論　文

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

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竹島（リアンクール岩）に対する日本の法的・歴史的主張の再検討（Ⅲ）

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Appraisal I

(i) *The Japanese Government argue for the original title to sovereignty rather than for 'occupatio' of terra nullius*

It appears that Japan's official legal argument is directly or indirectly associated with, or influenced by, the reasoning of judicial authorities like the 1953 judgement of the ICJ on the *Minquiers and Ecrehos* case[1] and the 1928 Award of the Island of Palmas case[2]: i.e., the Takeshima issue 'does not therefore present the characteristics of a dispute concerning the acquisition of sovereignty over *terra nullius*';[3] and even if Japan's Tokugawa Shogunate 'did have an original

feudal title in respect of [Takeshima], …[s]uch an alleged feudal title must have lapsed as a consequence of events… or could today produce no legal effect, unless it had been replaced by another title valid according to the law of the time of replacement'.[4] So, it appears that, in Japan's official argument, it is emphasised that, although it had already acquired the original title in the seventeenth century,[5] rather than by '*occupatio*' declared, Japan pre-eminently relies on the mere legal fact of incorporation or appropriation being reaffirmed in 1905 in accordance with the formality of a new law, *i.e.* modern international law. However, it appears that Japan, intentionally or unintentionally, ignores the following wording (underscored) of the 1905 Cabinet Decision:

'The Cabinet,

Considering the request from the Minister of Interiors regarding the possession of an uninhabited, desert island (attachment), in which it is mentioned that, whereas <u>there is no evidence that any other State has occupied the island concerned, and</u>

Whereas in 1903, two years ago, Yozaburo Nakai, a Japanese subject, built a fishery hut, despatched his fishermen, with fishing equipment installed there, and embarked to catch sea lions, and on this occasion made a petition for the territorial incorporation and the granting of the leasehold over the island, …

Whereas the Minister of Interiors, on this occasion, as it is necessary to give it the name of an island, intends to designate it as Takeshima and, from the present onward, put it in the possession of Shimane Prefecture, placing it under the jurisdiction of the Oki Island Administrator,

Considering that, as it is clear from the relevant documents, that since 1903 a subject called Yozaburo Nakai has moved onto the island concerned and engaged in fisheries,

<u>*Regarding it as the fact tantamount to occupatio in international law*</u>, incorporates it into our nation's territory and put it in the possession of Shimane Prefecture, placing it under the jurisdiction of the Oki Island Administrator;

So Decides in accordance with the request from the Minister of Interiors, as this would incur no obstacles.'[6]

Moreover, it has been pointed out that an opinion by the Cabinet Legislation Bureau was attached to this Cabinet Decision as Reference［参照］, which would indicate that the above wording of the Cabinet Decision had followed that of the former Decision regarding *occupatio* of the island of Minami Torishima/Marcus/Weeks.[7] The Reference included the following Cabinet Decision (14 July 1898) on Minami Torishima:

'The Cabinet,

…

Considering that there is no evidence that any other State has occupied the island concerned, and

That since December 1896 Shinroku Mizutani, a Japanese subject, has despatched his settlers and built houses, and embarked on catching fish and sea birds and reclamation, having a high prospect for success,

Regarding it as the fact tantamount to occupatio in international law, ….'[8)]

It is understood that the island of Minami Torishima was incorporated into the territory of Japan by *occupatio* of terra nullius.

On the other hand, it has been pointed out that, if it would happen in the future that the matter be agreed to be referred to the International Court of Justice (ICJ), it would be necessary for Japan to restructure its claims and justifications about Takeshima so that Japan would place its reasoning either on the *occupatio* of terra nullius *or*, as it now stresses, on the possession of its own (inherent) territory on the basis of an original and historical title in the Yedo period, so far as the pre-1905 possession of an island is concerned.[9)] Indeed, it would be impossible for Japan to make a legal argument for 'occupatio' of Takeshima as *terra nullius* by means of the 1905 Cabinet Decision, while thereby simultaneously making another legal argument for merely having 'reaffirmed' the original title of possession since the seventeenth century, which is based on the so-called doctrine of 'inherent territory' rooted in a political doctrine of irredentism relative to a lost land. In addition, despite the wording of '*occupatio*' therein, it might be possible that, in the proceedings at court, Japan would be making a distinction, dividing each of these arguments into the primary argument and the alternative arguments (or complementary justifications).[10)] That is because, if Takeshima should have remained part of Japanese *inherent* territory since the Yedo period, the Island was not a *terra nullius*, and so it would be absurd to argue that Japan would, in law, have tried to take possession twice of an island, which was already its own (inherent) territory, as *terra nullius*.

Apparently this would be a contradiction in reasoning. And it would seem that the historical circumstances of Takeshima should be distinguished from those of the *Minquiers and Ecrehos* case in that the circumstances of the former would only be much *slighter* evidence of effective control in the seventeenth century — such as (a) issuing a permit for reaching, not to *Takeshima* of today, but to a desert Island, *Utsuryo*, (Korean territory, to the latter, Korea's vacant-island policy had been long applied for purposes of national security, precluding political criminals or wandering people from fleeing into the Island so as for the Island not to become a tax or tribute haven); (b) presenting dried abalones as article for presentation to the Shogunate; or (c) once a penal jurisdiction was

exercised over the 1836 fraud and conspiracy case of a planned smuggling and trafficking to/from passage-prohibited Island Utsuryo or other foreign lands with only a *local permit to reach Takeshima* (?) to engage in fisheries[11] — *than* in the circumstances of the latter, where the King of England had made effective control — such as (a) issuing a Charter to assign the islands concerned to his liege (1200) and then to the abbey of Val-Richer (1204), which however remained King's territory where (b) King of England's judges had long presided over assizes, (c) collected house tax, and (c) the neighbouring Jersey Island authorities had registered real property in Ecrehos or (d) the Jersey coroner's court judged on dead bodies found in Ecrehos, etc., (not to mention Britain's proved sovereignty over Minquiers and Ecrehos as *fief* in the period between 1066 Norman Conquest and the 1204 separation of Norman Dukedom). In appraising the relative strength of the opposing claims to sovereignty over Takeshima, it appears that neither Japan nor Korea could provide so convincing, strong or positive evidence as that in the *Minquiers and Ecrehos* case.[12]

By way of a conclusion, it appears that Japan's point of argument might be how it would convince the Court that Takeshima had been (ironically) neither its own territory nor Korea's territory nor an island appertaining to Utsuryo Island as dependency;[13] but that it remained a *terra nullius* or *territorium nullius* as of 1905 in accordance with modern international law (even if both Japan and Korea had some historical or feudal title to Takeshima, having made some minor measures of feudal act over it).[14]

(ii) *Japan's interpretation of the 1951 Peace Treaty and the process of its drafting by the United States and the UK*

As regards the interpretation of San Francisco Treaty of Peace, Article 2 (a), as described above, Japan's approach of interpretation appears to be the orthodox one and in accordance with arbitral authorities such as the 1977 Award of the *Beagle Channel* arbitration.[15] In that Award, where the meaning of a geomorphologic or geographical term like a 'channel' used in demarcation treaties should be ambiguous or obscure in the extent or range, the Tribunal held that it must firstly be construed in accordance with 'ordinary meaning' of the word given in its context and in the light of its object and purpose;[16] secondly, should one State party to the dispute contend that the word concerned should be construed as a 'special meaning' other than its ordinary meaning in geography, then that contending State party has the obligation to prove it; thirdly, it must be examined what meaning the parties to the treaty intended to give to the term in the light of the parties' intention at the moment of its conclusion; fourthly, if it still remains ambiguous, recourse may be had to the process and circumstances of negotiations as the preparatory work of the treaty:[17] *i.e.*, in this case, the record of the drafting of the Treaty of Peace.

(a) *The US draft treaty*

In the period of March 1947 - November 1949, the US Department of State had prepared six working drafts on the presumption that Takeshima/Liancourt Rocks belong to postwar independent Korea. For instance, the first draft of March 1947, presuming that the domain of Japan's territory should be that as of 1 January 1894, included the following statement:

… *Japan hereby renounces* that [*sic*] all rights and titles to Korea and all minor offshore Korean islands, including Quelpart Island, Port Hamilton, Dagelet (Utsuryo) Island and *Liancourt Rock* (*Takeshima*).[18)]

The next US Department of State working draft of 5 August 1947, Article 1, stated that the domain of Japan's territory constitutes the four main Islands Honshu, Kyushu, Shikoku and Hokkaido including all the islands in the Seto Inland Sea, Habomai Islands, Shikotan, Kunashiri, Etorofu, Goto Islands, Ryukyu, Izu Islands…; accordingly the domain of Japan's territory includes all the islands and their territorial waters within the following lines [with their longitudes and latitudes shown]; and the domain of territory above was to be depicted in a map attached to the Treaty of Peace by such lines.[19)]

As per Takeshima/Liancourt Rocks, the above draft, Article 4, stated that *Japan renounces* Korea and all the offshore islands of Korea, including: Quelpart (Saishu To); the Nan How group (San To, or Komun Do) which forms Port Hamilton (Tonaikai); Dagelet Island (Utsuryo To, or Matsu Shima); *Liancourt Rocks (Takeshima)*; and all the other islands…. The above lines also were to be depicted in Map I, attachment to the Treaty.

The third working draft of January 1948, although deleting the four islands of Northern Territory from Japan's territory, dealt with Takeshima/Liancourt Rocks the same way as in the second draft.

The fourth working draft of 13 October 1949 also contained the same wording regarding Takeshima, except for the restoration of the four islands of Northern Territory as within Japan's domain.

The fifth working draft, although deleting the four islands of Northern Territory again, stipulated that 'Japan hereby renounces Liancourt Rocks (Takeshima) on behalf of Korea' (Article 6). And the sixth working draft of 2 November 1949 was basically the same as the fifth.

Although the fifth draft above had been transmitted over to Willian J. Sebald, US Political Adviser for Japan, in Tokyo, Mr Sebald himself, presumably having consulted with Supreme Commander for the Allied Powers,[20)] Douglas MacArthour, in response to the transmitted draft, sent out to the Department of State the following comment (dated 14 November 1949):

The following are our preliminary comments concerning those provisions which we consider of high importance:

Article 6: Recommended reconsideration Liancourt Rocks (Takeshima). Japan's claims to these islands is old and appears valid. Security considerations might conceivably envisage weather and radar stations thereon [p.3].[21)]

And, in his letter of 19 November 1949, entitled 'Detailed Comment on November 2 Draft Treaty', Sebald advised that it would be undesirable to use the method of demarcation such as containing Japan's whole territory by lines on the map, because it might give a negative, psychological impact on Japan's side, and he insisted that Takeshima/Liancourt Rocks be included in the domain of Japan's territory on the following grounds:

With regard to the disposition of islands formerly possessed by Japan in the direction of Korea it is suggested that Liancourt Rocks (Takeshima) be specified in our proposed Article 3 as belonging to Japan. Japan's claim to these islands is old and appears valid, and it is difficult to regard them as islands off the shore of Korea. Security considerations might render the provision of weather and radar station on these islands a matter of interest to the United States.[22)]

This decisively affected the subsequent US Department of Sate draft treaty, with the result that, contrary to the former drafts, Liancourt Rocks be enumerated as part of the domain of Japan's territory in Article 3, US Department of State draft treaty of peace of 29 December 1949.[23)] Thus Takeshima/Liancourt Rocks were deleted, and rescued, from the list of renounced islands, which stated:

1 Japanese territory constitutes four main islands of Honshu, Kyushu, Shikoku and Hokkaido; the islands in the Seto Naikai (inland sea), Tsushima, *Takeshima (Liancourt Rocks)*, the Oki islands, Sado, Okushiri, Rebun, Rishiri, and … all islands, including the Habomai Gunto and Shikotan. The above mentioned islands all belong to Japan with their tree-mile territorial waters.

2 Japan, on behalf of Korea, renounces all right and title to the mainland of Korea and all the offshore islands, including Quelpart Island, Port Hamilton, Dagelet (Utsuryo) Island and all the other islands to which Japan had once acquired the title.[24)]

The above US Department of Sate draft treaty (29 December 1949) had been used till summer 1950 within the US Government. And the 'Commentary on Draft Treaty of Peace with Japan' of July 1950 explained that 'Takeshima (Liancourt Rocks) — Takeshima, two desert islets situated in the Japan Sea approximately in the same distance from both Japan and Korea, was asserted as part of Japan's territory in 1905 by Japan with no contestation nor protest from Korea, and it was formally placed under the Oki Island District Office, Shimane Prefecture; the islets are a breeding place of sea lions (eared seals or *zalophus*), and there exist records that Japanese fishermen have for long engaged in catching sea lions in the season of breeding; contrary to the Dagelet Island [Ulleungdo], there is no Korean name of island regarding Takeshima, and it appears that Korea made no claim for its territorial possession of the islets; Takeshima has been used as the range of a bombing exercise for US Air Forces during the Allied Powers' postwar occupation of Japan; and they might possibly deserve the locus of a weather observatory or radar station'.[25)]

In the meantime, John Foster Dulles was appointed Adviser for the Secretary of State in charge of peace treaty with Japan on 19 April 1950. It was also scheduled that the coordination and adjustment with other Allied Powers would be embarked on in autumn of 1950. Dulles' first draft, dated 7 August 1950, was meant to be a simpler draft treaty as a possible alternative to the long form previously circulated, and it stopped enumerating any list of the islands retained or renounced by Japan, and no map was attached which depicted the range of Japan's territory demarcated by lines with latitudes and longitudes shown. It read:

Japan recognizing the independence of Korea, bases its relations on the UN General Assembly resolutions adopted on [*sic*] December 1948.[26)]

Then, the wording of 'Security Council resolutions' was inserted, too, into his draft treaty of 11 September 1950. And, this draft being summarised further into the Statement called 'Seven Principles regarding a Japanese Treaty prepared by the US Government', Principle III of which only mentioned the 'recognizing the independence of Korea', it was distributed to other Allied Powers in the autumn of 1950 and later to the press on 24 November 1950.

Although the reference to Takeshima had disappeared from the draft treaty, the intent of Japan retaining Takeshima was not changed. For example, in response to Australia's questions and request for more detailed information on the attribution of Japan's former territory, the US made answers to the effect that Takeshima as well as the islands of the Seto Inland Sea, Oki Islands, Sado … have been recognized for long as belonging to Japan, and it is considered that Japan will retain these islands.[27)] After such consultation with other Allied Powers and unofficial sounding with Japan had been finished, the US final draft treaty was completed on 23 March 1951, which stated

that 'Japan renounces all right, title and claim to Korea, Formosa and Pescadores Islands'.

(b) *The UK draft treaty*

On the other hand, the UK Government also had worked on a draft treaty of its own. After preparing the first draft (February 1951) and the second draft (March 1951), it reached the UK final draft treaty (7 April 1951),[28] which demarcate Japan's territory by using lines with latitudes and longitudes shown on the attached map for containing Japan's retained islands, wherein the UK, contrary to the US, excluded Takeshima from the domain of Japan's territory.[29] The UK draft, Article 2, stated that Japan hereby renounces any assertion for sovereignty or all right, title and interest in Korea; and Japan promises to recognise and respect all such measures as adopted by the UN, or taken on basis of the UN support, regarding the sovereignty and independence of Korea.

In May 1951, consultation was taken between the UK Foreign Office and US Department of State representatives in Washington, and the final US/British draft was agreed upon on 3 May 1951, in which the UK for its part abolished the method of demarcation by lines with latitude and longitude, and the US for its part, so far as Korea is concerned, returned to the method of the US Department of State draft treaty of peace of 29 December 1949 but, contrary to it, included not the list of Japan's retained islands but the list of its renounced islands. It stated:

Japan renounces all right, title and claim to Korea, including Quelpart Island, Port Hamilton, Dagelet (Utsuryo) Island, ….

It appears that such a compromise was reached in this process of redrafting a treaty, due to the US position against the method of demarcation by lines, which might have a negative, psychological impact on Japan and because Japan was also against such demarcation. And the US acceptance of the wording, indicating that the Quelpart Island, Port Hamilton and Dagelet (Utsuryo) Island belong to Korea, helped procure the UK approval.[30] The UK for its part considered that it would be necessary to insert, in particular, the above three islands as Korea's territory in the US draft treaty. And the UK proposed, under draft Article 2, for including Japan's obligation to recognise the UN future resolutions, but this point remained indeterminate.[31] As per Takeshima, the UK agreed with the abolition of a method of demarcation by lines, and so, in Japan's view, presumably it also agreed to Takeshima not included within Korea. It remains to see why the UK agreed to this.

Then, the United Kingdom and the United Sates agreed on a new draft treaty dated 14 June 1951, after Dulles visited London.[32] The final draft had remained unchanged until 8 September 1951, when the following final text was signed by most of Allied Powers and Japan:

Article 2 (a) Japan, recognizing the independence of Korea, renounces all right, title and claim to Korea, including the islands of Quelpart, Port Hamilton and Dagelet.[33)]

(c) *The letter of 9/10 August 1951 from Dean Rusk, US Assistant Secreatary of State, to Dr You Chan-Yang (梁裕燦), Ambassador of Korea in Washington*

In the context of looking to the *trauvaux préparatoires* of a treaty, Japan puts emphasis on the letter of 10/9 August 1951 from Dean Rusk, US Assistant Secreatary of State to Dr You Chan-Yang (梁裕燦), Ambassador of Korea in Washington. Therein the US clearly acknowledged that Takeshima belongs to Japan. While Korean Ambassador had sought the US confirmation that Japan's renunciation of Korea, including the three islands concerned, should also include Dokdo and take effect from 9 August 1945, the US formal letter (10 August 1951) was conveyed to him from D. Rusk, Assistant Undersecretary of State Department, for the Secretary of State, and it stated:

The US Government regrets that it is unable to concur in this proposed amendment. The US Government does not feel that the Treaty should adopt the theory that Japan's acceptance of the Potsdam Declaration on August 9, 1945 constituted a formal or final renunciation of sovereignty by Japan over the areas dealt with in the Declaration. *As regards the island of Dokdo, otherwise known as Takeshima or Liancourt Rocks, this normally uninhabited rock formation was according to our information never treated as part of Korea and, since about 1905, has been under the jurisdiction of the Oki Islands Branch Office of Shimane Prefecture of Japan. The island does not appear ever before to have been claimed by Korea*.[34)]

It would need no further explanation. In general principles for treaty interpretation, Japan's position appears to be more convincing than Korea's proposed new approach for a fairer interpretation, which has been strongly suggested in the context of post-war principles for peoples' right to decolonisation or self-determination from a perspective of historical criticism.[35)]

Japan's historical argument and justifications

I. *The main points for Japan and its criticism on Korean ancient records and documents*

Apart from private records or maps, the Japanese *official* historical bases for their claim to Takeshima as Japan's inherent territory are only a few: The main arguments are (a) that in 1618 the Shogunate allowed two families in Yonago, Hoki state, to cross the sea for engaging in fisheries *at the island of Ulleungdo, which, they believed, belonged to none*,[36)] and on the way to and from Ulleungdo the Japanese vessels used the Matsushima/Dokdo as a guiding post for seafaring; and

(b) that in 1836, when about 140 years had passed since the first Ahn Yong-Bok incident occurred and crossing the sea to Takeshima/Ulleungdo was prohibited, the Shogunate Government, exercising criminal jurisdiction over Matsushima/Dokdo, arrested Hachiuemon (under the protection of Aizuya, a shipping agent in Hamada, Iwami state) and his conspirators (samurai warriors in Hamada Clan) and punished them with death sentence, or brought some to suicide, for trying to secretly make passage to Ulleungdo for the purpose of smuggling or trafficking swords and bows under the guise of a passage (to Takeshima?) for fisheries, despite the continued prohibition of crossing the sea.[37] It is only recorded that Sanno-hyoe Hashimoto, one of the samurai conspirators, saying to Hachiuemon, the mastermind, that Matsushima/Dokdo had been as a nominal destination for smuggling. However, it would be nonsense to invoke Matsushima as a smuggling point, so long as it is impossible for any trafficker to stay there; and (c) that Japanese fisheries had been attempted also at Matsushima/Dokdo because, according to local *official* papers of Tottori Han, 'on the occasion of crossing the sea to Takeshima/ Ulleungdo, Matsushima/Dokdo was a guiding post of passage, and so they happened to make stopovers there and caught sea lions'.[38]

On the other hand, it is known that there remain far more public or private historical records and maps on the Korean side. The Japanese Government have been keen to criticise the reliability of those records or documents. However, the Japanese historians' position is that they should be dealt with more carefully and should be interpreted in the context of other official records and historical documents, considering the origin and lineage of those texts or maps.[39] It would be ill-advised to pick up only favourable interpretations for either Japan's argument or Korea's argument. So, it would be necessary to look at the original texts, although it might become a little bit long explanation.

[To be continued]

Notes [註]

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1) *Minquiers and Ecrehos case*, ICJ Reports, 1953, p.47.

2) Island of Palmas case, R.I.A.A., II, p.831.

3) *Minquiers and Ecrehos case*, ICJ Reports, 1953, at p.53.

4) *Minquiers and Ecrehos case*, ICJ Reports, 1953, at p.56, and Island of Palmas case, R.I.A.A., II, at p.845. In the Island of Palmas case, the Arbitrator noted that '[a]s regards the question which of different legal systems prevailing at successive periods is to be applied in a particular case (so-called intertemporal law), a distinction must be made between the creation of rights and the existence of rights. The same principle which subjects the act creative of a right to the law in force at the time the right arises, demands that the existence of the right, in other words its continued manifestation, shall follow the conditions required by the evolution of law. … internatonal law in the 19th century… laid down the principle that occupation, to constitute a claim to territorial sovereignty, must be effective …. It seems therefore imcompatible [*sic*] with this rule of positive law that there should be regions which are

neither under the effective sovereignty of a State, nor without a master, but which are reserved for the exclusive influence of one State, in virtue solely of a title of acquisition which is no longer recognized by existing law, even if such a title ever conferred territorial sovereignty. For these resaons, discovery alone, without any subsequent act, cannot at the present time suffice to prove sovereignty over the Island of Palmas…' (pp.845-846). This is also the basic position of Japan.

5）By Japan's Sogunate permitting fishers reaching Utsuryo in 8 July 1618 (16 May, 4th year of Genna in the Yedo period) or, at the latest, excercising a penal jurisdiction over the fraud and conspiracy case for organised smuggling, planned in vain by a shipping agent Hachiuemon Aizuya and some senior samurai of Hamada Han, Inaba, in [*circa*] 1836, who had sought Sogunate's permission for reaching Takeshima but actually made an attempt to reach Utsuryo for smuggling logs. However, the facts and purposes have not been identical as between official records and historical (hearsay) documents. 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.

6）Japan's Cabinet Decision, 28 January 1905, in 公文類聚 (Kobunruishu) [National Archives of Japan]. [The translation is mine]

7）Quoted in Takashi Tsukamoto, 'nihon no ryoiki kakutei ni okeru kindai kokusaiho no Tekiyo jirei: sensen hori to takeshima no ryodo 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, at p.91.
As regards Minami Torishima (Marcus/Weeks), in 1889 a US citizen foisted the national flag and made permission for reclamation and development to the US State Department. On the other hand, in 1896, Mizutani Shinroku, a Japanese subject, despatched his workers and engaged in economic activities and then he made a petition for land leasehold. On 14 July 1898 the Japanese Government made the above-mentioned Cabinet Decision on naming, incorporation and the branch office in charge of its jurisdiction. On 24 July 1898 the Tokyo Metropolitan Government of Tokyo (Tokyo-fu at the time) issued the notification concerned.

8）Takashi Tsukamoto, *ibid*., at note 8, p.91. [The translation is mine.]

9）Takashi Momose, *shiryo kensho: nihon no ryodo* [a reappraisal of modern historical material: Japan's territory], (supervising editor: Takashi Ito), Kawade Shobo Shinsha, 2010, p.228.

10）See the complementary justification by the UK in the case of *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge*, ICJ Reports 2008, at pp.38-40.

11）The [*circa*] 1836 case of Aizuya, a shipping agent. See above, Part I, Section I, (iii), p.173.

12）The *Minquiers and Ecrehos case*, ICJ Reports 1953, p.47,at p.67.

13）For an interesting review on the law and interpretation of geographical 'continuity', see 'Chapter VII. Problems of Contiguity, Natural Unity, and Ancient Original Title to Islands with Special Reference to Dokdo' (K.H. Kaikobad), in Seokwoo Lee and Hee Eun Lee, *Dokdo: Historical Appraisal and International Justice*, 2011, p.123ff, in particular at p.155-175.

14）*See takeshima mondai ni kansuru chosa kenkyu* [Final Report of the Research Study on the Takeshima Issue(Third Period), ed. By the study Group on the Takeshima Issue (Third Period), Shimane Prefecture, General Affairs Division, Department of General Affairs, Shimane Prefecture Government, Japan, August 2015, pp.230-231.

15）52 *International Law Reports* (1979), p.93.

16）See the 1969 Vienna Convention on the Law of Treaties, Article 31 (1).

17）In addition, in the Beagle Channel arbitration, the subsequent official maps or charts were solely investigated as a complementary method of confirmation. See Beagle Channel Arbitration between the Republic of Argentina and the Republic of Chile: Report and Decision of the Court of Arbitration (18 February 1977), R.I.A.A., Vol. XXI, pp.53-264, at p.142 (para.101); p. 157 (para.122); 71 *A.J.I.L.* [1977], pp.736-737; and 'Beagle Channel Arbitration', *Australian Year Book of International Law* (1977), pp.334-335.

18）draft of March 1947 [NARA/RG59, Decimal File 1945-49, Box 3153, 740.0011 PW (PEACE)/3-2047], quoted in Takashi Tsukamoto, 'Territorial Dispute over Takeshima and the Treaty of Peace with Japan (Reconsidered)', *the Reference,* No.518 (March 1994),Research and Legislative Reference Bureau, National Diet Library, Tokyo.pp.31-56, at p.39.

19）*Ibid*., pp.39-40.

20）Takashi Tsukamoto, 'Treaty of Peace with Japan and the Problem of Takeshima', *the Reference*, No.389 (June 1983),Research and Legislative Reference Bureau, National Diet Library, Tokyo.pp.51-63, at pp.54-55.

21）Acting Political Adviser in Japan (Sebald) to the Secretary of State, Nov. 14, 1949 [NARA/740.0011 PW (PEACE)/11-1449], *FRUS* (1949), p.103 [Vol.VII, pp.898ff].

22）*Ibid*.
23）[NARA/RG59, Lot54 D423 Japanese Peace Treaty Files of John Foster Dulles, Box 12, Treaty Drafts 1949-March 1951], quoted in Takashi Tsukamoto, 'Territorial Dispute over Takeshima and the Treaty of Peace with Japan (Reconsidered)', *the Reference*, No.518 (March 1994),Research and Legislative Reference Bureau, National Diet Library, Tokyo, p.43.
24）*ibid*.
25）[NARA/RG59m Decimal File 1950-54, Box 3006, 694.001/7-1850], quoted in Takashi Tsukamoto, *ibid*., p.44.
26）*ibid*., p.45.
27）Answers to Questions submitted by the Australian Gov., 26 Oct. 1951, [NARA/RG59, Decimal File 1950-54, Box 3007, 694.001/10-2650].
28）FO371/92532, [FJ1022/97], p.58; FO371/9253, 5, [FJ1022/171], p.70; and FO371/92538, [FJ1022/222], p.14, NA (PRO), Kew.
29）For the reason, research is still being pending.
30）*FRUS* (1951), Vol.VI, p.1055.
31）Anglo-American Meetings on Japanese Peace Treaty 8 (morning, 2 May 1951), Summary Records of Seventh Meeting, FO371/92547, [FJ1022/376], p.66.
32）FRUS (1951), Vol.VI, Part 1, p.1119; FRUS (1951), 29 May 1951, USDS, Official memo. to Mr Dulles form Mr Allison; Unresolved Treaty Provisions', [NARA/694.001/5-2951 CS/JEC], p.105.
33）Available at Japan's MOFA website, [http://www.mofa.go.jp/mofaj/gaiko/treaty/pdfs/B-S38-P2-795_1.pdf#search=%27%E5%B9%B3%E5%92%8C%E6%9D%A1%E7%B4%84%EF%BC%92%E6%9D%A1a%27]
34）*FRUS* (1951), pp.108-109; quoted in Takashi Momose, *shiryo kensho: nihon no ryodo* [a reappraisal of modern historical material: Japan's territory], (supervising editor: Takashi Ito), Kawade Shobo Shinsha, 2010, pp.214-216. The letter is dated 9 August 1951.
35）For the latter, new approach, see Seokwoo Lee and Hee Eun Lee, *the Making of International Law in Korea: From Colony to Asian Power*, Brill/Nijhoff, 2016, pp.89-100, in particular pp.98ff; and also Yoshio Hirose, *sengo nihon no saikochiku* [The Rebuilding of Post-war Japan], Shinzansha, Tokyo, 2006, at p.45 and pp.50-51 (footnote 48).
36）Moreover, as recorded in private papers of the Oya (Otani) family, it is said that Matsushima/Dokdo had been leased to them by the Shogunate since 25 years, but it is difficult to accept this literally. Yoshio Morita, 'takeshima ryoyu wo meguru nikkan ryokoku no rekishijouno 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.322. For the discussion, see above, Japan's historical argument, Section I, (i).
37）And it is recorded in the 1695 Hoki state papers to the Shogunate that sometimes at Matsushima/Dokdo also fisheries of abalones was engaged. *Id. And takeshima kosho jo/chu/ge* [Takeshima Enquiries I, II, III], quoted in 'gaimusho kiroku' [Ministry of Foreign Affares Records], Cabinet Library archives, National Archives Library, published in 1996, at pp.140-141. For the discussion, see above, Japan's historical argument, Section I, (iii).
38）However, the point is that it was no more than private action. *Takeshima no kakitsuke* [Memorandum on Takeshima], 27 February 1696, 9th Year of Genroku, Tottori Museum. Takashi Tsukamoto, 'nihon no ryoiki kakutei ni okeru kindai kokusaiho no Tekiyo jirei: sensen hori to takeshima no ryodo 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.86ff.
39）Although rarely quoted, it appears that you could find a reliable, standard treatment of the related official or historical Korean records from a Japanese point of view in Kozo Tagawa, 'takeshima ryoyu ni kansuru rekishiteki kosatsu' [A Historical Enquiry into the Possession of Takeshima], *Toyo Bunko Shoho*, No.20 (24 March 1989), pp.6-52.