ポケット・ゼミナール

「歴史・外交・法」

竹島

最終報告書

資料編

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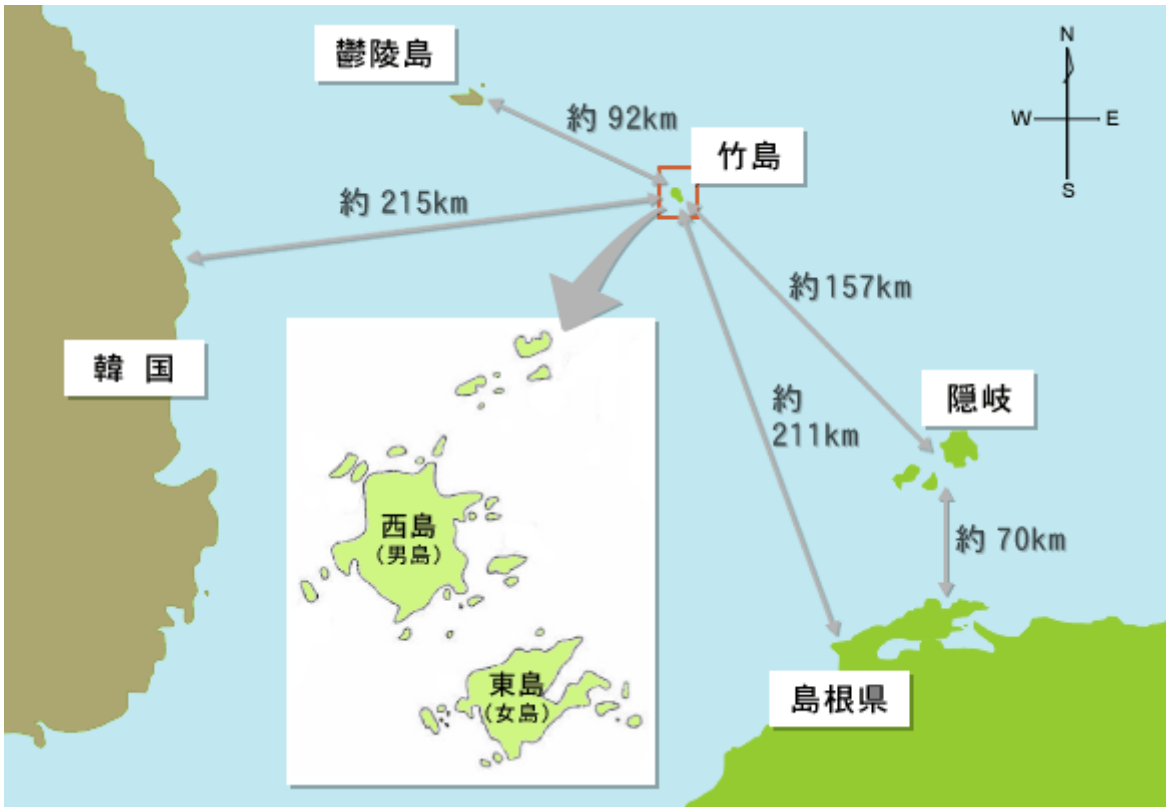
はじめに

・竹島の地図（日本国外務省ホームページ（http://www.mofa.go.jp/mofaj/area/takeshima/index.html））



第１章　本件に関係する国際法

第１節　領土取得に関する国際法

・東部グリーンランド事件のPCIJ判決（PCIJ, Series A/B, No. 53, 1933, pp. 45-6 http://www.worldcourts.com/pcij/eng/decisions/1932.08.03_greenland/）

It must be borne in mind, however, that as the critical date is July 10th, 1931, it is not necessary that sovereignty over Greenland should have existed throughout the period during which the Danish Government maintains that it was in being. Even if the material submitted to the Court might be thought insufficient to establish the existence of that sovereignty during the earlier periods, this would not exclude a finding that it is sufficient to establish a valid title in the period immediately preceding the occupation.

Before proceeding to consider in detail the evidence submitted to the Court, it may be well to state that a claim to sovereignty based not upon some particular act or title such as a treaty of cession but merely upon continued display of authority, involves two elements each of which must be shown [46] to exist: the intention and will to act as sovereign, and some actual exercise or display of such authority.

Another circumstance which must be taken into account by any tribunal which has to adjudicate upon a claim to sovereignty over a particular territory, is the extent to which the sovereignty is also claimed by some other Power. In most of the cases involving claims to territorial sovereignty which have come before an international tribunal, there have been two competing claims to the sovereignty, and the tribunal has had to decide which of the two is the stronger. One of the peculiar features of the present case is that up to 1931 there was no claim by any Power other than Denmark to the sovereignty over Greenland. Indeed, up till 1921, no Power disputed the Danish claim to sovereignty.

It is impossible to read the records of the decisions in cases as to territorial sovereignty without observing that in many cases the tribunal has been satisfied with very little in the way of the actual exercise of sovereign rights, provided that the other State could not make out a superior claim. This is particularly true in the case of claims to sovereignty over areas in thinly populated or unsettled countries.

In the period when the early Nordic colonies founded by Eric the Red in the Xth century in Greenland were in existence, the modern notions as to territorial sovereignty had not come into being. It is unlikely that either the chiefs or the settlers in these colonies drew any sharp

・パルマス島事件の仲裁判決　P.867（RIAA, vol.2, [n.d.], reprint, 1974, pp.867 http://untreaty.un.org/cod/riaa/cases/vol_II/829-871.pdf#search='island of PALMAS case RIAA'）

essential point is therefore to decide whether Spain had sovereignty over Palmas (or Miangas) at the time of the coming into force of the Treaty of Paris.

The United States base their claim on the titles of discovery, of recognition by treaty and of contiguity, i.e. titles relating to acts or circumstances leading to the acquisition of sovereignty; they have however not established the fact that sovereignty so acquired was effectively displayed at any time.

The Netherlands on the contrary found their claim to sovereignty essentially on the title of peaceful and continuous display of State authority over the island. Since this title would in international law prevail over a title of acquisition of sovereignty not followed by actual display of State authority, it is necessary to ascertain in the first place, whether the contention of the Netherlands is sufficiently established by evidence, and, if so, for what period of time.

In the opinion of the Arbitrator the Netherlands have succeeded in establishing the following facts:

a. The Island of Palmas (or Miangas) is identical with an island designated by this or a similar name, which has formed, at least since 1700, successively a part of two of the native States of the Island of Sangi (Talautse Isles).

b. These native States were from 1677 onwards connected with the East India Company, and thereby with the Netherlands, by contracts of suzerainty, which conferred upon the suzerain such powers as would justify his considering the vassal State as a part of his territory.

c. Acts characteristic of State authority exercised either by the vassal State or by the suzerain Power in regard precisely to the Island of Palmas (or Miangas) have been established as occurring at different epochs between 1700 and 1898, as well as in the period between 1898 and 1906.

The acts of indirect or direct display of Netherlands sovereignty at Palmas (or Miangas), especially in the 18th and early 19th centuries are not numerous, and there are considerable gaps in the evidence of continuous display. But apart from the consideration that the manifestations of sovereignty over a small and distant island, inhabited only by natives, cannot be expected to be frequent, it is not necessary that the display of sovereignty should go back to a very far distant period. It may suffice that such display existed in 1898, and had already existed as continuous and peaceful before that date long enough to enable any Power who might have considered herself as possessing sovereignty over the island, or having a claim to sovereignty, to have, according to local conditions, a reasonable possibility for ascertaining the existence of a state of things contrary to her real or alleged rights.

It is not necessary that the display of sovereignty should be established as having begun at a precise epoch; it suffices that it had existed at the critical period preceding the year 1898. It is quite natural that the establishment of sovereignty may be the outcome of a slow evolution, of a progressive intensification of State control. This is particularly the case, if sovereignty is acquired by the establishment of the suzerainty of a colonial Power over a native State, and in regard to outlying possessions of such a vassal State.

Now the evidence relating to the period after the middle of the 19th century makes it clear that the Netherlands Indian Government considered the island distinctly as a part of its possessions and that, in the years immediately preceding 1898, an intensification of display of sovereignty took place. 4

・マンキエ・エクリオ事件の ICJ 判決（ICJ, Reports, 1953, p. 57 http://www.icj-cij.org/docket/files/17/2023.pdf#search='MINQUIERS AND ECREHOS CASE'）

was intended to produce legal effects at that time, it remained in any case inoperative with regard to the Channel Islands. To revive its legal force to-day by attributing legal effects to it after an interval of more than seven centuries seems to lead far beyond any reasonable application of legal considerations.

The view is expressed by the French Government that the dismemberment of the Duchy of Normandy, which in fact occurred in 1204 when Continental Normandy was occupied by the King of France, has legal consequences in the present dispute. It is said that if the United Kingdom Government is unable to establish its claim to the Ecrehos and the Minquiers, the title to these islets must be considered as having remained with France since 1204. But since that time there has been a further development in the territorial position. Many wars and peace settlements between the two States succeeded each other during the following centuries. The Channel Islands, or some of them, were occupied temporarily by French forces during some years immediately following the events in 1204, as well as for brief periods in the next two centuries, and Continental Normandy was reconquered by the English King and held by him for a long period in the fifteenth century. In such circumstances it is difficult to see why the dismemberment of the Duchy of Normandy in 1204 should have the legal consequences attributed to it by the French Government. What is of decisive importance, in the opinion of the Court, is not indirect presumptions deduced from events in the Middle Ages, but the evidence which relates directly to the possession of the Ecrehos and Minquiers groups.

* * *

Before considering this evidence, the Court will examine some questions which concern both groups.

On August 2nd, 1839, France and the United Kingdom concluded a Convention concerning fishery, and particularly the oyster fishery between the Island of Jersey and the neighbouring coast of France. It is common ground between the Parties that this Convention did not settle the question of sovereignty over the Ecrehos and the Minquiers. But the French Government has submitted contentions which to a certain extent affect that question. These contentions, which were modified during the proceedings, were at the public hearing on October 8th, 1953, formulated as follows, as part of the Submissions presented on behalf of that Government :

> "(4) that by the Convention of August 2nd, 1839, the United Kingdom and France brought into being, between a line three miles from low water mark on the island of Jersey and an *ad hoc* line defined in Article 1 of the Convention, a zone in which fishery of every type should be common to the subjects of the two countries ;

・パルマス島事件の仲裁判決　P.839　（RIAA Vol. II, P.839 http://untreaty.un.org/cod/riaa/cases/vol_II/829-871.pdf#search='island of PALMAS case RIAA'）

ary to examine which of the States claiming sovereignty possesses a title—cession conquest, occupation, etc.—superior to that which the other State might possibly bring forward against it. However, if the contestation is based on the fact that the other Party has actually displayed sovereignty, it cannot be sufficient to establish the title by which territorial sovereignty was validly acquired at a certain moment; it must also be shown that the territorial sovereignty has continued to exist and did exist at the moment which for the decision of the dispute must be considered as critical. This demonstration consists in the actual display of State activities, such as belongs only to the territorial sovereign.

Titles of acquisition of territorial sovereignty in present-day international law are either based on an act of effective apprehension, such as occupation or conquest, or, like cession, presuppose that the ceding and the cessionary Powers or at least one of them, have the faculty of effectively disposing of the ceded territory. In the same way natural accretion can only be conceived of as an accretion to a portion of territory where there exists an actual sovereignty capable of extending to a spot which falls within its sphere of activity. It seems therefore natural that an element which is essential for the constitution of sovereignty should not be lacking in its continuation. So true is this, that practice, as well as doctrine, recognizes—though under different legal formulae and with certain differences as to the conditions required—that the continuous and peaceful display of territorial sovereignty (peaceful in relation to other States) is as good as a title. The growing insistence with which international law, ever since the middle of the 18th century, has demanded that the occupation shall be effective would be inconceivable, if effectiveness were required only for the act of acquisition and not equally for the maintenance of the right. If the effectiveness has above all been insisted on in regard to occupation, this is because the question rarely arises in connection with territories in which there is already an established order of things. Just as before the rise of international law, boundaries of lands were necessarily determined by the fact that the power of a State was exercised within them, so too, under the reign of international law, the fact of peaceful and continuous display is still one of the most important considerations in establishing boundaries between States.

Territorial sovereignty, as has already been said, involves the exclusive right to display the activities of a State. This right has as corollary a duty: the obligation to protect within the territory the rights of other States, in particular their right to integrity and inviolability in peace and in war, together with the rights which each State may claim for its nationals in foreign territory. Without manifesting its territorial sovereignty in a manner corresponding to circumstances, the State cannot fulfil this duty. Territorial sovereignty cannot limit itself to its negative side, i.e. to excluding the activities of other States; for it serves to divide between nations the space upon which human activities are employed, in order to assure them at all points the minimum of protection of which international law is the guardian.

Although municipal law, thanks to its complete judicial system, is able to recognize abstract rights of property as existing apart from any material display of them, it has none the less limited their effect by the principles of prescription and the protection of possession. International law, the structure of which is not based on any super-State organisation, cannot be presumed to reduce a right such as territorial sovereignty, with which almost all international relations are bound up, to the category of an abstract right, without concrete manifestations.

・マンキエ・エクルオ島事件　ICJ 判決（ICJ Reports 1953 p.67 http://www.icj-cij.org/docket/files/17/2023.pdf#search='MINQUIERS AND ECREHOS CASE'）

for Jersey and consequently marked as belonging to Great Britain and the other part apparently treated as *res nullius*. When the French Government in 1876 protested against the British Treasury Warrant of 1875 and challenged British sovereignty over the Ecrehos, it did not itself claim sovereignty, but continued to treat the Ecrehos as *res nullius*. In a letter of March 26th, 1884, from the French Ministry of Foreign Affairs to the French Minister of Marine, it was stated that the British Government had not ceased to claim the Ecrehos as a dependency to the Channel Islands, and it was suggested that French fishermen should be prohibited access to the Ecrehos. It does not appear that any such measure was taken, and subsequently, in a Note to the Foreign Office of December 15th, 1886, the French Government claimed for the first time sovereignty over the Ecrehos "*à la lumière des nouvelles données historiques et géologiques*".

*

The Court, being now called upon to appraise the relative strength of the opposing claims to sovereignty over the Ecrehos in the light of the facts considered above, finds that the Ecrehos group in the beginning of the thirteenth century was considered and treated as an integral part of the fief of the Channel Islands which were held by the English King, and that the group continued to be under the dominion of that King, who in the beginning of the fourteenth century exercised jurisdiction in respect thereof. The Court further finds that British authorities during the greater part of the nineteenth century and in the twentieth century have exercised State functions in respect of the group. The French Government, on the other hand, has not produced evidence showing that it has any valid title to the group. In such circumstances it must be concluded that the sovereignty over the Ecrehos belongs to the United Kingdom.

* * *

The Court will now consider the claims of both Parties to sovereignty over the *Minquiers* and begins with the evidence produced by the United Kingdom Government.

The Rolls of the Manorial Court of the fief of Noirmont in Jersey contain three entries for the years 1615, 1616 and 1617 concerning certain objects shipwrecked at the Minquiers. The first two entries state that certain wreckage of a ship, believed to belong to Honfleur, and lost at the Minquiers, was carried off from the islets by certain named persons. The Court, which was held "on this fief", ordered the Serjeant to take charge of the objects until other provision should have been made. The third entry states that a named person is "in default towards the Officers of the Seigneur for having taken away an Anchor from the Minquiers and their neighbourhood

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・パルマス島事件の RIAA 判決　P.841　(RIAA, vol.2, [n.d.], reprint, 1974, pp.841 http://untreaty.un.org/cod/riaa/cases/vol_II/829-871.pdf#search='island of PALMAS case RIAA')

ments made by a government in regard to its own acts are evidence in themselves and have no need of supplementary corroboration.

Since a divergence of view between the Parties as to the necessity and admissibility of evidence is a question of procedure, it is for the Arbitrator to decide it under Article V of the Special Agreement.

The provisions of Article II of the Special Agreement to the effect that documents in support of the Parties' arguments are to be annexed to the Memoranda and Counter-Memoranda, refers rather to the time and place at which each Party should inform the other of the evidence it is producing, but does not establish a necessary connection between any argument and a document or other piece or evidence corresponding therewith. However desirable it may be that evidence should be produced as complete and at as early a stage as possible, it would seem to be contrary to the broad principles applied in international arbitrations to exclude *a limine*, except under the explicit terms of a conventional rule, every allegation made by a Party as irrelevant, if it is not supported by evidence, and to exclude evidence relating to such allegations from being produced at a later stage of the procedure.

The provisions of the Hague Convention of 1907 for the peaceful settlement of international disputes are, under Article 51, to be applied, as the case may be, as subsidiary law in proceedings falling within the scope of that convention, or should serve at least to construe such arbitral agreements. Now, Articles 67, 68 and 69 of this convention admit the production of documents apart from that provided for in Article 63 in connection with the filing of cases, counter-cases and replies, with the consent, or at the request of the tribunal. This liberty of accepting and collecting evidence guarantees to the tribunal the possibility of basing its decisions on the whole of the facts which are relevant in its opinion.

The authorization given to the Arbitrator by Article III of the Special Agreement to apply to the Parties for further written Explanations would be extraordinary limited if such explanations could not extend to any allegations already made and could not consist of evidence which included documents and maps. The limitation to written explanations excluded oral procedure; but it is not to be construed as excluding documentary evidence of any kind. It is for the Arbitrator to decide both whether allegations do or—as being within the knowledge of the tribunal—do not need evidence in support and whether the evidence produced is sufficient or not; and finally whether points left aside by the Parties ought to be elucidated. This liberty is essential to him, for he must be able to satisfy himself on those points which are necessary to the legal construction upon which he feels bound to base his judgment. He must consider the totality of the allegations and evidence laid before him by the Parties, either *motu proprio* or at his request and decide what allegations are to be considered as sufficiently substantiated.

Failing express provision, an arbitral tribunal must have entire freedom to estimate the value of assertions made by the Parties. For the same reason, it is entirely free to appreciate the value of assertions made during proceedings at law by a government in regard to its own acts. Such assertions are not properly speaking legal instruments, as would be declarations creating rights: they are statements concerning historical facts. The value and the weight of any assertion can only be estimated in the light of all the evidence and all the assertions made on either side, and of facts which are notorious for the tribunal.

For the reasons stated above the Arbitrator is unable to construe the Special Agreement of January 23rd, 1925, as excluding the subsidiary application

・東部グリーンランド事件のPCIJ判決（*P.C.I.J. Ser. A/B,* No.53, p.69 http://www.worldcourts.com/pcij/eng/decisions/1932.08.03_greenland/）

Denmark as interdependent, and this interdependence appears to be reflected also in M. Ihlen's minute of the interview. Even if this interdependence-which, in view of the affirmative reply of the Norwegian Government, in whose name the Minister for Foreign Affairs was speaking, would have created a bilateral engagement - is not held to have been established, it can hardly [71] be denied that what Denmark was asking of Norway ("not to make any difficulties in the settlement of the [Greenland] question") was equivalent to what she was indicating her readiness to concede in the Spitzbergen question (to refrain from opposing "the wishes of Norway in regard to the settlement of this question"). What Denmark desired to obtain from Norway was that the latter should do nothing to obstruct the Danish plans in regard to Greenland. The declaration which the Minister for Foreign Affairs gave on July 22nd, 1919, on behalf of the Norwegian Government, was definitely affirmative : "I told the Danish Minister to-day that the Norwegian Government would not make any difficulty in the settlement of this question."

The Court considers it beyond all dispute that a reply of this nature given by the Minister for Foreign Affairs on behalf of his Government in response to a request by the diplomatic representative of a foreign Power, in regard to a question falling within his province, is binding upon the country to which the Minister belongs.

Norway has objected that the Danish Government's intention to extend the monopoly régime to the whole of Greenland was not mentioned in the Danish request of July 14th, 1919, as is alleged to have been done at a later date in the communications addressed to the interested Powers in 1920 and 1921; and it is argued that if the Norwegian Government had been warned of this intention, the declaration of the Minister for Foreign Affairs would have been in the negative; and that, in consequence, the declaration, though unconditional and definitive in form, cannot be relied on against Norway.

The Court cannot admit this objection. It seems difficult to believe that Norway could not have foreseen the extension of the monopoly, in view of the fact that the United States of America, which had received in 1915 a request similar to that made to Norway on July 14th, 1919, had understood perfectly well that the Danish plans in regard to the uncolonized parts of Greenland involved an extension of the monopoly régime - although this was not mentioned in the Danish request at Washington - and had for that very reason at first demanded the maintenance of the "open door". It is all the more difficult for the Court to accept the Norwegian

・プレア・ビヘア寺院事件のICJ判決P.23　（ICJ Reports, 1962, pp.23　http://www.icj-cij.org/docket/files/45/4871.pdf）

to earlier, including the Annex I map, was something of an occasion. This was no mere interchange between the French and Siamese Governments, though, even if it had been, it could have sufficed in law. On the contrary, the maps were given wide publicity in all technically interested quarters by being also communicated to the leading geographical societies in important countries, and to other circles regionally interested; to the Siamese legations accredited to the British, German, Russian and United States Governments; and to all the members of the Mixed Commission, French and Siamese. The full original distribution consisted of about one hundred and sixty sets of eleven maps each. Fifty sets of this distribution were allocated to the Siamese Government. That the Annex I map was communicated as purporting to represent the outcome of the work of delimitation is clear from the letter from the Siamese Minister in Paris to the Minister of Foreign Affairs in Bangkok, dated 20 August 1908, in which he said that "regarding the Mixed Commission of Delimitation of the frontiers and the Siamese Commissioners' request that the French Commissioners prepare maps of various frontiers, the French Commissioners have now finished their work". He added that a series of maps had been brought to him in order that he might forward them to the Siamese Minister of Foreign Affairs. He went on to give a list of the eleven maps, including the map of the Dangrek region—fifty sheets of each. He ended by saying that he was keeping two sheets of each map for his Legation and was sending one sheet of each to the Legations in London, Berlin, Russia and the United States of America.

It has been contended on behalf of Thailand that this communication of the maps by the French authorities was, so to speak, *ex parte*, and that no formal acknowledgment of it was either requested of, or given by, Thailand. In fact, as will be seen presently, an acknowledgment by conduct was undoubtedly made in a very definite way; but even if it were otherwise, it is clear that the circumstances were such as called for some reaction, within a reasonable period, on the part of the Siamese authorities, if they wished to disagree with the map or had any serious question to raise in regard to it. They did not do so, either then or for many years, and thereby must be held to have acquiesced. *Qui tacet consentire videtur si loqui debuisset ac potuisset.*

So far as the Annex I map is concerned, it was not merely the circumstances of the communication of this and the other maps that called for some reaction from the Siamese side, if reaction there was to be; there were also indications on the face of the map sheet which required a reaction if the Siamese authorities had any reason to contend that the map did not represent the outcome of

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・パルマス島事件の仲裁判決 P.869（RIAA, vol.2, [n.d.], reprint, 1974, pp.869 http://untreaty.un.org/cod/riaa/cases/vol_II/829-871.pdf#search='island of PALMAS case RIAA'）

The title of discovery, if it had not been already disposed of by the Treaties of Münster and Utrecht would, under the most favourable and most extensive interpretation, exist only as an inchoate title. as a claim to establish sovereignty by effective occupation. An inchoate title however cannot prevail over a definite title founded on continuous and peaceful display of sovereignty.

The title of contiguity, understood as a basis of territorial sovereignty, has no foundation in international law.

The title of recognition by treaty does not apply, because even if the Sangi States, with the dependency of Miangas, are to be considered as "held and possessed" by Spain in 1648, the rights of Spain to be derived from the Treaty of Münster would have been superseded by those which were acquired by the Treaty of Utrecht. Now if there is evidence of a state of possession in 1714 concerning the island of Palmas (or Miangas), such evidence is exclusively in favour of the Netherlands. But even if the Treaty of Utrecht could not be taken into consideration, the acquiescence of Spain in the situation created after 1677 would deprive her and her successors of the possibility of still invoking conventional rights at the present time.

The Netherlands title of sovereignty, acquired by continuous and peaceful display of State authority during a long period of time going probably back beyond the year 1700, therefore holds good.

* * *

The same conclusion would be reached, if, for argument's sake, it were admitted that the evidence laid before the Tribunal in conformity with the rules governing the present procedure did not—as it is submitted by the United States—suffice to establish continuous and peaceful display of sovereignty over the Island of Palmas (or Miangas). In this case no Party would have established its claims to sovereignty over the Island and the decision of the Arbitrator would have to be founded on the relative strength of the titles invoked by each Party.

A solution on this ground would be necessary under the Special Agreement. The terms adopted by the Parties in order to determine the point to be decided by the Arbitrator (Article I) presuppose for the present case that the Island of Palmas (or Miangas) can belong only either to the United States or to the Netherlands, and must form in its entirety a part of the territory either of the one or of the other of these two Powers, Parties to the dispute. For since, according to the terms of its Preamble, the Agreement of January 23rd, 1925, has for object to "terminate" the dispute, it is the evident will of the Parties that the arbitral award shall not conclude by a "non liquet", but shall in any event decide that the island forms a part of the territory of one or the other of two litigant Powers.

The possibility for the Arbitrator to found his decision on the relative strength of the titles invoked on either side must have been envisaged by the Parties to the Special Agreement, because it was to be foreseen that the evidence produced as regards sovereignty over a territory in the circumstances of the island in dispute might prove not to be sufficient to lead to a clear conclusion as to the existence of sovereignty.

For the reasons given above, no presumption in favour of Spanish sovereignty can be based in international law on the titles invoked by the United States as successors of Spain. Therefore, there would not be sufficient grounds for deciding the case in favour of the United States, even if it

・西サハラ事件のICJ勧告的意見（ICJ, Reports, 1975, p.43 http://www.icj-cij.org/docket/files/61/6195.pdf）

by the Permanent Court in upholding Denmark's claim to possession of the whole of Greenland.

92. This method of formulating Morocco's claims to ties of sovereignty with Western Sahara encounters certain difficulties. As the Permanent Court stated in the case concerning the *Legal Status of Eastern Greenland*, a claim to sovereignty based upon continued display of authority involves "two elements each of which must be shown to exist: the intention and will to act as sovereign, and some actual exercise or display of such authority" (*ibid.*, pp. 45 f). True, the Permanent Court recognized that in the case of claims to sovereignty over areas in thinly populated or unsettled countries, "very little in the way of actual exercise of sovereign rights" (*ibid.*, p. 46) might be sufficient in the absence of a competing claim. But, in the present instance, Western Sahara, if somewhat sparsely populated, was a territory across which socially and politically organized tribes were in constant movement and where armed incidents between these tribes were frequent. In the particular circumstances outlined in paragraphs 87 and 88 above, the paucity of evidence of actual display of authority unambiguously relating to Western Sahara renders it difficult to consider the Moroccan claim as on all fours with that of Denmark in the *Eastern Greenland* case. Nor is the difficulty cured by introducing the argument of geographical unity or contiguity. In fact, the information before the Court shows that the geographical unity of Western Sahara with Morocco is somewhat debatable, which also militates against giving effect to the concept of contiguity. Even if the geographical contiguity of Western Sahara with Morocco could be taken into account in the present connection, it would only make the paucity of evidence of unambiguous display of authority with respect to Western Sahara more difficult to reconcile with Morocco's claim to immemorial possession.

93. In the view of the Court, however, what must be of decisive importance in determining its answer to Question II is not indirect inferences drawn from events in past history but evidence directly relating to effective display of authority in Western Sahara at the time of its colonization by Spain and in the period immediately preceding that time (cf. *Minquiers and Ecrehos, Judgment, I.C.J. Reports 1953*, p. 57). As Morocco has also adduced specific evidence relating to the time of colonization and the period preceding it, the Court will now consider that evidence.

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94. Morocco requests that, in appreciating the evidence, the Court should take account of the special structure of the Sherifian State. No rule of international law, in the view of the Court, requires the structure of a State to follow any particular pattern, as is evident from the diversity of the forms of

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第２節　条約解釈における起草過程の意味

・女子夜間労働条約の解釈に関するPCIJの勧告的意見（PCIJ Series A/B No.50 1932 P.380　http://www.worldcourts.com/pcij/eng/decisions/1932.11.15_women/）

... In drafting the substantive parts of [380] the various draft conventions, the Drafting Committee has employed standard expressions whenever the use of these expressions has not interfered with the meaning of the report or the draft referred to this Committee by the Conference. The Drafting Committee wishes to suggest to the Conference that it is of the highest importance that such uniformity should be observed as far as possible, in order that there may be no confusion in the future concerning the legal results which flow from these draft conventions."

The text submitted by the Drafting Committee was unanimously adopted by the Conference.

The fact that the Preamble of the Convention as prepared by the Drafting Committee attached this Convention to item 3 in the agenda (Wornen's employment ... during the night) and not to item 5 (Extension and application of the Convention of Berne) has been noted above, page 377.

The impression derived from a study of the preparatory work is that, though at first the intention was that the Conference should not deviate from the stipulations of the Berne Convention, this intention had receded into the background by the time that the Draft Convention was adopted on November 28th, 1919. The uniformity of the terms of this Draft Convention with those of the other draft conventions which were being adopted, and which had their origin in the programme set forth in Part XIII of the Versailles Treaty, had become the important element.

The preparatory work thus confirms the conclusion reached on a study of the text of the Convention that there is no good reason for interpreting Article 3 otherwise than in accordance with the natural meaning of the words.

At this point the Court would refer to what it has already said, viz. that it has no intention of expressing any opinion whatever as to the correct interpretation of the Convention of Berne.

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The similarity both in structure and in expression between the various draft conventions adopted by the Labour Conference [381] at Washington in 1919 leads the Court to attach some importance to the presence in one of the other Conventions of a specific exception that the provisions of that Convention should not apply to persons holding positions of supervision or management, nor to persons employed in a confidential capacity.

The Convention in question is that limiting the hours of work in industrial undertakings to eight in the day, usually known as the Eight Hour Day Convention.

・セルビア公債事件の PCIJ 判決 P.30（PCIJ Series A, 1929, No.20 P.30 http://www.worldcourts.com/pcij/eng/decisions/1929.07.12_payment1/ ）

as a "4½ % *gold loan*" for "*a total of* 150 *million gold francs represented by* 300,000 *bonds of* 500 *gold francs*". The description in the bonds of 1913 is that of a "5 % *gold loan*" with the addition: "*This loan is represented by* 500,000 *bonds of* 500 *gold francs*."

The coupons in each of these issues either provide for payment in gold, as in those of the loan of 1902, or carry the words "....% *Gold loan*", as in those of the loans of 1906, 1909 and 1913.

It is argued that there is ambiguity because in other parts of the bonds, respectively, and in the documents preceding the several issues, mention is made of francs without specification of gold. As to this, it is sufficient to say that the mention of francs generally cannot be considered as detracting from the force of the specific provision for gold francs. The special words, according to elementary principles of interpretation, control the general expressions. The bond must be taken as a whole, and it cannot be so taken if the stipulation as to gold francs is disregarded.

As the bonds themselves are not ambiguous, there is no occasion for reference to the preliminary documents. But if these are examined, it will appear that they tend to confirm the agreement for gold payments.

The loan of 1895 was the subject of an agreement at Carlsbad, between representatives of the Serbian Government and the banks, which contained the following provisions: "*The payment of matured coupons and bonds drawn shall be in gold*"; and the Serbian law of July 8th/20th, 1895, which authorized the issue, provided:

> "The payment of matured coupons and bonds drawn for redemption shall be in gold at the places appointed therefor, at the holder's option and in the gold currency of the respective countries." [31]

In view of the clear terms of the bonds of this issue, it is not necessary to resort to inferences from the fact that this was a conversion loan to take the place of outstanding obligations, or to base any conclusions on the terms of the two notices which the Court has had before it and the authenticity of one of which has been drawn in question. There is nothing, moreover, in any of the attending circumstances or preliminary documents, which can be regarded as contradicting or impairing the gold clauses of the bonds. Nor is it necessary to follow the argument that the issue of bonds in London, in pounds sterling, was a part of the authorized issue of 1895. The issue in London — an issue which was made in a currency *par excellence*, a gold standard currency, and which would rather denote an

14

・条約法条約第 32 条

(*a*) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

(*b*) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

(*c*) any relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended.

Article 32
Supplementary means of interpretation

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

(*a*) leaves the meaning ambiguous or obscure; or

(*b*) leads to a result which is manifestly absurd or unreasonable.

Article 33
Interpretation of treaties authenticated in two or more languages

1. When a treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail.

2. A version of the treaty in a language other than one of those in which the text was authenticated shall be considered an authentic text only if the treaty so provides or the parties so agree.

3. The terms of the treaty are presumed to have the same meaning in each authentic text.

4. Except where a particular text prevails in accordance with paragraph 1, when a comparison of the authentic texts discloses a difference of meaning which the application of articles 31 and 32 does not remove, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted.

SECTION 4. TREATIES AND THIRD STATES

Article 34
General rule regarding third States

A treaty does not create either obligations or rights for a third State without its consent.

第２章　1910 年以前の竹島

第１節　日本の主張・それに対する韓国の反論

第２項　松島の漁業的利用

・渡海免許（日本国外務省ホームページ（http://www.mofa.go.jp/mofaj/area/takeshima/index.html））

従伯耆国米子竹島江 先年船相渡之由に候 然者如其今度致渡海度之段米子町人村川市兵衛大屋甚吉申上付而達上聞候之処不可有異儀之旨被仰出候間被得其意渡海之儀可被仰付候 恐々謹言

五月十六日

松平新太郎殿

永井信濃守
井上主計守
土井大炊頭
酒井雅楽頭

第３項　隠州視聴合紀

・隠州視聴合紀（国立国会図書館関西館蔵）

隱州視聽合紀卷一

國代記

隱州在北海中、故隱岐嶋（按、倭訓海中言遠洲、故名歟）。其在巽地言島前。也知夫郡海部郡屬焉。其位震地言島後。周吉郡穩地郡屬焉。其府者周吉郡南岸西郷豐崎也。從是南至雲州美穗關三十五里、辰巳至伯州赤崎浦四十里、未申至石州温泉津五十八里、自子至卯無可往地。戌亥間行二日一夜有松島。又一日程有竹島（俗言磯竹島、多竹魚海鹿）。此二島無人之地、見高麗如自雲岐望隱岐。然則日本之乾地以此州為限矣。民部圖帳曰、凡諸健兒免傜役、隱岐國以國造田三町地子充之。然近代所賦、毎年一萬千六百餘斛、其餘又以漆、椿實、山椒、紫藻、鯛、鰯、鱰、鯖、石決明、烏賊、馬皮等。是慶長年中堀尾氏之所定也。古老傳曰、昔對馬守源義親之國也。其後薩摩守忠敎在雲州美保關領之（忠度城跡在三保）。其後鎌倉右大將家使地頭人治之、其人尭首、故國人號鎌倉入道、而不名、遂失其姓名（按此人佐々木隱岐判官泰清一族歟、不然夫行氏之一）。

（須鍬是必庄野五郎之先亂也）又京極殿人某大和守某者來兪居東郷小田宮田城。其子孫有京極入道常念者、又有入道常意者、在宮田治國中。當此時、田園阡陌之法、稼税丁夫之品一變委失古法。從是京極經世、佐々木繁榮過元享健武之世、及義時義輝之時、此時有清政者始自東郷遷西郷、築甲尾城居之。自是先京極種類曼生於國中。於是時、弟兄鬩牆、同姓爛魚、清政亦無刀可制也。雲州刺史尼子伊豫守者、佐々木之棟梁、鄰州之盟主也。聞隱州之物怨、使其臣某將兵討隱岐、蓋為清政之援兵也。於是與都萬縣主興前守宗林其子彌二郎義秀戰于番市、誅焉。義秀雲州神門郡主之壻也。郡主遣兵救義秀、其兵到島前、為風波不渡、留豊田津（島前與島後渡口也）。義秀遂亡。又與中村縣主河渡某戰、偃焉。或曰尼子將傷而死、麾下秘之不發、全軍歸于雲州也。清政築平村小松城、置兵自攻郡隅城、其城主刑部少輔某自殺。圍小路城、城主箕尾戰敗走也。遂平島後、而後討島前、與美田人戰於福頼（或曰福頼人名號入道居海部、乃與美田人同亡、或曰福頼里名、今福居村是也）誅之、築城於別府治島前二郡、於是隱州又為一。其孫判官為清有讒舉、遂領于雲州島根郡、築本城（昔有城、本城今言本庄）。時藝州毛

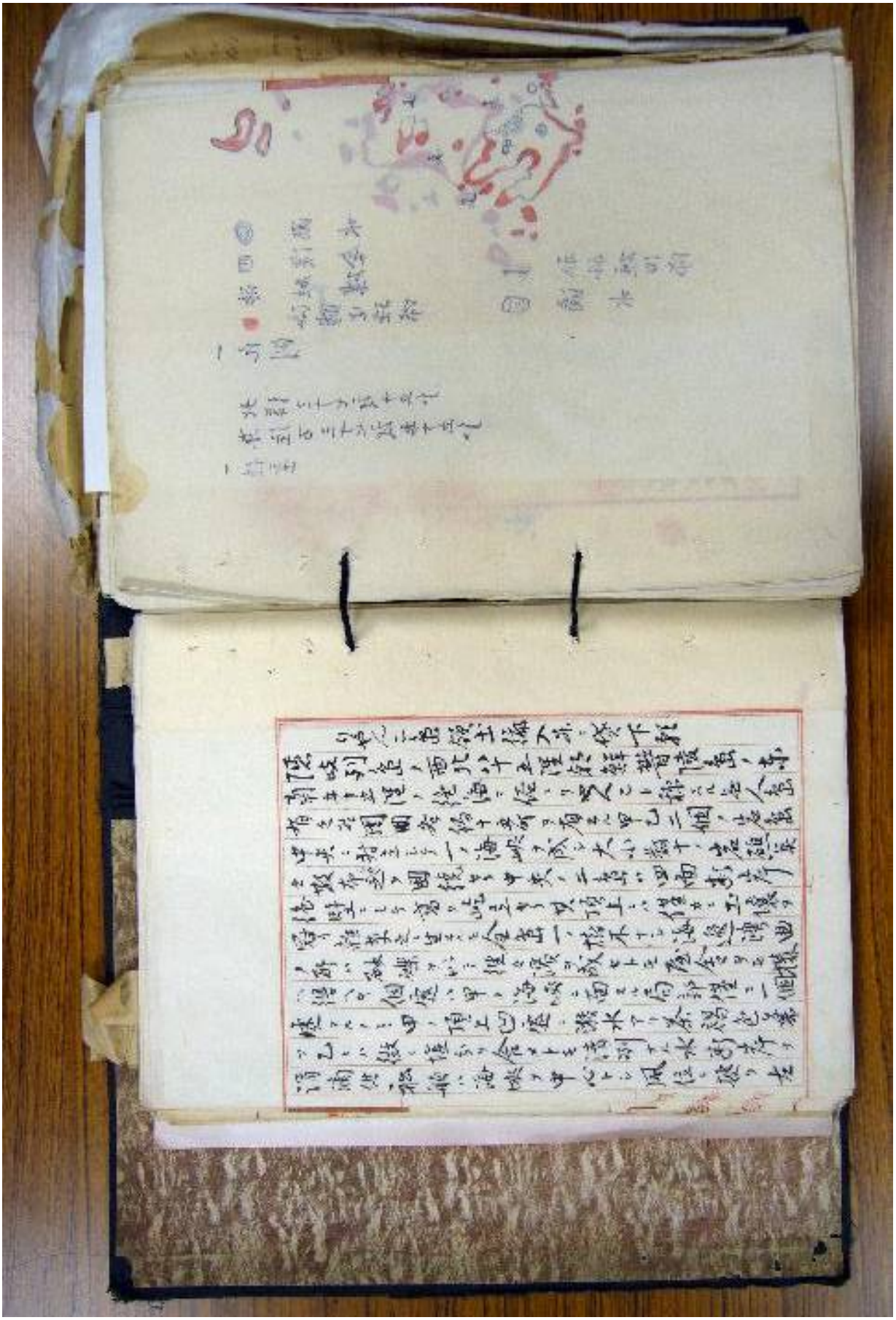
利元就聞尼子於雲州富田城、尼子日夜拒防之。為清以同族之故、乃出張于雲州。元就轉兵戰於本城、為清前鋒未設備、元就兵急戰、遂敗績、卒千軍（塚今在本庄之山）。或曰富田城陷、諸士散之四方。其臣山中鹿介聞尼子之支族勝久為僧在和泉境、奉之為將、欲復仇、乃往說之、與倶渡于隱岐、到東郷宮田城（本京極居處也）。軍小田海岸、請金七十兩米百廿斛於為清、為清與之。又為搆原田村勝山為要害、居勝久、而後相引渡乎雲州、討島根郡、領之、遂覃雲州半國。勝久又遷伯州米子、陣小田賀山、尼子舊臣獻於酒肴以迎之、古老或有流涙者。鹿介之猛威振于近國、於是降來者相繼於路。鹿介欲得人情、多裂地與之、依之雖可頒隱州諸士之地、隱州諸卒憤訴為清、携而歸乎隱州、泊三保關、待順風。鹿介聞之、自米子乘小舟、夜襲三保關、長清走去、鹿介追殺焉。二說不知何是。矣初為清有子、號庄野五郎、歳十二、不可以為將、故以為清之弟清家為留後、時在甲尾羅城。聞元就欲討隱州、自量思以此蕞爾孤島之弊邑不可敵藝陽濟々之多士、不如以小事大之義、遂遣使降于元就、以其子才又郎為質也。清家新得國以

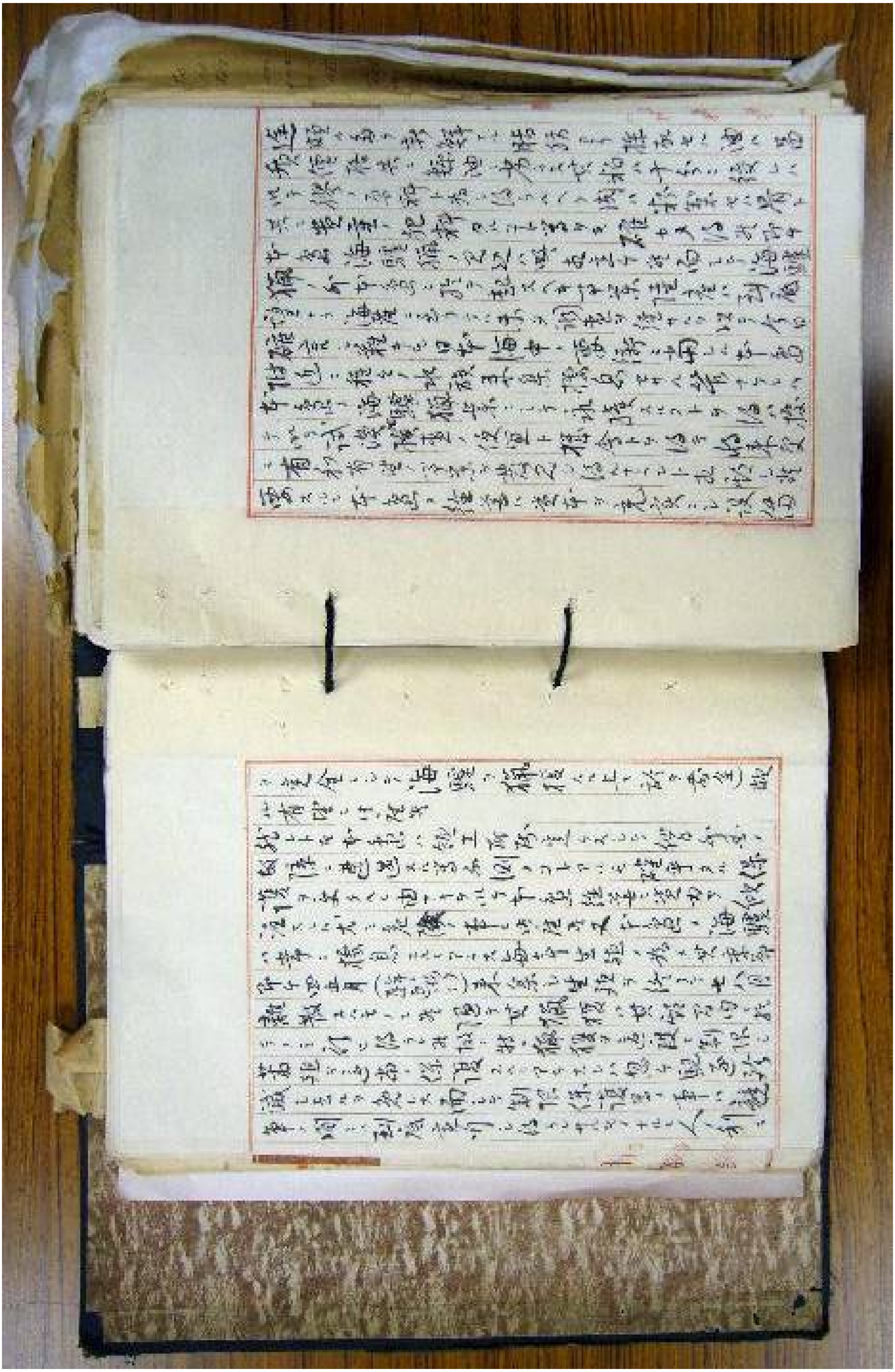
嚴酷立威、且益税賦以媚元就。元就多事於四方、督責販急、士民多憤怨者。於是為清之舊臣寺本和泉、寺本中務、寺本甚九郎、池田八兵衛、大寶寺某等潛偶語而曰、清家雖令弟、本比肩之家人、五郎君雖幼弱、佐々木之根本也。而以才又郎假元就威、以至此州、則吾儕皆渠之馬卒也。惟非事仇之理乎。死見先君於地下、何以對之。況五郎君以後來、何也。今倶合力討清家以奉五郎君、於義而當矣。一座皆嘗而起、毀血而盟、密謀遂成矣。初為清有事於雲州、以來但州若州之賊船入浦々寇民屋、年々無息、依是處々立柵。寺本等詣清家曰、建柵於砂崎（スナゴザキ、西海郷）濟可防賊船之往來、且西門破、請改作也。清家許焉。寺本等曰、其材木在原田山、可往擇之、叔公亦見之歟。然則以其次矣、魚於平村川、聊娯一日之遊。清家然諾矣。皆朝出行觀魚以飲于川上。於是伏兵城中、以使告清家曰、五郎君云歸時應入才城、有美酒以供焉。清家悅從之、直入謝之、從者各散、清家就座、寺本等肆于下、設盛膳羅美酒、清家飲且醉、和泉守左顧而欬、五郎君起行幕、勁兵鳴、清家怪而走、猿狠入室、左右亂擊焉。清家之扈從池田甚三郎、高井又四郎在門前、聞之拔及突而入刀

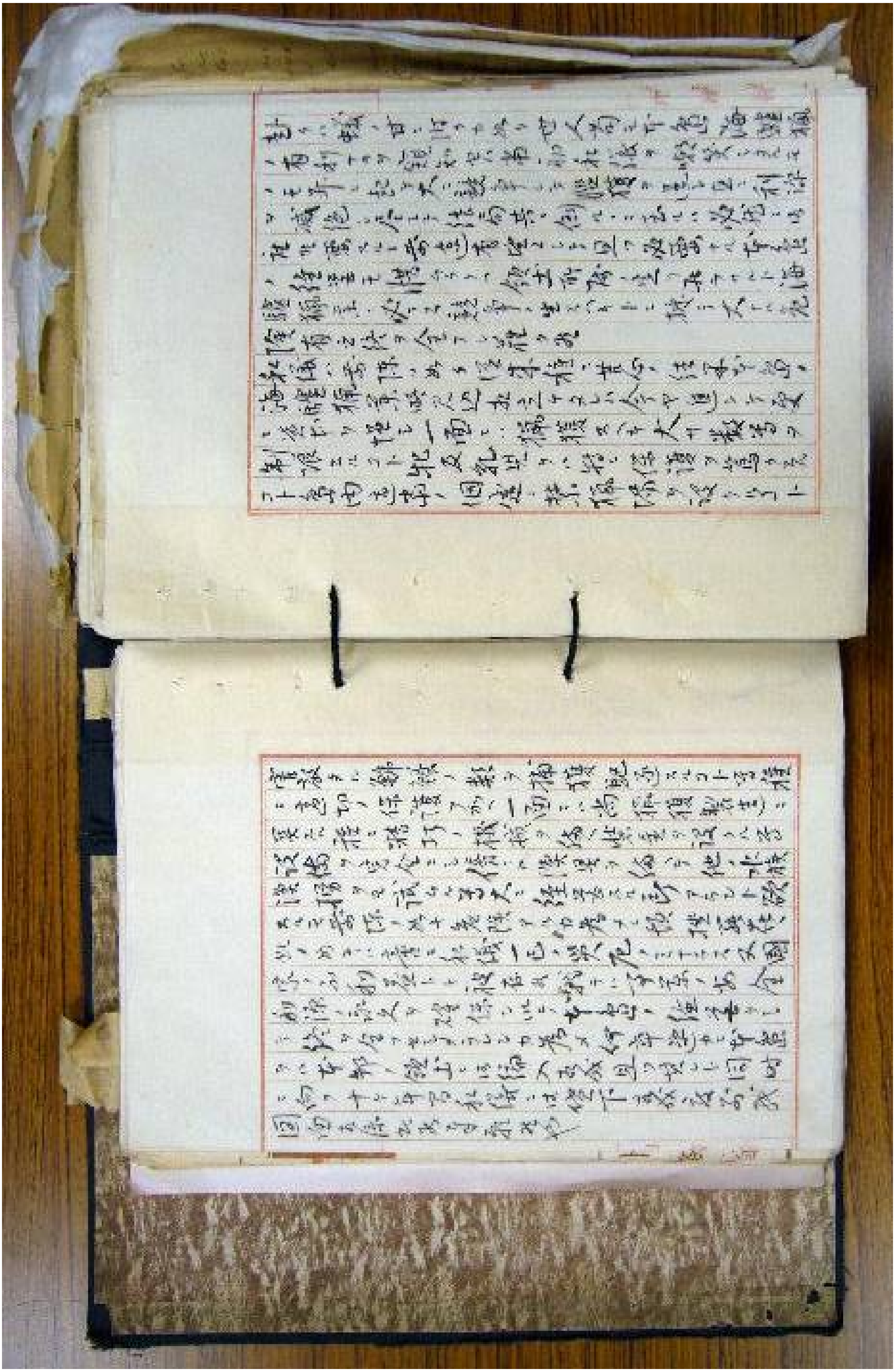
第 6 項　1905 年の日本政府による竹島の島根県への編入

・　りゃんこ島領土編入並に貸下願

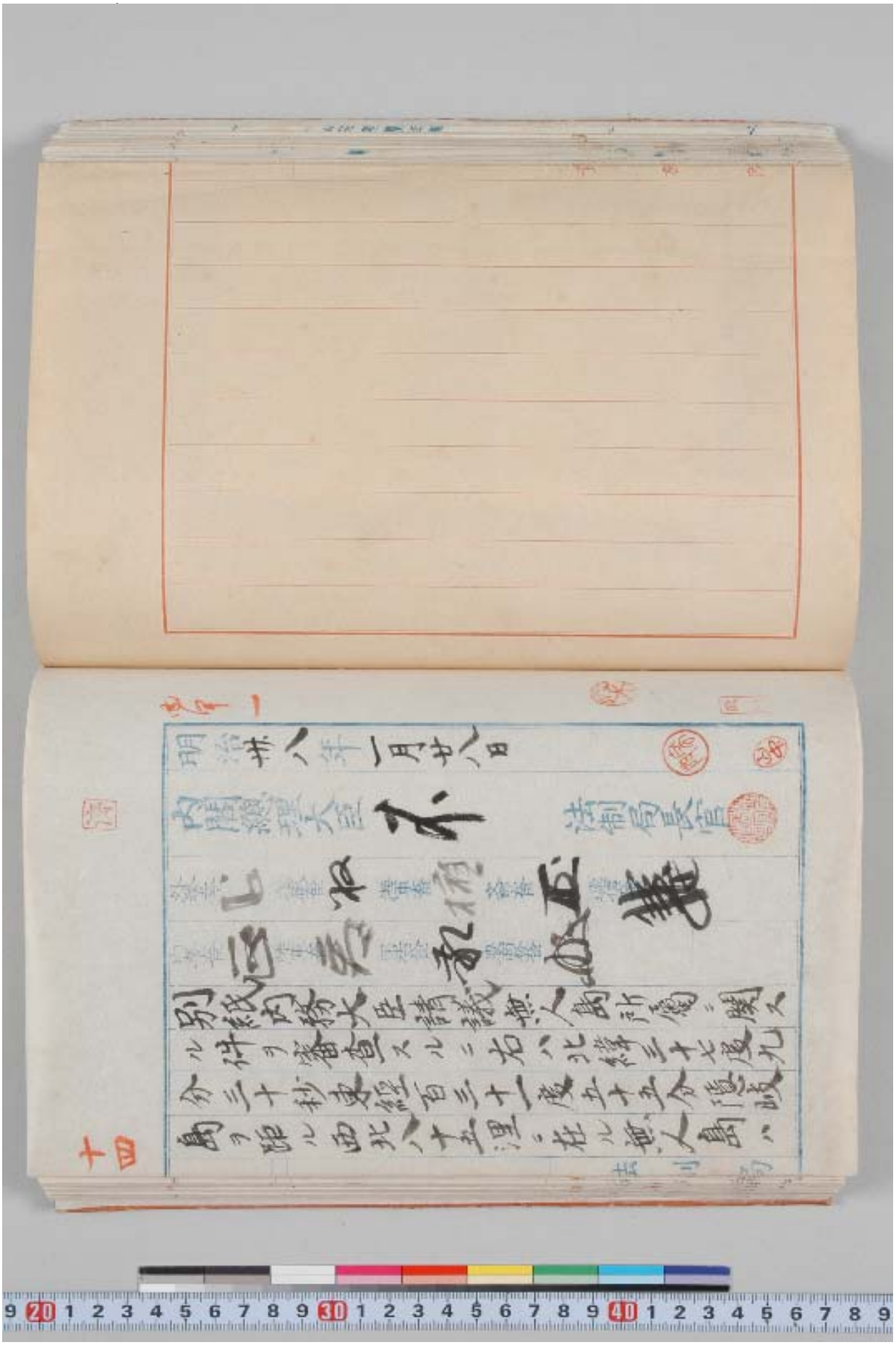
（http://www.tanaka-kunitaka.net/takeshima/teikokuhanto-1904/index.html）







・閣議決定（http://www.geocities.jp/tanaka_kunitaka/takeshima/2a11rui981-1905/）



他國ニ於テ之ヲ占領シタリト認ムヘキ形跡
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リ明ナル所ナレハ國際法上占領ノ事實
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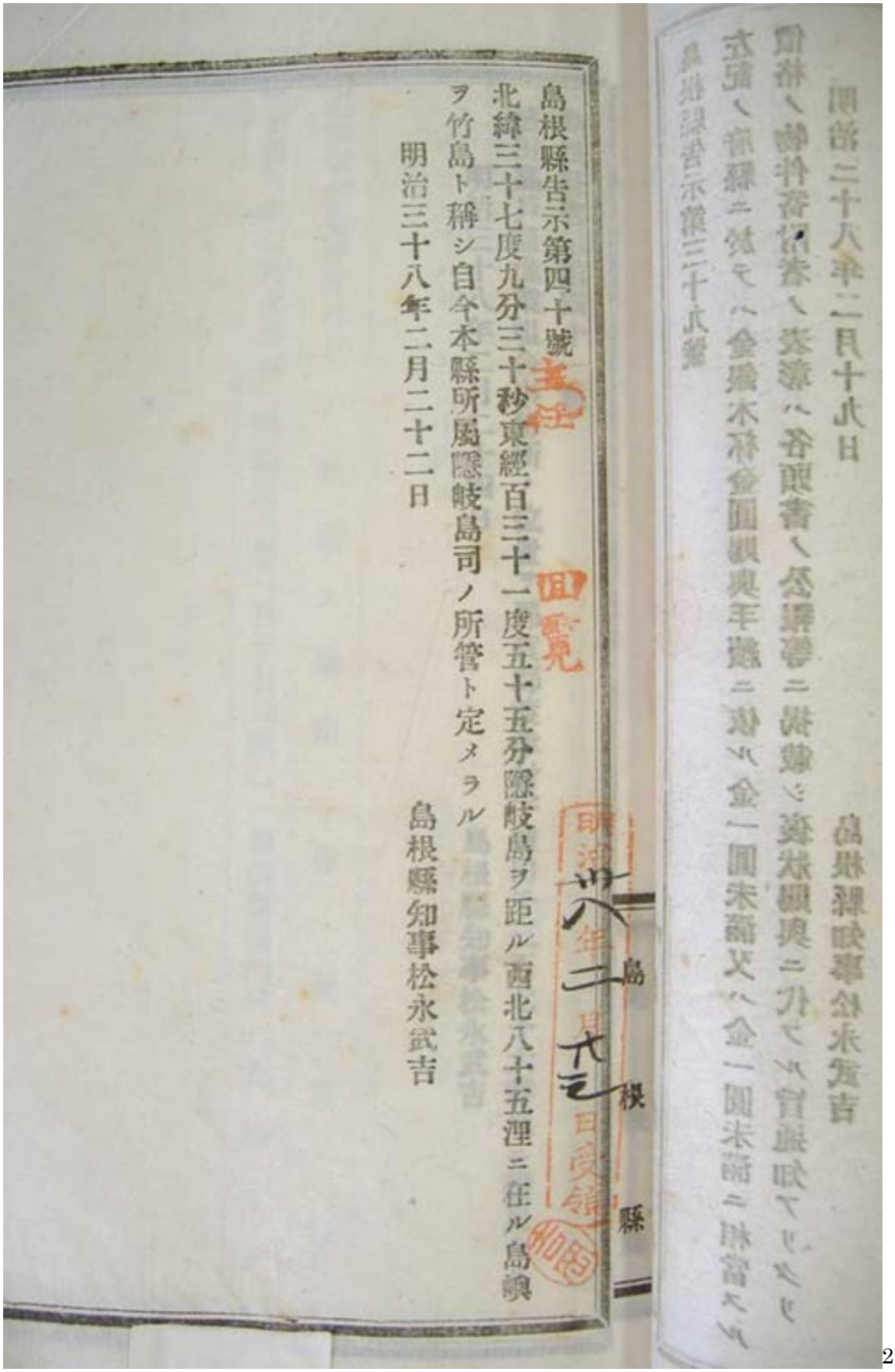
決定相成可然ト認ム

・島根県告示第 40 号

（http://www.pref.shimane.lg.jp/soumu/web-takeshima/takeshima_photo/#a04）



島根縣告示第四十號

北緯三十七度九分三十秒東經百三十一度五十五分隱岐島ヲ距ル西北八十五浬ニ在ル島嶼ヲ竹島ト稱シ自今本縣所屬隱岐島司ノ所管ト定メラル

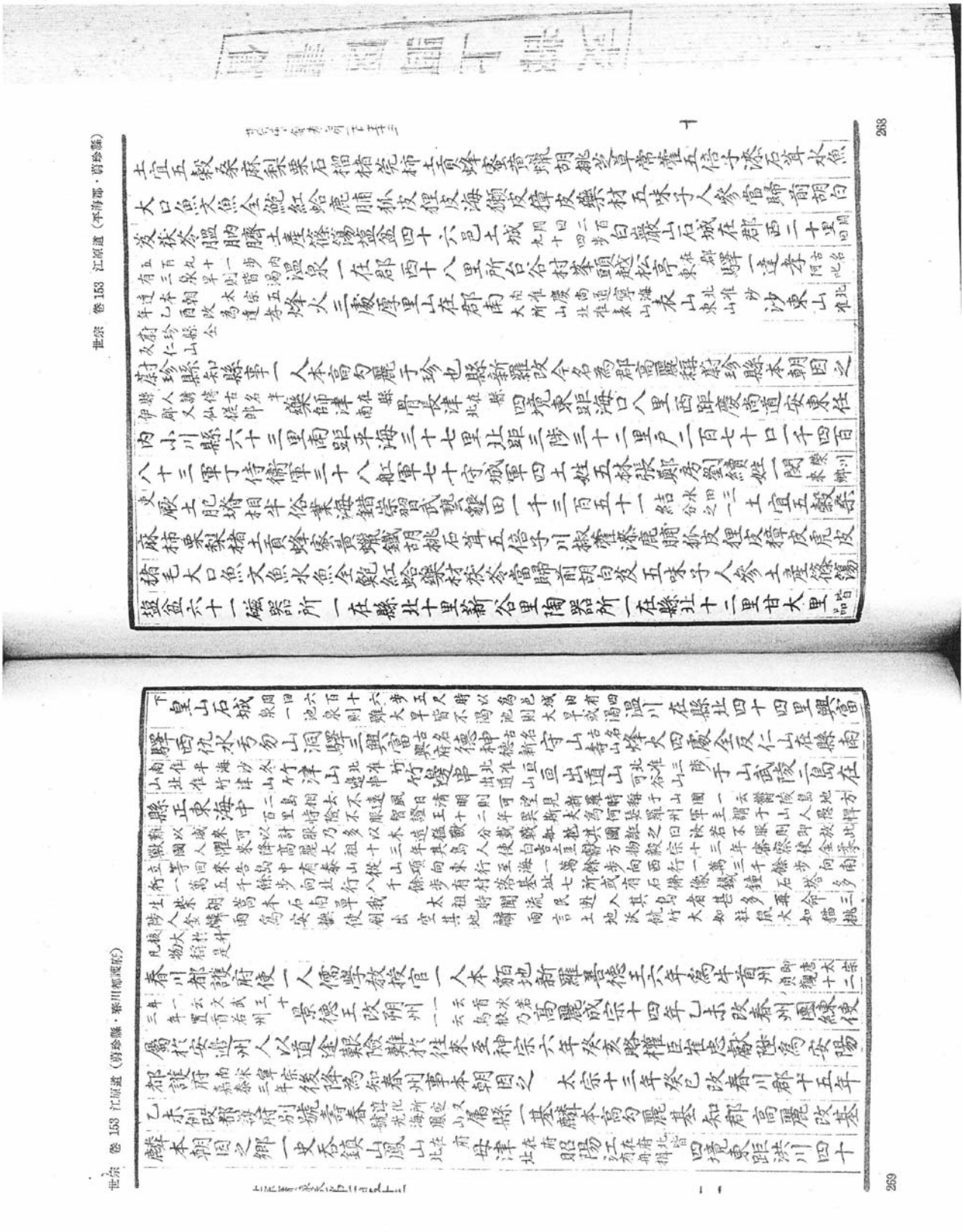
明治三十八年二月二十二日

島根縣知事松永武吉

第３節　韓国の主張・それに対する日本の反論

第１項　世宗実録「地理志」(1454)

世宗実録「地理志」巻 153　江原道（国立国会図書館関西館蔵）



第 5 項　1900 年の朝鮮政府による独島の鬱陵郡への編入

大韓帝国勅令第 41 号（http://toron.chu.jp/jp/take/hennyu/ishi41.html）

勅令第四十一號

鬱陵島全島竹島石島로改稱호고島監을郡守로改正호件

第一條　鬱陵島全島竹島石島라改稱호야江原道에附屬호고島監을郡守로改正호야官制中에編入호고郡守은五等으로홈

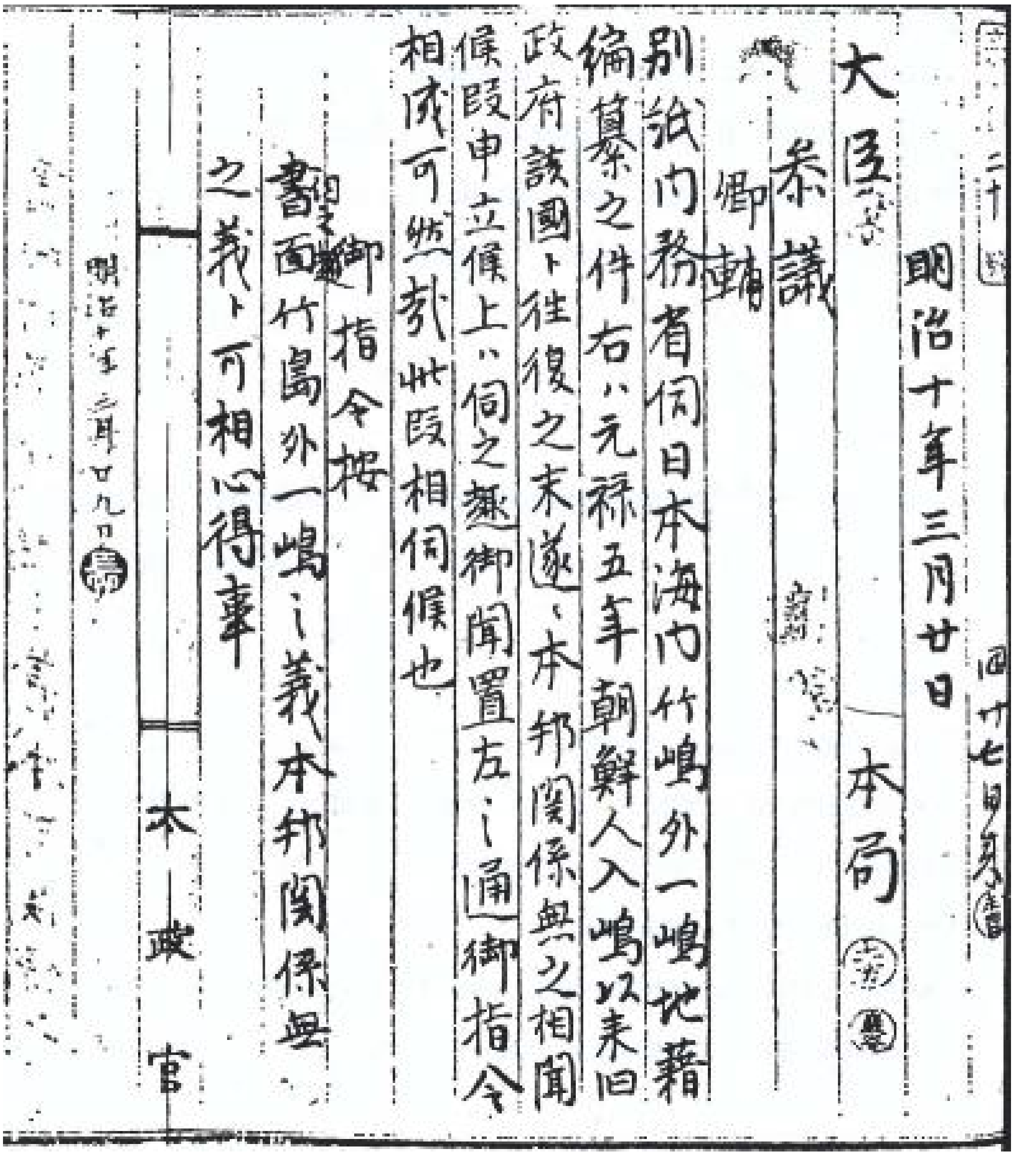
第二條　郡廳位置는台霞洞으로定호고區域은鬱陵全島와竹島石島로홈

附則

This is the official gazette of the Empire of Korea. This official gazette was issued on October 27th, 1900, showing the Imperial Ordinance No.41 of October 25th. It promulgates that Ullungdo Island, Chukdo Island, and Sokdo Island became under the Ullung County's administration. Some Korean scholars insist that Sokdo Island is Tokdo(=Takeshima). However, there is no evidence that Sokdo is Tokdo.

第 6 項　太政官指令（1877 年）

（竹島メモ　竹島編入の経緯　http://toron.chu.jp/jp/take/hennyu/taittou.html）


明治十年三月廿日

大臣

参議

御輔

本局

別紙内務省伺日本海内竹嶋外一嶋地籍編纂之件右ハ元禄五年朝鮮人入嶋以来旧政府該國ト往復之末遂ニ本邦関係無之相聞候段申立候上ハ伺之趣御聞置左之通御指令相成可然哉此段相伺候也

御指令按

書面竹島外一嶋之義本邦関係無之義ト可相心得事

明治十年三月廿九日

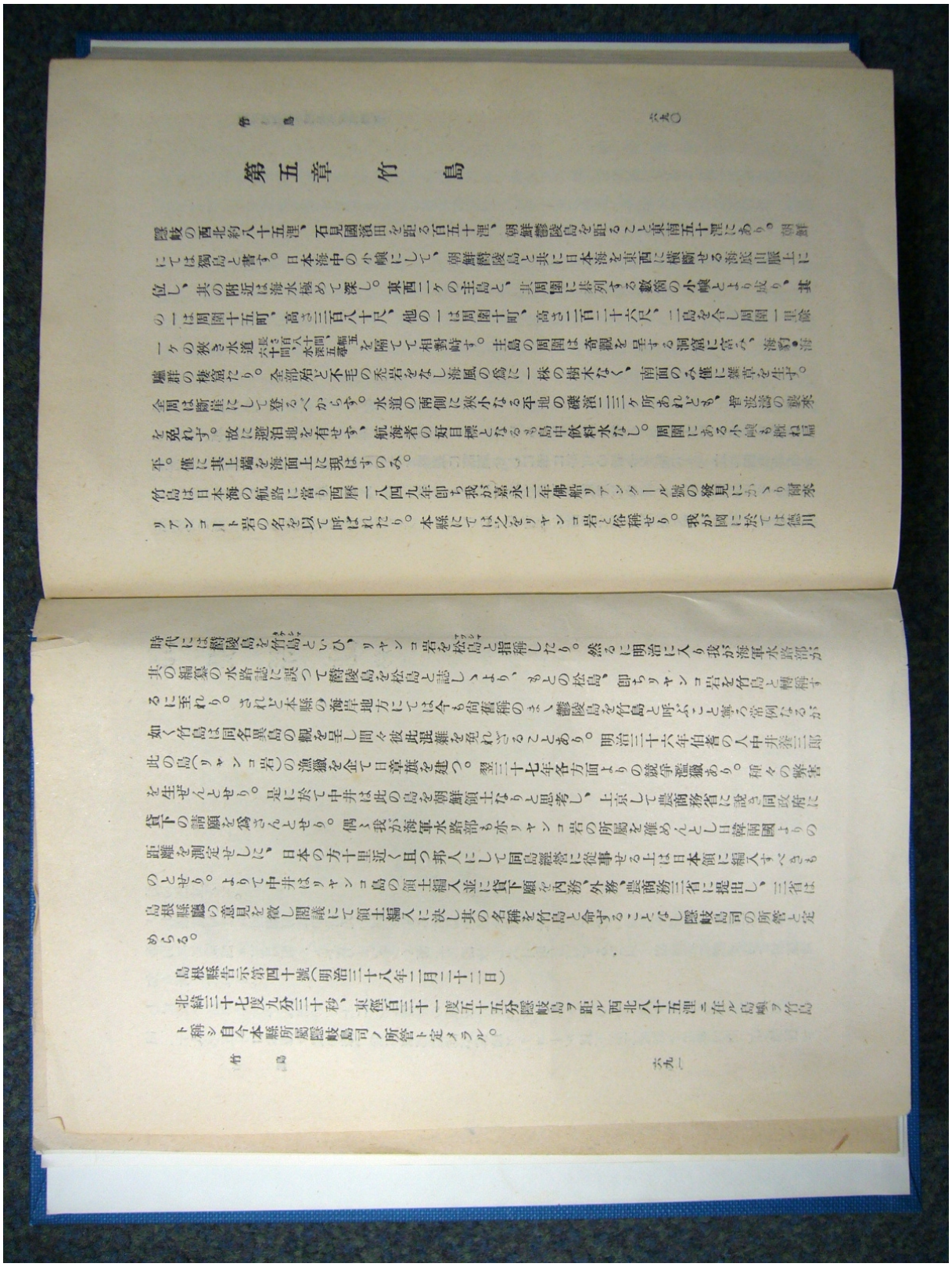
太政官

第３章　1910 年から第二次世界大戦までの竹島

第１節　韓国の主張・それに対する日本の反論

第１項　1923 年、島根県教育会『島根県誌』

（http://www.geocities.jp/tanaka_kunitaka/takeshima/shimanekenshi-1923/）



第五章　竹島

隠岐の西北約八十五浬、石見國濱田を距る百五十浬、朝鮮鬱陵島を距ること東南五十浬にあり。朝鮮にては獨島と書す。日本海中の小嶼にして、朝鮮鬱陵島と共に日本海を東西に横断せる海底山脈上に位し、其の附近は海水極めて深し。東西二ケの主島と、其周圍に非列する數箇の小嶼とより成り、其の一は周圍十五町、高さ三百八十尺、他の一は周圍十町、高さ二百二十六尺、二島を合し周圍一里餘、一ケの狭き水道（長さ十四町、水深五尋）を隔てて相對峙す。主島の周圍は奇觀を呈する洞窟に富み、海豹、海鳥群棲の棲息地なり。全部殆ど不毛の禿岩をなし海風の爲に一株の樹木なく、南面のみ僅に雑草を生ず。全周は断崖にして登るべからず。水道の南側に狭小なる平地の礫濱二三ケ所あれども、岩波激の襲來を免れず。故に避泊地を有せず、航海者の好目標となるも島中飲料水なし。周圍にある小嶼も概ね扁平。僅に其上端を海面上に現はすのみ。

竹島は日本海の航路に當り西暦一八四九年即ち我が嘉永二年佛船リアンクール號の發見にかゝり爾來リアンコート岩の名を以て呼ばれたり。本縣にては之をリャンコ岩と俗稱せり。我が國に於ては徳川時代には鬱陵島を竹島といひ、リャンコ岩を松島と指稱したり。然るに明治に入り我が海軍水路部が其の編纂の水路誌に誤つて鬱陵島を松島と誌し、もとの松島、即ちリャンコ岩を竹島と稱するに至れり。されど本縣の海岸地方にては今も尚舊稱のまゝ、鬱陵島を竹島と呼ぶこと寧ろ常例なるが如く竹島は同名異島の觀を呈し間々彼此混雑を免れざることあり。明治三十六年伯耆の人中井養三郎此の島（リャンコ岩）の漁獵を企て日韓族を建つ。翌三十七年各方面よりの競爭濃厚あり。稍々の衆客を生ぜんとせり。是に於て中井は此の島を朝鮮領土ならと思考し、上京して農商務省に請ひ同政府に貸下の請願を爲さんとせり。偶ゝ我が海軍水路部も亦リャンコ岩の所屬を確めんとし日韓兩國よりの距離を測定せしに、日本の方十里近く且つ邦人にして同島經營に從事せる上は日本領に編入すべきものとせり。よりて中井はリャンコ島の領土編入並に貸下願を内務、外務、農商務三省に提出し、三省は島根縣廳の意見を徴し閣議にて領土編入に決し其の名稱を竹島と命ずることなし隠岐島司の所管と定められる。

（島根縣告示第四十號（明治三十八年二月二十二日）

北緯三十七度九分三十秒、東經百三十一度五十五分隠岐島ヲ距ル西北八十五浬ニ在ル島嶼ヲ竹島ト稱シ自今本縣所屬隠岐島司ノ所管ト定メラル。

第 4 項　1933 年、日本海軍省『朝鮮沿岸水路誌』

（http://www.kr-jp.net/meiji/suiroshi/k-suiro-1933.pdf）

第４章　戦後処理における竹島の扱い

第１節　韓国の主張・それに対する日本の反論

第１項　カイロ宣言およびポツダム宣言

・　カイロ宣言

（http://www.ndl.go.jp/constitution/shiryo/01/002_46/002_46_001r.html）

CONFIDENTIAL　　CONFIDENTIAL　　CONFIDENTIAL

HOLD FOR RELEASE　　HOLD FOR RELEASE　　HOLD FOR RELEASE

PLEASE SAFEGUARD AGAINST PREMATURE RELEASE OR PUBLICATION.

The following communique is for automatic release at 7:30 P.M., E.W.T., on Wednesday, December 1, 1943.

Extraordinary precautions must be taken to hold this communication absolutely confidential and secret until the hour set for automatic release.

No intimation can be given its contents nor shall its contents be the subject of speculation or discussion on the part of anybody receiving it, prior to the hour of release.

Radio commentators and news broadcasters are particularly cautioned not to make the communication the subject of speculation before the hour of release for publication.

STEPHEN EARLY
Secretary to the President

- -

President Roosevelt, Generalissimo Chiang Kai-Shek and Prime Minister Churchill, together with their respective military and diplomatic advisers, have completed a conference in North Africa.

The following general statement was issued:

"The several military missions have agreed upon future military operations against Japan. The Three Great Allies expressed their resolve to bring unrelenting pressure against their brutal enemies by sea, land and air. This pressure is already rising.

"The Three Great Allies are fighting this war to restrain and punish the aggression of Japan. They covet no gain for themselves and have no thought of territorial expansion. It is their purpose that Japan shall be stripped of all the islands in the Pacific which she has seized or occupied since the beginning of the First World War in 1914, and that all the territories Japan has stolen from the Chinese, such as Manchuria, Formosa, and The Pescadores, shall be restored to the Republic of China. Japan will also be expelled from all other territories which she has taken by violence and greed. The aforesaid Three Great Powers, mindful of the enslavement of the people of Korea, are determined that in due course Korea shall become free and independent.

"With these objects in view the Three Allies, in harmony with those of the United Nations at war with Japan, will continue to persevere in the serious and prolonged operations necessary to procure the unconditional surrender of Japan."

- - - - - -

四　無分別ナル打算ニ依リ日本帝國ヲ滅亡ノ淵ニ陷レタル我儘ナル軍國主義的助言者ニ依リ日本國ガ引續キ統御セラルベキカ又ハ理性ノ經路ヲ日本國ガ履ムベキカヲ日本國ガ決定スベキ時期ハ到來セリ

五　吾等ノ條件ハ左ノ如シ

吾等ハ右條件ヨリ離脫スルコトナカルベシ右ニ代ル條件存在セズ吾等ハ遲延ヲ認ムルヲ得ズ

六　吾等ハ無責任ナル軍國主義ガ世界ヨリ驅逐セラルルニ至ル迄ハ平和、安全及正義ノ新秩序ガ生ジ得ザルコトヲ主張スルモノナルヲ以テ日本國國民ヲ欺瞞シ之ヲシテ世界征服ノ擧ニ出ヅルノ過誤ヲ犯サシメタル者ノ權力及勢力ハ永久ニ除去セラレザルベカラズ

七　右ノ如キ新秩序ガ建設セラレ且日本國ノ戰爭遂行能力ガ破碎セラレタルコトノ確證アルニ至ル迄ハ聯合國ノ指定スベキ日本國領域内ノ諸地點ハ吾等ノ玆ニ指示スル基本的目的ノ達成ヲ確保スル爲占領セラルベシ

八　「カイロ」宣言ノ條項ハ履行セラルベク又日本國ノ主權ハ本州、北海道、九州及四國竝ニ吾等ノ決定スル諸小島ニ局限セラルベシ

九　日本國軍隊ハ完全ニ武裝ヲ解除セラレタル後各自ノ家庭ニ復歸シ平和的且生產的ノ生活ヲ營ムノ機會ヲ得シメラルベシ

十　吾等ハ日本人ヲ民族トシテ奴隷化セントシ又ハ國民トシテ滅亡セシメントスルノ意圖ヲ有スルモノニ非ザルモ吾等ノ俘虜ヲ虐待セル者ヲ含ム一切ノ戰爭犯罪人ニ對シテハ嚴重ナル處罰加ヘラルベシ日本國政府ハ日本國國民ノ間ニ於ケル民主主義的傾向ノ復活强化ニ對スル一切ノ障礙ヲ除去スベシ言論、宗教及思想ノ自由竝ニ基本的人權ノ尊重ハ確立セラルベシ

十一　日本國ハ其ノ經濟ヲ支持シ且公正ナル實物賠償ノ取立ヲ可能ナラシムルガ如キ產業ヲ維持スルコトヲ許サルベシ但シ日本國ヲシテ戰爭ノ爲再軍備ヲ爲スコトヲ得シムルガ如キ產業ハ此ノ限ニ在ラズ右目的ノ爲原料ノ入手（其ノ支配トハ之ヲ區別ス）ヲ許サルベシ日本國ハ將來世界貿易關係ヘノ參加ヲ許サルベシ

十二　前記諸目的ガ達成セラレ且日本國國民ノ自由ニ表明セル意思ニ從ヒ平和的傾向ヲ有シ且責任アル政府ガ樹立セラルルニ於テハ聯合國ノ占領軍ハ直ニ日本國ヨリ撤收セラルベシ

十三　吾等ハ日本國政府ガ直ニ全日本國軍隊ノ無條件降伏ヲ宣言シ且右行動ニ於ケル同政府ノ誠意ニ付適當且充分ナル保障ヲ提供センコトヲ同政府ニ對シ要求ス右以外ノ日本國ノ選擇ハ迅速且完全ナル壞滅アルノミトス

・降伏文書（http://www.jacar.go.jp/）．

目次

一 降伏文書

昭和二十年（一九四五年）九月二日署名
同日附官報號外掲載、政府及大本營布告

降伏文書

下名ハ茲ニ合衆國、中華民國及「グレート、ブリテン」國ノ政府ノ首班ガ千九百四十五年七月二十六日「ポツダム」ニ於テ發シ後ニ「ソヴィエト」社會主義共和國聯邦ガ參加シタル宣言ノ條項ヲ日本國天皇、日本國政府及日本帝國大本營ノ命ニ依リ且之ニ代リ受諾ス右四國ハ以下之ヲ聯合國ト稱ス

下名ハ茲ニ日本帝國大本營竝ニ何レノ位置ニ在ルヲ問ハズ一切ノ日本國軍隊及日本國ノ支配下ニ在ル一切ノ軍隊ノ聯合國ニ對スル無條件降伏ヲ布告ス

下名ハ茲ニ何レノ位置ニ在ルヲ問ハズ一切ノ日本國軍隊及日本國臣民ニ對シ敵對行爲ヲ直ニ終止スルコト、一切ノ船舶、航空機竝ニ軍用及非軍用財產ヲ保存シ之ガ毀損ヲ防止スルコト及聯合國最高司令官又ハ其ノ指示ニ基キ日本國政府ノ諸機關ノ課スベキ一切ノ要求ニ應ズルコトヲ命ズ

下名ハ茲ニ日本帝國大本營ガ何レノ位置ニ在ルヲ問ハズ一切ノ日本國軍隊及日本國ノ支配下ニ在ル一切ノ軍隊ノ指揮官ニ對シ自身及其ノ支配下ニ在ル一切ノ軍隊ガ無條件ニ降伏スベキ旨ノ命令ヲ直ニ發スルコトヲ命ズ

下名ハ玆ニ一切ノ官廳、陸軍及海軍ノ職員ニ對シ聯合國最高司令官ガ本降伏實施ノ爲適當ナリト認メテ自ラ發シ又ハ其ノ委任ニ基キ發セシムル一切ノ布告、命令及指示ヲ遵守シ且之ヲ施行スベキコトヲ命ジ竝ニ右職員ガ聯合國最高司令官ニ依リ又ハ其ノ委任ニ基キ特ニ任務ヲ解カレザル限リ各自ノ地位ニ留リ且引續キ各自ノ非戰闘的任務ヲ行フコトヲ命ズ

下名ハ玆ニ「ポツダム」宣言ノ條項ヲ誠實ニ履行スルコト竝ニ右宣言ヲ實施スル爲聯合國最高司令官又ハ其ノ他特定ノ聯合國代表者ガ要求スルコトアルベキ一切ノ命令ヲ發シ且斯ル一切ノ措置ヲ執ルコトヲ天皇、日本國政府及其ノ後繼者ノ爲ニ約ス

下名ハ玆ニ日本帝國政府及日本帝國大本營ニ對シ現ニ日本國ノ支配下ニ在ル一切ノ聯合國俘虜及被抑留者ヲ直ニ解放スルコト竝ニ其ノ保護、手當、給養及指示セラレタル場所ヘノ即時輸送ノ爲ノ措置ヲ執ルコトヲ命ズ

天皇及日本國政府ノ國家統治ノ權限ハ本降伏條項ヲ實施スル爲適當ト認ムル措置ヲ執ル聯合國最高司令官ノ制限ノ下ニ置カルルモノトス

千九百四十五年九月二日午前九時四分日本國東京灣上ニ於テ署名ス

第２項　SCAPIN677 及び SCAPIN1033

・ SCAPIN677

（http://www.mofa.go.jp/mofaj/area/takeshima/pdfs/g_taisengo01.pdf）

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

AG 091 (29 Jan 46)GS
(SCAPIN - 677)

29 January 1946

MEMORANDUM FOR: IMPERIAL JAPANESE GOVERNMENT.

THROUGH : Central Liaison Office, Tokyo.

SUBJECT : Governmental and Administrative Separation of Certain Outlying Areas from Japan.

1. The Imperial Japanese Government is directed to cease exercising, or attempting to exercise, governmental or administrative authority over any area outside of Japan, or over any government officials and employees or any other persons within such areas.

2. Except as authorized by this Headquarters, the Imperial Japanese Government will not communicate with government officials and employees or with any other persons outside of Japan for any purpose other than the routine operation of authorized shipping, communications and weather services.

3. For the purpose of this directive, Japan is 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 the Ryukyu (Nansei) Islands north of 30° North Latitude (excluding Kuchinoshima Island); and excluding (a) Utsuryo (Ullung) Island, Liancourt Rocks (Take Island) and Quelpart (Saishu or Cheju) Island, (b) the Ryukyu (Nansei) Islands south of 30° North Latitude (including Kuchinoshima Island), the Izu, Nanpo, Bonin (Ogasawara) and Volcano (Kazan or Iwo) Island Groups, and all other outlying Pacific Islands (including the Daito (Chigashi or Oagari) Island Group, and Parece Vela (Okino-tori), Marcus (Minami-tori) and Ganges (Nakano-tori) Islands), and (c) the Kurile (Chishima) Islands, the Habomai (Hapomaze) Island Group (including Suisho, Yuri, Akiyuri, Shibotsu and Taraku Islands) and Shikotan Island.

4. Further areas specifically excluded from the governmental and administrative jurisdiction of the Imperial Japanese Government are the following: (a) all Pacific Islands seized or occupied under mandate or otherwise by Japan since the beginning of the World War in 1914, (b) Manchuria, Formosa and the Pescadores, (c) Korea, and (d) Karafuto.

BASIC: Memo, GHQ SCAP, file AG 091 (29 Jan 46)GS (SCAPIN 667) dtd 29 Jan '46, subj: "Governmental and Administrative Separation of Certain Outlying Areas from Japan", to IJG

5. The definition of Japan contained in this directive shall also apply to all future directives, memoranda and orders from this Headquarters unless otherwise specified therein.

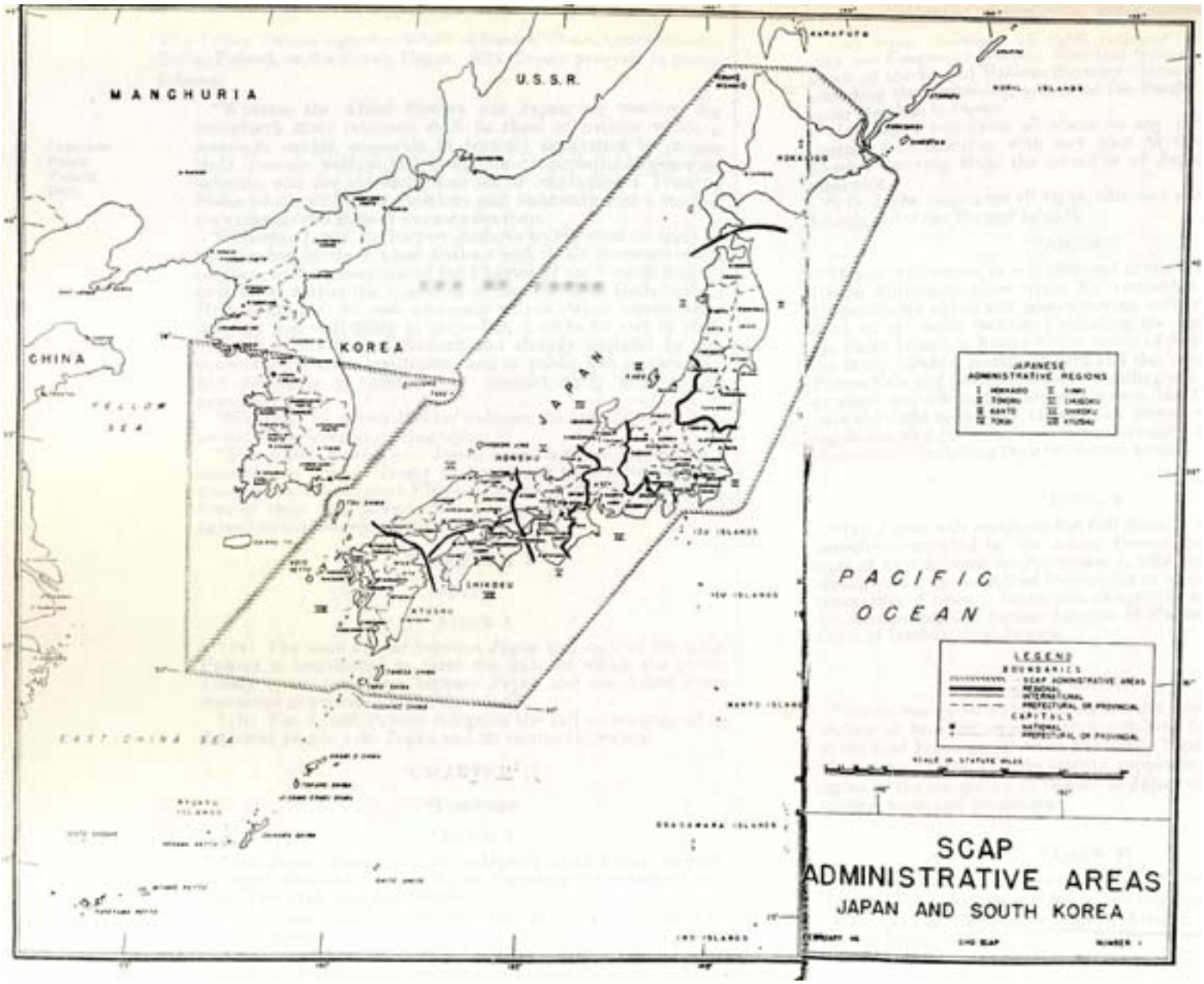
6. Nothing in this directive shall be construed as an indication of Allied policy relating to the ultimate determination of the minor islands referred to in Article 8 of the Potsdam Declaration.

7. The Imperial Japanese Government will prepare and submit to this Headquarters a report of all governmental agencies in Japan the functions of which pertain to areas outside of Japan as defined in this directive. Such report will include a statement of the functions, organization and personnel of each of the agencies concerned.

8. All records of the agencies referred to in paragraph 7 above will be preserved and kept available for inspection by this Headquarters.

FOR THE SUPREME COMMANDER:

H. W. ALLEN,
Colonel, AGD.
Asst Adjutant General.


MANCHURIA
U.S.S.R.
KOREA
CHINA
JAPAN
PACIFIC
OCEAN
YELLOW SEA
EAST CHINA SEA
JAPANESE ADMINISTRATIVE REGIONS
LEGEND
SCAP
ADMINISTRATIVE AREAS
JAPAN AND SOUTH KOREA

・SCAPIN1033 (http://www.mofa.go.jp/mofaj/area/takeshima/pdfs/g_taisengo02.pdf)

GENERAL HEADQUARTERS
SUPREME COMMANDER FOR THE ALLIED POWERS

APO 500
22 June 1946

AG 800.217 (22 Jun 46)NR
(SCAPIN 1033)

MEMORANDUM FOR: IMPERIAL JAPANESE GOVERNMENT

THROUGH : Central Liaison Office, Tokyo.

SUBJECT : Area Authorized for Japanese Fishing and Whaling.

References : (a) FLTLOSCAP Serial No. 80 of 27 September 1945.
(b) SCAJAP Serial No. 42 of 13 October 1945.
(c) SCAJAP Serial No. 567 of 3 November 1945.

1. The provisions of references (a) and (b), and paragraphs 1 and 3 of reference (c) in so far as they relate to authorization of Japanese fishing areas, are rescinded.

2. Effective this date and until further notice Japanese fishing, whaling and similar operations are authorized within the area bounded as follows: From a point midway between Nosappu Misaki and Kaigara Jima at approximately 43°23' North Latitude, 145°51' East Longitude; to 43° North Latitude, 146°30' East Longitude; thence to 45° North Latitude, 165° East Longitude; thence south along 165th Meridian to 24° North Latitude; west along the 24th Parallel to 123° East Longitude; thence north to 26° North Latitude, 123° East Longitude; thence to 32°30' North Latitude, 125° East Longitude; thence to 33° North Latitude, 127°40' East Longitude; thence to 40° North Latitude, 135° East Longitude; to 45°30' North Latitude, 140° East Longitude; thence east to 45°30' North Latitude, 145° East Longitude rounding Soya Misaki at a distance of three (3) miles from shore; south along 145th Meridian to a point three (3) miles off the coast of Hokkaido; thence along a line three (3) miles off the coast of Hokkaido rounding Shiretoko Saki and passing through Nemuro Kaikyo to the starting point midway between Nosappu Misaki and Kaigara Jima.

3. Authorization in paragraph 2 above is subject to the following provisions:

(a) Japanese vessels will not approach closer than twelve (12) miles to any island within the authorized area which lies south of 30° North Latitude with the exception of Sofu Gan. Personnel from such vessels will not land on islands lying south of 30° North Latitude, except Sofu Gan, nor have contact with any inhabitants thereof.

BASIC: Memo to IJG (SCAPIN - 1033)

(b) Japanese vessels or personnel thereof will not approach closer than twelve (12) miles to Takeshima (37°15' North Latitude, 131°53' East Longitude) nor have any contact with said island.

4. The present authorization does not establish a precedent for any further extension of authorized fishing areas.

5. The present authorization is not an expression of allied policy relative to ultimate determination of national jurisdiction, international boundaries or fishing rights in the area concerned or in any other area.

FOR THE SUPREME COMMANDER:

John B. Cooley

JOHN B. COOLEY,
Colonel, AGD,
Adjutant General.

・ 採択された平和条約条文
（http://www.mofa.go.jp/mofaj/area/takeshima/pdfs/g_sfjoyaku01.pdf）

TREATY OF PEACE WITH JAPAN

CHAPTER II

TERRITORY

Article 2

(a) Japan recognizing the independence of Korea, renounces all right, title and claim to Korea, including the islands of Quelpart, Port Hamilton and Dagelet.

(b) Japan renounces all right, title and claim to Formosa and the Pescadores.

(c) Japan renounces all right, title and claim to the Kurile Islands, and to that portion of Sakhalin and the islands adjacent to it over which Japan acquired sovereignty as a consequence of the Treaty of Portsmouth of 5 September 1905.

(d) Japan renounces all right, title and claim in connection with the League of Nations Mandate System, and accepts the action of the United Nations Security Council of 2 April 1947, extending the trusteeship system to the Pacific Islands formerly under mandate to Japan.

(e) Japan renounces all claim to any right or title to or interest in connection with any part of the Antarctic area, whether deriving from the activities of Japanese nationals or otherwise.

(f) Japan renounces all right, title and claim to the Spratly Islands and to the Paracel Islands.

第３項　韓国政府の修正要求と米国の拒否

- 韓国政府の意見書
- （外務省ホームページ http://www.mofa.go.jp/mofaj/area/takeshima/g_sfjoyaku.html）

July 19, 1961

Your Excellency,

I have the honor to present to Your Excellency, at the instruction of my Government, the following requests for the consideration of the Department of State with regard to the recent revised draft of the Japanese Peace Treaty.

1. My Government requests that the word "renounces" in Paragraph a, Article Number 2, should 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 islands Quelpart, Port Hamilton, Dagelet, Dokdo and Parangdo."

2. As to Paragraph a, Article Number 4, in the proposed Japanese Peace Treaty, my Government wishes to point out that the provision in Paragraph A, Article 4, does not affect the legal transfer of vested properties in Korea to the Republic of Korea through decision by the Supreme Commander of the Allied Forces in the Pacific following the defeat of Japan confirmed three years later in the Economic and Financial Agreement between the Republic of Korea and the United States Military Government in Korea, of September 11, 1948.

3. With reference to Article 9, my Government wishes to insert the following at the end of Article 9 of the proposed Peace Treaty, "Pending the conclusion of such agreements existing realities such as the MacArthur Line will remain in effect."

Please accept, Excellency, the renewed assurances of my highest consideration.

You Chan Yang

His Excellency
Dean G. Acheson
Secretary of State
Washington D C

・ラスク極東担当国務次官補から韓国大使への公文（外務省ホームページ http://www.mofa.go.jp/mofaj/area/takeshima/g_sfjoyaku.html）

Excellency:

I have the honor to acknowledge the receipt of your notes of July 19 and August 2, 1951 presenting certain requests for the consideration of the Government of the United States with regard to the draft treaty of peace with Japan.

With respect to the request of the Korean Government that Article 2(a) of the draft be revised to provide that Japan "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 islands Qualpart, Port Hamilton, Dagalet, Dokdo and Parangdo," the United States Government regrets that it is unable to concur in this proposed amendment. The United States Government does not feel that the Treaty should adopt the theory that Japan's acceptance of the Potsdam Declaration on August 9, 1945 constituted a formal

His Excellency

Dr. You Chan Yang,

Ambassador of Korea.

or final renunciation of sovereignty by Japan over the areas dealt with in the Declaration. As regards 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. It is understood that the Korean Government's request that "Parangdo" be included among the islands named in the treaty as having been renounced by Japan has been withdrawn.

The United States Government agrees that the terms of paragraph (a) of Article 4 of the draft treaty are subject to misunderstanding and accordingly proposes, in order to meet the view of the Korean Government, to insert at the beginning of paragraph (a) the phrase, "Subject to the provisions of paragraph (b) of this Article", and then to add a new paragraph (b) reading as follows:

(b) "Japan recognizes the validity of dispositions of property of Japan and Japanese nationals made by or pursuant to directives of United States Military Government in any of

the areas referred to in Articles 2 and 3".

The present paragraph (b) of Article 4 becomes paragraph (c).

The Government of the United States regrets that it is unable to accept the Korean Government's amendment to Article 9 of the draft treaty. In view of the many national interests involved, any attempt to include in the treaty provisions governing fishing in high seas areas would indefinitely delay the treaty's conclusion. It is desired to point out, however, that the so-called MacArthur line will stand until the treaty comes into force, and that Korea, which obtains the benefits of Article 9, will have the opportunity of negotiating a fishing agreement with Japan prior to that date.

With respect to the Korean Government's desire to obtain the benefits of Article 15(a) of the treaty, there would seem to be no necessity to oblige Japan to return the property of persons in Japan of Korean origin since such property was not sequestered or otherwise interfered with by the Japanese Government during the war. In view of the fact that such persons had the status of

Japanese nationals it would not seem appropriate that they obtain compensation for damage to their property as a result of the war.

Accept, Excellency, the renewed assurances of my highest consideration.

For the Secretary of State:

Dean Rusk

FE:MA:HFEAREY:SB
[illegible] 9, 1951.

第４項　ヴァン・フリート大使の特命報告書

・ヴァン・フリート大使の特命報告書（外務省ホームページ　http://www.mofa.go.jp/mofaj/area/takeshima/g_sfjoyaku.html）

4. Ownership of Dokto Island

The Island of Dokto (otherwise called Liancourt and Taka Shima) is in the Sea of Japan approximately midway between Korea and Honshu (131.8OE, 36.2ON). 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. The Republic of Korea has been confidentially informed of the United States position regarding the islands but our position has not been made public. Though the United States considers that the islands are Japanese territory, we have declined to interfere in the dispute. Our 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.