Chapter VII

Problems of Contiguity, Natural Unity, and Ancient Original Title to Islands with Special Reference to Dokdo

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I. Introduction

This study is an attempt to examine the problem of the two disputed islands known collectively as Dokdo to the Korean nation, as Takeshima to Japan, and, at one time, as Liancourt Rocks to the Western world. In order to avoid confusion, it is perhaps easier simply to use one name, that is, Dokdo, with the caveat that the choice of names does not in any way prejudice the analysis.

These two very small islands, indeed islets, lie southeast of Ulleungdo in the East Sea. The existence of a dispute between the Republic of Korea and Japan regarding sovereignty over this pair of islands is well known as are the various claims made by the two parties regarding sovereignty over Dokdo. It is difficult to encapsulate the entire range of claims and counter-claims made by both Korea and Japan regarding Dokdo, but it is essential that some of the key claims are outlined even if they are done in broad general terms. This attempt at encapsulation of the main arguments of the two states is necessary insofar as it provides perspective and this will help in following the general contours of the arguments of the parties, Japan and Korea.

As far as Korea is concerned, Dokdo is claimed on the basis of ancient original title.1 In terms of international law, then, the claim over Dokdo is not derived from any source as for example cession, conquest or acquisitive prescription and it is accordingly an original claim to title. The government in Seoul argues, as it

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always has, that Dokdo has since time immemorial been Korean territory; and that there has never been a time in ancient history that the islands have not appertained to Korea. Of course it is accepted, because an inescapable historical fact, that Japan annexed the pair of islets in 1905 by virtue of the Shimane Prefecture Public Notice No. 40 of 1905. Seoul, however, has claimed that such an annexation was indeed illegal and that no title passed in favor of Japan. Thus, although Japan controlled Dokdo, as it did all of Korea from 1910 onwards, sovereignty continued to remain vested firmly in favor of Korea.

At the end of the Second World War, Japan was occupied by the Allied army, and in 1946, the latter decided to identify the territories over which Japan was regarded as having ceased to exercise governmental control. The argument upon which Korea relies heavily is that the law adopted by the Allied Supreme Command, namely Supreme Command for Allied Powers Instruction No. 677, excluded Dokdo from those territories which were controlled and administered by Japan. This, the Korean government believes, implies that the United States accepted at that time that Dokdo was not a Japanese island. Continuing in this vein, Korea claims that by renouncing all its Korean mainland and island possessions by virtue of the Treaty of San Francisco of 8 September 1951, Japan also formally ended its illegal annexation, control and jurisdiction over Dokdo, sovereignty over which then reverted immediately to Korea. When the United States eventually transferred power to the Korean government, possession over Dokdo also peacefully passed over to the Korean government.

The position taken by Japan mirrors that of Korea. For Japan, the island pair called Takeshima has been an integral part of Japan since ancient times and that sovereignty over the pair has always vested therein. It is also been suggested that the annexation in 1905 was a legal mechanism necessary to control the hunting of sea lions and by this reasoning the act of annexation was thus a merely a regularization of a state of affairs. In other words, the annexation was confirmative, as opposed to vestitive, of title in Japan. It also offers to explain its position by stressing that when, in the 1951 Treaty of San Francisco, Japan renounced all right, title and claim to Korea and the islands of Quelpart (Jejudo), Port Hamilton (Geomundo) and Dagelet (Ulleungdo), there was no express mention of the island of Takeshima. Importantly the failure to mention Takeshima in the 1951 Treaty was not a case of careless oversight: it is pointed out that this omission was more a case of a careful, studied omission made in the context of contested claims to Dokdo.

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