

Takeshima or Dokdo? Toward Conflict Transformation of the Japan-Korea Territorial Dispute

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This article examines the territorial dispute between Japan and Korea over the Takeshima/Dokdo Islands from a perspective of peace research and conflict resolution. This article employs a modified version of conflict analysis framework and analyzes the historical, political, legal, economic, and social aspects of the bilateral territorial conflict. Indeed, the dispute has long been insoluble due to the complicated historical, political, economic, and social factors underlying the relationship between the two countries. Moreover, it is difficult to legally settle the bilateral dispute because the Korean government has declined to refer the conflict to the International Court of Justice. In order to overcome the deadlock of the territorial conflict, this article proposes applying the transcend method for conflict transformation of the Japan-Korea territorial dispute and to conduct Ho‘oponopono—a traditional Native Hawaiian dispute-resolution approach for a mutual reconciliation—between the Japanese and Korean people.

Keywords: Dokdo, Ho‘oponopono, Liancourt Rocks, Takeshima, transcend method

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I. INTRODUCTION

The Japanese government has consistently argued that Takeshima, known as Dokdo in South Korea, is “indisputably an inherent part of [] Japan, in light of historical facts[.]”² The Japanese government also asserts that the Republic of Korea (“Korea” or “ROK”) “has been occupying Takeshima with no basis in international law.”³ Meanwhile, the Korean government has asserted that “Dokdo is an integral part of Korean territory, historically, geographically, and under international law” and that “[n]o territorial dispute exists regarding Dokdo[.]”⁴ With this understanding, Korea has insisted that “Dokdo is not a matter to be dealt with through diplomatic negotiations or judicial settlement.”⁵

² *Japan’s Consistent Position on the Territorial Sovereignty over Takeshima*, MINISTRY OF FOREIGN AFF. OF JAPAN, <https://www.mofa.go.jp/region/asia-paci/takeshima/index.html> (last updated Apr. 23, 2020).

³ *Id.*

⁴ *The Korean Government’s Basic Position on Dokdo*, MINISTRY OF FOREIGN AFF., REPUBLIC OF KOREA, https://dokdo.mofa.go.kr/eng/dokdo/government_position.jsp (last visited Oct. 2, 2020).

⁵ *Id.* The location of the Oki Islands is of significance because the Japanese side believes that Takeshima/Dokdo belongs to the Oki Islands, Okinoshima Town, Shimane Prefecture. *Islands’ Location and Features*, OKINOSHIMA TOWN, <https://www.town.okinoshima.shimane.jp/www/sp/contents/1427258498867/index.html> (last visited Nov. 5, 2020).

Takeshima/Dokdo (the “Islands”) is approximately 0.20 square kilometers and is composed of two main islands, the East⁶ and West⁷ Islands, and eighty-nine surrounding islets.⁸ Internationally, the Islands are called the “Liancourt Rocks” in English, named after Le Liancourt, a French whaling ship in 1849.⁹ The third party to the conflict tends to use the term, Liancourt Rocks, for neutrality.¹⁰ The Islands are 87.4 kilometers away from Ulleungdo (Utsuryo Island) and 217 kilometers away from the mainland of the ROK,¹¹ whereas 157.5 kilometers away from the Oki Islands and 211 kilometers away from the mainland of Japan.¹² On the East Island, the Korean government built a “docking facility, coast guard station, heliport, and a staffed lighthouse.”¹³ The West Island contains Korean

⁶ The East Island is called Higashijima (Mejima) by the Japanese, and Dongdo by the Koreans. *Japan’s Consistent Position on the Territorial Sovereignty over Takeshima*, *supra* note 2; *Location and Features*, MINISTRY OF FOREIGN AFF., REPUBLIC OF KOREA, <https://dokdo.mofa.go.kr/eng/introduce/location.jsp> (last visited Jan. 30, 2020); *Information about Takeshima*, MINISTRY OF FOREIGN AFF. OF JAPAN, https://www.mofa.go.jp/a_o/na/takeshima/page1we_000014.html (last updated July 30, 2015).

⁷ The West Island is referred to as Nishijima (Ojima) by the Japanese, and Seodo by the Koreans. *Japan’s Consistent Position on the Territorial Sovereignty over Takeshima*, *supra* note 2; *Location and Features*, *supra* note 6.

⁸ See *Recognition of Takeshima*, MINISTRY OF FOREIGN AFF. OF JAPAN, (July 30, 2015) https://www.mofa.go.jp/a_o/na/takeshima/page1we_000057.html (last visited Dec. 11, 2020). There are different names for the Islands and Utsuryo Island in Japan and Korea. See *id.* In Japan, current Takeshima was called Matsushima, and Utsuryo Island/Ulleungdo was called Takeshima or Isotakeshima prior to 1905. *Id.* In Korea, current Dokdo was called Usan or Usando. See *id.* Incidentally, Japan has recognized that Utsuryo Island (not the Islands) belongs to the ROK. *Id.*

⁹ Min Jung Chung, *Analysis of the Territorial Issue Regarding the Liancourt Rocks between Korea and Japan*, 7 KOREAN J. INT’L & COMPAR. L., 2019, at 1, 2, https://brill.com/downloadpdf/journals/kjic/7/1/article-p1_1.xml

¹⁰ See, e.g., *id.*; *Aeronautical Charts Made by the US Government in 1953 and 1954: Takeshima as Japanese Territory*, JAPAN INST. INT’L AFF. (Oct. 26, 2020), <https://www.jiia.or.jp/en/column/2020/10/20201026-aeronautical-charts-made-by-us-government-in-1953-1954.html>. As for a map of the Islands, see *The Takeshima Issue: A Challenge to the Postwar International Order?*, THE GOV’T OF JAPAN, (summer 2014), https://www.japan.go.jp/tomodachi/2014/summer2014/the_takeshima_issue.html (last visited Dec. 16, 2020).

¹¹ *Japan’s Consistent Position on the Territorial Sovereignty over Takeshima*, *supra* note 2; *Location and Features*, *supra* note 6.

¹² *Japan’s Consistent Position on the Territorial Sovereignty over Takeshima*, *supra* note 2; *Location and Features*, *supra* note 6.

¹³ *Government Management of Dokdo*, GYEONGSANGBUK-DO PROVINCE, <http://en.dokdo.go.kr/pages/s01/page.html?mc=7226> (last visited Feb. 4, 2020).

“resident[] living quarters, a trail, and a drinking facility[.]”¹⁴ Kim Sin Yeol, thirty three police officers, three lighthouse managers, and two Dokdo Office personnel have resided on the West Island as of June 2020.¹⁵ Since May 2013, the Islands have been under the administration of the Korean Ministry of Oceans and Fisheries.¹⁶

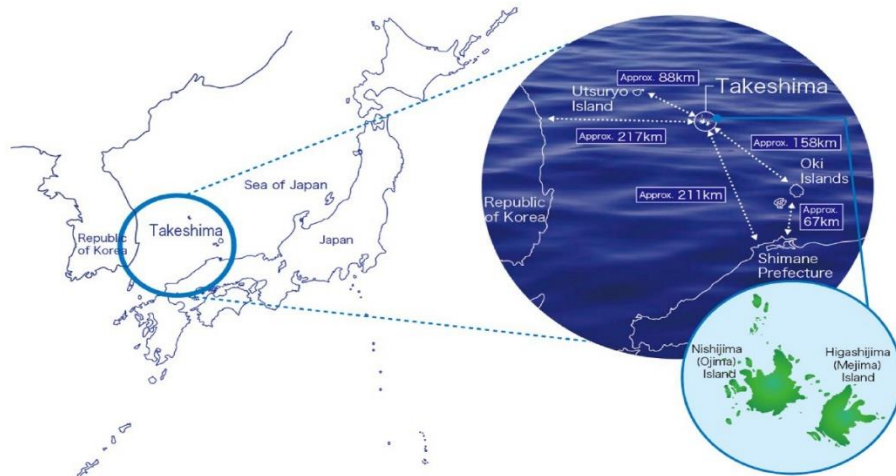


Figure 1: A Map of the Islands (Takeshima/Dokdo)¹⁷

In comparison to Japan’s territorial disputes with Russia and China,¹⁸ English language book publications on the Japan-Korea territorial dispute (the “territorial dispute” or “territorial conflict”) are relatively limited.¹⁹ A large number of academic journal articles, however, have been

¹⁴ *Id.* According to the Korean side, the Islands are “state-owned land” and currently under the administration of the Korean Ministry of Oceans and Fisheries. *Government Administration of Dokdo*, GYEONGSANGBUK-DO PROVINCE, <http://en.dokdo.go.kr/pages/s01/page.html?mc=7226> (last visited Nov. 5, 2020).

¹⁵ *Residents & Visitors*, MINISTRY OF FOREIGN AFF., REPUBLIC OF KOREA, <https://dokdo.mofa.go.kr/eng/introduce/residence.jsp> (last visited Oct. 2, 2020). Since 1965, a number of Korean civilians have moved from South Korea and resided on the Takeshima/Dokdo Islands. *Id.* The late Choi Jongduck was the first ever civilian who resided on the Islands. *Id.* Currently, Kim Sin Yeol is the only civilian who resides on the Islands since her husband, Kim Sung-do, passed away in 2018. *Id.*

¹⁶ *Composition*, GYEONGSANGBUK-DO PROVINCE, <http://en.dokdo.go.kr/pages/s01/page.html?mc=7227> (last visited Feb. 4, 2020).

¹⁷ *The Takeshima Issue: A Challenge to the Postwar International Order?*, *supra* note 10.

¹⁸ *See, e.g.*, JAMES D. J. BROWN, *JAPAN, RUSSIA AND THEIR TERRITORIAL DISPUTE: THE NORTHERN DELUSION* (2016); ANNA COSTA, *THE CHINA-JAPAN CONFLICT OVER THE SENKAKU/DIAOYU ISLANDS: USEFUL RIVALRY* (2016).

¹⁹ Still, there are a number of book publications both in Japanese and Korean

published on the issue,²⁰ although very few of those publications analyze feasible conflict resolution for the Islands.²¹ Aiming to fill this research gap, this article provides a systematic analysis on the territorial dispute by applying methods of conflict analysis as well as the conflict transformation approach, from a perspective of peace research and conflict resolution.

II. METHODOLOGY: POLICY ANALYSIS ASPECTS AND CONFLICT TRANSFORMATION METHODS

Unsurprisingly, most Japanese and Korean legal scholars and experts have examined the territorial dispute premised on the assumption that the Islands belong to their respective countries.²² International legal scholars, however, have tended to support Korea's territorial claim to the Islands.²³ For instance, Professor of Law Jon M. Van Dyke,²⁴ asserted that Korea's claim to territorial sovereignty over the Islands is stronger than

languages. As for books on the Japan-Korea territorial dispute published in English, see for example, BYUNGRYULL KIM, *THE HISTORY OF IMPERIAL JAPAN'S SEIZURE OF DOKDO* (2008) (describing the historical background of how the Empire of Japan seized the Islands in the middle of the Russo-Japanese War with diplomatic documents and military details) [hereinafter KIM, *THE HISTORY OF IMPERIAL JAPAN'S SEIZURE OF DOKDO*]; SEOKWOO LEE ET AL., *DOKDO: HISTORICAL APPRAISAL AND INTERNATIONAL JUSTICE* (Seokwoo Lee & Hee Eun Lee eds., 2011) (compiling legal analyses by several scholars from Korean, Japanese, American, and Chinese perspectives); PARK BYOUNG-SUP & NAITO SEICHU, *THE DOKDO/TAKESHIMA CONTROVERSY: STUDY BASED ON HISTORICAL MATERIALS* (NAT'L ASSEMBLY LIBR., REPUBLIC OF KOREA trans., 2009) (examining the bilateral territorial controversy from both Japanese and Korean perspectives and offering a critical analysis of Japan's claim to the sovereignty over the Islands).

²⁰ See, e.g., Jon M. Van Dyke, *Legal Issues Related to Sovereignty over Dokdo and its Maritime Boundary*, 38 OCEAN DEV. & INT'L L. 157 (2007); Kazuo Hori, *Japan's Incorporation of Takeshima into Its Territory in 1905*, 28 KOREA OBSERVER 477, 511 (1997), <https://www.dokdo-takeshima.com/wordpress/wp-content/images/Kazuo-Hori-Dokdo.pdf>; Chung, *supra* note 9.

²¹ See, e.g., Seokwoo Lee, *The Resolution of the Territorial Dispute Between Korea and Japan over the Liancourt Rocks*, 3 IBRU BOUNDARY & TERRITORY BRIEFINGS (2002), <https://www.dur.ac.uk/ibru/publications/view/?id=223>; Garret Bowman, *Why Now is the Time to Resolve the Dokdo/Takeshima Dispute*, 46 CASE W. RES. J. INT'L L. 433 (2013); Krista E. Wiegand & Ajin Choi, *Nationalism, Public Opinion, and Dispute Resolution: The Dokdo/Takeshima Dispute*, *Journal of Asian Pacific Communication*, 27 J. ASIAN PAC. COMMUN. 232, 232-45 (2017), <https://www.jbe-platform.com/content/journals/10.1075/japc.27.2.05wie>.

²² See, e.g., MASAO, SHIMOJO, *TAKESHIMA WA NIKKAN DOCHIRANO MONOKA (TO WHICH COUNTRY DOES TAKESHIMA BELONG, JAPAN OR KOREA?)* (2004); KIM HAK-JUN, *DOKDO/TAKESHIMA: KANKOKU NO RONRI (DOKDO/TAKESHIMA: THE LOGIC OF SOUTH KOREA)* (2007).

²³ See, e.g., Van Dyke, *supra* note 20, at 205; Bowman, *supra* note 21, at 451.

²⁴ John M. Van Dyke is former Professor of Law at the University of Hawai'i William S. Richardson School of Law and former Director of the Spark M. Matsunaga Institute for Peace at the University of Hawai'i.

Japan's claim.²⁵ Likewise, other international legal scholars have insisted that international law favors Korea's claim to the Islands.²⁶ Politically, the territorial dispute may create general diplomatic complications.²⁷ Legally, a joint submission of the territorial dispute to the International Court of Justice ("ICJ")²⁸ could be a feasible way to resolve the dispute.²⁹ Nevertheless, the refusal of the Korean government to refer the bilateral territorial dispute to the ICJ has made the judicial settlement of the territorial conflict virtually impossible thus far.³⁰

Due to the aforementioned complications, policy analysis, conflict resolution methods, and legal settlement are necessary to peacefully resolve the territorial dispute.³¹ In the field of peace research and conflict resolution, five levels of a conflict must be effectively analyzed: global, regional, national, organizational, and individual.³² It is also useful to employ three analytical levels of politics: international, national, and individual.³³ These

²⁵ Jon M. Van Dyke, *Addressing and Resolving the Dokdo Matter*, in *DOKDO: HISTORICAL APPRAISAL AND INTERNATIONAL JUSTICE*, *supra* note 19, at 29. More explicitly, Professor Van Dyke argued that "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." *Id.*; see also Van Dyke, *supra* note 20, at 205.

²⁶ Bowman, *supra* note 21; Sean Fern, *Tokdo or Takeshima? The International Law of Territorial Acquisition in the Japan-Korea Island Dispute*, 5 *STAN. J. E. ASIAN AFF.* 78, 87 (2005). It has been argued that the claim by the ROK is stronger in light of international law, especially its proximity (the Islands are closer to Korea's Ullungdo than Japan's Oki Islands) and Korea's effective control of the Islands. See Van Dyke, *supra* note 20, at 205.

²⁷ See J. Berkshire Miller, *The ICJ and the Dokdo/Takeshima Dispute*, *DIPLOMAT* (May 13, 2014), <https://thediplomat.com/2014/05/the-icj-and-the-dokdotakeshima-dispute/>.

²⁸ The ICJ is a judicial branch of the United Nations established in Hague, the Netherlands in 1945. Although the ICJ is responsible for judicial settlement of international disputes, a clear limitation of the ICJ lies in the fact that its jurisdiction relies on consent by the conflicting parties (states). Eric J. Sinrod, *United States: The Limitations of the International Court of Justice*, *MONDAQ* (Sept. 25, 2014), <https://www.mondaq.com/unitedstates/international-courts-tribunals/342368/the-limitations-of-the-international-court-of-justice>. In other words, if either party to the conflict disagrees to the judicial settlement by the ICJ, the dispute cannot be resolved. *Id.*

²⁹ Miller, *supra* note 27.

³⁰ Miller, *supra* note 27.

³¹ As for the previous research on conflict resolution methods, see OLIVER RAMSBOTHAM, TOM WOODHOUSE & HUGH MIALI, *CONTEMPORARY CONFLICT RESOLUTION*, at 123 (4th ed. 2016).

³² *Id.*

³³ See generally KENNETH WALTZ, *MAN, THE STATE AND WAR: A THEORETICAL ANALYSIS* (2001).

analytical levels are useful in analyzing causes of international conflicts.³⁴ A systematic and eclectic analysis with multidisciplinary aspects is necessary to effectively examine and comprehend international security issues, including the territorial disputes.³⁵

By adapting and applying the multiple levels of policy analysis, this article systematically examines: the historical background of the territorial dispute (the “historical aspect”); the stance of the United States regarding the territorial dispute as a political and structural factor (the “political aspect”); the legal factor of the San Francisco Peace Treaty, the Syngman Rhee Line and the Japan-Korea Basic Treaty (the “legal aspect”); the economic value of the Islands (the “economic aspect”); and the social and individual sentiments regarding the disputed islets; as well as the bilateral history problem (the “social aspect”). The historical, political, legal, economic, and social perspectives are comprehensive and overlap with global, regional, national, organizational, and individual analytical levels.

This article also sheds light on the applicability of the transcend method,³⁶ also referred to as a conflict transformation approach,³⁷ to the territorial dispute. As will be examined later, conflict transformation leads to a mutually acceptable and sustainable “win-win” solution for both countries in this dispute.³⁸ Judicial settlement is desirable as a conflict resolution method, but could potentially result in a “win-lose” situation.³⁹ Moreover, judicial settlement cannot be applied to the territorial dispute so long as Korea refuses judicial settlement.⁴⁰ The transcend method will be strengthened by integrating with it the principles of “Ho‘oponopono,” a traditional Native Hawaiian reconciliation method,⁴¹ which will contribute to reaching compromise and promoting a more peaceful relationship

³⁴ *See id.*

³⁵ *See generally* DAISUKE AKIMOTO, JAPAN AS A ‘GLOBAL PACIFIST STATE’: ITS CHANGING PACIFISM AND SECURITY IDENTITY (2013). “Analytic eclecticism” in this article is an approach that examines historical, political, economic, legal, and social perspectives. *See generally* RUDRA SIL & PETER J. KATZENSTEIN, BEYOND PARADIGMS: ANALYTIC ECLECTICISM IN THE STUDY OF WORLD POLITICS (2010).

³⁶ The transcend method “is based on the central thesis that to prevent violence and develop the creative potential of a conflict, there has to be transformation,” and it is also referred to as “conflict transformation by peaceful means.” *The TRANSCEND Method: Conflict Transformation by Peaceful Means*, TRANSCEND MEDIA SERV. (Nov. 27, 2017), <https://www.transcend.org/tms/2017/11/conflict-transformation-by-peaceful-means-the-transcend-method/>.

³⁷ *Id.*

³⁸ *See infra* Section VIII.

³⁹ *See infra* Section VIII.

⁴⁰ *See infra* Section VIII.

⁴¹ E. VICTORIA SHOOK, HO‘OPONOPONO: CONTEMPORARY USES OF A HAWAIIAN PROBLEM-SOLVING PROCESS (1985).

between Japan and Korea.⁴² Both the transcend method and the application of Ho‘oponopono to conflict transformation were originally proposed by Distinguished Professor of Peace Studies Johan Galtung,⁴³ who conducted peace research and conflict transformation and taught peace studies at the University of Hawai‘i from 1993 to 2000.⁴⁴ Accordingly, this article employs both the conflict analysis framework and conflict transformation methods in search of peaceful settlement of the territorial dispute.⁴⁵

III. HISTORICAL BACKGROUND: THE ORIGIN OF THE TAKESHIMA/DOKDO ISLANDS DISPUTE

The Korean government has argued that Dokdo became part of the territory of Korea in 512.⁴⁶ Furthermore, noting that “the two islands of Usan (Dokdo) and Mureung (Ulleungdo) are not located far apart from each other so Dokdo is visible from Ulleungdo on a clear day[.]” Korean scholars assert that both Ulleungdo and Dokdo belong to the Uljin county of Gangwon Province.⁴⁷

The ownership dispute over Ulleungdo was triggered in 1693, when Korean fishermen encountered Japanese fishermen around Ulleungdo, and

⁴² *See id.*

⁴³ Johan Galtung has been called the “father of peace studies” for his outstanding research outcomes and contributions toward resolving actual conflicts. JOHAN GALTUNG & DIETRICH FISCHER, JOHAN GALTUNG: PIONEER OF PEACE RESEARCH (2013), <https://www.springer.com/jp/book/9783642324802>.

⁴⁴ *See generally* JOHAN GALTUNG, UNITED NATIONS DISASTER MGMT. TRAINING PROGRAMME, CONFLICT TRANSFORMATION BY PEACEFUL MEANS: THE TRANSCEND METHOD (2000), https://www.transcend.org/pctrcluj2004/TRANSCEND_manual.pdf [hereinafter UNITED NATIONS DISASTER MGMT. TRAINING PROGRAMME]; JOHAN GALTUNG, NIHONJIN NO TAMENO HEIWARON (PEOPLE’S PEACE: POSITIVE PEACE IN EAST ASIA & JAPAN’S NEW ROLE) (2017), <https://www.diamond.co.jp/book/9784478100813.html>; Johan Galtung, *TRANSCEND-Galtung Track Record of Conflict Solution/Mediation: 1958-2018*, TRANSCEND MEDIA SERV., <https://www.transcend.org/tms/2018/11/transcend-galtung-track-record-on-conflict-solution-mediation-1958-2018/> (last visited Jan. 17, 2020).

⁴⁵ *See generally* OLIVER RAMSBOTHAM, TOM WOODHOUSE & HUGH MIALL, CONTEMPORARY CONFLICT RESOLUTION (4th ed. 2016); UNITED NATIONS DISASTER MGMT. TRAINING PROGRAMME, *supra* note 44.

⁴⁶ *Why Dokdo is Korean Territory*, MINISTRY OF FOREIGN AFF., REPUBLIC OF KOREA, <https://dokdo.mofa.go.kr/eng/dokdo/reason.jsp> (last visited Jan. 30, 2020).

⁴⁷ *Id.* In reference to *Samguksagi (The Chronicles of the Three Kingdoms)*, the Korean government has argued that Dokdo became part of the territory of Korea in 512, when “Usan-guk (Ulleungdo and Dokdo) was conquered by Ichan Isabu, and subjugated to Silla.” *Id.* According to *Sejong Sillok, Jiriji (Geography Section of the Annals of King Sejon’s Reign)* (1454), both Ulleungdo and Dokdo belong to Uljin county of Gangwon Province. *Id.* Historically, Korea’s recognition of the Islands (Takeshima/Dokdo) is much longer than that of Japan. *Id.* Moreover, Korea has regarded Ulleungdo and the Islands as the territory of Korea as a set since the 6th century. *Id.*

Korean fishermen An Yong-bok and Park Eodun were taken to Japan.⁴⁸ In response to this incident, the Edo Shogunate⁴⁹ sent an inquiry to the Tottori-han⁵⁰ regarding the ownership of Ulleungdo on December 24, 1695.⁵¹ According to the Korean government, the Tottori-han replied the next day and asserted that Takeshima (Ulleungdo) and Matsushima (Dokdo) were not part of the territory of the Tottori-han.⁵² Based on this 17th century series of events, Korea claims the Edo Shogunate's subsequent issuance of the order to ban passage to Ulleungdo on January 28, 1696 as Japan's first official recognition that Ulleungdo and the Islands belonged to Korea.⁵³

On the other hand, the Japanese government has argued that Takeshima has been part of Okinoshima Town of Shimane Prefecture since the mid-17th century.⁵⁴ Although vegetation and freshwater resources on the Islands are scarce, the Japanese people used Takeshima as a fishing ground for sea lions and abalone and started sea lion hunting businesses there during the 20th century.⁵⁵ Japanese merchants acquired official

⁴⁸ *Id.* This incident came to be known as the "Ulleungdo Dispute." *Id.*

⁴⁹ In Japanese history, "Shogun" was a national military leader. ELGIN HEINZ ET AL., *LEARNING FROM SHOGUN: JAPANESE HISTORY AND WESTERN FANTASY* 147 (1980) (Henry Smith ed. 1980), http://www.columbia.edu/~hds2/learning/Learning_from_shogun_txt.pdf. Literally, "general," the title was first assumed by Minamoto Yoritomo in 1190. *Id.* Tokugawa Ieyasu assumed the position in 1603. *Id.* The administration ruled by the Shogun was called "Shogunate." *Id.*

⁵⁰ Tottori-han was reformed as Tottori Prefecture. Regarding the administrative transition, see for instance, Ardath W. Burks, *Administrative Transition from Han to Ken: The Example of Okayama*, 15 *FAR E. Q.* 371, (1956), <https://www.jstor.org/stable/2941875?seq=1>. In 1871, the Meiji government implemented an administrative reform, transforming feudal domains ("han") into prefectures ("ken") in Japan. *Id.*

⁵¹ *Why Dokdo is Korean Territory*, *supra* note 46.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Takeshima is Japanese Territory!*, SHIMANE PREFECTURAL GOV'T, <https://www.pref.shimane.lg.jp/admin/pref/takeshima/web-takeshima/takeshima02/syuchu-english.html> (last visited Oct. 4, 2020); *Japan's Consistent Position on the Territorial Sovereignty over Takeshima*, *supra* note 2; *Sovereignty over Takeshima*, MINISTRY OF FOREIGN AFF. OF JAPAN, https://www.mofa.go.jp/a_na/takeshima/page1we_000058.html (last updated July 30, 2015). Economic activities by Japanese people on Takeshima were carried out in the 17th century, and the Japanese side believes that it established sovereignty over the Islands during this period. See Takashi Tsukamoto, *An Outline of the Territorial Dispute over Takeshima*, JAPAN DIGITAL LIBR./JAPAN'S TERRITORIES SERIES, Mar. 2015, at 1–2, https://www2.jiia.or.jp/en/pdf/digital_library/Tsukamoto_takeshima.pdf (last visited Oct. 5, 2020).

⁵⁵ *Information about Takeshima*, *supra* note 6.

permission from the Edo Shogunate for passage to Utsuryo Island⁵⁶ (Ulleungdo) and utilized the Islands as a navigation port.⁵⁷ Based on this understanding of history, the Japanese government has claimed that it “had established sovereignty over Takeshima by the mid-17th century (early Edo period) at the latest.”⁵⁸

In September 1904, Nakai Yozaburo, a resident of the Oki Islands in Shimane Prefecture, requested that the Japanese government incorporate Takeshima into Shimane Prefecture so he could officially expand the sea lion hunting industry.⁵⁹ Additionally, after the outbreak of the Russo-Japanese War (1904-1905), the Japanese government found strategic military value in the Islands.⁶⁰ On November 20, 1904, the Japanese warship Tsushima arrived at the Islands to investigate whether Japan could install a telegraphic station for military use.⁶¹ On January 28, 1905, the Japanese government made a cabinet decision to officially reaffirm the territorial sovereignty over Takeshima and incorporated the Islands into the prefecture.⁶²

⁵⁶ Utsuryo Island (Ulleungdo or Ulleung Island) has belonged to the ROK. The Island is 87.4 kilometers away from the Islands (Takeshima/Dokdo). See *Local Information (About Ulleungdo)*, ULLEUNG-GUN, (2016) https://www.ulleung.go.kr/english/page.htm?mnu_uid=2127& (last visited Dec. 6, 2020). In 1900, Ulleungdo was renamed as Uldongun and incorporated into Gangwondo, Korea. See *History (About Ulleungdo)*, ULLEUNG-GUN, (2016) https://www.ulleung.go.kr/english/page.htm?mnu_uid=2126& (last visited Dec. 6, 2020).

⁵⁷ *Sovereignty over Takeshima*, *supra* note 54; Tsukamoto, *supra* note 54, at 2. The Edo Shogunate granted permission to visit Ulleungdo (via or through the Islands) in 1618. Tsukamoto, *supra* note 54, at 2. The year permission was granted, however, could be 1625, according to other evidence. *Id.* at 2 n. 5. Although the Edo Shogunate banned the passage to Ulleungdo, passage to the Islands (Takeshima/Dokdo) was not forbidden. *Id.* at 3.

⁵⁸ *Sovereignty over Takeshima*, *supra* note 54. Nevertheless, it has been criticized by some Korean scholars that the Japanese government has ignored the decision by the Daijokan/Dajokan (Meiji Japan’s Council of State) that noted in 1877 that “It should be kept in mind that Takeshima (Ulleungdo) and Matsushima (Dokdo) has nothing to do with Japan.” See KIM, THE HISTORY OF IMPERIAL JAPAN’S SEIZURE OF DOKDO, *supra* note 19, at 5. Dajokan was the “highest state institution” and equivalent to the “Cabinet” of the Japanese government. Park and Naito also argued that Dajokan’s decree confirmed that Japan did not regard the Islands as the territory of Japan. See PARK & NAITO, *supra* note 19, at 311.

⁵⁹ *Incorporation of Takeshima into Shimane Prefecture*, MINISTRY OF FOREIGN AFF. OF JAPAN, https://www.mofa.go.jp/a_o/na/takeshima/page1we_000060.html (last updated July 30, 2015).

⁶⁰ Hori, *supra* note 20, at 511–14.

⁶¹ *Id.* at 513.

⁶² *Incorporation of Takeshima into Shimane Prefecture*, *supra* note 59.

On February 22, 1905, Shimane Prefecture officially announced its incorporation of Takeshima.⁶³ The Japanese government in the Meiji Era (1868-1912) charged its citizens a fee to use the Islands, and there was no official protest against the exercise of sovereignty from foreign countries.⁶⁴ Thus, the Japanese government asserts that they continued exercising territorial sovereignty over the Islands until the end of World War II in 1945.⁶⁵ On the contrary, the Korean government has claimed that Japan realized the strategic value of the Islands in the middle of the Russo-Japanese War of 1904-1905 and that Japan only then annexed the islets as a “first step toward Japanese invasion of Joseon.”⁶⁶ Thus, evaluating the historical aspect of this territorial dispute explains, in part, why both countries have different interpretations regarding sovereignty over the Islands and that these differing interpretations are a fundamental factor in the territorial dispute.⁶⁷

⁶³ *Takeshima is Japanese Territory!*, *supra* note 54.

⁶⁴ See *Korean Objections to Japan's 1905 Annexation of Dokdo*, (2009-2020), HIST. FACTS ABOUT KOREA'S DOKDO, <https://www.dokdo-takeshima.com/korean-objections-to-japans-1905-claim.html> (last visited Dec. 6, 2020). During this period, Korea was not able to officially protest against the incorporation as it was deprived of diplomatic rights by Japan. See *id.* Still, it has to be noted that there were unofficial objections by the Korean people to Japan's annexation of the Islands. *Id.*

⁶⁵ *An Outline of the Japanese Position on Sovereignty over Takeshima and the Illegal Occupation by the Republic of Korea*, MINISTRY OF FOREIGN AFF. OF JAPAN, <https://www.mofa.go.jp/region/asia-paci/takeshima/position.html> (last updated Aug. 23, 2016). The Japanese government has explained that Japan's sovereignty over the Islands (Takeshima/Dokdo) was established in the 17th century, and Japan “reaffirmed” the sovereignty over the Islands in 1905 by the cabinet decision and the incorporation into Shimane Prefecture. See *Takeshima: Definitive Clarifications as to Why Takeshima is Japan's Territory!*, MINISTRY OF FOREIGN AFF. OF JAPAN, at 8–9, 11. <https://www.mofa.go.jp/files/000092147.pdf> (last visited Dec. 17, 2020).

⁶⁶ *Japan's Encroachment*, DOKDO RES. INST., http://www.dokdohistory.com/eng/gnb02/sub03_01.do (last visited Feb. 6, 2020). Indeed, the outbreak of the Russo-Japanese War coincided with the Japanese Navy's entry into Incheon Port at 4:20 am on February 8, 1904. At 3:30 pm on February 9, Japanese Minister to Korea Gonsuke Hayashi asked for “Korea's cooperation in Japan's war against Russia.” See KIM, *THE HISTORY OF IMPERIAL JAPAN'S SEIZURE OF DOKDO*, *supra* note 19, at 71. After some consecutive sea battles, the Russo-Japanese War reached a stalemate. Then, Russia attempted to utilize Ulleungdo as a base for naval operations, while Japan planned to block the Russian advance by making use of Takeshima/Dokdo (the Islands) as its base for naval operations. *Id.* at 114–15.

⁶⁷ See generally MASAO, SHIMOJO, *TAKESHIMA WA NIKKAN DOCHIRANO MONOKA (TO WHICH COUNTRY DOES TAKESHIMA BELONG, JAPAN OR KOREA?)* (2004); KIM HAK-JUN, *DOKDO/TAKESHIMA: KANKOKU NO RONRI (DOKDO/TAKESHIMA: THE LOGIC OF SOUTH KOREA)* (2007), *supra* note 22.

IV. POLITICAL ASPECT: THE POSITION OF THE UNITED STATES ON THE
TERRITORIAL DISPUTE

On August 15, 1945, Japanese Emperor Hirohito announced the surrender of Imperial Japan in World War II, and Japanese Foreign Minister Mamoru Shigemitsu signed the Japanese Instrument of Surrender aboard the United States Navy Battleship *U.S.S. Missouri* in Tokyo Bay on September 2, 1945.⁶⁸ During this period, Japan was occupied by the U.S.-led Allied Powers and forced to disarm itself and relinquish its colonies, including those in Korea and Taiwan.⁶⁹ Immediately after the end of World War II, General Douglas MacArthur, Supreme Commander for the Allied Powers (“SCAP”), “designated the areas where Japan had to cease exerting political and administrative power” in Supreme Commander for the Allied Powers Instruction Notes (“SCAPIN”).⁷⁰ According to SCAPIN No. 677, issued in January 1946, Japan was “defined to include the four main islands of Japan (Hokkaido, Honshu, Kyushu and Shikoku) and the approximately 1,000 smaller adjacent islands, including the Tsushima Islands and Ryukyu (Nansei) Islands north of 30 degrees North Latitude (excluding Kuchinoshima Island)[,]” while “Utsuryo Island, Cheju Island, the Izu Islands, the Ogasawara Islands, and Takeshima [were listed] as the areas not included with those where Japan was allowed to exert political or administrative power.”⁷¹

In June 1946, SCAPIN No. 1033, also known as the “MacArthur Line,”⁷² was issued to expand “the areas where Japanese were permitted to engage in fishing and whaling.”⁷³ SCAPIN No. 1033 instructed Japanese vessels or personnel “not [to] approach closer than twelve miles to Takeshima nor have any contact with said island.”⁷⁴ At the same time,

⁶⁸ *The Surrender Ceremony*, BATTLESHIP MO. MEM’L, <https://ussmissouri.org/learn-the-history/surrender> (last visited Nov. 7, 2020).

⁶⁹ *Occupation and Reconstruction of Japan, 1945–52*, OFF. HISTORIAN, <https://history.state.gov/milestones/1945-1952/japan-reconstruction> (last visited Nov. 7, 2020).

⁷⁰ This note was prepared by General MacArthur as part of the occupation policy by the General Headquarters (GHQ). *Takeshima Immediately After World War II*, MINISTRY OF FOREIGN AFF. OF JAPAN, https://www.mofa.go.jp/a_o/na/takeshima/page1we_000061.html (last updated July 30, 2015).

⁷¹ *Id.*

⁷² The MacArthur Line (SCAPIN No. 1033) was named after by General Douglas MacArthur as the SCAP. U.S. DEP’T OF STATE, *Memorandum of Conversation, by the Officer in Charge of Korean Affairs in the Office of Northeast Asian Affairs (Emmons)*, in 6 FOREIGN RELATIONS OF THE UNITED STATES, 1951, ASIA AND THE PACIFIC 1182 (1977), <https://history.state.gov/historicaldocuments/frus1951v06p1/d633>.

⁷³ *Takeshima Immediately after World War II*, *supra* note 70.

⁷⁴ *Id.*

however, SCAPIN No. 677 stated that the instruction note (SCAPIN No. 677) was not “the ultimate determination of the minor islands referred to in Article 8 of the Potsdam Declaration.”⁷⁵ SCAPIN No. 1033 moreover noted that the instruction note (SCAPIN No. 1033) was not the “ultimate determination of national jurisdiction, international boundaries or fishing rights in the area concerned or in any other area.”⁷⁶ In short, SCAPIN No. 677 and No. 1033 seemed to deprive Japan of the Islands for a while, but these two notes were tentative measures until a peace treaty is signed with Japan.⁷⁷

In SCAPIN No. 2160 on July 6, 1951, the United States designated the Islands as a “bombing range” for the U.S. Forces.⁷⁸ In response, the Japanese government established a “consultative body for the implementation of the Japan-U.S. Administrative Agreement (an agreement based on the former Japan-U.S. Security Treaty, which was later succeeded by the current Japan-U.S. Status of Forces Agreement)[.]”⁷⁹ Based on the agreement, U.S. Forces were stationed in Takeshima as part of the U.S. military’s “facilities and areas in Japan[.]”⁸⁰ The U.S. government requested to redefine the scope of Japanese territory and that Japan allow the continued use of the Islands as a bombing range, even after the San Francisco Peace Treaty officially terminated the war between Japan and the signatory states of the Allies of World War II.⁸¹

⁷⁵ *Id.* In the Potsdam Declaration of July 26, 1945, which determined terms for the Japanese’ surrender, the Islands were not specified as those that Japan should give up. Potsdam Declaration July 26, 1945, <https://www.ndl.go.jp/constitution/e/etc/c06.html> (last visited Nov. 7, 2020). Indeed, Article 8 of the Declaration stipulated, “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.” *Id.*

⁷⁶ *Takeshima Immediately after World War II*, *supra* note 70.

⁷⁷ *Id.*

⁷⁸ Memorandum from K. B. Bush, U.S. Brigadier General, General Headquarters Supreme Commander for the Allied Powers to Japanese Government (July 6, 1951) (on file with U.S. National Archives and Records Administration), *available at* https://www.spf.org/islandstudies/jp/info_library/takeshima/t-01-history/t_01_history016-ref01.pdf.

⁷⁹ *Takeshima as a Bombing Range for the U.S. Forces*, MINISTRY OF FOREIGN AFF. OF JAPAN, https://www.mofa.go.jp/a_o/na/takeshima/page1we_000063.html (last updated July 30, 2015).

⁸⁰ Designation as a Training Area for the U.S. Forces (official gazette of July 26, 1952), MINISTRY OF FOREIGN AFF. OF JAPAN, https://www.mofa.go.jp/mofaj/area/takeshima/pdfs/g_beigun01.pdf (last visited Dec. 11, 2020).

⁸¹ *Id.* The Treaty of San Francisco, or the Treaty of Peace with Japan, was signed on September 8, 1951 and came into force on April 28, 1952. *See* Treaty of Peace with Japan, Allied Powers-Japan, Sept. 8, 1951, 1832 U.N.T.S. 46.

On July 19, 1951, Yang Yu Chan, the Korean Ambassador to the United States, sent a letter to Dean G. Acheson, Secretary of State of the United States, regarding the territorial sovereignty of the Islands in the draft of the San Francisco Peace Treaty.⁸² The Korean Ambassador noted that “[the Korean] government requests that the word ‘renounces’ [] be replaced by ‘confirms that it renounced on August 9, 1945, all right, title and claim to Korea and the islands which were part of Korea prior to its annexation by Japan, including the island[] [of] . . . Dokdo[.]’”⁸³ The Ambassador’s letter has acted as the Korean government’s unofficial request that the United States recognize that the Islands should be included in areas that Japan renounced as a consequence of its defeat in the Asia–Pacific War.⁸⁴ In response to the request by the Korean Ambassador, Dean Rusk, U.S. Assistant Secretary of State for Far Eastern Affairs, replied that:

The United States Government does not feel that the [San Francisco Peace 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 to 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.⁸⁵

The above “Rusk Letter” is not an official statement by the U.S. government,⁸⁶ but it can be regarded as a fundamental stance of Washington on the territorial dispute.⁸⁷ Furthermore, an August 15, 1954 report by U.S.

⁸² Letter from Yang Yu Chan, ROK Ambassador to the U.S., to Dean G. Acheson, U.S. Secretary of State (July 19, 1951) (on file with author), *available at* https://www.mofa.go.jp/mofaj/area/takeshima/pdfs/g_sfjoyaku02.pdf (last visited Jan. 31, 2020).

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Treatment of Takeshima in the San Francisco Peace Treaty*, MINISTRY OF FOREIGN AFF. OF JAPAN, https://www.mofa.go.jp/a_o/na/takeshima/page1we_000062.html (last visited Jan. 31, 2020).

⁸⁶ Yuji Hosaka, *Is the So-Called “Rusk Letter” be a Critical Evidence of Japan’s Territorial Claim to Dokdo Island?*, 7 J. E. ASIA & INT’L L. 145, 145 (2014), <https://dokdoandeastasia.com/wp-content/uploads/2015/04/Rusk-Letter2014-Yuji-Hosaka145-160.pdf>.

⁸⁷ *See* Letter Sent from the U.S. Government to the Korean Government on August 10, 1951 (Letter from Dean Rusk, the U.S. Assistant Secretary of State, to Yang Yu

Ambassador Van Fleet reaffirmed the stance that the Islands are part of the territory of Japan in accordance with the San Francisco Peace Treaty.⁸⁸ The report by Ambassador Van Fleet mentioned ownership of the Islands is as follows:

The Island of Dokto is in the Sea of Japan approximately midway between Korea and Honshu. This Island is, in fact, only a group of barren, uninhabited rocks. When the Treaty of Peace with Japan was being drafted, the Republic of Korea asserted its claims to Dokto but the United States concluded that they remained under Japanese sovereignty and the Island was not included among the Islands that Japan released from its ownership under the Peace Treaty.⁸⁹

Thus, the United States has recognized Japan's sovereign ownership of Takeshima despite the Korean government's request.⁹⁰ Nevertheless, the U.S. government has been neutral regarding the judicial settlement of the territorial conflict.⁹¹ Ambassador Van Fleet concluded in the same report that "[t]hough the United States considers that the islands are Japanese territory, we have declined to interfere in the dispute."⁹² In addition to the historical discrepancies between Korea and Japan regarding the sovereignty of the Islands as discussed above, the unwillingness of the U.S. government to determine the territorial sovereignty of the Islands has made political resolution of the territorial dispute even more difficult.⁹³ The United States, as a leader during the occupation period of postwar Japan, was influential and responsible for creating a series of SCAPIN yet avoided intervening in

Chan, the ROK Ambassador to the United States [The "Rusk Letter"], DEPARTMENT OF STATE, THE UNITED STATES, August 10, 1951, https://www.cas.go.jp/ryodo_eg/shiryo/takeshima/detail/t1951081000101.html (last visited Dec. 7, 2020). The letter was published by the U.S. Department of State. *Id.*

⁸⁸ *Report by Ambassador Van Fleet*, MINISTRY OF FOREIGN AFF. OF JAPAN, https://www.mofa.go.jp/mofaj/area/takeshima/pdfs/g_sfjoyaku04.pdf (last updated July 30, 2015).

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ See Mike Mochizuki, *The US Factor in Japan's Territorial Disputes*, JAPAN SPOTLIGHT 18 (March/April 2013), https://www.jef.or.jp/journal/pdf/188th_cover1-05.pdf (last visited Dec. 7, 2020). Indeed, there exists an argument that Washington prefers the territorial dispute "remain unresolved," because "it gives the U.S. strategic leverage in the region and steers Japan to remain committed to the bilateral alliance and the U.S. military presence on Japanese territory." *Id.*

the resolution of this territorial dispute between the two countries.⁹⁴ The lack of political resolution with the assistance of the United States requires the contemplation of a judicial settlement.⁹⁵

V. LEGAL FACTOR: LIMITATION OF JUDICIAL SETTLEMENT OF THE TERRITORIAL DISPUTE

Legally, the primary purpose of the San Francisco Peace Treaty of 1951 was to terminate the war between Japan and each of the Allied Powers, recognize the full sovereignty of the Japanese people over Japan, and to determine the scope of Japanese territory.⁹⁶ Unfortunately however, the treaty did not demarcate a border of the Japanese territory, causing the prolonged territorial dispute over the Islands.⁹⁷ It has to be noted that early drafts of the peace treaty prepared by the U.S. State Department “explicitly included the Liancourt Rocks (Takeshima) among the territories to which Japan would renounce all rights and titles.”⁹⁸ Nonetheless, later U.S. State Department drafts of the peace treaty specified the Islands as the territory of Japan.⁹⁹ Simply put, the drafting process of the San Francisco Peace Treaty shows that there existed diverse and conflictual perspectives on the

⁹⁴ *Id.* The United States was also responsible for drafting the San Francisco Peace Treaty, but decided not to mention the Islands in the Treaty on purpose. *Id.* at 19.

⁹⁵ See Alain Pellet, *Judicial Settlement of International Disputes*, OXFORD PUB. INT’L L., <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e54> (last visited Nov. 7, 2020). “Judicial settlement” of international disputes is “one of the various means of peaceful settlement of international disputes” listed in Article 33 of the Charter of the United Nations. *Id.* Paragraph 1 of Article 33 of the UN Charter stipulates that, “The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.” U.N. Charter art. 33, ¶ 1.

⁹⁶ See Treaty of Peace with Japan, *supra* note 81, 1832 U.N.T.S. at 48 art. 1.

⁹⁷ See generally Kimie Hara, *The San Francisco Peace Treaty and Frontier Problems in the Regional Order in East Asia: A Sixty Year Perspective*, 10(17) ASIA-PAC. J. 1 (2012), <https://apjjf.org/-Kimie-Hara/3739/article.pdf>

⁹⁸ Mochizuki, *supra* note 93, at 18. Indeed, the first draft on March 19, 1947 stipulated that “Japan hereby renounces all rights and titles to Korea, including Quelpart Island, Port Hamilton, Dagelet (Utsuryo) Island and Liancourt Rock (Takeshima).” Seokwoo Lee, *The 1951 San Francisco Peace Treaty with Japan and the Territorial Disputes in East Asia*, 11 WASH. INT’L L. J. 65, 129 (2002), <https://digitalcommons.law.uw.edu/cgi/viewcontent.cgi?article=1272&context=wilj>. Other early drafts (August 5, 1947, January 8, 1948, October 13, 1949, and November 2, 1949) also regarded the Islands as Korean territory. *Id.*

⁹⁹ Mochizuki, *supra* note 93, at 18–19. The policy shift of the United States over the Islands was suggested by William J. Sebald, the U.S. Political Adviser for Japan, who regarded the Islands as belonging to Japan. Lee, *supra* note 98, at 130.

sovereignty over the Islands.¹⁰⁰ The final version of the peace treaty eventually excluded any mention of the Islands.¹⁰¹ Indeed, Article 2(a) of the peace treaty stipulates that “Japan, recognizing the independence of Korea, renounces all right, title and claim to Korea, including the islands of Quelpart, Port Hamilton and Dagelet [Ulleungdo].”¹⁰² From a Japanese perspective, exclusion of Takeshima in the peace treaty signifies that the peace treaty determined that the Islands belong to the territory of Japan.¹⁰³ From a Korean viewpoint, however, it can be interpreted that the mere fact that Dokdo was not mentioned in the peace treaty does not mean that Japan did not renounce the Islands.¹⁰⁴

It is understandable that the Korean side was not satisfied with the drafting process, especially the Rusk Letter, and the final version of the San Francisco Peace Treaty, which did not resolve the territorial dispute.¹⁰⁵ On January 18, 1952, then Korean President Syngman Rhee unilaterally declared the “Syngman Rhee Line” that delineated the territory of the ROK, which included the Islands.¹⁰⁶ Notably, the Syngman Rhee Line was announced before the San Francisco Peace Treaty was enforced.¹⁰⁷ On February 4, 1953, the Japanese Daiichi Daihomaru fishing boat was shot by a Korean Navy vessel in international waters near Jeju Island, resulting in the death of the boat’s chief fisherman.¹⁰⁸ Months later, in July 1953, the Japanese Maritime Safety Agency, which later became the Japan Coast Guard, demanded that Korean fishermen leave the Islands, but the Japanese

¹⁰⁰ See generally Lee, *supra* note 98, at 127–44.

¹⁰¹ See generally *id.*

¹⁰² See Treaty of Peace with Japan, *supra* note 81, 1832 U.N.T.S. at 48 art. 1.

¹⁰³ *Treatment of Takeshima in the San Francisco Peace Treaty*, *supra* note 85.

¹⁰⁴ *Dokdo, Korea’s Beautiful Island*, MINISTRY OF FOREIGN AFF., REPUBLIC OF KOREA 30, http://www.korea.net/FILE/pdf/general/dokdo/2014_dokdo_English.pdf (last visited Dec. 8, 2020).

¹⁰⁵ Seokwoo Lee, *Dokdo: The San Francisco Peace Treaty, International Law on Territorial Disputes, and Historical Criticism*, 35(3) ASIAN PERSP. 361, 364–65 (2011).

¹⁰⁶ *Establishment of “Syngman Rhee Line” and Illegal Occupation of Takeshima by the Republic of Korea*, MINISTRY OF FOREIGN AFF. OF JAPAN, https://www.mofa.go.jp/a_o/na/takeshima/page1we_000064.html (last updated July 30, 2015).

¹⁰⁷ CABINET SECRETARIAT, COMMISSIONED RESEARCH REPORT ON THE TAKESHIMA-RELATED DOCUMENTS 23 (2017), http://www.cas.go.jp/jp/ryodo_eg/img/data/archives-takeshima03.pdf.

¹⁰⁸ Yoshiko Yamasaki, *The Creation of a Basis for the Possession of Takeshima by the Korean Government*, JAPAN DIGITAL LIBR./JAPAN’S TERRITORIES SERIES, Mar. 2016, at 25, 26, http://www2.jiia.or.jp/en/pdf/digital_library/japan_s_territories/160414_Yoshiko_Yamasaki.pdf. Jeju Island is far away from the Takeshima/Dokdo Islands. This incident shows how the Korean side became tougher after the establishment of the Syngman Rhee Line. *Id.*

vessel was fired at by Korean authorities.¹⁰⁹ In June 1954, the Korean government announced that it dispatched a permanent battalion of the ROK Coast Guard to the Islands, and Korean security personnel have been stationed on the Islands ever since.¹¹⁰

In response to the Syngman Rhee Line and the Korean occupation of the Islands, the Japanese government argued that the acts of the Korean government were conducted in contravention of international law.¹¹¹ In response, Japan proposed that the territorial dispute be referred to the ICJ for the first time in September 1954.¹¹² The Korean government rejected the proposal the following month.¹¹³ In 1962, Japanese Foreign Minister Zentaro Kosaka again proposed to Korean Foreign Minister Choi Duk Shin that they refer the territorial dispute to the ICJ, but Korea rejected the proposal.¹¹⁴ In August 2012, the Japanese government delivered a third proposal to the Korean government to refer the dispute to the ICJ after Korean President Lee Myung-bak visited the Islands for the first time as the Korean president.¹¹⁵ Japan's proposal was again rejected by the Korean government.¹¹⁶ It appears the Korean government continuously declined the joint referral of the dispute to the ICJ due to concerns regarding the imbalance of political and economic influence within the United Nations as well as the ICJ.¹¹⁷

As for legal bases for claims to the Islands, the Korean government has insisted that Dokdo belongs to Korea on the basis of SCAPIN No. 677, SCAPIN No. 1033 (MacArthur Line), the Cairo Declaration of 1943,¹¹⁸ and

¹⁰⁹ Tsukamoto, *supra* note 54, at 13.

¹¹⁰ *Establishment of "Syngman Rhee Line" and Illegal Occupation of Takeshima by the Republic of Korea*, *supra* note 106.

¹¹¹ Arata Yokokawa, *Takeshima*, JAPAN DIGITAL LIBR./JAPAN'S TERRITORIES SERIES, Mar. 2015, at 12, http://www2.jiia.or.jp/en/pdf/digital_library/Yokokawa_takeshima.pdf.

¹¹² *Id.*

¹¹³ Tsukamoto, *supra* note 54, at 13; *Proposal of Referral to the International Court of Justice*, MINISTRY OF FOREIGN AFF. OF JAPAN, https://www.mofa.go.jp/a_o/na/takeshima/page1we_000065.html (last updated July 30, 2015).

¹¹⁴ *Proposal of Referral to the International Court of Justice*, *supra* note 113.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ Shin, Yong-ha, *Rekishiteki/Kokusaihoteki ni Miruto Dokto/Takeshima wa Meihaku ni "Kankoku Ryodo" (Dokto/Takeshima is Evidently "Korean Territory" in Light of History and International Law)*, 52 SAI. 27–28 (2004 Winter/2005 Spring), <https://iss.ndl.go.jp/books/R100000039-I000501006-00>.

¹¹⁸ The Cairo Declaration (Cairo Communiqué), which aimed to “punish the aggression of Japan,” was released by U.S. President Theodore Roosevelt, Chinese

the 1951 San Francisco Peace Treaty.¹¹⁹ Thus, from a Korean perspective, Japan's proposal to refer the territorial dispute to the ICJ was regarded as "nothing but another false attempt [to assert sovereignty] disguised in the form of judicial procedures."¹²⁰ The Korean government explained that it has the territorial rights *ab initio*¹²¹ over the Islands, and therefore, there was no reason for the government to seek the verification of such rights "before any international court."¹²²

The ICJ does not have jurisdiction over an international conflict unless all parties to the conflict agree to settle their dispute in the ICJ.¹²³ In a 1954 report, U.S. Ambassador Van Fleet commented on the judicial settlement of the territorial dispute: "[The United States'] position has been that the dispute might properly be referred to the International Court of Justice and this suggestion has been informally conveyed to the Republic of Korea."¹²⁴ Despite the advice from the United States and the perceived heightened international influence of Japan, it is unlikely that Korea would agree on a referral to the ICJ because the Korean government has continually asserted that no territorial conflict exists between the two nations.¹²⁵

In line with Korea's arguments supporting its claim to the Islands, legal scholars tend to support Korea's claim to the Islands.¹²⁶ Legal scholars have analyzed the territorial sovereignty of the Islands from international law perspectives and incorporated the role of the ICJ.¹²⁷ While non-

Generalissimo Chiang Kai-shek, and British Prime Minister Winston Churchill on December 1, 1943. *Cairo Communiqué*, NAT'L DIET LIBR. OF JAPAN (Dec. 1, 1943), https://www.ndl.go.jp/constitution/e/shiryō/01/002_46/002_46tx.html. It should be noted that Takeshima/Dokodo is not mentioned in the Cairo Declaration or the Potsdam Declaration notwithstanding the argument by the Korean government. Raul Pedrozo, *International Law and Japan's Territorial Disputes*, REV. ISLAND STUD., Feb. 2018, at 10, <https://www.spf.org/islandstudies/research/a00018r.html>.

¹¹⁹ *Questions and Answers on Dokdo*, MINISTRY OF FOREIGN AFF., REPUBLIC OF KOREA, <https://dokdo.mofa.go.kr/eng/dokdo/faq.jsp> (last visited Feb. 3, 2020).

¹²⁰ *Id.*

¹²¹ A legal term, *ab initio*, means "from the beginning" in Latin. *See Ab Initio*, THE LAW.COM DICTIONARY, <https://dictionary.thelaw.com/ab-initio/> (last visited Dec. 8, 2020).

¹²² *Questions and Answers on Dokdo*, *supra* note 119.

¹²³ Miller, *supra* note 27.

¹²⁴ *Report by Ambassador Van Fleet*, *supra* note 88.

¹²⁵ *See* Miller, *supra* note 27.

¹²⁶ *See, e.g.,* Van Dyke, *supra* note 20; Fern, *supra* note 26; Bowman, *supra* note 21.

¹²⁷ *See generally* Nico J. Schrijver & Vid Prislán, *Cases Concerning Sovereignty Over Islands Before the International Court of Justice and the Dokdo/Takeshima Issue*, 46 OCEAN DEV. & INT'L L. 281 (2015).

Japanese and non-Korean legal scholars are apt to emphasize the benefits and limitations of judicial settlement of the bilateral conflict,¹²⁸ Japanese and Korean legal scholars tend to support the claims by their own governments, disregarding the benefits of judicial settlement.¹²⁹ The Japanese government has been consistent in its referral of the territorial dispute to the ICJ despite assertions by some international legal scholars who have supported Korea's claim to the Islands.¹³⁰ Sean Fern,¹³¹ for instance, noted that the Islands' history shows they "initially belonged to Korea," and "Japanese claims to sovereignty based on the annexation treaties negate any claim to have discovered [the Islands] because the treaties concede a lack of initial ownership."¹³² Fern concluded that "ultimately, South Korea has a stronger claim to [the Islands] than does Japan."¹³³

Similarly, Professor Jon M. Van Dyke argued that Japan's claim to the territorial sovereignty of the Islands is relatively weak.¹³⁴ The Japanese government explains that the Islands were *terra nullius*¹³⁵ by 1905, but Professor Van Dyke pointed out that this indicates "a Japanese acknowledgement that its contacts with the islets prior to that time were not sufficient to establish sovereignty over them."¹³⁶ Van Dyke also pointed to geographical proximity to the islets as a supportive factor of Korea's claim, noting the Islands are "physically closer to Korea's Ulleungdo (and can be seen from it) than to Japan's Oki Islands."¹³⁷ Likewise, Garret Bowman¹³⁸ contended that "[u]nder the accepted norms of international law, Japan's

¹²⁸ See generally *id.*

¹²⁹ See, e.g., Chung, *supra* note 9; Tsukamoto, *supra* note 54.

¹³⁰ See, e.g., Van Dyke, *supra* note 20, at 205; Fern, *supra* note 26, at 87; Bowman, *supra* note 21, at 29.

¹³¹ Sean Fern (J.D., New York University) is an attorney at Arnold & Porter LLP.

¹³² Fern, *supra* note 26, at 87.

¹³³ *Id.* at 88.

¹³⁴ Van Dyke, *supra* note 20.

¹³⁵ *Terra nullius* is "land that is unoccupied or uninhabited for legal purposes." TRISCHA MANN & AUDREY BLUNDEN, AUSTRALIAN LAW DICTIONARY (1st. ed. 2010), <https://www.oxfordreference.com/view/10.1093/acref/9780195557558.001.0001/acref-9780195557558-e-3278>.

¹³⁶ Van Dyke, *supra* note 20, at 194.

¹³⁷ *Id.* at 195.

¹³⁸ Bowman, a J.D. Candidate at Case Western Reserve University School of Law, published the article as a managing editor of *Case Western Reserve Journal of International Law*. See Bowman, *supra* note 21, at 433.

historical and legal claims over [the Islands] are substantially weaker than Korea's" and that "international law favors Korean sovereignty."¹³⁹

Instead of settling the territorial dispute in the ICJ, both Japan and Korea decided to "shelve"¹⁴⁰ the territorial dispute, and instead work toward restoring the war-torn bilateral diplomatic relationship.¹⁴¹ This decision was made because the Korean government did not wish to aggravate the territorial dispute and desired to eschew the judicial settlement in the ICJ.¹⁴² On June 22, 1965, Japanese Foreign Minister Etsusaburo Shiina and Korean Foreign Minister Lee Tong Won signed the Treaty on Basic Relations between Japan and the Republic of Korea ("Basic Treaty"),¹⁴³ which officially established diplomatic relations between the two countries.¹⁴⁴ The Basic Treaty, as well as Japan and Korea's military alliances with the United States, have enabled the countries to strengthen economic and trade partnerships between the two.¹⁴⁵

VI. ECONOMIC FACTOR: THE ECONOMIC VALUE OF THE TAKESHIMA/DOKDO ISLANDS

Why did Japan and Korea decide to "shelve" the settlement of the territorial dispute in the negotiations for the Basic Treaty?¹⁴⁶ Some purport that both sides had "realized that the economic importance of the islets [was] negligible."¹⁴⁷ In terms of the economic aspect of the Islands,

¹³⁹ *Id.* at 451.

¹⁴⁰ See generally Jaewon Hwang, *Analysis Dokdo/Takeshima Issue on Japan and Korea Newspapers during the Talks for Normalization of the Diplomatic Relations: Based on Articles about Agreement to Shelve the Discussion*, 24 J. GRADUATE SCH. ASIA-PAC. STUD., WASEDA U. 225 (2012).

¹⁴¹ See generally *id.*

¹⁴² See generally *id.*

¹⁴³ The Basic Treaty recalled the San Francisco Peace Treaty, which terminated the war between Japan and the Allied Powers, and officially normalized the bilateral diplomatic ties on the basis of the principle of mutual respect for sovereignty while turning a blind eye for the Takeshima/Dokdo Islands. Kanae Taijudo, *The Takeshima Dispute*, JAPAN DIGITAL LIBR./JAPAN'S TERRITORIES SERIES, Mar. 2017, at 1, https://www.jiia-jic.jp/en/resourcelibrary/pdf/Kanae%20TAIJUDO_%20The%20Takeshima%20Dispute.pdf.

¹⁴⁴ Treaty on Basic Relations, Japan-Republic of Korea, June 22, 1965, 583 U.N.T.S. 8471.

¹⁴⁵ See generally Victor D. Cha, *Bridging the Gap: The Strategic Context of the 1965 Korea-Japan Normalization Treaty*, 20 KOREAN STUD. 123 (1996), <https://www.jstor.org/stable/23719605?seq=1>.

¹⁴⁶ See Hwang, *supra* note 140.

¹⁴⁷ See generally Alexander Bukh, *Korean National Identity, Civic Activism and the Dokdo/Takeshima Territorial Dispute*, 3 J. ASIAN SECURITY & INT'L AFF. 183 (2016), <https://journals.sagepub.com/doi/pdf/10.1177/2347797016645459>.

Professor Mark Selden, asserted that there exists “scant direct economic value” for Japan and Korea.¹⁴⁸ Professor Bec Starting, similarly noted that “there is no economic value to what are essentially glorified rocks in the middle of the ocean.”¹⁴⁹ Despite such external assessments, the Japanese and Korean governments have indeed valued the Islands economically.¹⁵⁰

The economic value of the Islands has been recognized by both Japanese and Korean governments and fishermen.¹⁵¹ Japanese fishermen in Shimane Prefecture have capitalized on the Islands’ fisheries since the 1900s.¹⁵² Likewise, Korea recognizes the Islands’ “vital importance to the Korean economy[.]”¹⁵³ The economic value of the Islands in light of the economic exclusive zone (“EEZ”) cannot be underestimated.¹⁵⁴ The EEZ stretches 200 nautical miles from a sovereign state’s coastline and is defined as “an area beyond and adjacent to the territorial sea, subject to the specific legal regime[], under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention.”¹⁵⁵ In an EEZ, the coastal state has:

Sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of

¹⁴⁸ Mark Selden, *Small Islets, Enduring Conflict: Dokdo, Korea-Japan Colonial Legacy and the United States*, 9 ASIA-PAC. J./JAPAN FOCUS 1 (2011), <https://apjif.org/-Mark-Selden/3520/article.pdf>

¹⁴⁹ Bec Strating, *The Symbolic Politics of the Dokdo/Takeshima Disputes*, INTERPRETER (Dec. 6, 2017), <https://www.lowyinstitute.org/the-interpreter/symbolic-politics-dokdotakeshima-dispute>.

¹⁵⁰ Seizaburo Tamura, *Fisheries Administration in Relation to Takeshima*, JAPAN DIGITAL LIBR./JAPAN’S TERRITORIAL SERIES, Mar. 2016, at 1–14, http://www2.jiia.or.jp/en/pdf/digital_library/Takai_takeshima.pdf.

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ U.S. DEP’T OF STATE, *supra* note 72.

¹⁵⁴ Pedrozo, *supra* note 118.

¹⁵⁵ United Nations Convention on the Law of the Sea (UNCLOS) art. 55, Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter UNCLOS]. The UNCLOS is the most universal and comprehensive Law of the Sea. *See id.* It was signed on December 10, 1982 and entered into force on November 16, 1994. *Id.* As of October 3, 2020, as many as 168 countries signed and ratified the UNCLOS. *Chronological Lists of Ratifications of Accessions and Successions to the Convention and the Related Agreements*, UNITED NATIONS, https://www.un.org/Depts/los/reference_files/chronological_lists_of_ratifications.htm#The%20United%20Nations%20Convention%20on%20the%20Law%20of%20the%20Sea (last updated Sept. 3, 2020); *Oceans & Law of the Sea*, UNITED NATIONS, <https://www.un.org/Depts/los/index.htm> (last visited Oct. 6, 2020).

the zone, such as the production of energy from the water, currents and winds.¹⁵⁶

Because of the close proximity of Korea and Japan, the Islands are situated within the EEZ of both countries.¹⁵⁷

In order to sort out the EEZ overlap, both countries signed the Japan-Korea Fisheries Agreement (“Fisheries Agreement”) in 1965 and amended the agreement in 1998.¹⁵⁸ Under the agreement, Japanese fishing boats were permitted to catch 94,000 tons of fish in the Korean EEZ and Korean fishing boats were allowed to catch 149,200 tons in the Japanese EEZ.¹⁵⁹ In 2002, the actual fishing industry output amounted to some 635 Korean Won (\$500 million USD) with 93,773 tons from Japanese ships and 149,218 tons from Korean ships.¹⁶⁰ Researchers have estimated that “the total catch might be increased to about 13 million tons[.]”¹⁶¹ But this estimate may have to be tempered due to changes in the surrounding ecosystem and concerns about the “stocks of flying fish, Pacific herring, sandfish, halibut, Alaska pollack, and Japanese sardine.”¹⁶² Given these concerns, the Korean government implemented the “Dokdo seals restoration project” and Korean researchers analyzed the economic benefits of restoring endangered species.¹⁶³

¹⁵⁶ UNCLOS, at art. 56.

¹⁵⁷ Michael Weinstein, *South Korea-Japan Dokdo/Takeshima Dispute: Toward Confrontation*, 4 ASIA-PAC. J./JAPAN FOCUS 1, 3 (2006), <https://apjif.org/-Michael-Weinstein/1685/article.html>. Both Japan and the ROK became signatories of UNCLOS in 1996. *Id.*; see also Benjamin K. Sibbett, *Tokdo or Takeshima? The Territorial Dispute between Japan and the Republic of Korea*, 21 FORDHAM INT’L L. J. 1606, 1640 (1997), <https://core.ac.uk/download/pdf/144226939.pdf>.

¹⁵⁸ *Gyogyo ni Kansuru Nihonkoku to Daikanminkoku tonno Aidano Kyotei (The Agreement on Fisheries between Japan and the Republic of Korea)*, MINISTRY OF FOREIGN AFF., REPUBLIC OF KOREA, <https://www.mofa.go.jp/mofaj/gaiko/treaty/pdfs/A-H11-1039.pdf> (last visited Oct. 6, 2020). The Fisheries Agreement was first concluded in 1965, but a new agreement was signed on November 28, 1998 and came into force on January 22, 1999. *Id.* The original agreement was signed in response to the normalization of the bilateral diplomatic relationship in 1965 to facilitate bilateral cooperation for fishing. *Id.* The 1998 agreement was signed on the basis of the UNCLOS as both states became the signatories in 1996. *Id.*

¹⁵⁹ Kunwoo Kim, *Korea-Japan Fish Dispute*, INVENTORY CONFLICT & ENV’T CASE STUD. (Apr. 23, 2002), <http://mandalaprojects.com/ice/ice-cases/korea-japan-islands.htm>.

¹⁶⁰ *Id.*

¹⁶¹ Mark J. Valencia, *Ocean Management Regimes in the Sea of Japan: Present and Future*, NAPSNET POL’Y F., July 11, 1998, at 1. <https://nautilus.org/napsnet/napsnet-policy-forum/ocean-management-regimes-in-the-sea-of-japan-present-and-future/>.

¹⁶² *Id.*

¹⁶³ Seul-Ye Lim, Se-Jun Jin, & Seung-Hoon Yoo, *The Economic Benefits of the*

In addition to the Islands' economic value from fisheries and wildlife, a Korean authority notes that "a large amount of natural gas is buried in the seas near Dokdo[.]"¹⁶⁴ Korean researchers claim to have discovered 600 million tons of "methane hydrate"¹⁶⁵ buried in the seabed around the area which is "equivalent to 30 years of gas consumption in Korea and estimated to be worth more than 150 trillion won (\$149 billion USD)."¹⁶⁶ It was also reported that the economic value of methane hydrate would benefit Korea over decades, although it would take ten to twenty years to commercialize methane hydrate.¹⁶⁷ Since Japan has depended on import of fossil fuel, such as crude oil and natural gas from overseas countries, domestic production of methane hydrate around the Islands would contribute to the enhancement of its energy security.¹⁶⁸ Despite what some scholars assert, the economic and commercial values of the Islands are not negligible given the significance of fisheries and large stocks of methane hydrate.¹⁶⁹ In addition to these economic factors, social and psychological factors need to be taken into account to comprehend the deep-rooted causes of this territorial dispute.¹⁷⁰

Dokdo Seals Restoration Project in Korea: A Contingent Valuation Study, 9 SUSTAINABILITY 1 (2017). As many as 246 species were designated as endangered by the Korea Ministry of Environment. *Id.* In addition, the economic benefits of restoring the endangered species amount to \$89.8 million USD. *Id.*

¹⁶⁴ *Dokdo Story*, PROVINCE OF GYEONGSANGBUK-DO, https://www.gb.go.kr/open_content/m/meng/page.jsp?largeCode=about&mediumCode=dokdo&LANGCODE=EngMob (last visited Oct. 6, 2020).

¹⁶⁵ Methane hydrate is called "flammable ice" because it looks like ice and turns into water after burning. Mayuko Yatsu, *Will "Flammable Ice" Be a Critical Factor in Asia's Security?*, JAPAN TIMES (June 4, 2018) <https://www.japantimes.co.jp/opinion/2018/06/04/commentary/japan-commentary/will-flammable-ice-critical-factor-asias-security/>.

¹⁶⁶ Jung Ha-won, *Why Are the Dokdo Islet So Vital for Korea, Japan?*, KOREA JOONGANG DAILY (July 29, 2008), <https://koreajoongangdaily.joins.com/2008/07/28/etc/Why-are-the-Dokdo-islets-so-vital-for-Korea-Japan/2892904.html>.

¹⁶⁷ *Methane Hydrate May Ignite New Energy War in Asia*, BUS. KOREA (May 2, 2014), <http://www.businesskorea.co.kr/news/articleView.html?idxno=4389>.

¹⁶⁸ Ai Oyama & Stephen M. Masutani, *A Review of the Methane Hydrate Program in Japan*, 10 ENERGIES 1, 2 (2017).

¹⁶⁹ *Methane Hydrate May Ignite New Energy War in Asia*, *supra* note 167.

¹⁷⁰ Ralf Emmers, *Japan-Korea Relations and the Tokdo/Takeshima Dispute: The Interplay of Nationalism and Natural Resources* (S. Rajaratnam Sch. of Int'l Studies Working Paper, Paper No. 212, 2010), <https://www.files.ethz.ch/isn/123944/WP212.pdf>.

VII. SOCIAL AND INDIVIDUAL FACTOR: HISTORY RECOGNITION
PROBLEM AND NATIONALISM

It is important to consider the social and individual factors underlying the territorial dispute, particularly the history recognition problem (i.e., historical discrepancies between the countries)¹⁷¹ and nationalism.¹⁷² The social and individual factors related to the history recognition problem discussed earlier are regarded as one of the fundamental causes of the territorial dispute by Korea¹⁷³ and play a significant role in inhibiting conflict resolution between the countries.¹⁷⁴ This is because national resources around the Islands and nationalism of the two countries are inseparably connected with each other.¹⁷⁵ The territorial dispute originated from the “colonial experience” of Korea under the Empire of Japan.¹⁷⁶ Thus, political frictions with Japan tend to correlate with positive effects on leadership approval ratings for Presidents in Korea.¹⁷⁷ Additionally, Korea’s disputes with Japan are apt to increase the popularity of Korean presidents.¹⁷⁸ The Japanese government refers to the territorial dispute as a territorial problem rather than a historical one.¹⁷⁹ But Japan and Korea’s understanding of the territorial dispute and the “problem

¹⁷¹ For Koreans in particular, the memory of colonization by Japan and that of the Asia–Pacific War still lingers and influences on the bilateral maritime boundary dispute. Mikyoung Kim, *A War of Memories: Dissecting the Dokdo/Takeshima Dispute*, 7 GLOBAL ASIA 74, 74–77 (2012).

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ Michael Buckalew, *Outward Ripples: How Japan-Korea History Tensions Affect ASEAN*, EAST-WEST CTR. 1, 8 (May 2016), <https://www.jstor.org/stable/pdf/resrep06481.pdf>. The bilateral history problem affects not only the territorial dispute but also international relations in the Asia Pacific region. *Id.* at 23.

¹⁷⁵ *Id.*

¹⁷⁶ Toyokichi Iyenaga, *Japan's Annexation of Korea*, 3 J. RACE DEV. 201, 201–03 (1912), <https://www.jstor.org/stable/pdf/29737953.pdf>. After the end of the Russo-Japanese War (1904-1905), the Empire of Japan deprived the Korean Empire of its diplomatic sovereignty in 1905, and then Korea was forced under the protectorate of Japan. *Id.* Japan formally annexed Korea by the 1910 Japan-Korea Annexation Treaty. *Id.*

¹⁷⁷ Wonjae Hwang, Wonbin Cho & Krista Wiegand, *Do Korean-Japanese Historical Disputes Generate Rally Effects?*, 77 J. ASIAN STUD. 693, 705–06 (2018), <https://www.cambridge.org/core/journals/journal-of-asian-studies/article/do-korean-japanese-historical-disputes-generate-rally-effects/7A3881E758833F5EFACB37E996E5B0AD>.

¹⁷⁸ *Id.*

¹⁷⁹ *Japan's Consistent Position on the Territorial Sovereignty over Takeshima*, *supra* note 2.

of histor[ical] understanding” are inseparable from their respective national identities.¹⁸⁰

The Korean people have recognized the Islands as “the first victim of Japan’s aggression against the Korean peninsula.”¹⁸¹ The Korean government asserts that Japan “had seized the power to control Korea in 1904 when it forced upon Korea to sign the Korea-Japan Treaty of 1904 and the Korea-Japan Protocol of August 1904.”¹⁸² Therefore, from a Korean viewpoint, the incorporation of the Islands into Shimane Prefecture in 1905 was the beginning of Japan’s aggression against the Korean Peninsula.¹⁸³ The aggression culminated with the annexation of the entire Korean Peninsula in 1910 and Korea’s deprived sovereignty for over forty years.¹⁸⁴ Hence, for the Korean people, control over the Islands “symbolizes Korea’s sovereignty against Japan and represents a critical test of the integrity of Korean sovereignty.”¹⁸⁵

¹⁸⁰ Heonik Kwon, *Parallax Visions in the Dokdo/Takeshima Disputes*, in *NORTHEAST ASIA’S DIFFICULT PAST: ESSAYS IN COLLECTIVE MEMORY* 229, 229–30 (Mikyong Kim & Barry Schwartz eds., 2010).

¹⁸¹ *Dokdo, the First Victim of Japan’s Aggression against the Korean Peninsula*, MINISTRY OF FOREIGN AFF., REPUBLIC OF KOREA, <https://dokdo.mofa.go.kr/eng/pds/docu.jsp> (last visited Feb. 3, 2020). The Ministry of Foreign Affairs, Republic of Korea, in charge of the foreign affairs of the ROK, is a counterpart of the Ministry of Foreign Affairs, Japan, as well as the U.S. Department of State. *About the Ministry*, MINISTRY OF FOREIGN AFF., REPUBLIC OF KOREA, http://www.mofa.go.kr/eng/wpge/m_5744/contents.do (last visited Nov. 8, 2020).

¹⁸² *Dokdo, the First Victim of Japan’s Aggression against the Korean Peninsula*, *supra* note 181. Based on art. 3 of the Korea-Japan Treaty of February 1904, the Empire of Japan guaranteed “the independence and territorial integrity of the Korean Empire.” *The Korea-Japan Treaty of 1904 (February 23, 1904)*, MINISTRY OF FOREIGN AFF., REPUBLIC OF KOREA, https://dokdo.mofa.go.kr/eng/pds/pomflet_01.jsp (last visited Nov. 8, 2020). However, art. 4 of the Treaty stipulated that, “[i]n case the welfare of the Imperial House of Korea or the territorial integrity of Korea is endangered by aggression of a third power or internal disturbances, the Imperial Government of Japan shall immediately take such necessary measures as circumstances requires, and in such case the Imperial Government of Korea shall give full facilities to promote the action of the Imperial Japanese Government.” *Id.* Hence, it can be observed that Japan concluded the Treaty so that it could be advantageous for the military operations of the Russo-Japanese War. *See id.* Based on the 1904 Protocol, Japan deprived Korea of the diplomatic sovereignty. *The Korea-Japan Protocol of August 1904 (August 22, 1904)*, MINISTRY OF FOREIGN AFF., REPUBLIC OF KOREA, https://dokdo.mofa.go.kr/eng/pds/pomflet_02.jsp (last visited Dec. 20, 2020). Art. 3 of the Protocol stipulates, “[t]he Korean Government shall consult the Japanese Government previous to concluding Treaties of Conventions with foreign Powers, and in dealing with other important diplomatic affairs such as granting of concessions to or contracts with foreigners.” *Id.*

¹⁸³ *Dokdo, the First Victim of Japan’s Aggression against the Korean Peninsula*, *supra* note 181.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

Dokdo consciousness and the image of Japan in Korean society have been part of the formation of the Korean identity.¹⁸⁶ The territorial dispute has given rise to anti-Japanese sentiments—based on the historical memory of Japanese colonization—in Korea and inspired the “Protect Dokdo” movement.¹⁸⁷ The Korean people have also claimed territorial sovereignty over the Islands based on the collective historical memory of Japan’s aggression against the Korean Peninsula.¹⁸⁸ This kind of “civic activism” has constructed Korean “national identity.”¹⁸⁹

Japan’s continued assertion of sovereignty over the Islands has not helped the already strained relationship between the countries.¹⁹⁰ Japanese people believe the Islands were illegally occupied by the Republic of Korea, and this alleged “illegal occupation” has stimulated Japanese nationalism that led to the designation of “Takeshima Day”¹⁹¹ on February 22, 2005.¹⁹² The establishment of Takeshima Day aggravated the anti-Japanese sentiments in South Korea and caused additional political tension between the two nations.¹⁹³ The territorial dispute has been part of the formation of the Korean national identity and the “us and them” dichotomy that exacerbates the already strained bilateral relationship.¹⁹⁴

¹⁸⁶ See generally Daesong Hyun, *Blood, Land, and Knowledge of Korean and Its Impact on Japan: Empirical Analysis of Korean Identity, Dokdo Consciousness, and Their Image of Japan*, 148 MEMOIRS INST. FOR ADVANCED STUD. ON ASIA 75 (2005).

¹⁸⁷ Bukh, *supra* note 147. The “Protect Dokdo” movement in South Korea was shaped in the 1980s. The movement was composed of nonprofit organizations, such as the Christian Council of Korea and the Young Korean Academy. Still, some protesters resorted to violence, burning Japanese flags and clashing with police. ALEXANDER BUKH, *THESE ISLANDS ARE OURS: THE SOCIAL CONSTRUCTION OF TERRITORIAL DISPUTES IN NORTHEAST ASIA* 96 (2000).

¹⁸⁸ Bukh, *supra* note 147.

¹⁸⁹ *Id.*

¹⁹⁰ See *Takeshima is Japanese Territory!*, *supra* note 54.

¹⁹¹ In March 2005, the Shimane Prefectural Assembly designated February 22 as “Takeshima Day,” commemorating the 100th anniversary of the Shimane Prefectural Notice on Takeshima. *February 22 is Takeshima Day*, OKINOSHIMA-TOWN, <https://www.town.okinoshima.shimane.jp/www/contents/1427262675587/index.html> (last visited Oct. 7, 2020). The Assembly urged the Japanese government to enact a Takeshima Day in law, but the government did not create such legislation, so the Assembly unilaterally designated Takeshima Day. *Id.*

¹⁹² *Takeshima is Japanese Territory!*, *supra* note 54.

¹⁹³ Weinstein, *supra* note 157.

¹⁹⁴ David Kozisek, *Us and Them: Constructing South Korean National Identity through the Liancourt Rocks Dispute*, 12 CULTURE MANDALA 1, 4 (2016), <http://www.international-relations.com/CM2016/1-South-Korean-Identity.pdf>.

Another factor underlying the Korean perspective on the territorial dispute stems from bilateral “frictions over history,”¹⁹⁵ including the “comfort women” issue.¹⁹⁶ However, the Japanese government purports that compensation for the comfort women was already settled under the 1965 Basic Treaty.¹⁹⁷ In fact, Japanese officials complained to the Korean government after Korean President Moon Jae-in served U.S. President Donald Trump “Dokdo shrimp”¹⁹⁸ and invited a comfort woman survivor to a banquet for President Trump in 2017.¹⁹⁹ This incident could be viewed as an attempt to persuade the United States to side with the Korean government regarding the territorial dispute over the Islands and the issue of the comfort women.²⁰⁰

Since the history recognition problem and the territorial dispute between Japan and Korea are strongly connected with their respective national identities,²⁰¹ the public frictions between the two nations can easily reflect the social and individual negative sentiments toward each other.²⁰² As a matter of fact, the public opinion in Japan and Korea indicates that the

¹⁹⁵ Kiwoong Yang, *South Korea and Japan's Frictions over History: A Linguistic Constructivist Reading*, 32 *ASIAN PERSP.* 59, 59–86 (2008), <https://www.jstor.org/stable/42704641?seq=1>.

¹⁹⁶ *Who Were the Comfort Women?*, *ASIAN WOMEN'S FUND*, <https://awf.or.jp/e1/facts-00.html> (last visited Oct. 7, 2020). Comfort women are “those who were taken to former Japanese military installations, such as comfort stations, for a certain period during wartime in the past and forced to provide sexual services to officers and soldiers.” *Id.* Although the Japanese side considers that the issue was resolved, the Korean side argues that additional reparations for the former comfort women is necessary. See generally Shellie K. Park, *Broken Silence: Redressing the Mass Rape and Sexual Enslavement of Asian Women by the Japanese Government in an Appropriate Forum*, 3 *ASIAN-PAC. L. & POL'Y J.* 23 (2002), http://blog.hawaii.edu/aplpj/files/2011/11/APLPJ_03.1_park.pdf.

¹⁹⁷ Hyonhee Shin, *History, Islets and Rulings Behind Tension Between South Korea, Japan*, *REUTERS* (Oct. 22, 2019), <https://www.reuters.com/article/us-southkorea-japan-explainer/history-islets-and-rulings-behind-tension-between-south-korea-japan-idUSKBN1X20W3>.

¹⁹⁸ The term “Dokdo Shrimp” caught off the Takeshima/Dokdo Islands symbolizes Korea’s claim to the sovereignty over the disputed islets, and hence, the Japanese side complained about the banquet. Justin McCurry, *Japan Anger over South Korea's Shrimp Surprise for Donald Trump*, *GUARDIAN* (Nov. 10, 2017), <https://www.theguardian.com/world/2017/nov/10/japan-anger-south-koreas-shrimp-surprise-menu-donald-trump-sex-slave>.

¹⁹⁹ *Id.*

²⁰⁰ *See id.*

²⁰¹ Bukh, *supra* note 147; Kim, *supra* note 171.

²⁰² Bukh, *supra* note 147; Kim, *supra* note 171.

bilateral historical and political issues are regarded as relevant problems.²⁰³ The 7th Japan-South Korea Joint Public Opinion Poll (2019) (the “Poll”)²⁰⁴ showed that 12.3% of the Japanese respondents considered Korea a military threat to Japan.²⁰⁵ In contrast, 38.3% of the Korean respondents felt that Japan posed a military threat to their country.²⁰⁶ Moreover, approximately 24.5% of Korean respondents think that a military conflict between the nations “will occur eventually[,]” whereas only 8% of the Japanese felt the same way.²⁰⁷ The results of the poll can be explained by the fact that Korea currently controls the disputed islands, making Korean people more concerned about military confrontation between the two countries.²⁰⁸ Conversely, because Japan does not currently control the Islands, Japanese people feel less worried about military confrontation.²⁰⁹ Despite the mutual threat perception and the bilateral national security dilemma, the majority of the Japanese people think that each country should “avoid confrontation” and “overcome the difficulties in a future-oriented manner[.]”²¹⁰ Over 70% of the Korean people believe that both countries “should make efforts to improve the relationships.”²¹¹ Notably, 41.3% of the Japanese and 75.6% of Koreans feel that the bilateral relationship can be strengthened by “resolving territorial disputes over the Islands.”²¹² Thus, although the bilateral territorial dispute is influenced by social and individual factors—such as the national identity of South Koreans, history recognition issue, and negative individual sentiments—the poll indicates that the Japanese and Korean people mutually desire the resolution of the history problem as well

²⁰³ See THE GENRON NPO & EAST ASIA INSTITUTE, THE 7TH JAPAN-SOUTH KOREA JOINT PUBLIC OPINION POLL (2019): ANALYSIS REPORT ON COMPARATIVE DATA (2019), <https://www.genron-npo.net/en/7th-Japan-South%20KoreaJointOpinionPoll.pdf> [hereinafter PUBLIC OPINION POLL].

²⁰⁴ The opinion poll was conducted and published by the Genron NPO and the East Asia Institute, in cooperation with the Public Opinion Research Institute Corporation in Japan and the Hankook Research in South Korea. See generally *id.*

²⁰⁵ *Id.* at 30.

²⁰⁶ *Id.* at 31.

²⁰⁷ *Id.*

²⁰⁸ Kilian Spandler, *The Dokdo/Takeshima Dispute – Power, Institutions, and Identities in East Asia’s “Other” Territorial Conflict*, IFAIR, (Nov. 24, 2012), <https://ifair.eu/2012/11/24/the-dokdotakeshima-dispute-power-institutions-and-identities-in-east-asias-other-territorial-conflict/>.

²⁰⁹ *Id.*

²¹⁰ *Id.* at 9.

²¹¹ *Id.*

²¹² *Id.* at 9–10. Furthermore, 53.7% of the Japanese and 84.5% of Koreans agreed that the bilateral ties can be improved by “resolving historical disputes (comfort women and wartime labor).” *Id.*

as the territorial dispute to strengthen the bilateral relationship.²¹³ Accordingly, it is important to examine possibilities of peaceful conflict resolution over the Islands.²¹⁴

VIII. APPLICABILITY OF TRANSCEND METHOD TO THE JAPAN-KOREA TERRITORIAL DISPUTE

So far, this article has analyzed the historical, political, legal, economic, and social aspects concerning the territorial dispute over the Islands. Both countries have argued that the Islands belong to their respective territories based on historical records and legal documents.²¹⁵ The economic value of the Islands, in addition to the social and individual sentiments stemming from the impact of Japanese colonialism, has complicated the resolution of the territorial dispute.²¹⁶ This section provides an alternative solution to the dispute by adapting and applying Johan Galtung's conflict transcend method and principles from the Native Hawaiian reconciliation approach of Ho'oponopono.²¹⁷

The transcend method aims to mutually transform conflicts by peaceful means,²¹⁸ and outlines five scenarios in conflict resolution as shown in Figure 1.²¹⁹ In Scenarios 1 and 2, only one party to the conflict wins, so this is a win-lose situation.²²⁰ The outcomes in these cases have the potential for violence between the parties.²²¹ In Scenario 3, the current state of the territorial dispute over the Islands, both parties withdraw from the conflict resolution process.²²² In this case, both parties avoid resorting to violence but reconcile themselves to the status-quo.²²³ In Scenario 4, the parties compromise, resulting in a draw situation.²²⁴ Judicial settlement can

²¹³ *Id.*

²¹⁴ See UNITED NATIONS DISASTER MGMT. TRAINING PROGRAMME, *supra* note 44.

²¹⁵ See e.g., *Japan's Consistent Position on the Territorial Sovereignty over Takeshima*, *supra* note 2; *The Korean Government's Basic Position on Dokdo*, *supra* note 4.

²¹⁶ See e.g., *Japan's Consistent Position on the Territorial Sovereignty over Takeshima*, *supra* note 2; *The Korean Government's Basic Position on Dokdo*, *supra* note 4.

²¹⁷ UNITED NATIONS DISASTER MGMT. TRAINING PROGRAMME, *supra* note 44; SHOOK, *supra* note 41.

²¹⁸ UNITED NATIONS DISASTER MGMT. TRAINING PROGRAMME, *supra* note 44.

²¹⁹ Galtung, *supra* note 44.

²²⁰ *Id.*

²²¹ *Id.*

²²² *Id.*

²²³ *Id.*

²²⁴ *Id.*

be one of the conflict resolution scenarios, but both sides must agree to concede to a certain degree, and both should abide by the judgment by the ICJ.²²⁵ It is also possible for both parties to negotiate and split sovereignty over the Islands as a compromise plan, but each side would need to concede half of the Islands in this case.²²⁶ In the ideal Scenario 5 situation, also known as the transcendent solution, both parties to the conflict can satisfy their needs and create a win-win situation using a creative solution that transcends the conflict, as examined below.²²⁷

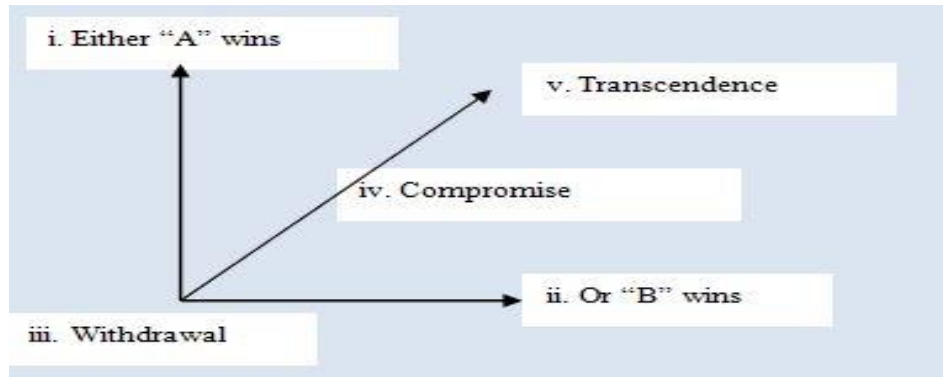


Figure 1: The Galtung/TRANSCEND Conflict Diagram.

Note: The “transcend method” proposed by Johan Galtung.²²⁸

Theoretically, it is possible for the two nations to apply the transcend method to the territorial dispute.²²⁹ In Scenario 1 or 2, either Japan or Korea wins control over the Islands.²³⁰ An example of these scenarios is what happened to the Islands in 1905 when Japan incorporated it, and in 1952 when the Syngman Rhee Line was announced.²³¹ In fact, after the 1952 Syngman Rhee Line was announced, a violent clash between the countries

²²⁵ IWASHITA AKIHIRO, HOPPO RYODO, TAKESHIMA, SENKAKU, KOREGA KAIKETSUSAKU [THESE ARE SOLUTIONS TO NORTHERN TERRITORIES, TAKESHIMA, AND SENKAKU] 242–43 (Tokyo: Asahi Shinbun Shuppan 2013).

²²⁶ Galtung, *supra* note 44.

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ See *A Dialogue Between Johan Galtung and Akie Abe at the Office of the Prime Minister of Japan on 20 August 2015*, GREENZ PEOPLE (Sept. 9, 2015), https://greenz.jp/2015/09/21/johan_galtung/ (last visited Jan. 17, 2020).

²³⁰ Galtung, *supra* note 44.

²³¹ *Incorporation of Takeshima into Shimane Prefecture*, *supra* note 59; CABINET SECRETARIAT, *supra* note 107.

occurred around the Islands in July 1953, as previously mentioned.²³² As a possible solution to the territorial dispute, Japanese scholars suggested that Japan should give up on the territorial claim and cede control of the Islands to Korea.²³³ But if the Japanese government gives up on its territorial claim over the Islands, some Japanese nationalists might resort to violence, given the past skirmishes between the two nations in the 1950s.²³⁴ The same violence could result if Korea were to cede control to Japan.²³⁵

The current situation is illustrative of Scenario 3 because Japan and Korea have agreed to shelve the negotiations to resolve the territorial dispute with the signing of the 1965 Basic Treaty.²³⁶ However, there is still a threat of future confrontation which is why the territorial dispute lingers on.²³⁷

In Scenario 4, both countries would agree to a compromise proposal.²³⁸ The Japanese government attempted to employ a version of Scenario 4 when it suggested that the bilateral territorial dispute should be referred to the ICJ in 1954, 1962, and 2012, but the attempts resulted in failure due to the refusal by the Korean government.²³⁹ Although the United States has been neutral in the territorial dispute,²⁴⁰ it has unofficially

²³² Tsukamoto, *supra* note 54, at 13. The Japanese Maritime Safety Agency was fired by the Korean authorities. *Id.*

²³³ For instance, Professor Jon M. Van Dyke suggested this scenario for bilateral reconciliation. See Jon M. Van Dyke, *Reconciliation between Korea and Japan*, 5 CHINESE J. INT'L L. 215, 235 (2016) [hereinafter Van Dyke, *Reconciliation between Korea and Japan*]. Professor Harry N. Scheiber of California University, Berkley, also proposed a scenario that "Japan would yield on its claim to Dokdo, linking that gesture to a formal apology by the Emperor and a program of tangible restitution to individuals and their families who were especially harmed during the annexation period and during the war." See Harry N. Scheiber, *Legalism, Geopolitics, and Morality: Perspectives from Law and History on War Guilt in Relation to the Dokdo Island Controversy*, in DOKDO: HISTORICAL APPRAISAL AND INTERNATIONAL JUSTICE, *supra* note 19, at 25. Emeritus Professor of Tokyo University, Haruki Wada, also suggested this policy option. See Haruki Wada, RYODO MONDAI O DOU KAIKETSU SURUKA: TAIRITSU KARA TAIWE E [HOW TO RESOLVE THE TERRITORIAL PROBLEMS] 231 (Tokyo: Kabushiki Kaisha Heibonsha 2012).

²³⁴ See generally Tsukamoto, *supra* note 54.

²³⁵ *Id.*

²³⁶ Hwang, *supra* note 140.

²³⁷ PUBLIC OPINION POLL, *supra* note 203, at 30–31.

²³⁸ Galtung, *supra* note 44.

²³⁹ *Proposal of Referral to the International Court of Justice*, *supra* note 113.

²⁴⁰ *U.S. Shies Away from Takeshima/Dokdo Dispute in Response to Online Petitions*, JAPAN TIMES (Nov. 23, 2014), <https://www.japantimes.co.jp/news/2014/11/23/national/politics-diplomacy/u-s-urges-japan-s-korea-to-settle-takeshimadokdo-isles-dispute/>.

recognized Japan's territorial sovereignty over the Islands.²⁴¹ The U.S. government suggested that Japan and Korea refer the dispute to the ICJ and showed its reluctance to mediate as a third party to the conflict.²⁴² The referral to the ICJ seems to be unfeasible for the Korean government, given its firm argument that the Islands belong to Korea and that they have no reason to seek such a judicial settlement.²⁴³ Another possible compromise, in line with Scenario 4, would be for Japan and Korea to split the two islands into two parts, and the two countries agree to cede half to the other side.²⁴⁴ But in order for Japan and Korea to both satisfy their needs and protect their national interests, they must create a win-win situation through Scenario 5.²⁴⁵

But under what circumstances can Japan and Korea transcend the territorial dispute and reach conflict transformation? Of course, the two countries have attempted conflict resolution of the territorial dispute, and the recent bilateral economic cooperation between Japan and Korea has improved their relationship, but it has not served as a complete solution to the territorial conflict.²⁴⁶ Resolution of the territorial dispute will “require a return to the spirit of 1965 – setting aside the dispute in favor of cooperation on more pressing issues.”²⁴⁷ Bilateral negotiation, third-party mediation, arbitration and jurisdiction, and cross-border cooperation have been investigated and applied in actual conflict resolution processes, including

²⁴¹ *Report by Ambassador Van Fleet, supra note 88; see also Ankit Panda, No, the US Won't Back South Korea Against Japan on Dokdo*, DIPLOMAT (May 2, 2014), <https://thediplomat.com/2014/05/no-the-us-wont-back-south-korea-against-japan-on-dokdo/>.

²⁴² *Report by Ambassador Van Fleet, supra note 88.*

²⁴³ *The Korean Government's Basic Position on Dokdo, supra note 4.*

²⁴⁴ This kind of solution was proposed by a Japanese citizen to Shimane Prefecture, but it was turned down by the Prefecture in September 2008. *See Shimane Prefecture, Takeshima Mondai eno Iken [Opinions about the Takeshima Issue] (2008-2009)*, <https://www.pref.shimane.lg.jp/admin/pref/takeshima/web-takeshima/takeshima08/iken-H20.html> (last visited Dec. 11, 2020). Likewise, President Park Chung-Hee stated that “he would like to bomb the island out of existence to resolve the problem.” *See Lee, supra note 98*, at 127. In theory, such kind of compromise plan may be categorized as Scenario 4. *See Galtung, supra note 44.*

²⁴⁵ Galtung, *supra note 44.*

²⁴⁶ Hidehiko Mukoyama, *Can Japan and South Korea Build a New Economic Relationship?: Recent Changes in the Global Environment May Help to Repair Relations*, 16 PAC. BUS. & INDUS. 2, 2–24 (2016), <https://www.jri.co.jp/MediaLibrary/file/english/periodical/rim/2016/59.pdf>.

²⁴⁷ Erika Pollmann, *The Politicization of the Liancourt Rocks Dispute and Its Effect on the Japan-South Korea Relationship*, 15 PAC. F. CSIS ISSUES & INSIGHTS 11 (Oct. 2015), https://www.files.ethz.ch/isn/194539/issuesinsights_vol15no10.pdf.

the resolution of territorial disputes.²⁴⁸ The bilateral Fisheries Agreement may be regarded as a cross-border cooperation,²⁴⁹ but it has not served as a fundamental resolution of the bilateral territorial dispute.²⁵⁰

As an alternative solution, Johan Galtung, a successful international mediator,²⁵¹ proposed the idea of “joint ownership” of the Islands to Akie Abe, wife of then Prime Minister Shinzo Abe.²⁵² Galtung has argued that it

²⁴⁸ Sangsoo Lee & Alec Forss, *Dispute Resolution and Cross-border Cooperation in Northeast Asia: Reflections on the Nordic Experience*, INST. FOR SEC. & DEV. POL'Y at 13–16 (June 2011), https://isdpeu/content/uploads/publications/2011_lee-forss_dispute-resolution-and-cross-border-cooperation.pdf. First, bilateral negotiation is one of the first steps toward conflict resolution. *Id.* Second, when the bilateral negotiation results in failure, third-party mediation can be effective in conflict resolution. *Id.* Third, arbitration and jurisdiction is a conflict resolution method by legal means. *Id.* Fourth, cross-border cooperation is important to build peaceful relationship as a process of or after successful conflict resolution. *Id.*

²⁴⁹ As for the possible economic benefits, see Lim, Jin & Yoo, *supra* note 163. Regarding the possibility of bilateral border cooperation around the Islands from the perspective of the law of the sea, see generally Atsuko Kanehara, *A Possible Practical Solution for the Dispute over The Dokdo/Takeshima Islands from the Perspective of the Law of the Sea*, in DOKDO: HISTORICAL APPRAISAL AND INTERNATIONAL JUSTICE, *supra* note 19, at 71–89. So far, the bilateral border cooperation has been managed “without touching upon the issue of the sovereignty over the Dokdo/Takeshima Islands.” *Id.* at 89.

²⁵⁰ *S. Korea, Japan Fail to Reach Fisheries Agreement*, YONHAP NEWS AGENCY (June 29, 2016), <https://en.yna.co.kr/view/AEN20160629005500320>; American Society of International Law, *Agreement Between Japan and the Republic of Korea Concerning Fisheries*, 4 INT'L LEGAL MATERIALS 1128, 1128–33 (1965), <https://www.jstor.org/stable/20689991?seq=1>; *Japan, South Korea Reach Fishing Accord*, JAPAN TIMES (Sept. 25, 1998), <https://www.japantimes.co.jp/news/1998/09/25/national/japan-south-korea-reach-fishing-accord/>. The bilateral Fisheries Agreement was first executed in 1965, while the second agreement was signed in 1998 and took effect in 1999. *Japan, South Korea Reach Fishing Accord*, *supra* note 250. Yet, the agreement has not been renewed due to the failure of bilateral negotiations. *Id.*

²⁵¹ Johan Galtung is a successful mediator to more than 100 international and interfaith conflicts. *See* Galtung, *supra* notes 44. An armed conflict broke out between Peru and Ecuador over an area in the Andes in 1941. Marcel Fortuna Biato, *The Ecuador-Peru Peace Process*, 38 CONTEXTO INT'L 621, 621–22 (2016), <http://dx.doi.org/10.1590/S0102-8529.2016380200005>. Galtung played a successful mediator role in the longstanding border conflict between Peru and Ecuador by proposing the transformation of the disputed area into a binational park. Alice Gavin, *Conflict Transformation in the Middle East*, 2 PEACE POWER 6, 6 (2006), http://www.calpeacepower.org/0201/PDF/galtung_transcend.pdf. Although both countries ceased the military operations by concluding the Rio de Janeiro Protocol in 1942, the border issue had remained a source of bilateral dispute. *See* Biato, *supra* note 251, at 621 n.5. The peace process by Peru and Ecuador began in 1995, and the two countries concluded the Brasilia Peace Agreement in 1998. *Id.* at 621.

²⁵² Tetra Tanizaki, *A Dialogue Between Johan Galtung and Akie Abe at the Office of the Prime Minister of Japan on 20 August 2015*, GREENZ PEOPLE (Sept. 9, 2015), https://greenz.jp/2015/09/21/johan_galtung/.

is imperative for Japan and two Koreas²⁵³ to focus on the significance of the joint ownership, share 80% of the economic benefits from the Islands (Japan and Korea would each receive 40% of the profits), and utilize 20% of the benefits for the joint control and conservation of natural resources around the area.²⁵⁴ If all sides agree to the application of the transcend method, the territorial dispute can be settled in a mutually beneficial and peaceful manner.²⁵⁵

The transcend method is applicable to conflict transformation of the territorial dispute at a political level.²⁵⁶ Despite the 1965 Basic Treaty and Japan's official apologies, such as the Murayama Statement,²⁵⁷ apology and forgiveness alone have proven to be insufficient to satisfy the psychological needs of the people in Japan and Korea.²⁵⁸ In addition to apology and forgiveness, healing of the aggrieved individuals is essential in post-conflict societies such as Japan and Korea.²⁵⁹

Galtung suggested applying Ho'oponopono to post-conflict healing and reconciliation processes in combination with his transcend method.²⁶⁰ Combined with the transcend method, Ho'oponopono—a Native Hawaiian reconciliation method—could be applicable to the reconciliation process between the Japanese and Korean people.²⁶¹ Ho'oponopono has been

²⁵³ North Korea has also claimed the sovereignty over the Islands. *Profile: Dokdo/Takeshima Islands*, BBC NEWS (Aug. 10, 2012), <https://www.bbc.com/news/world-asia-19207086>.

²⁵⁴ Tanizaki, *supra* note 252.

²⁵⁵ *Id.*

²⁵⁶ *Id.*

²⁵⁷ Prime Minister Tomiichi Murayama expressed his “heartfelt apology” for Japan's past conduct, such as colonial rule and aggression. *Statement by Prime Minister Tomiichi Murayama: “On the Occasion of the 50th Anniversary of the War's End,”* MINISTRY OF FOREIGN AFF. OF JAPAN, <https://www.mofa.go.jp/announce/press/pm/murayama/9508.html> (last visited Oct. 8, 2020).

²⁵⁸ See generally Van Dyke, *Reconciliation between Korea and Japan*, *supra* note 233.

²⁵⁹ As for the importance of healing and reconciliation between Japan and Korea, see Jon M. Van Dyke, *Reconciliation between Korea and Japan*, *supra* note 233. In comparison with the reconciliation process between the United States and Native Hawaiians, Professor Van Dyke explored a pathway toward the reconciliation between Korea and Japan. Van Dyke, *Reconciliation between Korea and Japan*, *supra* note 233, at 227. He raised four elements of reconciliation: “1. An apology for the wrong, 2. An investigation and accounting, 3. Compensation for the victim, and 4. Prosecution of the wrongdoers.” Van Dyke, *Reconciliation between Korea and Japan*, *supra* note 233, at 227.

²⁶⁰ Galtung, *supra* note 44.

²⁶¹ Oliver Urbain, *Three Sessions Using Hawaiian-Style Reconciliation Methods Inspired by the Ho'oponopono Problem-solving Process*, SOKA U. PEACE RSCH. 75, 75–85 (2004).

traditionally utilized as a problem-solving method for conflict resolution and reconciliation in Hawai‘i.²⁶²

In Ho‘oponopono, a healer, leader or expert (*kahuna lapa‘au*), or senior family member acts as a facilitator and starts with a prayer (*pule*).²⁶³ The problem (*kukulu kumuhana*) is then identified with the special care and responsibility of the healer so as not to offend participants at the outset,²⁶⁴ and the healer reveals transgression (*hala*) as a cause of the problem.²⁶⁵ It would come to light that both victims and aggressors are entrapped in a negative relationship (*hihia*) that should be healed or sorted out.²⁶⁶ Participants then share their personal experience (*mana‘o*) to explain reasons why they are suffering, while avoiding placing blame on each other.²⁶⁷ The aggressors are encouraged to apologize while the victims offer forgiveness (*mihi*), which heal the negative sentiments (*kala*) and restore a harmonious relationship.²⁶⁸ In the closing phase (*pani*), the leader declares that the problem is solved, and participants share a meal afterwards.²⁶⁹

Joanna Santa-Barbara suggested utilizing Ho‘oponopono principles to heal the psychological damages of conflict parties.²⁷⁰ Santa-Barbara specified what needs to be healed: “1) the harm suffered by the victim, 2) the propensity of the offender to do harm, 3) the relationship between victim and offender, and 4) the relationship between offender and their society.”²⁷¹ In order for Ho‘oponopono to be successful, a series of sessions of reconciliation processes between the Japanese and Korean people would be necessary.²⁷²

²⁶² SHOOK, *supra* note 41.

²⁶³ See Urbain, *supra* note 261, at 76.

²⁶⁴ *Id.*

²⁶⁵ See *id.* at 77.

²⁶⁶ *Id.*

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ *Id.* Oliver Urbain suggested to apply a simplified version of the method with the following five steps: “Step 1. Stating the facts (inspired by *kukulu kumuhana*), Step 2. Experiences by the participants (inspired by *mana‘o*), Step 3. Apology and forgiveness by all participants (inspired by *mihi*), Step 4. Promise by each participant (inspired by *kala*), Step 5. Closure, and celebration (inspired by *pani*).” *Id.* at 80.

²⁷⁰ Joanna Santa-Barbara, *Reconciliation*, in HANDBOOK OF PEACE AND CONFLICT STUDIES, 173, 176, 181 (Charles Webel & Johan Galtung eds., 2007), <http://aipadinst.org/wp-content/uploads/2018/10/handbook-of-peace-and-conflict-studies.pdf>.

²⁷¹ *Id.*

²⁷² Urbain, *supra* note 261, at 81–82.

For example, Ho‘oponopono was conducted at a public level by the Peace Boat on October 8, 2003.²⁷³ During the Ho‘oponopono session on the Peace Boat, some Japanese and Korean participants experienced the healing and reconciliation process.²⁷⁴ Applied to the territorial dispute at hand, it is feasible and desirable for Japanese and Korean political leaders and citizens to participate in the mutual reconciliation process.²⁷⁵ Thus, the utilization of Ho‘oponopono-inspired reconciliation methods at a public level, combined with the transcend method at a political level, is the optimal route to resolving the territorial dispute.²⁷⁶ This novel combination of conflict resolution approaches will contribute to the creation of the peaceful bilateral relationship in the Asia–Pacific region.²⁷⁷

IX. CONCLUSION

This article has examined the Japan-Korea territorial dispute over the Takeshima/Dokdo Islands from historical, political, legal, economic, and social perspectives in search of possible solutions to the longstanding conflict.²⁷⁸ This article also comparatively analyzed opposing claims by Japan and Korea to the territorial sovereignty over the Islands.²⁷⁹ The findings of this research indicate that the bilateral territorial dispute has been complicated, but it is not impossible for the two countries to settle the dispute in a peaceful way.²⁸⁰

First, the historical background shows that the Korean government has claimed territorial sovereignty over the Islands from as early as 512.²⁸¹ Conversely, the Japanese government has asserted that it established the sovereignty over the Islands in the 17th century, and reconfirmed its ownership of the Islands in 1905.²⁸² The countries’ differing historical

²⁷³ *About Peace Boat*, PEACE BOAT, <https://peaceboat.org/english/about-peace-boat> (last visited Oct. 8, 2020). The Peace Boat is a Japanese non-government organization that facilitates transcultural exchanges among young people especially in Asia. *Id.*

²⁷⁴ Urbain, *supra* note 261, at 82–84.

²⁷⁵ *See id.*

²⁷⁶ Santa-Barbara, *supra* note 270, at 181; Urbain, *supra* note 261, at 76–77.

²⁷⁷ *See* Santa-Barbara, *supra* note 270, at 181; Urbain, *supra* note 261, at 76–77.

²⁷⁸ *See* discussion *supra* Section III–VII.

²⁷⁹ *See e.g., Japan’s Consistent Position on the Territorial Sovereignty over Takeshima*, *supra* note 2; *The Korean Government’s Basic Position on Dokdo*, *supra* note 4.

²⁸⁰ *See* discussion *supra* Section VIII.

²⁸¹ *See The Korean Government’s Basic Position on Dokdo*, *supra* note 4.

²⁸² *See Japan’s Consistent Position on the Territorial Sovereignty over Takeshima*, *supra* note 2.

perceptions of the conflict makes the territorial issue complex.²⁸³ Second, the stance of the United States on the sovereignty of the Islands matters significantly, since the United States was directly involved in the drafting process of the San Francisco Peace Treaty.²⁸⁴ Yet, the United States has been neutral in the territorial dispute, despite its support for Japan's sovereignty of the Islands.²⁸⁵ Therefore, the political resolution through a mediation by the United States seems to be unrealistic.²⁸⁶ Third, from a legal aspect, the San Francisco Peace Treaty can be seen as the lengthening of the bilateral territorial dispute.²⁸⁷ Unless Korea agrees to the joint referral of the territorial dispute to the ICJ, judicial settlement is virtually impossible.²⁸⁸ Despite international legal scholars concluding that international law favors the claim by the Korea, they are reluctant to refer the dispute to the ICJ because of Japan's superior international influence.²⁸⁹ Fourth, the economic value of the Islands, particularly the discovery of methane hydrate has made the situation all the more complicated.²⁹⁰ Lastly, the social and individual negative sentiments in combination with nationalistic tendencies regarding the Islands are deeply rooted in the societies, making their attitudes uncompromising.²⁹¹

Nevertheless, this article argues that applying a bifurcated approach using the transcend method in concert with an adaptation of Ho'oponopono to the case of Takeshima/Dokdo is the best option to reconcile the dispute at both a political and public level.²⁹² Official apology and forgiveness will be enhanced by individual healing and mutual reconciliation between the Japanese and Koreans.²⁹³ The combination of the transcend method and the Ho'oponopono will contribute to the conflict resolution and transformation

²⁸³ See *The Korean Government's Basic Position on Dokdo*, *supra* note 4; *Japan's Consistent Position on the Territorial Sovereignty over Takeshima*, *supra* note 2.

²⁸⁴ *U.S. Recognized Takeshima as Part of Japan's Territory in 1950: Government Report*, JAPAN TIMES (Sept. 10, 2019), <https://www.japantimes.co.jp/news/2019/09/10/national/u-s-recognized-takeshima-part-japans-territory-1950-japanese-government-report/>.

²⁸⁵ *Report by Ambassador Van Fleet*, *supra* note 88.

²⁸⁶ *Id.*

²⁸⁷ Hara, *supra* note 97.

²⁸⁸ IWASHITA, *supra* note 225; *Proposal of Referral to the International Court of Justice*, *supra* note 113.

²⁸⁹ Shin, Yong-ha, *supra* note 117.

²⁹⁰ See Yatsu, *supra* note 165. The discovery of methane hydrate as a next generation resource could aggravate the bilateral territorial dispute. *Id.*

²⁹¹ Bukh, *supra* note 147.

²⁹² See Santa-Barbara, *supra* note 270, at 181; Urbain, *supra* note 261, at 82–84.

²⁹³ See Santa-Barbara, *supra* note 270, at 181; Urbain, *supra* note 261, at 82–84.

of the Japan-Korea territorial dispute and to the creation of a more peaceful bilateral relationship in the Asia-Pacific region.²⁹⁴

²⁹⁴ See Santa-Barbara, *supra* note 270, at 181; Urbain, *supra* note 261, at 84–85.