<sup>6</sup> *Asahi Shimbun*, August 30, 2012 (evening edition), page 1.

<sup>7</sup> This paragraph is largely drawn from page 11 of the transcript cited in note 5. Also, see pp. 11–12 for Takeshima's status between the seventeenth century and the 1905 cabinet decision; pp. 13–15 for references to Takeshima during the negotiations for the 1951 San Francisco Peace Treaty; pp. 15–17 for the September 1947 SCAP designation of Takeshima as a bombing range for US aircraft and the July 1952 decision, based on the bilateral administrative agreement under Article 3 of the 1951 Japan-US Security Treaty, to offer Takeshima as a bombing range for US aircraft. For South Korean claims regarding Takeshima, see pp. 16–21.

<sup>8</sup> Recent researches into this topic include the Tsukamoto transcript cited in note 5; Nakano Tetsuya's "Takeshima no kizoku ni kansuru ichikosatsu" (A Study on the Sovereignty over Takeshima), *Kansai Daigaku Hogaku Ronshu* 60, No. 5 (January 2011); Nakano's "1905-nen Nihon ni yoru Takeshima ryodo hennyu sochi no hoteki seishitsu" (The Legal Nature of the 1905 Incorporation of Takeshima into Japan), *Kansai Daigaku Hogaku Ronshu* 61, No. 5 (January 2012); and the many works by these and other authors that are quoted or cited in these studies.

Korea; the Agreement between Japan and the Republic of Korea Concerning Fisheries of 1965 and the revised Fisheries Agreement of 1998; and the 1974 Agreement between Japan and the Republic of Korea Concerning the Establishment of the Boundary in the Northern Part of the Continental Shelf Adjacent to the Two Countries. Japan actually sought to address the Takeshima issue during negotiations for the 1965 Treaty on Basic Relations, but this was rejected on the grounds that an inherent territory of Korea should not be handled as a pending bilateral concern. Japan softened its stance to achieve the broader goal of normalizing bilateral ties, so the Takeshima dispute was not included in the treaty.<sup>9</sup> No specific mention is made of Takeshima, therefore, in the related exchange of notes regarding the settlement of potential bilateral disputes.<sup>10</sup> The fisheries agreement that was negotiated at the same time called for the establishment of a “joint management zone” outside the 12-nautical-mile “exclusive fishery zone,” thereby shelving the territorial issue for the time being.

In the 1974 Northern Continental Shelf Agreement, which would logically have involved it, the Takeshima issue was again put aside by limiting the boundary delimitation to the waters whose northern end did not include Takeshima. It was shelved a third time when the bilateral fisheries agreement was revised in 1998, two years after both countries ratified the UN Convention on the Law of the Sea and established overlapping 200-nautical-mile exclusive economic zones, resulting in the creation of the “northern provisional zone” that enclosed the disputed island.<sup>11</sup>

Over the years, South Korea has taken a number of steps to exercise administrative rights over and physically control the island: it has stationed security forces, constructed a lighthouse, issued stamps bearing Takeshima’s image, created maps based on field surveys, conducted scientific studies of the island’s flora and other features, registered private individuals as residents, built various structures, and constructed a pier and heliport.<sup>12</sup> It has recently begun permitting tourists to visit

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9 Testimony by Prime Minister Sato Eisaku in the House of Representatives Special Committee on Treaties and Agreements between Japan and South Korea, October 27, 1965. Cited in Nakano, “Takeshima no kizoku,” pp. 107–08, note 18.

10 Taijudo Kanae, *Ryodo kizoku no kokusaiho* (International Law of Territorial Sovereignty) (Tokyo: Toshindo, 1998), Chapter 3, “Takeshima funso” (Takeshima Dispute), pp. 125–26.

11 How Takeshima was handled during the negotiations for the 1998 fisheries agreement is briefly covered in Sugiyama Shinsuke, “Shin Nik-Kan gyogyo kyotei teiketsu no igi” (Meaning of the New Japan–South Korea Fisheries Agreement), *Jurist* 1151 (1999), and Fukamachi Kiminobu, “Nik-Kan gyogyo mondai” (Japan–South Korea Fisheries Dispute), in *Gendai no kaiyoho* (Contemporary Law of the Sea), ed. Mizukami Chiyuki (Tokyo: Yushindo, 2003).

12 See the Tsukamoto transcript of note 5, p. 21. A concise chronology of the exchange between the two countries from 1966 to 2010 is contained in Nakano, “Takeshima no

the island, and on August 10, 2012, then President Lee Myung-bak landed on the island in a political performance.<sup>13</sup> South Korea contends that these steps suffice to demonstrate the country's "effective control" of the island.

To justify its claims of "effective control," though, South Korea must first have legitimate entitlement to Takeshima, which Japanese researchers have shown to be lacking. Even if, for the sake of argument, we accept that Seoul's territorial claims are not totally groundless, its assertion that there is no dispute would still be unrealistic, for Takeshima's sovereignty has indeed been disputed since Korea unilaterally proclaimed the Rhee Line in 1952. Indeed, as we have seen, the territorial issue has been sidestepped in the aforementioned bilateral treaty negotiations. In this context, does the unilaterally accumulated record of "effective control" by South Korea have any validity under international law?

#### 4. Korean Claims of "Effective Control"

"Effective control" is obviously of paramount importance with regard to territorial claims in international law. The classic *Island of Palmas* award of 1928 by the Permanent Court of Arbitration stated that a "peaceful and continuous display of State authority"<sup>14</sup> was necessary for the acquisition of title to territory. This was a landmark verdict that contributed to the establishment of international rules for territorial acquisitions<sup>15</sup>—one of them being that the title of discovery in itself confers only an "inchoate title" that must be followed, within a reasonable time, by such acts as could be considered continuous and peaceful displays of sovereignty through "effective occupation,"<sup>16</sup> e.g. the establishment of vassal ties with the

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kizoku" (see note 8), pp. 110–12.

<sup>13</sup> *Japan Times*, August 11, 2012, p. 1.

<sup>14</sup> The *Island of Palmas* Award, April 4, 1928, *Reports of International Arbitral Awards*, Vol. 2, p. 867. The phrase "continuous and peaceful display of State authority" appears on p. 846. The phrase means that it is required that State authority be displayed continuously without intervention or protest from foreign countries.

<sup>15</sup> International law regarding territorial acquisition is not based on this arbitral award alone. The ruling was subsequently augmented by, among others, the 1931 *Clipperton Island* case; the 1933 judgment by the Permanent Court of International Justice in the *Legal Status of Eastern Greenland* case; and the 1953 judgment by the International Court of Justice in the *Minquiers and Ecrehos* case. More recent decisions that accede to and further develop the arguments of the *Island of Palmas* award include the 1986 ICJ judgment in the *Frontier Dispute* case between Burkina Faso and the Republic of Mali; the 1994 ICJ judgment in the *Territorial Dispute* case between Libyan Arab Jamahiriya and Chad; and the 2005 judgment by the ICJ in the *Benin-Niger Frontier Dispute* case.

<sup>16</sup> The *Island of Palmas* Award, *Reports of International Arbitral Awards*, Vol. 2, p. 846.

headman of the natives, a system of taxation, and the hoisting of flags.<sup>17</sup> While “effective occupation” differs, strictly speaking, from “effective control,” they are very much related, inasmuch as “occupation” is a legal state achieved through a certain period of effective control. For the sake of convenience, therefore, I will be using the term “effective control” to refer to both concepts.<sup>18</sup>

Effective control has been confirmed as a decisive factor in such subsequent territorial acquisition cases as the *Clipperton Island* case, the *Legal Status of Eastern Greenland* case, and the *Minquiers and Ecrehos* case. More recent decisions have also emphasized the importance of acts that demonstrate the effective exercise of governmental authority through the use of the term *effectivités*, including the 1986 *Frontier Dispute* case between Burkina Faso and the Republic of Mali; the 1994 *Libya/Chad Territorial Dispute* case; and the 1998 award (first stage) of the Arbitral Tribunal concerning the *Territorial Sovereignty and Scope of the Dispute* between Eritrea and Yemen. Over the past few years, moreover, parties to territorial disputes have themselves asserted their *effectivités* in their written pleadings and oral arguments, and the courts have accordingly responded by fully discussing these acts in their rulings.

The effective control argument was devised as Western colonial powers sought to justify their seizure of African and other colonies originally claimed by Spain and Portugal in the seventeenth to nineteenth centuries. International tribunals came to adopt the argument to reflect such state practice, and effective control came to be seen as indicating *animus occupandi*: the intention on the part of a state to acquire and retain sovereignty over territory. This is explained in the *Island of Palmas* award thus: “It is admitted by both sides that international law underwent profound modifications between the end of the Middle-Ages and the end of the 19th century, as regards the rights of discovery and acquisition of uninhabited regions or regions inhabited by savages or semicivilised peoples.”<sup>19</sup> In other words, as a result of the

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<sup>17</sup> *Ibid.*, pp. 862–66.

<sup>18</sup> Legally speaking, it may be more accurate to use “effective possession,” inasmuch as the term refers to acts of possession. See, for example, “Reply of the United Kingdom, November 3, 1952,” *ICJ Pleadings, Minquiers and Ecrehos*, Vol. 1, p. 547, paras. 215, 216, 217. “State functions” or “functions of state,” as well as “state activity” are also used. See Sir Gerald Fitzmaurice, “The Law and Procedure of the International Court of Justice, 1951–4: Points of Substantive Law, Part II,” *The British Year Book of International Law* 32 (1955–56), pp. 49–52. The former term appears in C. H. M. Waldock, “Disputed Sovereignty in the Falkland Islands Dependencies,” *The British Year Book of International Law* 25 (1948), p. 317. Waldock also uses the latter term on p. 321.

<sup>19</sup> *The Island of Palmas Award, Reports of International Arbitral Awards*, Vol. 2, p. 845. As to the various arguments and evidence forwarded by the two parties, see pp. 862–66.

“profound modifications” in international standards, effective control came to be viewed with greater importance as a factor in territorial acquisitions.

It is no doubt in the light of such rulings that South Korea has taken pains to assert its “effective control” of Takeshima and to accumulate acts that it believes contribute to such control. I would point out, however, that there is one big restriction: acts of effective control taken after a certain date are moot and have no validity under international law. This temporal cutoff point is called the “critical date.”

## 5. The Critical Date

What exactly is a critical date? The 2007 ICJ judgment in the *Case concerning the Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea* quotes a decision made by the Court five years earlier in the *Indonesia/Malaysia* case:

[I]t cannot take into consideration acts having taken place after the date on which the dispute between the Parties crystallized unless such acts are a normal continuation of prior acts and are not undertaken for the purpose of improving the legal position of the Party which relies on them. (*Sovereignty over Pulau Ligitan and Pulau Sipadan* [Indonesia/Malaysia], Judgment, *ICJ Reports* 2002, p. 682, para. 135.)<sup>20</sup>

Before introducing this case, the judgment explains:

[T]he significance of a critical date lies in distinguishing between those acts performed *à titre de souverain* which are in principle relevant for the purpose of assessing and validating *effectivités*, and those acts occurring after such critical date, which are in general meaningless for that purpose, having been carried out by a State which, already having claims to assert in a legal dispute, could have taken those actions strictly with the aim of buttressing those claims. Thus a critical date will be the dividing line after which the Parties’ acts become irrelevant for the purposes of assessing the value of *effectivités*.<sup>21</sup>

Judgments regarding *effectivités* thus must take note of the critical date, since any actions taken after that date are excluded from consideration in legal assessments.<sup>22</sup>

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<sup>20</sup> “Case Concerning Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras), Judgment of 8 October 2007,” *ICJ Reports* 2007, p. 36, para. 117.

<sup>21</sup> *Ibid.*, pp. 35–36, para. 117.

<sup>22</sup> The fundamental “object of establishing a critical date in disputes over territory,” as argued orally by Fitzmaurice—who acted as counsel for the United Kingdom in the *Minquiers and Ecrehos* case—is “to ensure that the dispute is determined on the basis that

In this sense, this date is of decisive importance, since all actions taken by a country in the name of effective control after that date become in principle legally meaningless. This is a serious point that warrants close and careful examination. How, then, is a critical date determined? Normally, the date is set at the point that a dispute first emerges. And what constitutes a dispute? This is a point that I will now address.

### A. Definition of “Dispute”

What, exactly, constitutes an international dispute? Article 34 of the United Nations Charter makes a reference to “any dispute, or any situation which might lead to international friction or give rise to a dispute,” thus making a distinction between “dispute,” “international friction,” and “situation.” Later in the paragraph, the article mentions “the continuance of the dispute or situation,” thus referring only to “dispute” and “situation,” suggesting that “dispute” and “international friction” are roughly equivalent notions, to be distinguished from “situation.” A “dispute,” then, is a condition with certain special characteristics not possessed by a “situation” — a more general state of affairs. How, then, should “dispute” be defined?

This is corroborated by a number of international judgments. One example is the 1920 judgment of the Permanent Court of International Justice in the *Mavrommatis Palestine Concessions (Preliminary Objections)* case, which states, “A dispute is a disagreement on a point of law or fact, a conflict of legal views or of interests between two persons.”<sup>23</sup> In its March 1950 advisory opinion in the *Interpretation of Peace Treaties with Bulgaria, Hungary, and Romania* case, the ICJ noted, “Whether there exists an international dispute is a matter for objective determination. The mere denial of the existence of a dispute does not prove its non-existence,”<sup>24</sup> adding, “There has thus arisen a situation in which the two sides hold clearly opposite views concerning the question of the performance or non-performance of certain treaty obligations. Confronted with such a situation, the Court must conclude that international disputes have arisen.”<sup>25</sup> What these judgments show is that when the parties disagree in their views or interests, with such disagreement taking the form of a clear and objective conflict of legal views or interests, there is a “dispute” between the parties. What is intriguing in this regard is that the “mere denial of the

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seems most just and equitable, having regard to all the circumstances of the case.” *ICJ Pleadings, Minquiers and Ecrehos*, Vol. 2, pp. 67–68. Statements to the same effect can be found in the reply submitted by the United Kingdom. *Ibid.*, Vol. 1, p. 540, para. 202.

<sup>23</sup> *Affaire des Concessions Mavrommatis en Palestine*, *PCIJ Publications*, Series A, No. 2, p. 11. This definition of “dispute” is confirmed in the April 12, 1960, ICJ judgment in the *Right of Passage over Indian Territory* case, *ICJ Reports 1960*, p. 34.

<sup>24</sup> *Interprétation des Traités de Paix Conclus avec la Bulgarie, la Hongrie et la Roumanie*, *ICJ Reports 1950*, p. 74.

<sup>25</sup> *Ibid.*

existence of a dispute does not prove its non-existence.”

Given this definition of a dispute and that the critical date is when a dispute has arisen, the next question is how these notions can be applied to specific cases. Before proceeding with this task, however, it would be appropriate to see in the light of international judicial decisions whether the critical date can safely be identified as the date of the emergence of the dispute.

## **B. The Critical Date in International Judicial Precedents**

The concept of “critical date” is regarded as having been first used in the *Island of Palmas* case,<sup>26</sup> but it was the *Minquiers and Ecrehos* case in which the concept played a major role. Let us take a close look at this ICJ judgment. The dispute was between the United Kingdom and France regarding the sovereignty over two island groups (Minquiers and Ecrehos) off the port city of Saint-Malo in the English Channel, and both countries argued at considerable length on the critical date for this case. France contended that the date should be the signing of a bilateral oyster fishery convention of 1839, subsequent to which acts performed by each party cannot be set up against the other as manifestations of territorial sovereignty. The United Kingdom, meanwhile, argued that the court should take into consideration all acts before 1950, when the two countries concluded the special agreement to submit the case to the ICJ.<sup>27</sup>

In spite of the detailed arguments made by the two countries,<sup>28</sup> the court did not address the question of critical date at length but summarized the arguments of the parties and came to its conclusion. The court’s finding deserves full quotation as follows.

The United Kingdom Government submits that, though the Parties have for a long time disagreed as to the sovereignty over the two groups, the dispute did not become “crystallized” before the conclusion of the Special Agreement of December 29th, 1950, and that therefore this date should be considered as the critical date, with the result that all acts before that date must be taken into consideration by the Court. The French Government, on the other hand, contends that the date of the Convention of 1839 should be selected as the critical date, and

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26 Robert Yewdall Jennings, *The Acquisition of Territory in International Law* (Manchester: Manchester University Press, 1963), p. 31. The *Island of Palmas* case, incidentally, referred not only to “critical date” but also to “critical moment.” *Reports of International Arbitral Awards*, Vol. 2, pp. 843, 845, 866.

27 The *Minquiers and Ecrehos* case, Judgment of 17 November 1953, *ICJ Reports*, p. 59.

28 The United Kingdom, in particular, did indeed fully discuss the critical date in both written pleadings and oral arguments. See *ICJ Pleadings, Minquiers and Ecrehos*, Vols. 1 and 2.

that all subsequent acts must be excluded from consideration.<sup>29</sup>

It continued thus:

At the date of the Convention of 1839, no dispute as to the sovereignty over the Ecrehos and Minquiers groups had yet arisen. The Parties had for a considerable time been in disagreement with regard to the exclusive right to fish oysters, but they did not link that question to the question of sovereignty over the Ecrehos and the Minquiers. In such circumstances there is no reason why the conclusion of that Convention should have any effect on the question of allowing or ruling out evidence relating to sovereignty. A dispute as to sovereignty over the groups did not arise before the years 1886 and 1888, when France for the first time claimed sovereignty over the Ecrehos and the Minquiers respectively. But in view of the special circumstances of the present case, subsequent acts should also be considered by the Court, unless the measure in question was taken with a view to improving the legal position of the Party concerned. In many respects activity in regard to these groups had developed gradually long before the dispute as to sovereignty arose, and it has since continued without interruption and in a similar manner. In such circumstances there would be no justification for ruling out all events which during this continued development occurred after the years 1886 and 1888 respectively.<sup>30</sup>

The gist of the judgment is as follows: (1) The critical date is the point at which a dispute became “crystallized”; (2) France began claiming sovereignty over the islands in 1886 and 1888, respectively, before which a territorial dispute between the two countries did not exist; (3) in view of the special circumstances of this case, acts subsequent to these dates have a bearing on the decision.

These factors are all specific to the *Minquiers and Ecrehos* case, but at the same time, they may also be useful criteria for territorial disputes in general. This is a point that merits further analysis. Let us examine the ruling, particularly with regard to the critical date, in further detail.

The United Kingdom contended that the origin of the dispute and the critical date should be considered separately. It argued that disagreements over the islands date back to the thirteenth century but that issues in territorial sovereignty remained unidentified until 1950, when the two countries concluded their special agreement to refer the case to the ICJ. Inasmuch as the dispute became “crystallized” only with this agreement, it claimed that this should be considered the critical date. The court, at least on the surface, rejected the UK claim and instead, in effect, established 1886

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<sup>29</sup> *ICJ Reports 1953*, p. 59.

<sup>30</sup> *Ibid.*, pp. 59–60.

and 1888, when France began to claim sovereignty over two groups of islands, as the critical dates (point 2 above). The court, in other words, equated the start of the dispute with the critical date, but at the same time allowed evidence subsequent to the date to be considered in its ruling (point 3). This may appear to be a contradiction, but the judgment took note of the fact that those subsequent acts were not aimed at reinforcing the claimant's sovereignty claims. The ruling states, "In many respects activity in regard to these groups had developed gradually long before the dispute as to sovereignty arose, and it has since continued without interruption and in a similar manner."<sup>31</sup> Note the emphasis on "activity has since [subsequent to the establishment of the dispute] continued without interruption and in a similar manner [as before]."

The justification for considering both countries' actions after the critical date was actually put forward by counsel for the United Kingdom, who claimed in his oral arguments, "[N]ormally sovereignty over territory is not something that springs up overnight. It is a continuing process. At any given moment it has probably been going on for some time," adding, "Just as the subsequent practice of parties to a treaty, in relation to it, cannot alter the meaning of the treaty, but may yet be evidence of what that meaning is, or of what the parties had in mind in concluding it, so equally events occurring after the critical date in a dispute about territory cannot operate to *alter* the position as it stood at that date, but may nevertheless be evidence of, and throw light on, what that position was."<sup>32</sup> While this position was not embraced verbatim by the court, it did, in effect, conditionally admit the argument: "But in view of the special circumstances of the present case, subsequent acts should also be considered by the Court, unless the measure in question was taken with a view to improving the legal position of the Party concerned."

### C. Incidental Legal Issues

There are a few other points that need to be considered regarding the critical date, and I will attempt to address them here.

The first, which I have touched upon above, pertains to its relationship with the origin of the dispute. This is an issue that, logically speaking, may not arise if the origin of the dispute is strictly stipulated, but there have been cases in which the parties do not agree on when the dispute came into being, as we have seen in the *Island of Palmas* case and the *Minquiers and Ecrehos* case. In the former, the 1648 Peace of Münster between the Dutch Republic and Spain, which covered the areas under dispute, was not considered, and instead the 1898 Treaty of Paris ending the

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<sup>31</sup> *Ibid.*

<sup>32</sup> "Oral Argument of Mr. Fitzmaurice (U.K.), 21 IX 1953," *ICJ Pleadings, Minquiers and Ecrehos*, Vol. 2, p. 94.

Spanish-American War and resulting in the cession of the Philippines to the United States was identified as the “critical moment,” inasmuch as it unequivocally identified the Island of Palmas as US territory. The arbitrator thus considered all Dutch actions with regard to the island up until that moment.<sup>33</sup> As for the latter, 1886 and 1888, when France first claimed sovereignty over the Ecrehos and the Minquiers, respectively, were determined to be the critical dates, although France and the United Kingdom had disagreed over the islands long before those years.<sup>34</sup> In essence, the key factor in determining the critical date is that it brings the facts of a dispute to light. In the *Legal Status of Eastern Greenland* case, the Permanent Court of International Justice identified July 10, 1931, as the critical date, as this was when Norway issued a decree claiming sovereignty over the territory, despite the fact that Denmark had, according to the PCIJ ruling, long claimed sovereignty over the region. Because such a salient event did not exist in the *Minquiers and Ecrehos* case, the United Kingdom asserted that the critical date should be set at the point when the dispute came to light, that is, when the UK-French special agreement to submit the case to the ICJ was concluded.<sup>35</sup> The ICJ determined, rather, that the dispute first emerged when France claimed sovereignty over the islands that were largely recognized as being occupied by the United Kingdom. Events up to the submission of the case in 1950 were considered, though, given the “special circumstances” of this case.

The second point regarding the critical date, which relates to the first, is that any actions taken by an occupying country while a dispute is ongoing—and which are protested by another country—cannot be used to back up a territorial claim.<sup>36</sup> This is because such actions, under the said circumstances, do not constitute a “peaceful and continuous display of State authority.”<sup>37</sup> The notion of “protest” becomes a factor in such situations, since the absence of a protest when a country is placed at a disadvantage is construed, in international relations, as indicating acquiescence. Protests are usually made to undermine the legitimacy of actions taken by an

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33 *The Island of Palmas Award, Reports of International Arbitral Awards*, Vol. 2, p. 843. The signing of the 1898 Treaty of Paris was established as the critical date, as it identified the island as US territory. It was this act that triggered the dispute with the Netherlands.

34 *The Minquiers and Ecrehos case, ICJ Reports 1953*, pp. 59–60. For supplementary information on the French and UK arguments and on the issue of the critical date, see Sir Gerald Fitzmaurice, “The Law and Procedure of the International Court of Justice, 1951–4: Points of Substantive Law, Part II,” *The British Year Book of International Law* 32 (1955–56), pp. 37–44.

35 “Reply of the United Kingdom, November 3, 1952,” *ICJ Pleadings, Minquiers and Ecrehos*, Vol. 1, p. 542, para. 204, and p. 549, para. 222.

36 *Ibid.*, pp. 542–43, para. 206.

37 Identified in the *Island of Palmas* case as conferring title. *Reports of International Arbitral Awards*, Vol. 2, p. 846.

occupying country.<sup>38</sup>

The third point is that protests have no legal meaning, though, if the occupying country is only reinforcing its original title to a territory through effective occupation.<sup>39</sup> Original title here does not necessarily refer to rights that go back to time immemorial but only to title that was first acquired legitimately. As the title to territory is already established in this case, protests from another country are not *opposable* to the occupying country.

The fourth point is that the critical date, as established by international tribunals, is the date of emergence of a dispute when the points at issue become clear,<sup>40</sup> and that all *effectivités*—acts that demonstrate the effective exercise of governmental authority—up to that date have been examined.<sup>41</sup> As the concept of critical date has actually been used before international tribunals, there may still be room for suspicion that it is nothing more than a judicial technique. On the face of it, such suspicion may appear to be reasonable, but a certain temporal framework is nonetheless needed in considering the record of effective control from a general point of view of settling territorial and boundary disputes in a rational manner. From this viewpoint, it would indeed be rational to establish a critical date in all disputes—not just those referred to international tribunals—and to disregard those actions taken after that date. All actions and measures taken after an objective date, which is set by the disputing parties based not on bargaining or other agreement, should rationally be excluded from considerations of effective control.

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38 See the following for the meaning of “protest” under international law: D.H.N. Johnson, “Acquisitive Prescription in International Law,” *The British Year Book of International Law* 27 (1950), pp. 340–48; Sir Gerald Fitzmaurice, “The Law and Procedure of the International Court of Justice, 1951–54: General Principles and Sources of Law,” *The British Year Book of International Law* 30 (1953), pp. 27–47; I.C. McGibbon, “Some Observations on the Part of Protest in International Law,” *ibid.*, pp. 293–319; *Id.*, “The Scope of Acquiescence in International Law,” *The British Year Book of International Law* 31 (1954), pp. 143–86.

39 “Reply of the United Kingdom, November 3, 1952,” *ICJ Pleadings, Minquiers and Ecréhos*, Vol. 1, p. 543, para. 207.

40 The critical date in a legal case is determined by the court.

41 Many rulings on territorial or frontier dispute cases since the 1928 *Island of Palmas* case (*Reports of International Arbitral Awards*, Vol. 2, p. 843) have discussed the critical date—albeit with some differences in nuance—using it to differentiate between the claimed *effectivités*. These include the 1933 *Legal Status of Eastern Greenland* case (*PCIJ Publications, Series A/B*, No. 53, p. 45); the 1953 *Minquiers and Ecréhos* case (*ICJ Reports* 1953, pp. 51–60); the 1960 *Right of Passage over Indian Territory* case (*ICJ Reports* 1960, pp. 34–35); the 2007 *Nicaragua/Honduras Territorial and Maritime Dispute in the Caribbean Sea* case (*ICJ Reports* 2007, pp. 697–701, paras. 117–131); and the 2012 *Nicaragua/Colombia Territorial and Maritime Dispute* case (*ICJ Reports* 2012, pp. 28–34, paras. 66–84).

Some maintain that this notion can be extrapolated to apply not only to territorial and frontier disputes but also to international disputes in general, and that it would be more rational to do so.<sup>42</sup> This should be quite natural, given that international disputes tend to involve temporal factors in them.

How could the preceding overview of the notion of critical date, as gleaned from international territorial and other disputes cases, be applied to specific pending territorial disputes? This is the task to which we shall now turn.

## 6. How Could the Takeshima Dispute Be Addressed?

Let me now backtrack and go over the incidents that gave rise to the territorial dispute over Takeshima between Japan and South Korea. There is no doubt that the dispute surfaced on January 18, 1952, when South Korean President Syngman Rhee unilaterally proclaimed a “Peace Line,” for up until that time, sovereignty over Takeshima was exercised by Japan through a “peaceful and continuous display of State authority.” It was on January 28, 1905, that Takeshima was incorporated into the territory of Japan by a cabinet decision,<sup>43</sup> and on February 22 of the same year its name and jurisdiction was announced by the governor of Shimane Prefecture. In May it was added to the National Land Registry by the governor, who issued permits for the hunting of sea lions in June. In March 1906 a survey of the island was conducted, and fees were collected from fishermen for the use of state-owned territory from July. While the island passed into the hands of the Imperial Japanese Navy for its use in 1940, permits for fishing rights continued to be issued, and fees were collected for the use of the island.<sup>44</sup>

As these facts show, Japan had firmly taken the necessary administrative actions, or what in recent international territorial cases have been referred to as *effectivités*, over Takeshima and its surrounding waters, which elicited no protests from the Korean side. South Korea contends that it was unable to resist these measures under great pressure from Japan at the time, but it should be noted that the steps Japan took were then considered permissible under international law.<sup>45</sup> Physically detaining or

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42 L.F.E. Goldie, “The Critical Date,” *The International and Comparative Law Quarterly* 12 (1963), pp. 1267–84. The author describes the critical date as a “doctrine,” thus granting that it has not yet become an established theory, but he maintains that it can be used as a generally applicable yardstick.

43 For the situation prior to the 1905 incorporation by cabinet decision, see, for example, Nakano Tetsuya’s “1905-nen Nihon ni yoru Takeshima ryodo hennyu sochi,” pp. 116–25, cited in note 8.

44 See note 7. Also refer to p. 171 of the *Nihon no kokusai hojirei kenkyu (3): Ryodo* (Japanese Research on International Law [3]: Territory), issued by the Kokusaiho Jirei Kenkyukai and published by Keio University Press, 1990.

45 On Japan’s effective exercise of governmental authority over Takeshima, South Korea

threatening the plenipotentiary representative in treaty negotiations was certainly contrary to international law even at that time, but it was not illegal to exert pressure on another state to force it to sign a treaty. There is no room to doubt that treaties concluded under any such coercion would be null and void today<sup>46</sup>—an indication of the validity of *intertemporal law* and a sign of evolution of international law.

The key facts of this dispute are that (1) Japan took legitimate steps to incorporate Takeshima into its territory in 1905 on the basis of various effective acts before that date and (2) exercised sovereignty in administering the island in a “peaceful and continuous” manner without protest from Korea until (3) Seoul unilaterally proclaimed the Syngman Rhee Line in 1952 enclosed Takeshima and alleged that it was part of the Korean territory. How should these facts be characterized from the standpoint of international law? Japanese fishing boats returned to the waters around Takeshima after the use of the island as a bombing range was terminated by the Japan-US Joint Committee in March 1953. Korean boats were also found fishing in the same waters, prompting Japan’s Maritime Safety Agency (now the Japan Coast Guard) to crack down on their illegal fishing activities. In July, a Japanese patrol boat was shot at by Korean security officers.<sup>47</sup> And in June 1954 the South Korean Ministry of Home Affairs (now the Ministry of Security and Public Administration) announced that it had dispatched Coast Guard personnel to be stationed on the island. In August, a Maritime Safety Agency patrol boat sailing near Takeshima was fired upon from the island, confirming that security personnel had been stationed there.<sup>48</sup> Japan thus proposed in a note verbale of September 1954 that the issue of

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claims that the country was under Japanese colonial control at the time—first becoming a protectorate and then being annexed—and unable to lodge a protest (although, to be precise, the Japan-Korea Protectorate Treaty was not signed until November 17, 1905, and the Annexation Treaty, marking the official start of Japan’s rule, not until August 22, 1910). An attempt to apply today’s standards of international law in discussing the situation at the turn of the twentieth century is contrary to *intertemporal law*, though, and it is important to use the standards prevailing at the time. International law at that time allowed the actions taken by Japan after similar actions by the European powers. While this should be separated from moral arguments, it should not be forgotten that the law of the day tolerated the colonization of territories around the world by the leading Western powers. This point is true also of China’s criticism of Japan’s incorporation of the Senkaku Islands in 1895. A different approach is needed if a critical discussion is to be made of the international standards governing the acquisition of territory.

<sup>46</sup> See Article 51 (Coercion of a Representative of a State) and Article 52 (Coercion of a State by the threat or use of force) of the 1969 Vienna Convention on the Law of Treaties.

<sup>47</sup> See note 1.

<sup>48</sup> The website of the Japanese Ministry of Foreign Affairs, “Takeshima mondai no gaiyō: (8) Ri Shoban Rain no settei to Kankoku ni yoru Takeshima no fuho senkyō” (Issues in the Takeshima Dispute: (8) The Syngman Rhee Line and the Illegal Occupation of Takeshima by South Korea), [www.mofa.go.jp/mofaj/area/takeshima/gaiyo.html](http://www.mofa.go.jp/mofaj/area/takeshima/gaiyo.html). (The corresponding page on MOFA’s English site is “Takeshima Issues: Illegal Occupation of Takeshima by the ROK,”

sovereignty over Takeshima be referred to the International Court of Justice, but this was rejected by South Korea the following month. The Japanese minister for foreign affairs proposed again that the matter be referred to the ICJ in March 1962 during a meeting of foreign ministers, but this overture, too, was dismissed by his Korean counterpart.<sup>49</sup> During the interim, South Korea steadily took actions in the name of “effective control” as if to reinforce its *de facto* possession of the island.

Is there nothing Japan can do under the circumstances? While international disputes are best settled through direct negotiations between the parties involved, the most reasonable alternative, if this is impossible, is to seek settlement through a third party. There are a huge number of dispute-settlement treaties and clauses calling for, first, negotiations, and then, should they become deadlocked, a referral to arbitration or judicial settlement.<sup>50</sup> While Japan has attempted on various occasions to refer the matter to the ICJ, proceedings cannot begin unless and until South Korea agrees to this mode of settlement.

For the sake of argument, let us review the available evidence from a legal perspective, putting aside for a moment the question of whether the case is to be referred to the court. The first point to consider is the legal efficacy of the actions that South Korea claims demonstrate its “effective control” of Takeshima. The legitimacy of those claims rests on whether they were taken before or after the critical date. As we have seen above, the date is usually set at the time the dispute surfaced, and all facts occurring after that date are excluded from legal consideration. In the context of the Takeshima dispute between Japan and South Korea, then, when would that date be?

Perhaps the most logical would be 1952, when the Rhee Line was drawn, thereby explicitly negating the sovereignty that Japan had maintained over the island since 1905.<sup>51</sup> This would be the equivalent of Norway’s 1931 sovereignty decree in the

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<http://www.mofa.go.jp/region/asia-paci/takeshima/position.html>. Accessed on January 6, 2015.)

49 *Ibid.* More recently, Japan on August 21, 2012, made the proposal to the same effect in a note verbale for the third time following the visit to the island by then President Lee Myung-bak on August 10. The South Korean government rebuffed Japan’s proposal in a note verbale dated August 30. See note 6.

50 For examples, see the following: Max Habicht, *Post-War Treaties for the Pacific Settlement of International Disputes: A Compilation and Analysis of Treaties of Investigation, Conciliation, Arbitration, and Compulsory Adjudication, Concluded during the First Decade Following the World War* (Cambridge, Massachusetts: Harvard University Press, 1931); United Nations, *Systematic Survey of Treaties for the Pacific Settlement of International Disputes 1928–1948* (New York: United Nations, 1949); United Nations, *A Survey of Treaty Provisions for the Pacific Settlement of International Disputes 1949–1962* (New York: United Nations, 1966).

51 The incorporation of Takeshima into the territory of Japan by cabinet decision in 1905

*Legal Status of Eastern Greenland* case and France's 1886 and 1888 sovereignty claims in the *Minquiers and Ecrehos* case. In both cases, these claims sought to overturn the sovereignty that the other claimant country had already established over the disputed territory.

A second candidate date would be 1954, when Japan proposed to South Korea in a note verbale that the dispute be referred to the ICJ. The note has legal significance, inasmuch as it clearly specified Japan's position and identified the points of disagreement. On the other hand, Seoul's October 28, 1954, official communication rejecting the proposal, noting that Korea had always claimed territorial sovereignty over "Dokdo" from the beginning and that there was no reason to refer the case to the ICJ, would not seem to have clearly identified the legal grounds for its claims.<sup>52</sup> Since the proposal by the Japanese foreign minister in March 1962 was again rejected by the Korean side, there would be no stronger reason to select this year over 1954 as the critical date. The same goes for August 2012, when Japan made its third proposal to refer the dispute to the ICJ.

In the light of the above, the likeliest critical date of the Takeshima dispute would be either the 1952 proclamation of the "Peace Line" by South Korean President Syngman Rhee or the 1954 Korean rejection of Japan's proposal to refer the dispute to the ICJ. There is a lapse of only 20 months between these two dates, which is not very long, but there were rather significant developments in the interim. On January 28, 1952—10 days after the presidential proclamation—Japan lodged a protest against the Rhee Line, saying that the line delimiting some areas of the high seas appeared to claim sovereignty over Takeshima, which was simply unacceptable. In its February 12 reply, Seoul asserted that a memorandum issued by the General Headquarters of the Supreme Commander for the Allied Powers endorsed and confirmed Korean rights to Takeshima, which made clear that South Korea was indeed laying claims to the island. There followed an exchange of documents between the two governments supporting their respective positions, and thereafter there ensued on the island the erecting of fixtures by one side and removal of those of the other to show its ownership. In 1954, South Korea went so far as to station armed personnel on the island.<sup>53</sup>

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was a clear legal measure and an act of sovereignty, and so it is an important benchmark year. Historically speaking, though, Japan's dominion over Takeshima goes back much further. For details, see Tsukamoto's "Kokusaiho" (pp. 10–11) of note 5 and the same author's "Takeshima ryoyuken mondai no keii" (The Background of the Takeshima Territorial Dispute), third edition, in *Issue Brief* (published by the National Diet Library), No. 701 (February 20, 2011), pp. 1–5.

<sup>52</sup> See Tsukamoto's transcript in note 5, p. 1.

<sup>53</sup> Details of the developments during the 20-month period can be found in Tsukamoto's "Kokusaiho" (p. 1) of note 5.

It can be inferred from these facts that South Korea's February 12, 1952, reply clearly asserts its territorial rights, which is a total opposition to Japan's sovereignty over Takeshima. This is akin to the 1931 decree by Norway claiming sovereignty over Eastern Greenland, which was found by the court to have posed a clear challenge to the long-established Danish sovereignty and caused a dispute to come into being. Similarly, France's sovereignty claims over the Ecrehos and Minquiers in 1886 and 1888, respectively, were found to have challenged Britain's sovereignty over the islands up until that point, and these were the years when the dispute was regarded as having arisen. Thus the South Korean reply of February 12, 1952, clearly demonstrates that Tokyo and Seoul were thereby embroiled in a dispute.

South Korea began erecting signs/poles and taking other actions on Takeshima after sending this reply and permanently stationed armed personnel in 1954. These actions, though, were taken after the presumed critical date—when the bilateral dispute came to light—and they thus have no significance or value from the viewpoint of international law. The placement of signs/poles and the stationing of troops were the acts done after the dispute had arisen, with the result that they are not to be considered evidence of “effective control.” This applies to all of South Korea's ongoing efforts taken well after the emergence of the dispute, such as the construction of a lighthouse, issuance of stamps bearing Takeshima's image, creation of maps based on field surveys, conducting of scientific studies of the island's flora and other features, registration of private individuals as residents, building of various structures, and construction of a pier and heliport. None of these measures taken in an effort to improve South Korea's position, as shown above in detail, can carry any meaning in international law.

South Korea may possibly point to the *Minquiers and Ecrehos* case and exclaim that while 1886 and 1888 were identified as the critical dates, the ICJ nonetheless took into account the acts of the United Kingdom through 1950, when the special agreement to submit the case to the ICJ was reached. Why then exclude the actions taken in Takeshima after the critical date? Although the *Minquiers and Ecrehos* judgment may appear on the surface to have admitted the facts after the critical date, one must remember that this was because such activity “had developed gradually long before the dispute as to sovereignty arose, and it has since continued without interruption and in a similar manner.”<sup>54</sup> Actions after the critical date that had not “developed gradually” before the dispute nor had continued “without interruption and in a similar manner” do not meet the requirements for consideration and consequently are seen simply as measures “taken with a view to improving the legal position of the Party concerned.”<sup>55</sup> Invoking such portions of the *Minquiers and Ecrehos* case as are useful for one's own interests would be misguided at best and

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54 The *Minquiers and Ecrehos* case, *ICJ Reports 1953*, pp. 59–60.

55 *Ibid.*, p. 59.

may even be considered an abuse of this judicial precedent if done willfully. In either case, such invocations would have no meaning under international law.

South Korea has also repeatedly insisted that a dispute over Takeshima does not exist. On this point, we should recall the ICJ's 1950 advisory opinion in the *Interpretation of Peace Treaties with Bulgaria, Hungary, and Romania* case, which noted, "The mere denial of the existence of a dispute does not prove its non-existence." South Korea may perhaps believe that its accumulated acts in the "effective control" of Takeshima confer territorial rights to it and that Japan's sovereignty claims are thus void. But as we have already seen, these assertions are meaningless under international law. The ICJ's 1950 ruling would seem to suggest that merely denying the existence of a dispute is insufficient; the state that insists on the "non-existence" of a dispute must prove it. Said another way, South Korea must produce evidence to overturn all the historical and legal claims put forth by Japan. The mere denial of the existence of the Takeshima dispute, it seems to me, is hardly a persuasive argument.<sup>56</sup>

## 7. Conclusion

A review of the critical date for the Takeshima dispute outlined above suggests that the most appropriate date would be 1952, when South Korean President Syngman Rhee proclaimed a "Peace Line" that encroached on Japan's sovereignty over Takeshima, thereby triggering a dispute between the two countries. Japan had long effectively occupied the island before this date and had established sovereignty over the island, although it was in 1905 that it took a clear act of sovereignty by incorporating the island into its territory—a move that did not elicit any protest from Korea. The Korean Peninsula was effectively under Japan's colonial rule, the Korean side may argue, preventing the Korean government from lodging a protest. But in international relations, silence when a country is placed at a disadvantage is construed as indicating acquiescence, and so even under its colonial status, Seoul could at least have objected to Takeshima's incorporation in writing—if indeed it believed the island to be its own territory. Suddenly moving to claim Takeshima in 1952—having done nothing over the preceding half century to protest Japan's

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<sup>56</sup> Incidentally, Japan's official position that a dispute with China does not exist over the Senkaku Islands has been fully supported with evidence demonstrating that China's claims are groundless. An overview of such evidence is contained my article "Senkaku Shoto shuhen kaiiki ni okeru shikko kankatsuken koshi ni tsuite" in *Tosho Kenkyu Journal*, Vol. 3 No. 1, pp. 6–23 (translated into English as "Exercising Enforcement Jurisdiction around the Senkaku Islands," <http://islandstudies.oprf-info.org/research/a00013/>) and in Ozaki Shigeyoshi's three-part "Senkaku Shoto to Nihon no ryoyuken (shoron)" in *Tosho Kenkyu Journal*, inaugural issue (Part 1), Vol. 2, No. 1 (Part 2), and Vol. 2, No. 2 (Part 3) (available in English on this website as "The Senkaku Islands and Japan's Territorial Rights").

sovereignty claims—is a serious fault for which it must take responsibility. Stationing troops two years after the proclamation and subsequently accumulating acts of “effective control”<sup>57</sup> are in flagrant violation of Japanese sovereignty. Threatening Japan Coast Guard vessels in Takeshima’s vicinity—and even firing on them—is an inexcusable outrage against a sovereign state. If, as Korea claims, it has legitimate grounds for the possession of Takeshima, why does it persist in rejecting Japan’s proposal that the case be submitted to the ICJ? Such adamant refusal is a telltale sign, it would appear, that its grounds for sovereignty are quite weak. I, as one who espouses the rule of law, sincerely hope that South Korea will come to recognize the need for a law-based resolution as soon as possible.

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<sup>57</sup> South Korean actions may possibly be premised on the assumption that, while Japan’s 1905 incorporation of Takeshima is an undeniable fact, it has been able to usurp the island from Japanese hands by “prescription,” in contradistinction to “occupation” (of a *terra nullius*), through the accumulation of “effective control” since 1952. This, I believe, is a defective argument, but disproving its effectiveness is a subject that would require another full paper, covering such topics as the legal principles of protest, silence, and acquiescence in addition to prescription. In the meantime, refer to Nakano’s “Takeshima no kizoku,” pp. 122–32, in note 8.