

Japan's Legal and Historical Claim to Takeshima/ Liancourt Rocks (Part I)

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竹島（リャンクール岩）に対する日本の法的・歴史的主張の 再検討（I）

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Introduction

Suffice it to say, for the time being, that the Japanese academics, whether historians or international lawyers¹⁾, do not necessarily share the same position as the Japanese Government's or its Foreign Ministry's official justifications²⁾ for claims to the sovereignty over Takeshima. Some positivist historians specialising in the premodern period of Japanese-Korean relations or diplomatic history, as well as not a

few scholars of international law, cannot be sure whether Japan's position of the present moment that it only 'reaffirmed sovereignty over Takeshima' in 1905 (*not 'occupatio of terra nullius'*) could be tenable enough to appeal to any international court for the judicial settlement of the Takeshima/Dokdo/Liancourt Rocks dispute, so long as their official reasoning should be based on such historical and legal justifications, in particular, as the so-called doctrine of Japan's inherent or intrinsic territory.³⁾ Indeed, Japan's position is that, through Tokugawa Shogunate's permission for the Hoki Ikeda feudal clan to despatch sailing vessels for fishery to Utsuryo Island (*i.e.* permission for sailing [out of Japan?] for the purpose of monopolistic economic use or activity on that *seemingly* uninhabited island), Japan had established sovereignty over Takeshima (why not over Utsuryo Island [Ulleungdo] itself?) by the mid-seventeenth century. In fact, however, those Japanese sailing vessels made it a rule to use Takeshima mainly as a point of guiding navigation over to Utsuryo Island.⁴⁾ However, it would still be arguable in law that Japan's title to Takeshima would rather be based on the '*occupatio*' of *terra nullius* in spite of Korea's subsequent contestation or counter-arguments.⁵⁾

Anyway, Japan's official position is summarised in MOFA's website as follows:

'Takeshima is indisputably an inherent part of the territory of Japan, in light of historical facts and based upon international law. The Republic of Korea unilaterally took over Takeshima and has been illegally occupying it ever since. Continuing a peaceful existence since the end of World War II, Japan will continue to seek a peaceful settlement of the dispute.'⁶⁾

'Takeshima is indisputable [*sic*] an inherent part of the territory of Japan, in light of historical facts and based on international law.

The Republic of Korea has been occupying Takeshima with no basis in international law. Any measures the Republic of Korea takes regarding Takeshima based on such an illegal occupation have no legal justification.

Japan will continue to seek the settlement of the dispute over the territorial sovereignty over Takeshima on the basis of international law in a calm and peaceful manner.

Note: The Republic of Korea has never demonstrated any clear basis for its claims that it had taken effective control over Takeshima prior to Japan's effective control over Takeshima and reaffirmation of its territorial sovereignty in 1905.¹⁷⁾

Following this, the website mentioned nine historical or legal points in some detail: (i) Recognition (historical knowledges and understanding) of Takeshima; (ii) Sovereignty over Takeshima (Japan's Shogunate's acts of the Yedo period); (iii) Prohibition of Passage to Utsuryo Island (the Arn Yong-bok cases); (iv) Incorporation of Takeshima into Shimane Prefecture (although this section also points out the

deficits of the Korean Imperial Ordinance No.41 of 1900, it somehow does not explain nor mention the very wording ‘*occupatio*’ [of Takeshima as *terra nullius*] of Japan's Cabinet Decision of 28 January 1905, only reproducing a blurry photo of the original Cabinet Decision paper, which is unreadable even to Japanese scholars⁸⁾; (v) Takeshima immediately after the Second World War (Japan's interpretation of two SCAPINs); (vi) Treatment of Takeshima in the San Francisco Peace Treaty (Japan's interpretation of Article 2 (a), which relies on the letter from the US Assistant Secretary of State Dean Rusk to Korean Ambassador Yang Yu Chang); (vii) Takeshima as a Bombing Range for the US Forces; (viii) Establishment of ‘Syngman Rhee (Peace) Line’ and Illegal Occupation of Takeshima by the Republic of Korea; and (ix) Proposals of Referral to the International Court of Justice (ICJ).⁹⁾

In this treatise I would like to more clearly explicate several critical points of Japan's official position of history and law mainly prior to 1950s¹⁰⁾, and evaluate those justifications from perspectives of a historical critique and international law, indicating several merits or demerits of justifications and omissions for Japan's part. In the first place, Japan's legal argument and justifications will be reviewed.

Japan's legal argument and justifications

I. The following is the circumstances where Japan, it contends, virtually appropriated Utsuryo/Ulleungdo and acquired its original title to Takeshima/Dokdo in the Yedo period (1603-1868).

(i) Permission of passage by the Tokugawa Shogunate during the Yedo period

Jinkichi Oya 大屋 [later renamed Otani 大谷], a shipping agent at Yonago, Hoki State, happened to encounter a typhoon on the way back from Echigo, Northern Japan, drifting out to Ulleungdo. Oya found the island so rich in fish and shellfish stock. In 1618 (4th year of Genna) Japan's Shogunate had granted, through Hoki Ikeda Clan (Tottori Han), a special licence for the Oya (Otani) and Murakawa Families to set sail and make passage (渡海) to Utsuryo Island for engaging in, so to speak, monopolistic economic activity thereon, such as logging, catching sea lions (*zalophus*), gathering ear shells or abalones (*haliotis*).¹¹⁾ Takeshima is located en route to Utsuryo. It is said, according to the Otani (Oya) family papers, that, in 1661, fisheries were attempted also on Takeshima with official permission. The Japanese official view put emphasis on this event as the proof of its original title in feudal law.

However, it is to be noted that there remains no *official* document for permitting such fisheries at Takeshima as the Otani (Oya) family papers recorded.¹²⁾ It appears that, in those days, the Shogunate did not clearly acknowledged Utsuryo or Takeshima as part of its territory, although it might have considered the islands as under its sphere of influence (版図 *hanto*) in a feudal sense of the word. This is because, when, later on in 1690s, there occurred a dispute over whether these Islands appertained to Japan or Korea, Tottori Han (Hoki Ikeda Clan), in response to the Shogunate's enquiries, reported to the Shogunate that ‘we do not hear that Utsuryo Island [*i.e.*, Ulleungdo] does

belong to any native State (国 *kuni*); and that ‘the fisheries at Matsushima [*i.e.*, Takeshima/Dokdo] happened to be *de facto* engaged in because the island was on the sea route for a passage to Utsuryo’.¹³⁾ This means that neither Utsuryo nor Matsushima might have appertained to Hoki-no-kuni (Tottori Han) or other native States of Japan; nor was the Shogunate sure that the islands concerned appertained to the domain under the Shogunate's direct control. It is supposed that this kind of passage to Utsuryo was continued for more than 70 years thereafter.

(ii) *Japan's prohibition of passage to Utsuryo and the Ahn Yong-bok incidents (1693 and 1696)*

In 1692 (5th Year of Genroku) the agent of the Murakawa family for the first time saw Korean fishermen on Utsuryo and so quit landing and came back to Hoki. In 1693 Kurobei, an agent of the Otani (Oya) family, found traces of fisheries like dried seaweed and seized two Koreans, Ahn Yong-bok (安龍福) and Park Eo-doon (朴於屯), on 18 April 1693, taking them forcibly from Utsuryo to Yonago, Hoki-no-kuni, as proof of not having been able to catch abalones.¹⁴⁾ On the way back to Yonago they visited Matsushima (*i.e.*, Takeshima of today). The two Koreans were then moved to Nagasaki for interrogation. And then they were repatriated to Korea through Tsushima on 10 December 1693.¹⁵⁾

In 1693 or in 1694, subsequent to the first Ahn Yong-bok incident of 1693, the Tokugawa Shogunate directed the Tsushima So (宗) Clan to embark on negotiations with Korea for requesting the prohibition of *Korean* fishermen's passage to Utsuryo. However, the Tsushima So Clan had known that Utsuryo was an island of Korea under a singular *vacant-island* policy, but they had not reported to the Shogunate on this.¹⁶⁾ Then, as the final result of the 1694-95 negotiations between Japan and Korea through Tsushima, the Tokugawa Shogunate issued a decree dated 28 January of 9th Year of Genroku (1 March 1696) for prohibition of *Japanese* fishermen's passage to Utsuryo.¹⁷⁾ It is pertinent to note that this decree was issued about four months before Ahn Yong-bok incident of 1696 occurred, when he, for the second time, made seafaring for himself to arrive in the Oki islands on 20 May of 9th Year of Genroku (1696) and reached Hoki on 4 June, for unidentified appeal.¹⁸⁾

A clear distinction must be drawn between these two incidents. Needless to say, as for the Korean position, it is believed in accordance with the Annals of King Sukjong [*Sukjong Sillok*] (22nd year of Sukjong; 9th year of Genroku) that Ahn Yong-bok tried to expel or oust Japanese fishermen from both Utsuryo and Usan (Ahn seems to have believed that Usan or ‘Jasan’ was Takeshima/Dokdo)¹⁹⁾ and he made such a statement that, when he had stayed in house arrest in Tsushima (in the 1693 incident), Ahn had been deprived of gold money and official letters or documents provided by Hoki Han.²⁰⁾

It is said that, in his second visit in 1696, Ahn was well treated in the early period of time in Hoki but, after the Shogunate directive reached Hoki Ikeda Clan for his containment and movement to Nagasaki in case he did not leave for himself, their treatment became more restrictive, similar to a

sort of house arrest, and they were moved on the islet Aoshima in large brackish lake Koyamaike in Hoki (Tottori).²¹⁾ From a perspective of historical study, it would be interesting to know why Ahn embarked on the second seafaring in 1696, how he ever managed to prepare such a ship and who ever, if any, helped him financially. It remains to see a more deepened historical research in the future.

(iii) *The aftermath in the Edo period*

Since the prohibition of passage to Utsuryo/Ulleungdo the visit to Takeshima/Dokdo (called Matsushima at that time) in fact had become seldom. Presumably it was not profitable to only engage in fisheries on Takeshima. It is known that Korea had despatched the Inspector to Utsuryo once three years, although there was no official record proving that, apart from Ulleungdo, the Inspector made a round of patrol over Takeshima, too.

In [*circa*] 1836 (2nd Year of Tenpo), when 140 years had passed since the Ahn Yong-bok incidents occurred, Hachiuemon, a wanderer (*mushukunin*) at the time under the protection of Aizuya, a shipping agent in Hamada, Iwami State [or recorded as ‘son of the late Aizuya Seisuke’], and his conspirators were arrested and sentenced to death for trying to secretly make passage to ‘an island, appendage to an alien State’ (Ulleungdo?) for the purpose of smuggling swords and bows under the guise of a passage for fisheries (to Takeshima?). It is said that there remained the official papers of these judgements.²²⁾ And, according to a hearsay records, one of the conspirators said that... ‘in the name of crossing the sea to Matsushima [Takeshima of today], tried to reach Takeshima [Ulleungdo]’.²³⁾ If this was true, the punishment might be a proof of Japan's knowledge distinguishing Takeshima from Ulleungdo under the prohibition of passage. However, it is doubted whether this incident could prove Japan's acknowledgement that Matsushima [Takeshima of today] belonged to Japan, because the case was about a conspiracy only amongst Hachiuemon under shipping agent Aizuya and Okada Tanomo and Matsui Tosho, chief counsellor and high official, etc. at Yedo under Matsudaira Clan, Iwami State, and the attempt was made without *any* Shogunate permission; and because Takeshima, and presumably Matsushima as well, had neither been acknowledged as part of the domain under the Shogunate's direct control nor as part of fief of Tottori Han since the Ahn Yong-bok incidents. They only tried to smuggle or make use of no man's island for their illegal profits.²⁴⁾ Those criminals were apprehended and punished with death penalty, apparently with Japanese feudal law being applied not on the territorial principle but on the personal or extra-territorial principle.

(iv) *Confusion and misunderstandings about the names of the two Islands*

In [*circa*] 1787 two French frigates La Boussole (Captain : Jean-François de Galaup, Comte de La Pérouse, a French explorer) and L'Astrolabe (Captain: Paul Antoine Fleuriot de Langle, Vicomte) surveyed Utsuryo and named it *Dagelet* after a French astronomer and mapping specialist, Joseph

Lepaute Dagelet, one of the members of La Pérouse exploration — in passing, *Jukseo* (竹嶼 Chikusho), near Ulleungdo (Utsuryo), was named *Boussole Rock*.²⁵⁾ In 1797, ten years later, HM Sloop Providence (Captain: William R. Broughton) also surveyed Utsuryo with a mistaken measurement and named it *Argonaut* independently of *Dagelet*,²⁶⁾ with a result that there were two Ulleungdo (Utsuryo).²⁷⁾ However, no such island existed as Argonaut. Then, Phillip Franz von Siebold's Map 'Karte vom Japanischen Reiche' of 1840²⁸⁾ mistakenly identified *Argonaut* as Utsuryo and *Dagelet* as Matsushima on the basis of his knowledge of 'Takasima and Mazusima' in Japan's *Ino-zu* (a confidential complete map of Japan, which was made by Ino Tadataka (1745-1818) and formally submitted in 1821 to the Shogunate, and a copy of which had been smuggled out to the Netherlands). On the other hand, in 1849 (2nd year of Kaei), a French whaler ship *Liancourt* surveyed Takeshima/Dokdo and named it *Liancourt Rocks*. So, for a certain period of time, there were three islands in Western charts.

However, later on in 1854, Russian ship *Pallada* tried to survey Broughton's island of Argonaut, which must be in the northwest of Utsuryo, but could not find any. So, after that, *Argonaut*/'Takasima' was deleted from a European version of map and chart, with the result that Dagelet/'Mazusima' only remained as Ulleungdo/Utsuryo. This appears to have affected the thereafter Japanese knowledge, and confusion occurred in names relative to Utsuryo/Ulleungdo and Takeshima/Dokdo for the period from the closing days of the Tokugawa Shogunate to the latter half of the Meiji era. Namely, the general public in Japan began to delete 'Takasima' from their map and stop calling Utsuryo 'Takasima' and began to newly call it 'Matsushima', although, during the Yedo period, the name of 'Mazusima' had long been applied to Liancourt Rocks and the name of 'Takasima' to Utsuryo/Ulleungdo. And at the same time, in their knowledge, too, they began to confuse the original 'Takasima' (Ulleungdo) with the original 'Mazusima' (Liancourt Rocks). In contrast to this, it is to be noted that the Japanese Navy of the time still dubbed Takeshima/Dokdo of today 'Riancourt Iwa'.

Japan's position today is that this confusion in naming Utsuryo has no relevance on correctness in Japan's official, geographical knowledge of Takeshima of today in the Meiji era (in contrast with its more vague knowledge about Utsuryo²⁹⁾). In fact, as far as Utsuryo/Ulleungdo is concerned, although having some information about it and sketch maps prepared in the Yedo period³⁰⁾, Japan, for the first time, came to know Utsuryo, with a measurement in latitude and longitude when a Japanese battleship Amagi surveyed the island in June 1878 (11th Year of Meiji), and the same battleship again surveyed and depth-sounded it, together with a tiny rocky islet Boussole Rock (*Jukseo*) nearby, and reported with a chart attached on 13 September 1880 (13th Year of Meiji), so that the confusion disappeared in the general public and presumably within the Japanese Government, too.³¹⁾

II. Some historical facts in the Meiji era

(i) *Controversy on the interpretation of Japan's Dajokan Directive of 1877 (10th Year of Meiji)*

In 1876 (9th Year of Meiji) an official in charge of geography and land inspected round Shimane Prefecture and came to know the information of passage to Utsuryo (called Takeshima in the Edo Period). He made enquiries about the detailed account of old practice. The Governor of Shimane (Acting) at that time, in response to this, submitted a memorandum of enquiry titled 'About the land registration of Takeshima and another island in the Japan Sea', (unfortunately) based on the private papers of the Otani (Oya) family, etc., to the Minister of Interiors.³²⁾ In this memorandum, this 'Takeshima' is Utsuryo, and 'another island' is Matsushima, to which passage was also made in the Edo period, *i.e.* Takeshima today. The reason Shimane Prefecture submitted such a memorandum of enquiry to the Ministry of Interiors, was that they considered both of the islands, Takeshima/Utsuryo and 'another island'/Liancourt Rocks, as Japan's territory, based on the uncritical acceptance of the mistaken statement in the Otani (Oya) family papers. Those private papers stated that the 1696 (9th Year of Genroku) prohibition of passage was 'a measure taken on the basis of an official letter acquired by the Shogunate from Korea'.³³⁾ And, as regards 'another island' therein, Shimane Prefecture meant that, if the Ministry of Interiors should intend to produce a land register of Takeshima/Utsuryo, it is also indispensable to register Matsushima/Liancourt Rocks in Japan's cadaster. It may be noted that that is an error or failure in fact.³⁴⁾

On the other hand, receiving this memorandum of inquiry from Shimane, the Ministry of Interiors, made research on Takeshima independently of Shimane Prefecture, and in March 1877 it sought for the final judgement by Head Minister (Deputy) of the Japanese Administration (Udaijin), Tomomi Iwakura, stating that 'whereas, as regards the matter of possession of Takeshima, Shimane Prefecture submitted a memorandum of enquiry (attached) and whereas the Ministry of Interiors made research on it, we hear and understand that the matter of the island concerned... is what has no relevance to our nation'; 'however, as it is significant to decide whether to take or abandon the territory (*hanto* 版図), we, just to be sure, intend to request your judgement with the documents concerned appended.' Then, Tomomi Iwakura, having agreed with the Ministry of Interiors, issued a Dajokan Directive dated on 29 March 1877 as follows:

As regards this request, you should understand that the matter of Takeshima and another island is what has no relevance to our nation.³⁵⁾

The Ministry of Interiors noticed the error in the knowledge of a historical fact on the part of Shimane Prefecture. It appears that Hisoka Maejima, deputy for Toshimichi Okubo, Minister of Interiors, requested final confirmation from Tomomi Iwakura, Dajokan Udaijin, on the non-

possession/abandonment of Takeshima only, but, to its request, it appended the mistaken memo. from Shimane Prefecture, which had regarded both Takeshima/Ulleungdo and Matsushima/Dokdo as Japanese islands.³⁶⁾ This might have led to such an error in the wording as ‘Takeshima *and another island*’. Although Japanese-Korean negotiations in the Genroku era as well as the attached historical documents on it were solely related with Takeshima, in consequence not only Takeshima/Utsuryo but also Matsushima/Liancourt Rocks was in form identified as the island which had no relevance to Japan. The Japanese Government regards the 1877 Dajokan Directive as a mere inner administrative decree with an administrative error of fact, and so it does not conclusively prove that Japan had abandoned Takeshima/Liancourt Rocks as well as Utsuryo; and they say that, so long as the interpretation on a historical document has been disputed by scholars, any State party to the dispute could not invoke it as probative fact in law.

The same conclusive remarks as those of Dajokan's Directive, together with the gist of the requests and facts, is also recorded in *dajo ruiten* (Collection of Dajokan Administrative Records) under the document title: ‘It was decided that Takeshima and another island in the Sea of Japan was not within the territory (*hanto*) of our nation.’³⁷⁾ Expecting further deepening of historical study on this issue (*e.g.* a research on *whether or not and when* Japan subsequently produced a land register of Matsushima/Liancourt Rocks as national land), we, at the present moment, could only classify the matter of wording ‘Takeshima and another island’ in the Dajokan Directive into several probable cases: the two islands therein mean (a)Utsuryo (Ulleungdo) and Takeshima today [despite the Ministry's intention to merely abandon Utsuryo]; (b)Utsuryo and nearby islets including ‘Jukseo’ (竹嶼) or Jukdo, a Korean island about 2km northeast of Ulleungdo; (c) Utsuryo and ‘Usando’ (于山島) in Korea's ancient records; (d)Utsuryo and Usando (=Jukseo 竹嶼); and (e)one and the same Utsuryo with two names (‘Utsuryo or Matsushima’) given (and Utsuryo/Takeshima was called Matsushima towards the end of the Edo period and at the beginning of the Meiji era (one island with two names)³⁸⁾

However, with a sketch map,³⁹⁾ depicting clearly the relation among ‘Isotakeshima’ (Ulleungdo), *Matsushima* and the Oki islands, attached, the internal papers prepared by the Ministry of Interiors for requesting the Directive, explaining the history and circumstances of Takeshima and Matsushima, stated:

Isotakeshima, or dubbed Takeshima [Ulleungdo], was located more than 120 *ri* (miles; about 192 km or 222 km) far from the Oki State... Next, there is another island called *Matsushima*. The circumference of the island is more than 30 *cho* [about 3.3 km], and it is on the same line with Takeshima. It is more than 80 *ri* (about 128 km or 148 km) distant from the Oki Islands. It has few trees or bamboos but it also produces fish stock and sea lions. [*emphasis added*]⁴⁰⁾

In fact, the distance between Takeshima/Ulleungdo and the Oki Islands is about 249 km, and the distance between Matsushima/Dokdo and the Oki Islands is 157 km. Judging from the above description of the distance and size of an island called *Matsushima*, it is presumed that this *Matsushima* is today's Takeshima/Dokdo, and it would be admitted that the disputed Japan's Dajokan Directive of 1877 was issued on this understanding about 'another island'.⁴¹⁾ Actually, on 29 November 1881, four years after the Dajokan Directive was issued, Sutezo Nishimura, acting senior secretary of the Ministry of Interiors, made an enquiry to the Ministry of Foreign Affairs on the unlawful logging case at Ulleungdo, and he stated:

I have heard and since understood that Takeshima and *Matsushima* in the Sea of Japan, as Attachment I [the 1877 Dajokan Directive] stated, are determined to be what has no relevance to our nation within the 10th Year of Meiji (1877)...⁴²⁾

It would follow from those remarks above that, at least around that time, the Ministry of Interiors considered 'another island' in the Dajokan Directive as *Matsushima*, i.e. today's Takeshima.

Then, the reason they did not adopt *Matsushima* and only mentioned 'another island' in 1877 is unknown at the moment, except for a variety of speculation. Indeed, it is understandable that the names of an island were extraordinarily too confused to select any one of those names at once for administrative purposes. A nebulous notion of 'another island' might be due to the technical wisdom of the Meiji bureaucracy.

(ii) *Japan's second prohibition of passage by Dajo Daijin Naitatsu* [Internal Directive from the Minister of Dajo] of 1883 (16th Year of Meiji)

On 1 March 1883, six years later after the Dajokan Directive was issued, Minister of Dajo issued to the Ministry of Interiors the following Directive:

It is internally directed that every local governor be advised and notified by your Ministry [of Interiors] that, considering the hitherto agreement between the Korean and the Japanese governments, each local governor shall see that no Japanese subject, without permission, should make passage and land to the island located at 37 degrees 30 minutes North Latitude and 130 degrees 49 minutes East Longitude, which the Japanese call Matsushima or Takeshima another way, and which the Koreans call Ulleungdo.⁴³⁾

This was because Ulleungdo Inspector Lee Gyu-won(李奎遠) officially visited there to find that the Japanese (under the control of a Japanese trading company called Okuragumi at that time) were

logging island trees, hanging a marquee and having put up a bulletin log-board saying 'Matsushima' nearby. In his second visit, they still continued logging.⁴⁴⁾ But, in accordance with the above Internal Directive, all Japanese people on the island were once enforced to leave Ulleungdo with a Japanese vessel, although not a few Japanese appear to have unlawfully continued smuggling themselves to the island thereafter.⁴⁵⁾

[To be continued]

Notes [註]

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- 1) e.g. Takashi Momose, *shiryō kensho: nihon no ryōdo* [a reappraisal of modern historical material: Japan's territory], (supervising editor: Takashi Ito), Kawade Shobo Shinsha, 2010, p.228; and Takashi Tsukamoto, 'nihon no ryōiki kakutei ni okeru kindai kokusaiho no Tekiyo jirei: sensen hori to takeshima no ryōdo hennyu wo chushin ni' [The cases for applying modern international law in the confirmation of Japan's territory], *Higashi Ajia kindai shi* [Modern History of East Asia], No.3 (March 2000), pp.84-92.
- 2) Available at <http://www.mofa.go.jp/region/asia-paci/takeshima/position.html>
- 3) For a Japanese academic view similar to the official position, see Takeshi Minagawa, 'takeshima funso to kokusai hanrei' (1963) [the Takeshima Dispute and International Judicial Precedents], in T. Minagawa, *kokusaiho kenkyū* [Study of International law], 1985, pp.212-231.
- 4) This kind of a slight usage might have constituted a claim to Takeshima as 'Hanto' (版図), which would mean not only 'territory' but the 'sphere of influence' in the feudal ages of East Asia. Upon the people of the former a feudal king duly imposed land tax for feudal territory (*feud*) in the law of the feudal ages. On the other hand, it would be highly probable that two States' claims to the latter would often overlap each other, simultaneously permitting fisheries or exacting tributes from fishers (which might be similar to the state of affairs of the South China Sea in the old ages). As far as Takeshima is concerned, there remains the last, concrete historical record of fisheries in the Yedo period, on the Japanese side, that, in 1695 (8th Year of Genroku) those Japanese boats reached Utsuryo to find many Korean fishers on the Island and so quit fishing there for that year and, instead, on the way back to Hoki, tried abalone fishing on Takeshima (Official History of Tottori Han). Hiroshige Taniguchi, 'tottori hansei shiryō kara mita takeshima mondai' [the Takeshima question from a perspective of Tottori Han material], Schedule of History, p.2. <http://www.pref.shimane.lg.jp/soumu/takesima/chukanhoukoku/index.data/taniguti-report.pdf>
On the other hand, according to private papers of the Oya (Otani) Family, one of the shipping agents in charge of monopolistic use of Utsuryo, it is said that, since 1661, fisheries had continued on Takeshima as well with official approval. Kenzo Kawakami, *Takeshima no rekishi chirigaku teki kenkyū* [historical and geographical study of Takeshima], 1966, at pp.73-82.
- 5) Korea's position on the original title of possession of Dokdo is also the doctrine of Korea's inherent territory, based on ancient records and atlas of Usan Island, Statement by Ahn Yong-bok recorded in the *Annals of King Sukjong* in the 9th month of the 22nd year of the reign of King Sukjong (1696), Japan's Shogunate decision to prohibit passage to Utsuryo Island in January 1696, Japan's Dajokan's decree (1877) which recognised that 'Utsuryo (called Takeshima in Japan at that time) and another island (Dokdo as so interpreted and understood in Korea now) as well' be excluded from Japanese territory, Korean's reaffirmation by its Imperial Ordinance No.41 (石島), etc. See below, Chapter 4 South Korea's Claim to Dokdo.
- 6) Available at http://www.mofa.go.jp/territory/page1we_000007.html#q6
- 7) Available at <http://www.mofa.go.jp/region/asia-paci/takeshima/index.html>
- 8) I am wondering whether this is an honest attitude as it is an official website for public diplomacy
- 9) For (i) - (ix), see the following URLs of the Ministry of Foreign Affairs of Japan (MOFA):
(i) http://www.mofa.go.jp/a_o/na/takeshima/page1we_000057.html
(ii) http://www.mofa.go.jp/a_o/na/takeshima/page1we_000058.html
(iii) http://www.mofa.go.jp/a_o/na/takeshima/page1we_000059.html
(iv) http://www.mofa.go.jp/a_o/na/takeshima/page1we_000060.html

(v) http://www.mofa.go.jp/a_o/na/takeshima/page1we_000061.html

(vi) http://www.mofa.go.jp/a_o/na/takeshima/page1we_000062.html

(vii) http://www.mofa.go.jp/a_o/na/takeshima/page1we_000063.html

(viii) http://www.mofa.go.jp/a_o/na/takeshima/page1we_000064.html

(ix) http://www.mofa.go.jp/a_o/na/takeshima/page1we_000065.html

In addition, see Takashi Tsukamoto, 'Sovereignty over Takeshima/Dok-do Island (Documents)', *The Reference*, No.617 (June 2002), Research and Legislative Reference Bureau, National Diet Library, Tokyo, pp.49-70.

- 10) This is because, as the 'critical date', if any, of the Takeshima dispute, the Japanese Government regards a date between, at the earliest, January 1952, when Japan lodged the first protest against 'Syngman Rhee line' ('Peace Line') and, at the latest, July 1953, when Japan conveyed to Korea a *note verbale* in which Japan contended thoroughly its legal position in accordance with international law, while the Korean Government appear to regard September 1954, when Japan proposed to refer the matter to the ICJ. For the position regarding 1905 as the critical date, see Seokwoo Lee, 'The Resolution of the Territorial Dispute between Korea and Japan over the Liancourt Rocks', *Boundary and Territory Briefing*, Vol.3, No.8 (2002), p.33.
- 11) Odani Ihei's memo. dated 17 February 1696 (25-nichi Shogatsu Nineth Year of Genroku), in takeshima no kakitsuke [Memorials on Takeshima]. See Takashi Tsukamoto, 'takeshima kankei kyu tottori han bunsho oyobi ezu (jo)' [former Tottori Han Documents and Atlas regarding Takeshima (Part I)], *The Reference*, No.411 (April 1985), National Diet Library, Tokyo.
- 12) See above, note 4), Kenzo Kawakami.
- 13) See above, note 4), Hiroshige Taniguchi.
- 14) On this occasion he was taken forcibly or abducted to Hoki, together with Park Eo-Doon, by the agent of the Oya (Otani) family as proof of not having been able to engage in fisheries on Utsuryo. Hiroshige Taniguchi, 'tottori hansei shiryō kara mita takeshima mondai' [the Takeshima question from a perspective of Tottori Han material], *Schedule of History*; Kozo Taguchi, 'takeshima ryōyū ni kansuru rekishiteki kosatsu' [Historical Study on the Possession of Takeshima], *Toyo Bunko Shoho* [Bulletin of the Oriental Archives Library], No.20, at p.25.
- 15) *Takeshima kiji* [Accounts of Takeshima (Utsuryo)], 1726 (11th year of Kyōho). E. Usuki, 'Research Material: The Takeshima/Dokdo question', *Daito Bunka Daigaku Kiyō* [Bulletin of Daito Bunka University], No.40, 2002, at pp.33-34.
- 16) In 1614, the 19th Year of Keicho, *So Gi* at Tsushima despatched an envoy to Toraifu, Busan, to argue that Utsuryo was 'within our nation's *hanto* (版図)' and received a Korean reply that 'Takeshima was Ulleungdo, and that it was not Japanese land', together with a Korean book of ancient history, presumably *Yeoji Seungnam* 輿地勝覽 (see below, Section II (v)).
However, *So* did not report on this negotiation to the Shogunate because of the turmoil in the Winter Battle at Ozaka between Tokugawa Ieyasu and Toyotomi Hideyori, son of Hideyoshi. *takeshima kankei bunsho shusei* [Collection of Documents relating to Takeshima], Cabinet Papers, 'MOFA Records', National Archives of Japan, *Emuti Pub.*, 1996, pp.134-135.
- 17) Before that date, Inaba Matsudaira Clan, Hoki Ikeda Clan, the Otani (Oya) and the Murakawa families had been notified, on the condition that this should remain confidential till the decree had been transmitted to Korea through Tsushima Han. Kozo Tagawa, 'takeshima ryōyū ni kansuru rekishiteki kosatsu' [Historical Thoughts on the Possession of Takeshima], *Toyo Bunko Shoho* [Oriental Archives Library Bulletin], No.20 (March 1989), pp.6-52 at pp.24-37.
- 18) Kozo Tagawa, *ibid.* at p.32 and p.37.
- 19) Kozo Tagawa, *ibid.*, p.29. For the original old Chinese text, see *ibid.*, p.48.
- 20) 22nd year of Sukjong (October, 9th year of Genroku).
- 21) Hiroshige Taniguchi, 'tottori hansei shiryō kara mita takeshima mondai' [the Takeshima question from a perspective of Tottori Han material], *Schedule of History*.
- 22) *takeshima kosho jo/chu/ge* [Takeshima Enquiries I, II, III], quoted in 'gaimusho kiroku' [Ministry of Foreign Affairs Records], Cabinet Library archives, National Archives Library, published in 1996, pp.140-154.
- 23) *Mushuku karikomi ikken* [the case of apprehension of wanderers], in Takashi Tsukamoto, *ibid.*, *Issue Brief*, No. 289 (Nov.22, 1996), section 5; Yoshio Morita, 'takeshima ryōyū wo meguru nikkā ryōkoku no rekishijō kenkai' [Japanese and Korean Historical Views regarding the possession of Takeshima], *Gaimusho Chosa Geppo* [Monthly Bulletin of the Ministry of Foreign Affairs], vo.II, No.5 (May 1961), pp.317-329, at p.324.
- 24) See 'takeshima kosho (ge)' [Investigation on Takeshima (III)], in *Emuti Pub.*, Tokyo, 1996, pp.139-155, at pp.140-141. A different account of the case is, according to a hearsay record in the Edo period called 'mushuku karikomi ikken' [arrest case of vagrants], that, under the guise of passage to nearby island Takeshima (called 'Matsushima'), he made

- passage to Utsuryo (called ‘Takeshima’), foreign soil, for illegal logging. Takashi Tsukamoto, ‘takeshima ryoyuken mondai no keii’ [circumstances for the question of sovereignty over Takeshima], *Chosa to Joho -ISSUE BRIEF*, No.289, National Diet Library, Tokyo, pp.1ff.
- 25) Carte générale des découvertes faites en 1787, collected in [Sir Arthur Henry] Hugh Cortazzi, *Isles of Gold: Antique Maps of Japan*, Weatherhill, Inc., New York/Tokyo, p.135.
 - 26) While Japanese Ministry of Foreign Affairs' website at the present moment states that ‘...the British explorer, James Colnett, also reached Utsuryo Island in 1789 and named it “Argonaut”’, British Captain J. Colnett, in the Nootka incident in Northeast America, was arrested and captured together with his ship *Argonaut* by the Mexican navy at Vancouver Island in 1789 and had been detained in Mexico during 1789-90 for hoisting a Portuguese flag and trying to establish a post for getting sea otter pelts within a self-claimed Mexican territory of Nootka [near Vancouver]. So, he could not have been able to name a new island in the Japan Sea/Donghae as ‘Argonaut’. Such a mistake is found at ‘takeshima hoka itto’ [Takeshima and another island] in the Japanese version of Wikipedia <https://ja.wikipedia.org/wiki/%E7%AB%B9%E5%B3%B6%E5%A4%96%E4%B8%80%E5%B3%B6>. See also JMFA website above, [http://www.mofa.go.jp/a_o/na/takeshima/page1we_000057.html].
 - 27) See a map showing the positions of Argonaut and Dagelet, in Yoshio Morita, ‘takeshima ryoyu wo meguru nikkann ryokoku no rekishijo no kenkai’ [Historical View on the Possession of Takeshima], *gaimusho chosa geppo* [MOFA Research Bulletin], Vol.II, No.5, p.23, at p.25.
 - 28) Collected in Hugh Cortazzi, *ibid.*, pp.156-157.
 - 29) Around 1877 (10th Year of Meiji), there were made a lot of petitions for reclamation or fisheries on Takeshima or Matsushima from the general public, and on this context, in fact, there was the acutest controversy on whether Utsuryo had two names like Takeshima, Matsushima, and whether these two were only the two names of Utsuryo or they respectively corresponded to Korea-claimed Utsuryo and Usan (Dokdo). This controversy ended with the conclusion that all those names were meant to be Utsuryo, and so those petitions were not accepted. Koza Tagawa, ‘takeshima ryoyu ni kansuru rekishiteki kosatsu’ [Historical Thoughts on the Possession of Takeshima], *Toyo Bunko Shoho* [Oriental Archives Library Bulletin], No.20 (March 1989), at pp.37-41.
 - 30) e.g., Sketch Map of the 9th Year of Kyoho (1724), submitted from the Hoki state to the Shogunate (in Yoshio Morita, ‘takeshima ryoyu wo meguru nikkann ryokoku no rekishijo no kenkai’ [Historical View on the Possession of Takeshima], *Gaimusho Chosa Geppo* [MOFA Research Bulletin], Vol.II, No.5, p.23, at p.29), or its slightly different version (in Takashi Tsukamoto, *the Reference*, No.412, May 1985, National Library of Japan, p.95, at 97); and Sketch Map of *circa* 9th Year of Genroku (*circa* 1696), submitted from Kotani Ihyoe, official at Yedo under Tottori Han (in Takashi Tsukamoto, *ibid.*, at p.98.).
 - 31) Seisei Kitazawa, an official at Ministry of Foreign Affairs, prepared ‘takeshima hanto shozoku ko’ [Deliberation on the Appurtenance of Takeshima], a memorandum of a correct narrative on the history of the name of an island called ‘Takeshima, Isotakeshima, Matsushima, Ulleungdo or Huleungdo (芋 陵 島)’, dated 20 August 1881 (14th Year of Meiji). See *Takeshima kankei bunsho shusei* [Collection of Records relating to Takeshima], [Ministry of Foreign Affairs Records], Cabinet Library archives, National Archives Library, published in 1996, p.143-144. For the Amagi report and chart, see *takeshima kosho jo/chu/ge* [Takeshima Enquiries I, II, III], quoted in ‘gaimusho kiroku’ [Ministry of Foreign Affairs Records], Cabinet Library Archives, National Archives Library, published in 1996, pp.269-271; and for the position of Boussole Rock, see attached map in the report, at p.271.
 - 32) This is collected in ‘kobunroku’ (公文録), part of the Ministry of Interiors, March 10th Year of Meiji: 「竹島……外一島がある〔。〕か松島と呼ぶ」
 - 33) *Ibid.* and other documents like ‘takeshima tokai yurai ki nukigaki hikae’ [memo. On the summary of the origin of passage to Takeshima].
 - 34) Takashi Tsukamoto, ‘takeshima ryoyuken mondai no keii’ [circumstances for the question of sovereignty over Takeshima], *Chosa to Joho -ISSUE BRIEF*, No.289, National Diet Library, Tokyo, at p.5.
 - 35) Kobunroku [collection of public documents (10th year of Meiji, 1877), Vol.25, request for confirmation of March 1877, housed at the National Archives, Tokyo [公文録・明治十年・第二十五卷・明治十年三月・内務省伺(一)、国立公文書館] available at pp.17-18 in [http://www.digital.archives.go.jp/das/image-j/M000000000000114717].
 - 36) For all that, one of the internal documents prepared by the Ministry of Interiors for requesting Dajokan's final confirmation indicated that ‘another island’ might be Matsushima/Dokdo. See Kobunroku [collection of public documents (10th year of Meiji, 1877), Vol.25, request for confirmation of March 1877, housed at the National Archives, Tokyo [公文録・明治十年・第二十五卷・明治十年三月・内務省伺(一)、国立公文書館] available at pp.4-5 in URL:[?http://www.digital.archives.go.jp/das/image-j/M000000000000114717]
 - 37) Namely, it states: ‘... the matter of Takeshima and another island is what has no relevance to our nation.’ ‘dajo

ruiten, dai ni hen' National Archives of Japan [太政類典、第二篇、明治4年—明治10年、第九六卷、3類、地方、行政区二], pp.1-13, available at p.1 [https://www.digital.archives.go.jp/das/image/M0000000000000847112].

- 38) In particular, the Japanese navy had tended to use the name 'Matsushima' for Ulleungdo in the Meiji period. For example, see Japanese Foreign Ministry's survey report (Masataka Kitazawa) of 1881 (14th Year of Meiji), *takeshima koshō (ge)*, No.24, Emuti Pub., 1996, pp.269-271.
- 39) See below, Map I and Map II at the end of this treatise.
- 40) Kobunroku [collection of public documents (10th year of Meiji, 1877) , Vol.25, request for confirmation of March 1877, housed at the National Archives, Tokyo [公文録・明治十年・第二十五卷・明治十年三月・内務省伺（一）、国立公文書館] available at pp.4-5 in [http://www.digital.archives.go.jp/das/image-j/M000000000000114717].
- 41) However, this point is not conclusive in judging the possession of the island. Although thereby Japan might have admitted in 1877 that Matsushima was not its own territory, it no way admitted that it was Korean territory. It might remain *territorium nullius* as well.
As for the inconclusiveness about 'another island' in Dajokan's Directive, see also Takashi Tsukamoto, 'takeshima ryoyuken mondai no kei-i [3rd ed.]', ISSUE BRIEF No.701(2011. 2.22.), National Library of the Diet, p.5. And see Takashi Sugihara, 'meiji 10 nen dajkan shirei wo meguru shomondai' [some questions on Dajokan Directive of 1877], at p.14 [http://www.pref.shimane.lg.jp/admin/pref/takeshima/web-takeshima/takeshima08/iken-B.data/-04.pdf#search=%27%E5%85%AC%E6%96%87%E9%A1%9E%E5%85%B8+%E7%AC%AC%E4%BA%8C%E7%B7%A8+%E7%AB%B9%E5%B3%B6%27]
- 42) 1881年11月29日, FO papers, Japan (外務省記録 8324 「内務書記官 西村捨三の外務省書記官宛照会」) available at [https://sites.google.com/site/takeshimaliancourt/Home/ulluengdo-another-name-takeshima-matsushima]
- 43) Internal Directive from the Minister of Dajo of 1883, Sanji-in (参事院), available at [http://www.dokdo-takeshima.jp/the-japanese-invasion-of-ulleungdo-iii.html] (Translation is mine.) For other versions, see [http://www.tanaka-kunitaka.net/takeshima/2a357chou83/].
- 44) *Gojong Daehwangje Sillok* vol.19 at 38 and 43 (高宗大皇帝実録、卷之十九 38, 43) Available at [http://www.dokdo-takeshima.jp/the-japanese-invasion-of-ulleungdo-iii.html]
- 45) See above, II, the latter part of (i), for Sutezo Nishimura's inquiry to the Ministry of Foreign Affairs of 1881.

MAP I

'Sketch Map of Isotakeshima': A map attached to the request for confirmation of Dajokan's Directive of 1877, Kobunroku [collection of public documents] (10th year of Meiji, 1877), Vol.25, request for confirmation of March 1877, housed at the National Archives, Tokyo (公文録・明治十年・第二十五卷・明治十年三月・内務省伺(一)、国立公文書館), available at p.21 in [http://www.digital.archives.go.jp/das/image-j/M0000000000000114717] (See above, in-text Section II, (i), p.176.)



MAP II

A focussed version of MAP I above with original explanatory words printed.

