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**History and Justice: Approaches to the Dokdo Issues**

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Introductory Note: The dispute between Korea and Japan as to which country has sovereignty over Dokdo Island, the group of rocks in the East Sea that Japan calls Takeshima, and earlier western navigators called the Liancourt Rocks, first came to public notice in February 1996, when the then Japanese foreign minister, Yukihiko Ikeda, declared that the island was Japanese territory. This led Korea and Japan to indulge in a bout of gunboat diplomacy, launching naval exercises around the island. In December 1996, the ROK announced plans to build a lighthouse beginning construction in 1997 and finishing in 1998. In November 1997 Japan demanded that the wharf facilities constructed by the ROK be removed. Since then, tensions have risen and fallen, with ultra-nationalist groups in Japan orchestrating a campaign in support of Japanese claims and a continuing high level of public emotion in Korea at what is seen as a sign of Japan’s continuing expansionist intentions. A number of English-language blogs and web sites have recently come into existence, maintained by westerners, expressing strong support for Japan’s claims and belittling the Korean position in an actively hostile manner. The RAS-KB therefore asked a Korean professor of Japanese history to help its members understand the issue as objectively as possible from a Korean perspective.

I am very happy to have a chance to address here a topic that has caused some conflicting views among scholars, especially those of Korea and Japan. The controversial points center on how to view the history of Dokdo and apply the system of international law in order to solve the territorial conflicts surrounding it. Accurate history should be based on historical facts, evidence as to what really happened in the past. Accurate [page 98] history leads us to correct history, which supports right legal judgment and justice.

There is much evidence supporting Korea’s sovereignty over Dokdo during past centuries. However, the most persuasive way to convince any third party of the rightness of the Korean claim is by referring to foreign sources, in particular to Japanese documents about Dokdo (“Takeshima” in Japanese), that support Korea’s claim. I wish to demonstrate Korea’s rightful sovereignty over Dokdo, not by making use of Korean sources, but by using foreign sources and logic based on historical evidence and international law.

Dokdo is the easternmost island of Korea. Given that Dokdo is visible from the nearest inhabited Korean island, Ulleungdo, on a clear day, albeit only vaguely, the claim that is sometimes made in Japan that its existence was long unknown in Korea cannot be sustained. Dokdo has long been a fishing base for Korean fishermen. In 1785, the most famous military scientist of early moden Japan, Hayashi Shihei, published a map of Japan and the surrounding region. Hayashi’s map in his Sankoku Tsuran Zusetsu (Survey of Three Countries with Pictorial Explanation) distinguishes one country from another by coloring the territories of each country with a distinctive color: Japan in green, and Korea in yellow. In the center of the map, there lie Ulleungdo and Dokdo, both marked in the same yellow as mainland Korea, and right next to these two islands, there is a written explanation that says “they belong to Joseon” (the official name of Korea at that time).

The modern Japanese government was established in 1868. Prior to formulating a new relationship with Korea, the new government’s Prime Minister and Foreign Minister dispatched high- ranking officials to Korea in 1869. One of the matters to be investigated during their visit was how Ulleungdo and Dokdo came to belong to Korea. The findings of the investigation were compiled into a document called ‘Chosenkoku Kosai Shimatsu Naitansho’ (Report on the Secret [page 99] Investigation on the Circumstances of Korea’s Association; 1870), and the report includes an article accepting Ulleungdo and Dokdo as Korean territory. Reviewing the report, the top leadership of Japan in those days recognized these two islands as a part of Korea.

Again in 1877, the Ministry of the Interior, in a complete survey of Japan, concluded that Ulleungdo and Dokdo were “unrelated to Japan.” Citing the importance of the issue at hand, however, the Interior Ministry deferred the matter to the highest state organ, the Supreme Council of State (Dajokan) for a final decision. The Supreme Council replied in a formal, written manner, ordering the Ministry of the Interior in March 1877 “to keep in mind that Ulleungdo and Dokdo are unrelated to Japan.”

Things became more complex with the outbreak of the Russo- Japanese War in February 1904. Japan wanted to build a naval observatory on Dokdo in order to be able to monitor Russian naval activities in the the East Sea area. At the same time, the Korean peninsula became a battleground, with Japan wanting tight military control over it in order to gain a strategic advantage against Russia. Around the same time, a Japanese fisherman by the name of Nakai came to learn of the fertile fishing grounds that surround Dokdo and wanted to profit by securing exclusive rights to catch sea lions around Dokdo. He clearly believed that Dokdo belonged to Korea, for he petitioned Japan’s Ministry of Agriculture and Commerce to help him obtain exclusive hunting rights around Dokdo from the Korean government.

Upon learning about Nakai’s petition, Japan’s Ministry of the Navy decided to take advantage of the petition to proceed with its plan to build a naval observatory on Dokdo. The Ministry of the Navy at that point introduced an important new element, one that indicates a radical change in Japanese policy toward the ownership of the island and toward Korea, too. The Ministry advised Nakai that Dokdo was terra nullius, land that had no legal owner, and therefore, he should petition the Japanese government to incorporate Dokdo into Japanese territory and give him permission to utilize the island. It is important to note that in the [page 100] international law of the time, the term terra nullius was specifically and almost exclusively used by colonial powers to describe territory that no westerner owned, so that the first westerner to discover it was entitled to take it over without regard for the rights of native inhabitants. The term is particularly associated with the confiscation of aboriginal lands in Australia. This colonialist association of the term is especially important in what followed.

As advised, Nakai petitioned three Japanese ministries: the Ministry of the Interior, the Ministry of Foreign Affairs, and the Ministry of Agriculture and Commerce. At first, the officer-in-charge of the Interior Ministry discouraged Nakai because such an action— incorporating Dokdo into Japanese territory using a colonial legal term— might arouse the suspicions of Western Powers, making them believe that by that measure, Japan might be taking its first step toward the annexation of Korea. That was, of course, in fact the case.

The Ministry of the Interior subjected the incorporation of Dokdo into Japanese territory as terra nullius to a cabinet decision. It then ordered Shimane Prefecture to publish a notice of the Cabinet’s decision announcing the prefecture’s jurisdiction over Dokdo. On February 22, 1905, Shimane Prefecture issued its Notice No. 40, declaring that the island, from that day forth, would be called “Takeshima” and be under the jurisdiction of Oki Island, Shimane Prefecture. The Japanese central government did not take any measures to publicly declare its incorporation of Dokdo internationally. Instead, it deliberately limited the scope of the promulgation to a small area by ordering Shimane Prefecture to make the measure known to the public within the prefecture’s jurisdiction. Due to the Japanese government’s deliberately secretive approach, the Korean Empire (its name had been changed in 1897), previously recognized by Japan as the rightful owner of Dokdo, did not know of Japan’s incorporation of Dokdo until it learned about it by chance years later, in March 1906.

The news of Japan’s violation of Korean sovereignty over Dokdo was belatedly reported in Korean newspapers and enraged Koreans. The [page 101] Imperial Government of Korea, however, could by that time neither officially protest to the Japanese Government against the Japanese seizure of Dokdo nor appeal to the international community via diplomatic channels, because Japan had already stripped the Korean Empire of all autonomous diplomatic powers, imposing the treaty that made the Korean Empire a protectorate of the Japanese Empire in November 1905. After the conclusion of the Protectorate Treaty, Korea’s Ministry of Foreign Affairs was closed, and the Office of the Japanese Resident-General was established to control Korea’s foreign affairs. Japan’s erosion of Korean sovereignty continued, and it finally annexed the entire Korean Empire on August 29, 1910. Therefore, Tokdo stands in Korean memory as the first step in the Japanese colonial annexation of Korea, the most humiliating episode in Korean history.

Japan’s unconditional surrender to the Allied Powers, on August 15, 1945, resulted in Korea’s liberation from Japan’s colonial rule. During and after World War II, the Allied Powers adopted a series of documents that contained provisions intended to make Japan return to Korea the pre- colonial Korean territories in their entirety. The 1943 Cairo Declaration, drafted by the United States, China, and the United Kingdom states, “Japan will be expelled from all other territories which she has taken by violence and greed.” The 1945 Potsdam Declaration, drafted by the same three powers stipulates, “The terms of the Cairo Declaration shall be carried out and Japanese sovereignty shall be limited to the islands of Honshu, Hokkaido, Kyushu, Shikoku and such minor islands as we determine.”

After Japan’s surrender, the Allied Powers vested all legal powers over Japan under military occupation in the Supreme Commander for the Allied Powers (SCAP). On January 29, 1946, SCAP issued SCAPIN (SCAP Instruction) No. 677 to Japan, explicitly excluding Ulleungdo and Dokdo from Japan’s territory. The appended map of SCAPIN No. 677 went further, clearly labeling Dokdo as Korean territory. Following SCAPIN No. 677, SCAPIN No. 1033 issued on June 22, 1946, [page 102] prohibited Japanese vessels and personnel from entering Dokdo’s twelve- mile waters or accessing the island. Upon surrender, Japan had unconditionally accepted the Potsdam Declaration, and thereby the Cairo Declaration. Accordingly, Japan had in effect given up all claim to the territories it had gained through “violence and greed,” including Dokdo. By recognizing the newly formed Republic of Korea as the sole lawful government in Korea on December 12,1948,it can be claimed that the United Nations implicitly approved Korea’s regained sovereignty over Dokdo.

The next major point of contention in the Dokdo issue is the text of the San Francisco Peace Treaty, which was signed on September 8, 1951 by 49 of the 52 states participating in the San Francisco Conference; the USSR, Czechoslovakia and Poland rejected it. Neither China nor Taiwan, nor South and North Korea were invited; the Koreas were in the midst of the Korean War at the time. The final text of the treaty says that Japan recognizes the independence of Korea, renounces all right, title and claim to Korea, “including to Jejudo, Geomundo and Ulleungdo.” Dokdo was specifically included in this list in a number of preparatory drafts but was finally not mentioned in the final version of the treaty. The Japanese Government nowadays cites the San Francisco Peace Treaty as proof―due to the “absence” of Dokdo’s mention―of the Allied Powers’ recognition of Japan’s sovereignty over Dokdo.

Why and how was Dokdo deleted from the final version? Even today, there is no clear answer and the issue remains a matter of speculation. Until the fifth version, Dokdo had been included specifically as Korean territory, strongly supported by U.K. and Australian delegates. There is a key person who strenuously lobbied for Japan—Mr. William J. Sebald, who held several critically important posts during the San Francisco Treaty negotiations. Mr. Sebald worked at a law firm in Kobe, Japan during the 1930s and had married a mixed-blood Japanese woman. In 1947, he became the Political Advisor and Chief of the Diplomatic Section of the SCAP as well as the Chairman of the Allied Council for [page 103] Japan, the organization dealing with matters related to the San Francisco Peace Treaty. It is quite probable that he lobbied for Japan when the mention of Dokdo was being considered. Also, the international political situation―the expansion of Communism (e.g. the Berlin blockade in 1948 and the Korean War in 1950)―had forced the United States to change its Japan policy. Mr. John Foster Dulles, the representative of the U.S. government at the Treaty negociations, might have tried to leave the Dokdo issue ambiguous in order to prevent conflict between the United States’ allies in East Asia. As for the Republic of Korea, she was so preoccupied with the Korean War that she certainly did not have the wherewithal to give attention to the Dokdo issue during San Francisco Peace Treaty negotiations, in which she was not involved.

Japan’s claim to sovereignty over Dokdo based on the Treaty’s failure to mention it specifically as a Korean island is seriously flawed. If Japanese logic is strictly applied to interpreting the failure of the San Francisco Peace Treaty to mention Dokdo, it would equally result in the exclusion of about 3,000 other islands, none of them named in the Treaty, from Korean territory, something which has no basis in reality. Clearly, Jejudo, Geomundo and Ulleungdo are mentioned as representative examples of Korea’s many islands. Ulleungdo is cited in the Treaty as the main island in the East Sea, the largest representative of a group of smaller islands, including Dokdo.

Again, as described above, international law had already clearly excluded Dokdo from Japan’s sovereignty during the Allied Power’s occupation of Japan after World War II. The measures taken during that time have never been reversed or voided since. Japan surrendered unconditionally to the Allied Powers and agreed to abide by the Allied Powers’ decisions on Japan at the end of World War II. Therefore, the decisions of the Allied Powers became the law of Japan. At the same time, the fact that SCAP was exercising full governmental power in Japan as well as representing Japan in the international arena in those days means that their decisions on Japan became binding international law for the Allied Powers and Japan. Although Japan regained its status as an [page 104] independent sovereign state through the San Francisco Peace Treaty, the Treaty does not revoke, void, or alter any measures taken by the Allied Powers during the occupation period. The Allied Powers explicitly excluded Dokdo from Japanese territory in SCAPIN No. 677 issued in 1946 and they took no explicit binding measures to return Dokdo to Japan after that. What this means is that Japan has no legal ground to reclaim today the island it seized illegally as the first step toward the annexation of Korea.

Moreover, recently, additional evidence has been discovered that negates Japan’s claim, in the so-called ‘Finance Ministry Order 4’ and ‘Order 24 of the Prime Minister’s Office’ of 1951. Both of these Japanese documents clearly show that Dokdo did not belong to Japan and was not claimed by Japan at the time. They state that Japanese territory is Honshu, Hokkaido, Kyushu, Shikoku and nearby islands, and that Jeju Island, Ulleung Island, and the Dokdo islets are not part of Japanese territory. Those documents were made when the Japanese government, under the rule of the Allied Powers, was renouncing claims to territories acquired during its colonization of neighboring countries. The Japanese government under SCAP abided by SCAP directions, and the SCAP directions, unless reversed, altered, or voided later, must still be honored by the Japanese government. The way in which the Japanese government has tried hard to prevent the publication of these documents, which were finally obtained only after an arduous legal battle, and the fact that they have been defaced with ink-blots until they are barely legible, suggests the power they have to negate the current Japanese claims.

Finally, it should be stressed that the San Francisco Peace Treaty could not in any case have effected the “return” of Dokdo to Japan, since it does not contain any explicit statement to that effect. This is because Dokdo was already clearly recognized as being under the sovereignty of the Republic of Korea at the time of the signing of the treaty in 1951. Since 1948,Korea had been an independent sovereign state recognized by the international community. The signatory states of the San Francisco Peace Treaty had no right or authority to hand over a sovereign territory [page 105] under the effective jurisdiction of one country to another without the consent of the party concerned. Rather than creating any inconsistencies, the San Francisco Peace Treaty legally reconfirms Korean sovereignty over Dokdo. Finally, it is sometimes suggested that Korea and Japan should submit the conflict to the International Court of Justice for a binding settlement but the Korean position is that Dokdo is not a “disputed” territory but an integral part of Korean territory which Japan wishes to annex illegally, as it did already in 1905. It therefore refuses to accept that there is any dispute needing to be arbitrated by the ICJ, and would not wish to accept that Japan has any legal claim to the islands.

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