Chapter III

Addressing and Resolving the Dokdo Matter

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I. Korea’s Claim to Sovereignty Over Dokdo Is Very Strong

Korea’s claim to sovereignty over Dokdo is substantially stronger than the claim of Japan, based on the principles that tribunals apply to address and resolve such disputes.1

• Korea has a long historical claim, going back, according to some reports, 1500 years into the Silla Kingdom period. Maps drawn by prominent Japanese cartographers in the late 1700s and early 1800s seemed to recognize that Dokdo was part of Korea. In 1877, the Japanese Dajokan instructed the Home Ministry that “our country has nothing to do with” Dokdo and Ulleungdo. On October 25, 1900, the Korean government promulgated Imperial Ordinance No. 41, which established the county of Ulleungdo and clearly included Dokdo within its boundaries.

• Japan claimed sovereignty over Dokdo on January 28, 1905, stating that this territory was “terra nullius…there being no evidence of its being occupied by any country.” This Japanese statement that Dokdo was “terra nullius” (referring to land that is unclaimed by any country) is significant, because it serves as an acknowledgement that Japan had no meaningful claim to Dokdo based on historical activities prior to January 28, 1905.

• Japan’s 1905 claim to Dokdo was made during the period when Japan was engaged in unrelenting efforts to exert increasing military and civilian control over Korea, which led to the establishment of a protectorate over Korea in November 1905 and formal annexation in 1910. On February 23, 1904, eleven months prior to Japan’s claim to Dokdo, Japan sent troops into Seoul

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and compelled Korea to sign a protocol agreement giving Japan effective control over Korea’s governmental activities. This protocol marked the moment when Korea lost its ability to act independently on the world stage. As Han Key Lee has written: “Korea was deprived of its rights to conduct diplomacy and its sovereignty and independence by this protocol signed on February 23, 1904, not by the Protectorate Treaty concluded on November 17, 1905.” In order to gain support for its claim to Dokdo, Japan would have to overcome the almost impossible hurdle of convincing others that its annexation of the islets was not part of its expansionist military activities in Northeast Asia, which led to the subjugation of Korea and caused enormous suffering to the Korean people. As the late Judge Choon-ho Park put it, Japan stole “the whole bakery and now wants the crumbs.”

- The Korean government did attempt to protest Japan’s claim to Dokdo in 1906, but its independence had been swallowed up by Japan by then, and its voice was muffled.
- In 1946, after World War II, the Allied Powers occupying both Japan and Korea issued instructions that separated Dokdo from Japanese territory. But the 1951 Peace Treaty between Japan and the Allied Powers made no specific mention of Dokdo (perhaps because of the Korean War and the dynamics of Cold War politics). Once Korea became freed from the occupation, it quickly and vigorously reasserted its claim to Dokdo in 1952, built a guarded lighthouse on it in 1954, and has maintained a presence there ever since.
- In 1965, the Republic of Korea and Japan normalized their diplomatic relations in a formal treaty. Japan sought to address Dokdo during the negotiations that led to this treaty, but Korea refused. Dokdo was never listed as an official agenda item for discussion during the protracted negotiations that produced this treaty, and the issue is ignored in the treaty. Japan’s willingness to enter into the normalization treaty without pressing its claim to Dokdo might be seen as a waiver by Japan of its claim and an acceptance of (or acquiescence to) Korea’s sovereignty over Dokdo.
- Japan has, however, continued to assert its claim to sovereignty regularly, and has suggested that the matter be submitted to the International Court of Justice (ICJ) for resolution. Japan’s willingness to submit the Dokdo matter to the Court is inconsistent with its reluctance to submit its dispute with China over the Senkaku (Diaoyudao) Islands or its dispute with Russia over the Northern Territories to the Court.

The international tribunals that have examined disputes over small islands almost always focus on acts related to sovereign governance undertaken by the claimants during the past century. Korea’s claim would thus prevail over Japan’s (1) because Korea exercised acts of sovereignty over Dokdo in the years prior to 1905, (2) because official Japanese pronouncements in the late 19th century