

# A Study on Legal Aspects of Japan's Claim to Tokdo\*

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## I. Introduction

**A**rticle 3 of the Constitution of the Provisional Government of the Republic of Korea in exile in Shanghai proclaimed on September 9, 1919, defines the territory of the Republic of Korea as consisting of the domain of the Empire of Korea (1897-1910) before its annexation by Japan in 1910;<sup>1</sup> Article 4 of the Republic of Korea Constitution of July 17, 1948, similarly defines the territory of the Republic of Korea as comprising the Korean Peninsula and its adjacent islands; and Article 3 of the present Republic of Korea Constitution also provides the identical definition.

Thus, Tokdo is included as an integral part of the domain of Korea in the constitution of 1919, in its "adjacent islands" in the

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1. Article 2 of the Constitution of the Provisional Government of the Republic of Korea states that "the Republic of Korea territory shall consist of the Empire of Korea's inherent domain."

constitution of 1948 and in the current constitution.

Tokdo, located 49 nautical miles east of Ullŭngdo in the East Sea and 86 nautical miles west of Japan's Oki Island, is composed of two main islets, East and West, as well as 32 surrounding small rocks and reefs. It is the Republic of Korea's territory,<sup>2</sup> entered into the register with its location at san-42 to san-76 Todong, Nammyŏn, Ullŭnggun, Kyŏngsangbukto, Korea.<sup>3</sup>

When the Republic of Korea government announced "the Presidential Declaration on Sovereignty over the Adjacent Seas"<sup>4</sup> on January 18, 1952, the Japanese Ministry of Foreign Affairs protested on the 28th of the same month that "the Republic of Korea's declaration seems to have the territorial rights over the islets known as Takeshima, but the Japanese government does not recognize such a claim by the Republic of Korea."<sup>5</sup> Thus started a dispute over Tokdo between Korea and Japan.<sup>6</sup>

As the dispute became heated through the exchange of memoranda and counter-memoranda over the territorial sovereignty of Tokdo, the Korean government and many scholars have presented historical proofs as well as legal grounds that the territorial sovereignty over Tokdo belongs to the Republic of Korea, not to Japan.<sup>7</sup>

This paper attempts to point out the invalid nature of the

2. Land Register (No. 79, June 8, 1978, Ullŭngdo County Chief). There, the East Islet is located at No. San-67, and the West Islet at No. San-63.
3. According to the Register, the owner is the State and is under the Management of the Port Authority of Korea.
4. The State Council Notice No. 14 (January 18, 1952).
5. "Note Verbale" of the Japanese side dated Jan. 28, 1952; ROK Ministry of Foreign Affairs (MOFA), *Tokdo kwan'gye charyojip* (Collection of Data on Tokdo) (I) Wangbok oegyo munsŏ (Diplomatic Correspondence Exchanged); *Chipmu charyo* (Reference Materials for Staff), (Seoul: MFA, 1997), pp. 1-20.
6. Prior to that, Public Information Minister Lee issued a statement on Tokdo, which strongly renounced Japan's position. Ministry of National Defense, Information and Education Bureau (MND), *Haŋguk tongnan iyŏnji* (Chronicle of the Korean War in the Second Year) (Seoul: MND, 1953), p. c41.
7. Kim Myung-Ki, *Tokdowa kukchae bŏp* (Tokdo & International Law), (Seoul: Hwa-haksa, 1987) pp. 171-176.

Japanese government's claims. The Japanese government's claims are divided into "the claim of inherent territory" and "the acquisition of territory by prior occupation" for a comparative study.

## II. Review of the claim of inherent territory

### A. Substance of the claim of inherent territory

The Japanese Ministry of Foreign Affairs asserted in its memorandum dated July 13, 1962, that Tokdo is Japan's inherent territory. The memorandum said in part:

The Japanese Government has made clear the position of its claim that Takesima is Japan's inherent territory from olden times and is now reconfirming repeatedly that position.<sup>8</sup>

This is an assertion that Tokdo was not a *terra nullius* but had been Japanese territory even before its annexation in 1905. In other words, it is claiming "historic title" or "original title" to Tokdo.

An inherent territory means it is acquired by prior occupation, prescription, partial cession, annexation, or conquest after the foundation of a state, but it is a territory which formed the territorial basis for the state.<sup>9</sup> A new state acquires territorial sovereignty by virtue of its foundation.<sup>10</sup> As such, a territory under the "pre-legal sovereignty" as origin of a territorial right is called an inherent territory or a territory by original title.<sup>11</sup> As an example of a territorial dispute over original title, the *Minquiers and Ecrehos Case* (1953)

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8. MFA, *op. cit.*, *supra* n. 5, pp. 234, 236, 250.

9. Gerh rd von Glahn, *Law Among Nations*, 4th ed. (New York: MacMillan, 1981), p. 315.

10. Wesley L. Gould, *An Introduction to International Law* (New York: Harper, 1957), p. 35.

11. Georg  Schwarzenberger and E.D. Brown, *A Manual of International Law*, 6th ed. (Milton: Professional Books, 1976), p. 96. The term "original title" is not used uni-

between Great Britain and France can be cited. In this case, the International Court of Justice ruled in favor of Britain by recognizing its historical title to the islets and reefs.<sup>12</sup>

## B. Claim of inherent territory

### 1. Claim of original title

The Japanese government's claim of original title to Tokdo runs counter to the historical fact that Tokdo has been Korea's inherent territory.

#### a. Subjugation of Usan'guk (于山國)

The name Tokdo historically underwent many changes. During the Silla Dynasty, it formed a country named Usan'guk together with Ullŭngdo.<sup>13</sup> Usan'guk was subjugated to Silla in the 13th year of the 22nd King Chijung in 512 A.D. The background of Usan'guk surrendering to Silla is described in the *Samguk sagi* (三國史記: History of the Three Kingdoms).<sup>14</sup>

#### b. Tokdo under Uljin County

During the Koryo Period, Ullŭngdo was called Ullŭng, using different Chinese characters (蔚陵, 芋陵, 羽陵) or Mullŭng (武陵, 茂陵). During the Chosŏn period, Tokdo was called Usan'guk and

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formly among scholars. Ian Brownlie says original title is by occupation and accretion, while derivative title is by cession. Ian Brownlie, *Principles of Public International Law*. 3rd ed. (Oxford: Clarendon, 1979) p. 135; Charles G. Fenwick uses the term in the same sense as Brownlie does. Charles G. Fenwick, *International Law*, 4th ed. (New York: Appleton-Century 1965), p. 404.

12. I.C.J. Reports, 1953, pp. 52-53.

13. On the historical study of the names of Tokdo, see Shin Tong-uk, "Tokdo yŏngyuron" (On the territorial ownership of Tokdo), *Kukchaebop hakhoe nonch'ong* (The Korean Journal of International Law: KJIL) (Seoul), Vol. II, No. 1, 1966, pp. 317ff. The Korean Association of International Law.

14. Isabu. See the Complete Translation of *Samguk sagi* (History of the Three Kingdoms) by Kim Chong-gwŏn (Seoul: Kwangjo Publishing Co., 1974) p. 686.

together with Ullŭngdo was placed under the control of Uljin County, Kangwŏndo. In the gazetteer on Kangwŏndo of *Sejong sillok* (世宗實錄 Annals of King Sejong), under the heading of Uljinhŭn (county) in Vol. 153, Usando and Mullŭngdo are listed: "The two islands of Usan and Mullŭng are located in the sea due east of this county and the distance between them is not far off, so one of them can be seen from the other on a fine day." From this we know that Ullŭngdo consists of the two islands of Mullŭng and Usan and they are visible from each other, weather permitting.<sup>15</sup>

*Tongguk yŏji sŭngnam* (東國輿地勝覽: The Augmented Survey of the Geography of Korea) also records in Vol. 45 (Ullŭngdo) that Usando and Ullŭngdo are not the same islands.<sup>16</sup>

### c. An Yong-bok Incident

From the 18th year of Chŏngjo (1794 A.D.), Tokdo was called Kajido as Kaji (sea lions) were found there, and then from around the 18th year of King Kojong (1881 A.D.) towards the end of the Chosŏn Dynasty, it was called Tokdo.<sup>17</sup>

In the 19th year of King Sukchong (1693 A.D.), there occurred a clash between a Tongnae fisherman, An Yong-bok, and others and the Japanese. Thereupon, Japan, through the lord of Tsushima, demanded the Chosŏn Dynasty authorities to "keep Korean fishermen from fishing off Takeshima," and the Chosŏn Dynasty authorities countered by demanding "an end to Japanese fishing since Takeshima is Ullŭngdo;" thus ensued a dispute between the two countries. In the 23rd year of King Sukchong (1697 A.D.) acceding to Korea's demand, Japan delivered through the lord of Tsushima

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15. Kuksa p'yongch'an wiwŏnhoe, *Chosŏn wangjo sillok* (Annals of the Chosŏn Dynasty) V, *Sejong sillok* (Annals of King Sejong) IV, (Seoul: 1956) pp. 680-81.

16. Chosŏn ūhakhoe, *Sinjung tongguk yŏji sŭngnam* (Augmented Survey of the Geography of Korea) (Seoul: Chikazawa shoten insatsusho, 1930), Vol. 45 (Tokdo), p. 28.

17. Park Kwan-sook, "Tokdo ūi popchok chiwi" (The Legal Status of Tokdo), KJIL, inaugural issue, 1956, p. 33.

an official letter stating that Japanese fishermen would thereafter be banned from fishing off Ullŭngdo.<sup>18</sup> In this way, the problem of Ullŭngdo and Tokdo was resolved, and only Korean fishermen engaged in fishing there.<sup>19</sup>

#### d. Incorporation into Shimane prefecture

As Japan built a modern state through the Meiji Restoration and encouraged its people to go overseas, Japanese fishermen once again started coming to Ullŭngdo and Tokdo for fishing. The Korean government lodged a stern protest with Ueno Kagenori, acting Japanese Foreign Minister, in 1881 (18th year of King Kojong), and withdrew the "vacant island policy" and encouraged Korean fishermen to resettle on Ullŭngdo. However, for Tokdo, the vacant island policy continued.<sup>20</sup>

Meanwhile, Japanese fishermen also continued to come to Tokdo for fishing, and in 1905 Japan took an administrative action incorporating Tokdo into Shimane prefecture.<sup>21</sup> Then, in November of the same year, Japan made Korea its protectorate, forcing a treaty upon the latter, and finally annexed it under the Korea-Japan Annexation Treaty in 1910;<sup>22</sup> thus the question of Tokdo passed into oblivion.

As observed so far, Tokdo, with Ullŭngdo, has been an integral part of the Korean territory together since the 13th year of King Chijung of Silla (512 A.D.), and there are no grounds for Japan to

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18. *Ibid.*

19. *Ibid.*

20. *Ibid.*, p. 34.

21. Shimane Prefecture Public Notice No. 40 (February 22, 1905) by Governor Matsumoto Takekichi.

22. However, these treaties were signed under duress and are null and void. The 1910 annexation was an unlawful one. That the U.N. General Assembly recognized the Republic of Korea Government by General Assembly Resolution 195 (III) on December 12, 1948, is an act of confirmation that the State of Korea exists. Herbert W. Briggs, *The Law of Nations, Cases, Documents and Notes*, 2nd ed. (New York: Appleton-Century, 1952) p. 82.

lay claim to the island.

## 2. Inherent territory vs. prior occupation

The Japanese government has claimed that Tokdo is Japan's inherent territory from olden times and argues that it took the action of acquiring the territory by serving a public notice by the Shimane prefecture government on February 22, 1905. The Japanese government states:

The State's intention to acquire territory is confirmed by a result of the decision made by the Cabinet meeting on January 18, 1905 to add Tokdo to Japanese territory, and the official announcement of the State's intention to acquire territory is made through a notice announced by Shimane prefecture on February 22, 1905.<sup>23</sup>

The Japanese government has claimed Tokdo as its inherent territory on the one hand,<sup>24</sup> and its incorporation into Japanese territory in 1905, on the other hand. That is proof that Tokdo is not an inherent territory of Japan. It is not necessary to incorporate an inherent territory; it is self-contradictory. Thus the Japanese government's claim is considered illogical.

## III. Japan's claim to Tokdo by prior occupation

### A. Substance of Japan's claim

The Japanese government also claims that Japan has acquired Tokdo by prior occupation of a *terra nullius*. In the memorandum dated February 10, 1954, the Japanese government maintains that Japan acquired Tokdo by prior occupation and that one of the req-

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23. Japanese memorandum dated February 10, 1954; Republic MOFA, *op. cit.*, *supra* n. 5, p. 55.

24. *Ibid.*, pp. 234, 236, 250.

quisite conditions for occupation, i.e. the intention of the state to acquire the territory, was met in the following way:

With regard to the requisite conditions for acquiring territory under modern international law, the State's intention to acquire territory is confirmed by a result of the decision made by the Cabinet Meeting on January 28, 1905 to add Tokdo to Japanese territory, and the official announcement of the State's intention to acquire territory is made through a notification announced by Shimane prefecture on February 22, 1905. This was done in accordance with the practice taken by Japan in announcing prior occupation of territory, thus the above-mentioned measure has satisfied the requisite conditions under international law.<sup>25</sup>

Thus the Japanese government claims that it acquired its territorial rights by prior occupation of Tokdo.

### *B. Examination of the claim*

In view of the Japanese government's claim of prior occupation, the following should be taken into consideration: (i) Tokdo was not a *terra nullius* which could be an object of occupation; (ii) the Japanese government has never effectively occupied Tokdo; (iii) the Japanese government has not fulfilled the obligation of notification of occupation; (iv) the Japanese government first advanced the theory of prior occupation of a *terra nullius* and then switched its claim to inherent territory. However, in this study, (i) and (ii) will be dealt with.

#### 1. Claim to a *terra nullius*

A territory subject to prior occupation must be a "*terra nullius*."<sup>26</sup> "*Terra nullius*" is a "territory which is not under the control

25. *Ibid.*, p. 55.

26. Brownlie, *op. cit.*, *supra* n. 11, p. 142.



of an international person or a subject of international law.”<sup>27</sup>

In other words, a “*terra nullius*” has never belonged to any State, and is not a territory abandoned by a sovereign state.<sup>28</sup> The abandonment of territorial right requires not only the non-exercise of power over the territory, but also the expression of the intention to abandon the territory.<sup>29</sup> It was confirmed by the *Clipperton Island Case* (1931).<sup>30</sup> The polar regions are *terra nullius* but are excluded from the object of prior occupation.<sup>31</sup> It is an established principle of international law that the object of occupation must be a “*terra nullius*.”

a. *Judicial precedents*

(1) *Clipperton Island Case*

In the *Clipperton Island Case* (1931) between France and Mexico, Arbitrator Victor Emmanuel passed judgment that Clipperton Island belonged to France and described reason as follows:

Consequently, when France expressed its sovereignty for Clipperton Island, the Island was in the legal situation of *territorium nullius*, and therefore there is a basis for accepting that France was in a position to carry out prior occupation.<sup>32</sup>

At the same time, the judge ruled that the abandonment of territorial right for an area which had belonged to the sovereignty of a state requires the expression of “*animus of abandoning*,” in addition to non-exercise of authority on the area.<sup>33</sup> In short, the *Clipper-*

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27. Schwarzenberger and Brown, *op. cit.*, *supra* n. 11, p. 97.

28. Hersch Lauterpacht (ed.), *Oppenheim's International Law*, 8th ed., Vol. 1 (London: Longman, 1955) pp. 555-56.

29. Brownlie, *op. cit.*, *supra* n. 11, p. 142.

30. *A.J.I.L.*, Vol. 267, 1932, p. 394.

31. Robert Jennings and Arthur Watts (ed.), *Oppenheim's International Law*, 9th ed., Vol. 1 (London: Longman, 1992), p. 692.

32. *A.J.I.L.*, Vol. 26, 1932, p. 393.

33. *Ibid.*, p. 394.

*ton Island* Case reconfirmed that the object of prior occupation must be a territory without owner.

(2) *Eastern Greenland Case*

In the *Eastern Greenland Case* (1933) between Denmark and Norway, Norway declared prior occupation of Eastern Greenland on July 10, 1931, and asserted that Eastern Greenland was a territory without owner.<sup>34</sup> The International Court of Justice ruled as follows:

In the event that it is acknowledged as impossible to reconcile Denmark's theory of sovereignty and Norway's theory of a *terra nullius*, it is necessary to restrict negotiations to an agreement which enables rules.<sup>35</sup> The problem of sovereignty and the problem of *terra nullius* are a problem outside the Convention of July 9, 1924. It is the fact that Norway did not make any reference on this matter in the Convention.<sup>36</sup>

Thus, the Permanent International Court of Justice recognized as the conditions for prior occupation that the territory becoming an object for prior occupation must be a *terra nullius*.

(3) *Western Sahara Case*

When Spain tried to give independence to Western Sahara which had been its colony since the 19th century, Morocco and Mauritania each claimed the title to Western Sahara.

In this case, the United Nations General Assembly asked the International Court of Justice for an advisory opinion.<sup>37</sup> The International Court of Justice expressed its opinion as follows:

The expression, "*terra nullius*," is a legal term used in connection

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34. P.C.I.J., *Series A/B*, n. 53, 1933, p. 44.

35. *Ibid.*, p. 73.

36. *Ibid.*, p. 74.

37. *I.C.J.*, Reports, 1975, p. 12.

with prior occupation, which is one legal method for acquiring sovereignty over a territory. That the territory must be a *terra nullius* - territory belonging to no one - is one of the cardinal conditions for an effective prior occupation.<sup>38</sup>

Thus, the International Court of Justice made it plain that the object of prior occupation must be a *terra nullius*.

b. Theories

That the object of prior occupation must be an ownerless territory is supported by many scholars,<sup>39</sup> and on this point, there is no objection. Also, an ownerless territory includes the region abandoned by the former owner state, and the abandonment requires not only the non-exercise of authority in the region but also the expression of its intention of abandonment.<sup>40</sup>

A territory subjected to prior occupation needs to be a "*terra nullius*." Tokdo, together with Ullungdo, was not a *terra nullius* but had belonged to Korea ever since the era of Silla, and this is proven by many historical data. The vacant island policy did not

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38. *Ibid.*, p. 39.

39. Hans Kelsen, *Principles of International Law*, 2nd ed. (New York: Holt, 1967), p. 314; R.Y. Jennings, *The Acquisition of Territory in International Law* (Manchester: Manchester University Press, 1963), p. 23; Brownlie, *op. cit.*, *supra* n. 11, p. 142; Schwarzenberger and Brown, *op. cit.*, *supra* n. 11, p. 97; Jennings and Watts, *op. cit.*, *supra* n. 31, p. 686; Santiago T. Bernardez, "Territory, Acquisition," in Robert Bernhardt (ed.), *Encyclopedia of Public International Law*, Vol. 10 (Amsterdam: North-Holland, 1987), p. 500; J. G. Starke, *Introduction to International Law*, 9th ed. (London: Butterworths, 1984), p. 155; David H. Ott, *Public International Law in the Modern World* (London: Pitman, 1987), p. 105; Oscar Svarlien, *An Introduction to the Law of Nations* (New York: McGraw-Hill, 1955), p. 170.

40. Jennings and Watts, *op. cit.*, *supra* n. 31, p. 688; n. 6; Bernardez, *op. cit.*, *supra* n. 39 p. 500; Brownlie, *op. cit.*, *supra* n. 11, pp. 148-49; D. P. O'Connell, *International Law*, Vol. 1 (London: Stevens, 1970), p. 444; Michael Akehurst, *A Modern Introduction to International Law*, 4th ed. (London: George Allen, 1984), p. 142; Charles C. Hyde, *International Law*, 2nd ed., Vol. 1 (Boston: Little Brown, 1947), p. 394.

mean the abandonment of territorial right to Tokdo.

Therefore, Tokdo did not become a "*terra nullius*" - an object of prior occupation. If Japan claims the prior occupation of Tokdo, Japan must prove that Korea had the intention of abandoning Tokdo.

## 2. Obligation of notification

The Japanese government claims that its intention to acquire the territory was officially announced by the "notification" by Shimane prefecture. This was countered by the Korean government as follows in a memorandum dated September 25, 1954:

The Korean government cannot recognize as appropriate the Japanese government's argument that Japan has satisfied the condition of officially announcing the intention of the state as the condition of acquisition by international law, concerning the prior occupation of territory. The notification by Shimane prefecture was announced so obscurely that it was not known not only to foreign countries but also to the general public in Japan. Therefore it could not be regarded as an official announcement of the intention of the state...<sup>41</sup>

Thus, the notification by Shimane prefecture in 1905 was to inform the local people of the intention of a local administrative organ and could not be construed as an external expression of intention of the state under international law. The Japanese memorandum dated September 20, 1956, asserts:

As regards the above mentioned public announcement, there is a problem on the notification to foreign countries. Most international law scholars agree that there is no principle under international law

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41. Memorandum dated September 25, 1954 (View of the Korean Government) (2), MOFA, *op. cit.*, *supra* n. 5, pp. 90-91. This was also announced by the Minister of Information on September 20, 1954. *Five-Year History of the Korean War* (Seoul: MND, 1956), pp. 11-15.

that such notification is an essential condition for acquisition of territory. In the *Island of Palmas Case* (1928) and the *Clipperton Island Case* of 1931, the arbitration trial ruled clearly that the notification to foreign countries is not required, and the principle under the two cases was cited at the time of prior occupation of Guano Island by the United States of America.<sup>42</sup>

The Japanese government views that the external notification of prior occupation is not a requisite for prior occupation under international law.<sup>43</sup> This is tantamount to admitting that Shimane prefecture Notification No. 40 dated February 22, 1905, was not the external notification by international law. It is necessary to examine whether notification is one of the requisites for prior occupation under international law.

a. Judicial precedents

(1) *The Island of Palmas Case*

The Japanese government asserted that the arbitration trial of *the Island of Palmas Case* ruled clearly that notification to foreign countries is not required.<sup>44</sup>

*The Island of Palmas Case* was submitted to the permanent arbitration trial over the territorial right of Palmas Island between the United States and Holland. This case started when General

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42. Memorandum from the Japanese side dated September 20, 1956 (View of the Japanese Government 3), MOFA, *op. cit.*, *supra* n. 5, p. 170.

43. This view is held by Japanese scholars such as Minagawa Ko, "Takeshima Dispute & International Precedent," *Maehara Mitsuo kyoju kanreki kinen kokusaihogaku no shomondai* (Various Problems in International Law in Commemoration of the Sixtieth Birthday of Prof. Maehara Mitsuo) (Tokyo: Keio Tsushin, 1963), p. 367; Ueda Kaṣuo, "Japan-Korea Dispute over Annexation of Takeshima," *Hitotsubashi Collection of Thesis*, Vol. 54, No. 1, 1965, p. 30. However, this is a mode of "classic, imperialist-type prior occupation of *terra nullius*" and cannot be applied to Tokdo. Kim Chōng-gyūn, "Tosō bunjaeng saraewa tokdo munjae" (Precedents of dispute over islands and the question of Tokdo), *KJIL*, Vol. 25, 1980, p. 40.

44. MFA, *op. cit.*, *supra* n. 5, p. 170.

Leonard Wood, who was Moro State governor in the Philippines, then under the control of the United States, found the Dutch flag hoisted on Palmas Island during an inspection tour on January 21, 1906 and reported it to the U.S. government. The case was brought before the Permanent Arbitration Court in 1925 and ended with Holland winning the case.<sup>45</sup>

The Philippine Islands were ceded to the United States by Spain under the peace treaty concluded on December 10, 1892, as a result of the U.S. - Spanish War.

Palmas Island is located about 20 miles inside the boundary shown in the peace treaty and is two miles long and less than one mile wide, and there were less than 1,000 inhabitants then.

The U.S. government asserted that Palmas Island was ceded to it by the peace treaty, while the Dutch government countered that the island was a part of the East Indian islands in Holland's possession since the days of the East India company and that Holland had exercised sovereignty on the island continuously and peacefully.<sup>46</sup>

Arbitration Judge Max Huber, in passing judgment on the case, states:

As to the conditions of acquisition of sovereignty by way of continuous and peaceful display of State authority, some of which have been discussed in the United States Counter-Memorandum, the following must be said: The display has been open and public, that is to say that it was in conformity with usages as to exercise of sovereignty over colonial States. An obligation for the Netherlands to notify to other Powers... the display of sovereignty in these territories did not exist. Such notification, like any other formal act, can only be the condition of legality as a consequence of an explicit rule of law. A rule of this kind adopted by the Powers in 1885 for the African continent does not apply *de plano* to other regions....<sup>47</sup>

45. D.J. Harris, *Cases and Materials on International Law*, 2nd ed. (London: Sweet and Maxwell, 1979), p. 174.

46. Briggs, *op. cit.*, supra n. 22, p. 239; Harris, supra n. 45, p. 174.

Thus, in the *Island of Palmas Case*, notification to foreign countries was recognized as the condition of legality for the Netherlands' act on Palmas Island, like any other formal act. It was ruled that the obligation of notification stipulated in the 1885 protocol on occupancy on the African continent does not exist where a clandestine exercise of State authority over an inhabited territory like Palmas Island seems to be impossible.<sup>48</sup>

In short, it only pointed out that the 1885 protocol on the African continent does not apply to Palmas Island, and clearly acknowledged that "notification is the condition of legality like other formal acts."

#### (2) *Clipperton Island Case*

The Japanese government argues that in the *Clipperton Island Case* in 1931 notification to foreign countries was not required.<sup>49</sup> It is the case involving Mexico and France over the territorial rights to the Clipperton Island, which is located 670 miles southwest of Mexico and is less than three miles in diameter.

Coat de Kerweguen, a French naval officer, discovered Clipperton Island during a voyage on November 17, 1858, and reported it to the French consul in Honolulu, who in turn notified the Hawaiian government, and it was published in the Honolulu newspaper, *The Polynesian*, on December 8, 1858, that France proclaimed sovereignty on the island.<sup>50</sup>

On November 24, 1897, France announced that the commander of the French fleet in the Pacific found three Americans hoisting the American flag on Clipperton Island and collecting guano.

The United States responded on November 24, 1897, that the U.S. had no intention to exercise sovereignty on Clipperton Island.

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47. *Ibid.*, p. 180.

48. L.C. Green, *International Law through the Cases* (London: Stevens, 1951), p. 369.

49. MOFA, *op. cit.*, *supra* n. 5, p. 170.

50. *A.J.I.L.*, Vol. 26, 1932, p. 391.

Mexico dispatched a warship to the island on December 13, 1897 and had the three Americans lower the American flag and hoisted the Mexican flag. This incident was brought to the Court of Arbitration and concluded with France winning the case.<sup>51</sup>

In the case, the arbitration judge clarified in the ruling that there was no obligation of notification as follows:

The regularity of the French occupation has also been questioned because the other Powers were not notified of it. But it must be observed that the precise obligation to make such notification is contained in Art. 34 of the Act of Berlin which is not applicable to the present case.<sup>52</sup>

This decision does not deny obligation of notification in general, but it points out the inapplicability of such notification as contained in Art. 34 of the Act of Berlin to that particular case. Naturally, France is a party to the Act of Berlin, concluded in 1895, but the island was occupied earlier, in 1858. So, France had no such obligation under the Act of Berlin.<sup>53</sup>

The notification was served to the Hawaiian government by the French consul and at the same time, the establishment of French sovereignty over the island was publicly announced in the newspaper, *the Polynesian*, in Hawaii. This is made clear in the court decision:

There is good reason to think that the notoriety given to the act, by whatever means, sufficed at the time, and that France provoked that notoriety by publishing the said act in the manner above indicated.<sup>54</sup>

Therefore, the Japanese government's claim that "the judgment was made to clarify that notification to foreign countries is not required" is not justified.<sup>55</sup>

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51. *Ibid.*, pp. 391-92.

52. *Ibid.*, p. 394.

53. Svarlien, *op. cit.*, *supra* n. 39, p. 172.

54. *A.J.I.L.*, Vol. 26, 1932, p. 394.



b. Scholars' views

The Japanese government maintains that "the majority of international jurists agree that there is no principle by international law that the above mentioned notification is a necessary condition for acquiring territory."<sup>56</sup>

There are different views on whether external notification is one of the requisite conditions for prior occupation. The majority of jurists do not accept this as the Japanese government does; rather they consider notification required.

(1) Negative views

L. Oppenheim holds that external notification is not an absolute requirement:

No rule of the Law of Nations exists which makes notification of occupation to other States a necessary condition of its validity. As regards all future occupations on the African coast the parties to the General Act of the Berlin Congo Conference of 1885 stipulated that occupation should be notified to one another. But this Act has been abrogated so far as the signatories of the Convention of St. German of September 10, 1919 are concerned.<sup>57</sup>

Thus, Oppenheim is negative on notification unless it is specially stipulated in a treaty. This view is shared by Alf Ross:

On the other hand, a formal declaration of occupation or notification is not required, but of course is often to be recommended by way of proof.<sup>58</sup>

Despite his negative view on notification, Ross thinks it becomes the proof of prior occupation. Ian Brownlie also concurs

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55. MOFA, *op. cit.*, *supra* n. 5, p. 170.

56. *Ibid.*

57. Lauterpacht, *op. cit.*, *supra* n. 28, p. 559.

58. Alf Ross, *A Textbook of International Law, General Part* (London: Longmans, 1947), p. 147.

with Ross:

Notice of a territorial claim or an intention to extend sovereignty to other governments constitutes evidence of occupation, but is not a condition for acquisition. As between the contracting parties, conventions may provide for notification of claims.<sup>59</sup>

This view is also maintained by Lord McNair,<sup>60</sup> Green H. Hackworth,<sup>61</sup> T. Guggenheim,<sup>62</sup> R.Y. Jennings,<sup>63</sup> I.C. MacGibbon.<sup>64</sup>

## (2) Positive views

A positive view on notification is asserted by George G. Wilson:

... Discovery cannot become title, but discovery must be followed by occupation or other act which could be interpreted as similar to occupation and the General Act of Berlin Conference in Chapter 6 Article 34 made a special stipulation concerning the acquisition of land on the coast of the African continent.<sup>65</sup>

Thus, Wilson feels that discovery alone does not generate title and cites Article 34 of the 1885 General Act of Berlin Conference. He brings our attention to the Institute of International Law that in 1888 proposed a draft of "obligatory declaration" concerning occupation.<sup>66</sup> Oscar Svarlien is also positive on this point:

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59. Brownlie, *op. cit.*, *supra* n. 11, p. 148.

60. Lord McNair, *International Law Opinions*, Vol. 1 (Cambridge: Cambridge University Press, 1956), p. 286.

61. Green H. Hackworth, *Digest of International Law*, Vol. 1 (Washington D.C.: U.S. Government Printing Office, 1940) pp. 408-409.

62. T. Guggenheim, *Traite de droit international public*, t. 1 (Geneva: George, 1954), p. 441.

63. Jennings, *op. cit.*, *supra* n. 39, p. 39.

64. I. C. MacGibbon, "The Scope of Acquiescence in International Law," *B.Y.I.L.*, Vol. 31, 1954, p. 176.

65. George G. Wilson, *Handbook of International Law*, 3rd ed. (St. Paul, Minn: West Publishing Co., 1939) pp. 77-78.

66. *Ibid.*, p. 78.

Furthermore, the French proclamation of sovereignty over Clipperton was dated November 17, 1858, a fact which rendered the subsequent Act of Berlin inapplicable. As to the question of proper notification on the part of the French government, the Arbitrator held that the publication in a Honolulu journal of the fact that sovereignty over Clipperton Island had been assumed by France, and the communication of the accomplishment to the government of Hawaii by the French Consulate, were sufficient under the then existing law. Here again the special provisions relative to such notification contained in Article 34 of the Act of Berlin were held to be without application.<sup>67</sup>

On the basis of these main premises, the Arbitrator arrived at the conclusion that Clipperton Island was legitimately acquired by France on November 17, 1858.

Thus, Svarlien regards notification as a necessary condition for occupation, since Clipperton Island was legitimately acquired by France by its notification of the fact of occupation of the island.

John Westlake also takes the same position and cites Lord Stowell that in the newly discovered territory where title is to be recognized, some act of possession can be consummated by notification of the fact or proclamation thereof.<sup>68</sup>

He states that the Act of Berlin did not make any further development from "the principle of publicity."<sup>69</sup> This could be interpreted that the Act of Berlin does not carry any weight since international law generally makes notification the necessary condition for occupation.

William E. Hall also argues that the Act of Berlin is not only valid for the contracting parties, but should be considered as hav-

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67. Svarlien, *op. cit.*, *supra* n. 39, pp. 172-73.

68. John Westlake, "Discovery and Occupation as International Titles," in *The Collective Papers of J. Westlake on Public International Law*, L. Oppenheim, ed. (London: Cambridge University Press, 1914), pp. 163-64.

69. *Ibid.* p. 166.

ing a general binding power under international law. He says:

... an agreement, made between all the states which are likely to endeavour to occupy territory, and covering much the largest spaces of coast, which, at the date of the declaration, remained unoccupied in the world, cannot but have great influence upon the development of a generally binding rule.<sup>70</sup>

Westlake feels that a general international law requiring notification was codified by the Act of Berlin while Hall considers the Act became a general international law.

John B. Moore also advocates the obligation of notification by citing Hall's above-mentioned argument.<sup>71</sup> M.F. Lindley viewed it proper to regard notification and effective occupation as the necessary conditions for occupation, before and after the signing of the 1885 Berlin Act. He states as follows:

... According to views adopted by Britain, Germany, France and the United States, at the time of before and after the Berlin conference, there were no colonial states which took exception to the application of new rule of occupation, and it seems to be justified to say that all recent acquisition of territory obeys to this rule irrespective of whether it is the African coast or not.<sup>72</sup>

Lindley says that notification and necessary conditions for effective occupation defined in the Act of Berlin do not apply only to "the African coasts" and the contracting parties to the Act, but also apply to all areas and all states. This is the same as Hall's view.

According to Charles de Visscher, the Act of Berlin of 1885 is

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70. William E. Hall, *A Treatise on International Law*, 6th ed. (Oxford: Clarendon, 1909), pp: 115-16.

71. John B. Moore, *Digest of International Law*, Vol. 1 (Washington, D.C.: U.S.G.P.O. 1906), p. 268.

72. M.F. Lindley, *The Acquisition and Government of Backward Territory in International Law* (London: Longmans, 1926), p. 157.

not a treaty valid simply for individual countries concerned with the Act, but it is a collective measure for establishing the structure of international law. He states emphatically as follows:

The Act itself can not be seen as a simple treaty of acknowledging the creation only of individual relationships between its signatories of the Act. This Act was devised to set up a legal rule relating to occupation of ownerless territory while guaranteeing benefit of peace, protection of indigenous people and freedom of trade. This is clearly a collective and normative act establishing a highly internationalized legal regime.<sup>73</sup>

Thus, Visscher also regards the Act of Berlin as general international law having validity beyond the scope of its signatories. He maintains the same position as Hall and Lindley on the point that the obligation of notification became general international law through the Act of Berlin. Also, Quincy Wright says that the Declaration of the West Africa Conference, namely Articles 34 and 35 of the Act of Berlin were "generally accepted" and that it is a "present law."<sup>74</sup>

Charles C. Hyde says that Articles 34 and 35 of the 1885 Act of Berlin defined notification and effective occupation as the necessary conditions for occupation on the African coasts and that this definition does not restrict its application to specific areas of Africa.<sup>75</sup>

He also points out that the Declaration of the Institute of International Law does not approve as valid occupation by sovereignty without official notification of taking possession and regards notification as a necessary condition for occupation. He quotes Westlake's view that the the Declaration is seen as having unified views

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73. Charles de Visscher, *Theory and Reality in Public International Law*, trans. by P.E. Corbett (Princeton: Princeton University Press, 1956), p. 321.

74. Quincy Wright, "Territorial Propinquity," *A.J.I.L.*, Vol. 12, 1918, p. 552.

75. Hyde, *op. cit.*, *supra* n. 40, p. 342.

of the existing situation.<sup>76</sup>

Charles G. Fenwick expresses his view on notification of occupation as follows:

The provisions of the Berlin convention showed the desirability of formulating a general rule of international law upon the subject. In consequence, the question was taken up by the Institute of International Law, which offered in 1888 a Draft of an International Declaration Regarding Occupation of Territories.<sup>77</sup>

Fenwick considers it desirable to regard as a general rule of international law the Act of Berlin of 1885 which defined notification as the necessary condition for occupation. And he regards the Declaration of Institute of International Law of 1888 as its result. Consequently, he considers notification the necessary condition for occupation in general international law. As Westlake did, he views the Act of Berlin as codification of general international law.

In addition to the above-mentioned scholars, Travers Twiss,<sup>78</sup> Paul Fauchille,<sup>79</sup> Charles Rousseau,<sup>80</sup> Julius Hatschek,<sup>81</sup> George Friedrich Martens,<sup>82</sup> F.V. List,<sup>83</sup> Mitsuo Maebara,<sup>84</sup> Akira Ozawa,<sup>85</sup> Taoka Ryoichi<sup>86</sup> also regard notification as the necessary condition

76. *Ibid.*, p. 343.

77. Fenwick, *op. cit.*, *supra* n. 11, p. 410.

78. Travers Twiss, *The Oregon Question Examined* (London: np. 1846), pp. 1547-58.

79. Paul Fauchille, *Traite de droit international public*, t. 1 (Paris: Rousseau, 1925), pp. 738 ff.

80. Charles Rousseau, *Droit international Public* (Paris: Sirey, 1953), p. 246.

81. Julius Hatschek, *Volkerrecht* (Leipzig: Erlangen, 1923), s. 170.

82. George Friedrich Martens, *Recueil des principaux traites (etc.)*, t. 7 (Göttingen: Dietrich, 1831), p. 426.

83. F.V. List, *Volkerrecht Systematisch Dargestellt*, 12 Auf., ed. M. Fleishmann (Berlin: np. 1925), S. 160.

84. Maebara Mitsuo, *Kokusaiho kogian (A Draft Lecture on International Law (Peace))* (Tokyo: Keio Tsushin, 1974), p. 86.

85. Ozawa Akira, *Heiji Kokusaiho, (International Law: Peace,)* Part I (Tokyo, Nihon Hyoron-sha, 1937), pp. 236-40.

86. Taoka Ryoichi, *Kokusaiho koza, A Lecture on International Law*, Vol. 1 (Tokyo: Yuhikaku), p. 338.

for occupation.

Therefore, the Japanese government's claim that "most of international jurists agree that the principle by international law making notification as an absolute condition for acquiring territory does not exist<sup>87</sup> is incorrect.

Even those scholars who do not regard notification as the necessary condition for occupation accede that the usefulness of notification<sup>88</sup> should be taken into consideration.

In brief, the Japanese government argues that notification is not required and Shimane prefecture Notice No. 40 was valid for its occupation of Tokdo.<sup>89</sup>

As examined above, international precedents and the majority view of scholars consider notification necessary even without a specific treaty such as the Act of Berlin. Merely, there is a difference of views over whether the Act of Berlin has become general international law or vice versa.

The draft of an International Declaration Regarding Occupation of Territories by the Institute of International Law clearly stated in 1888 that notification is a necessary condition for occupation.<sup>90</sup> Therefore, the Japanese memorandum of September 20, 1956, is unfounded.

### 3. Public announcement of the intention of the State

The Japanese memorandum dated February 10, 1954 asserts as follows:

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87. ROK Ministry of Foreign Affairs, *op.cit.*, *supra* n. 5, p. 170.

88. Ross recognizes the value of notification as "proof." Ross, *op. cit.*, *supra* n. 58, p. 147; Brownlie also recognizes this. Brownlie, *op.cit.*, *supra* n. 11, p. 148; Lauterpacht says notification is required by "the comity of nations". Lauterpacht, *op. cit.*, *supra* n. 28, p. 559.

89. ROK Ministry of Foreign Affairs, *op. cit.*, *supra* n. 5, p. 55.

90. Wilson, *op. cit.*, *supra* n. 65, p. 78, ; Yokoda Kisaburo, *Kokusaiho (International Law)* II., 7th ed. (Tokyo: Yuhikaku, 1966), p. 92.

We cannot but mention that the intention of the State to acquire territory and its public announcement on February 22, 1905, were taken by the notification announced by Shimane prefecture. As this was in accordance with the practice followed by Japan at that time in announcing her occupancy of territory, the above measure taken for public announcement of the intention of the State, has satisfied the requirement under international law in this respect.<sup>91</sup>

It is not clear whether "the public announcement of the intention of the State" means the public announcement of the intention of the State under domestic law or under international law.

But, it seems to mean the public announcement of the intention of the State "by international law" since it said that the notification by Shimane prefecture satisfied "the necessary condition by international law."

If so, can Shimane prefecture Notice No. 40 be regarded as the public announcement of the intention of the State by international law? To examine this point, one must study (i) whether the Shimane prefecture Governor is an organ of the State capable of making the public announcement of the intention of the State under international law, and (ii) whether the Shimane prefecture Notice has the character of notification by international law.

a. Is the Governor of Shimane prefecture an organ of the State under international law?

Is the Governor of Shimane prefecture Japan's external organ capable of taking such unilateral legal action as declaration or notification under international law? External relations of the State surely must be conducted by a state organ.<sup>92</sup> In other words, it is a general principle of international law that the State can exercise a legal act under international law only through an action by the

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91. MOFA, *op. cit.*, *supra* n. 5, p. 55.

92. Hyde, *op. cit.*, *supra* n. 40, Vol. 2, p. 1204.



State's external organ.<sup>93</sup> Francis Deak holds that the State's official external relations can be conducted only by the authorized state organs,<sup>94</sup> and L. Kopelmanas maintains that "the creative activity of the State can be conducted by international organs only."<sup>95</sup> This is recognized by many scholars,<sup>96</sup> and it also was confirmed by the advisory opinion of the International Court of Justice, concerning the *German Settlers in Poland Case* (1923).<sup>97</sup>

The State's external organs are the chief of State, the head of government, the foreign minister, the military commander, diplomatic agents and plenipotentiaries,<sup>98</sup> and the chief of State, the foreign minister and the military commander<sup>99</sup> have naturally the right to represent the State, and the diplomatic agents and plenipotentiaries require letters of credence.<sup>100</sup> The sovereign state decides who becomes the State's external organ, such as the chief of State, the head of government, the foreign minister, the military commander, diplomatic agents and plenipotentiaries, and this is outside the realm of international law.<sup>101</sup>

A unilateral act of declaration or notification is also one of the

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93. Svarlien, *op. cit.*, *supra* n. 39, p. 229.

94. Francis Deak, "Organs of State in their External Relations," in Max Sorensen (ed.), *Manual of Public International Law* (London: MacMillan, 1968), p. 392.

95. Lazare Kopelmanas, "Custom as a Means of the Creation of International Law," *B.Y.I.L.*, Vol. 18, 1937, p. 131.

96. Hans Kelsen, *General Theory of Law and State*, A. Wedberge (trans.) (Cambridge: Harvard University Press, 1949), pp. 192-93; Hall, *op. cit.*, *supra* n. 70 p. 290; Kelsen, *op. cit.*, *supra* n. 39 p. 463; Werner Levi, *Contemporary International Law: A Concise Introduction* (Boulder: Westview Press, 1979), pp. 101-102.

97. P.C.I.J., *Seriés B*, No. 6, 1923, p. 22.

98. Deak, *op. cit.*, *supra*, n. 94, p. 383.

99. The military commander has the rights to represent the state by international law. Kelsen, *op. cit.*, *supra* n. 39, p. 463; John Westlake, *International Law*, Part 2 (Cambridge: Cambridge University Press, 1913), p. 92; Levi, *op. cit.*, *supra* n. 96, p. 103.

100. Deak, *op. cit.*, *supra* n. 94, pp. 383-84; Fenwick, *op. cit.*, *supra* n. 11, p. 522; Art. 7, Para. 2 of the Vienna Convention on the Law of Treaties.

101. Kelsen, *op. cit.*, *supra* n. 39, p. 460; Hall, *op. cit.*, *supra* n. 70, pp. 290-91; Svarlien, *op. cit.*, *supra* n. 39, p. 229.

forms of interstate activity or action under international law;<sup>102</sup> it is of course, conducted by a State's external organs.<sup>103</sup> It is because the intention of occupation should be the intention of the State organ.<sup>104</sup> The Governor of Shimane prefecture who announced publicly Shimane prefecture Notice No. 40 was undoubtedly not the rightful representative organ of the State under international law, nor a representative Japanese organ capable of making the external activity on behalf of the State.

Therefore, the Governor of Shimane prefecture is merely an administrative organ which could announce publicly administrative action under Japan's domestic law, but cannot represent the State, in making declaration or notification of the occupation of territory or the intention of sovereign occupation by the State under international law.

The public announcement by the Governor of Shimane prefecture was not an act beyond power, but an act without power.

But whether could it eventually be recognized as an action of the State as it is an action beyond authority under international law? An act of so-called *ultra vires* being reverted to an act of the State could be considered only when "the State's representative organ" takes a representative action beyond its authority,<sup>105</sup> and an action by those who are not the State's representative organ cannot be recognized. In other words, the *ultra vires* action is on the premise of the State's representative organ and becomes a problem in case the representative organ went beyond its authority.<sup>106</sup>

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102. Lord McNair, *The Law of Treatise* (Oxford: Clarendon, 1961), p. 32.

103. Charles Fairman, "Competence to Bind the State to an International Engagement," *A.J.I.L.*, Vol. 30, 1936, p. 446.

104. Brownlie, *op. cit.*, *supra* n. 18, p. 143; Ozawa Akira, *Kokkaryoikito sono hendo* (State Territory & Its Changes), *Kokusaiho koza* (Lecture on International Law), Vol. 1 (Tokyo: Yuhikaku, 1953) pp. 219-20.

105. Art. 47 of the Vienna Convention on the Law of Treaties.

106. Gould, *op. cit.*, *supra* n. 10, p. 309; Fairman, *op. cit.*, *supra* n. 103, p. 440; William W. Bishop, *International Law, Cases and Documents* (Boston: Little

Therefore, the action taken by those who are not the State's representative organs cannot confer the validity of the conduct to the State. In the case of the conclusion of a treaty, the *ultra vires* formal action could be conferred on the State's action only when it is an action of an organ possessing a letter of credence. Therefore, it is "non-existent" as an act in international law even based on the analogy of being a *ultra vires* act.

b. Is the Shimane prefecture Notice notification?

Has the Shimane prefecture Notice the nature of notification under international law? "Notification" in a State's unilateral action is a communication to another State or States of a legally significant specific fact or facts,<sup>107</sup> and the purpose of notification is to make clear the position of the notifying country on that fact or facts.<sup>108</sup>

Unilateral actions such as notification, protest, acquiescence, and dereliction have the same legal validity as bilateral acts of a treaty because a unilateral action expresses the intention of a State or States as in a formal agreement.<sup>109</sup> That a State's unilateral action binds the States under international law like a treaty was ruled on by the International Court of Justice in the *Corfu Channel* Case (1948).<sup>110</sup>

Since a valid notification is an interstate activity<sup>111</sup> under international law, it is contradistinguished from a notice which is an administrative action under domestic law. A notice is designed for many and unspecified people (1) to inform them of a specific mat-

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Brown, 1953), pp. 90-91; "Harvard Research Draft Convention on Treaties," A.J.I.L., vol. 29, 1935, Supplement, p. 1008.

107. Lévi, *op. cit.*, *supra* n. 96, p. 214; Lauterpacht, *op. cit.*, *supra* n. 28, p. 874.

108. Schwarzenberger and Brown, *op. cit.*, *supra* n. 11, p. 140.

109. Fairman, *op. cit.*, *supra* n. 103, p. 39.

110. L.C. Green, *International Law Through the Cases*, 3rd ed. (London: Stevens, 1970), p. 631.

111. McNair, *op. cit.*, *supra* n. 102, p. 32.

ter; (2) to announce the enactment of a law or regulation; (3) and to make public an administrative disposition or legislation.<sup>112</sup> Shimane prefecture Notice No. 40 is not a declaration or notification of occupation because it was not conducted as an interstate activity but was merely an administrative action under municipal law. Thus, Shimane prefecture Notice No. 40 is non-existent as a declaration of occupation or notification under international law.

Therefore, the Japanese government claim in the memorandum dated February 10, 1954 does not have any meaning except under Japan's domestic law.

#### IV. Conclusion

As illustrated above the Japanese government's claim to Tokdo as an inherent Japanese territory is without grounds, nor its claim of prior occupation of a *terra nullius* has any validity. To claim its acquisition by prior occupation first and to shift the claim to an "inherent territory" later plainly indicates that Tokdo has not been its inherent territory, nor was it an object of prior occupation.

Tokdo is an integral part of the Korean territory when seen against the historical documents, the contradictory Japanese claims under international law, and a series of international agreements or documents including the Cairo Declaration and SCAPIN No. 677. Japan's claim to the sovereign right over Tokdo after joining the United Nations in 1954 is a violation of the U.N. Charter, Article 2, Paragraph 4, which defines the principle of territorial integrity. It is also a breach of Article 4 of the "Korea-Japan Treaty on Basic Relations" which defines the principle of mutual respect of sovereignty.

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112. Sugimura Shosaburo *Gyoseigaku gaiyo* (An Outline of Administrative Law) (Tokyo: Yuhikaku, 1951), p. 261; Nobuta Jiro, *Gyoseiho* (Administrative Law) Vol. 1 (Tokyo: Kobundo, 1973), p. 164.

However, Japan continues to claim Tokdo's territorial rights even today, which is straining the friendly relations between the two countries. Japan should make a sincere effort to promote friendship with Korea as a good neighbor by admitting Korea's sovereignty over Tokdo. There can be no question about Tokdo's sovereignty.