

THE DEBATE OVER DOKDO / TAKESHIMA

A TERRITORIAL DISPUTE SOWS DISCORD BETWEEN KOREA AND JAPAN

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ABSTRACT

Sovereignty over Dokdo/Takeshima islands should not become a factor of confrontation between Korea and Japan. The end of this territorial dispute in favour of Korea has to imply some benefits for Japan in a win-win game.

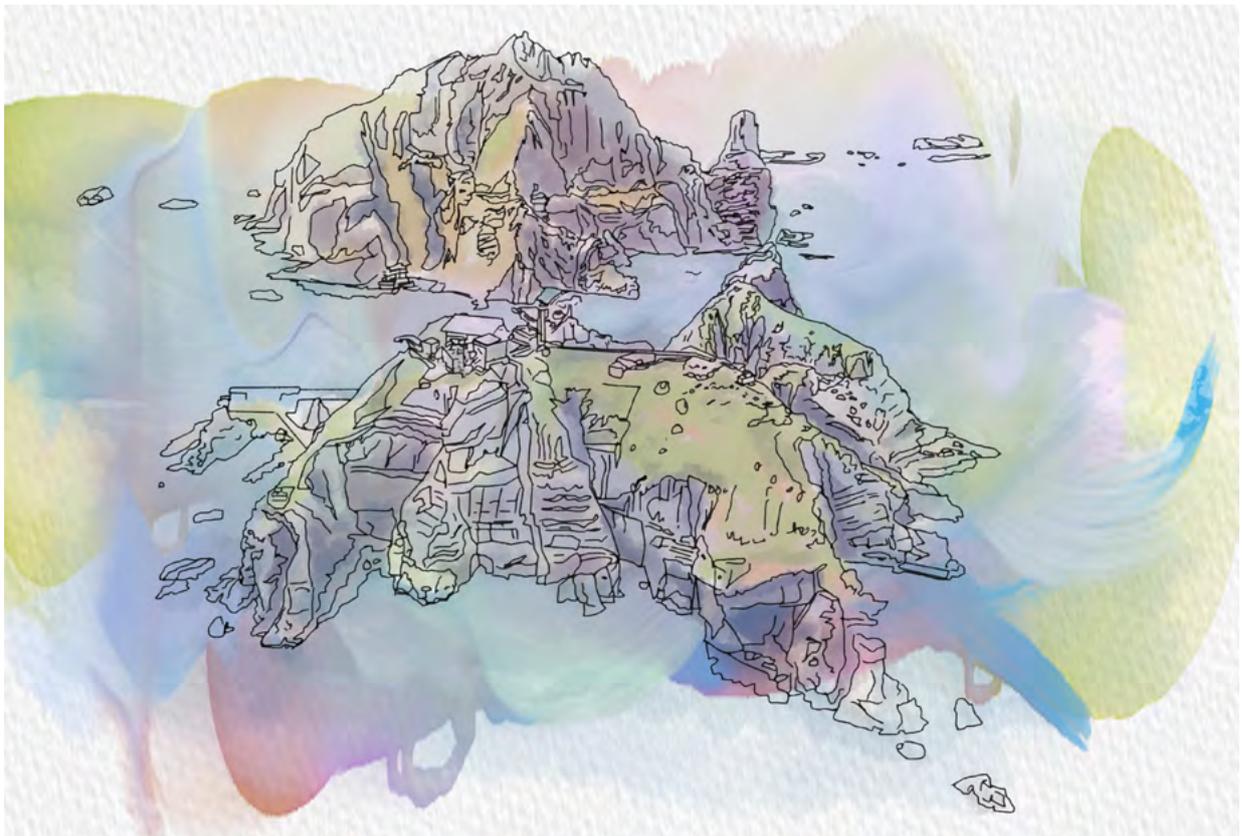
The relations between neighbouring countries do not always flow through channels of concord and harmony. Some disputes, especially where land is concerned, are extended in time without apparent interruption.

Fortunately, International Law offers some ways to resolve conflicts, including access to the International Court of Justice, or Mediation and Arbitration systems. But sometimes the conflict is so complex and countries distrust the resolution offered by a judicial or by a third party where, in many cases, the final outcome is not a legal issue, but rather a political or diplomatic one.

Hence, direct and discreet dialogue, chaired by a reciprocal goodwill, may be the best means of harmonizing divergent interests.

Sovereignty over a territory is usually unique and indivisible. Examples of shared sovereignty are rather rare in History and, in addition, may become a factor of daily confrontation between two irreconcilable positions. Therefore, the country offering more weakness in its arguments (historical, documentary, legal, political) should consider that the most reasonable solution is perhaps definitively to renounce its territorial ambitions in exchange for achieving certain rights or considerations, treating the two litigants as winning parties (win-win game).

The specific case of Dokdo (in the Korean terminology) or Takeshima (Japanese name) requires additional diplomatic effort, since both parties trail a long history of conflicts, the perception of which reaches not only the political class, but also the civil society.



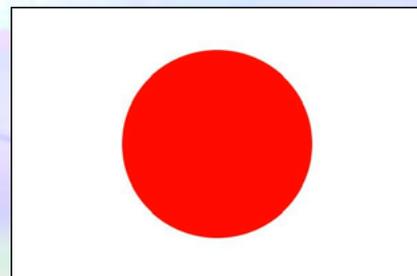


INTRODUCTION

We will explore, through data and reflections following the origin, the territorial nature of this debate. We will try to check the arguments that both nations defend.

Finally, we will conclude that the dispute, despite enjoying the dialectical arguments on both sides, opts for Korea, which, incidentally, currently holds the possession and control, at least “de facto”, on Dokdo. It has even exercised sovereign powers in that territory by building infrastructure and the continued presence of patrolling its waters.

However, our conclusion does not end there. If Japan finally renounces any further claim to sovereignty on the island, it will be rewarded with other benefits, including implementing a real historic reconciliation between Seoul and Tokyo, as it finally would heal the wounds of the past. Otherwise, it can establish the basis for a strategic and deep cooperation agreement among the U.S., Japan and the Republic of Korea in order to further integration of their economies and security policies in Asia Pacific, which would be a counter power to China’s hegemonic temptations in the region.



DATA VALIDATING THE MAGNITUDE OF THE CONTROVERSY

Dokdo / Takeshima comprises two islets with sparse vegetation as well as about 33 tiny sized rock formations. For practical reasons, this small group of tiny islands is grouped under one common name. The total area amounts to 73,297 square meters. It is located at 49 nautical miles southeast of Ulleungdo (a Korean island without question), part of the East Sea / Sea of Japan. As regards the distance from Japan, it is 86 nautical miles northwest of the Japanese island Oki.

Since ancient times those waters provide valuable fishery resources. The fleets of both countries used to fish in the surrounding areas, not always under conditions of peaceful coexistence. The existing flora was reduced some time before, providing that vision so sad and barren of two large boulders. In addition, the island served as a refuge against the typhoons that ravaged fishing vessels. Well into the twentieth century fishing was expanded to whaling. But it was as result of the Russo-Japanese War that Tokyo discovered the strategic importance of these islands. At present, the economic interest has increased substantially, because it has calculated reserves of natural gas that could be exploited for a minimum of 30 years.

Given this situation, the preceding statement needs qualifying. We have to note that the high value of the land for both countries is emotional or sentimental. Public opinion in each country supports its own government in defending its sovereign claims.

We should not lose sight of this fact, it seems to us fundamental. Neither of them will renounce what they consider their own. However, the meaning of that territory in the collective consciousness differs substantially between the Korean peninsula and the Japanese archipelago. Indeed, for Koreans Dokdo has been, is and will always be their own territory, usurped by the Japanese in 1905. History and documentation shown by them confirm this. Korean specialists insist that the best title of sovereignty that the Japanese can wield goes back to the early twentieth century, just as Japanese imperialism forced a weak Korea to follow its dictates. In a situation of political normality, Japan would never have achieved territorial dominance over the islands, simply because it would have been prevented by Korea.

For the Japanese, Takeshima is part of "inherent" Japanese territory. Numerous studies and documents guarantee it. Even some local institutions, such as Shimane Prefecture, show a special preoccupation for the cause that actually dwarfs the effective work of Japanese diplomacy.

HISTORICAL EVOLUTION OF TERRITORIAL DISPUTE

To follow the historical vicissitudes of Dokdo/Takeshima is not always easy, as chronicles, maps and documents in one of those countries are objects of different interpretation, when not a single challenge, by the other party in the dispute.

Additional to this, there is a long documentary void in stages of history, which is very strongly felt by scholars. And, to further complicate the issue, the name of this small cluster of islands in the documents changes relatively frequently. There are even confusions with a name already implanted.

Beyond these complications, there is a general belief that the islands belonged to Korea, but they faced raids by the Japanese population. Do not forget, in this connection, that the Japanese Imperial Navy excluded them from its jurisdiction until 1900.

We should bear in mind that such an important body, as was the State Board of Imperial Japan (Daijokan), warned in 1877 that these islands had nothing to do with Japan. At the very beginning of the twentieth century came a turning point for Japan, certainly controversial, in the development we feel compelled to detail below. Once war broke out between Russia and Japan, on February 8, 1904, the Japanese Navy planned to build numerous coastal monitoring posts, including the Korean mainland and the Korean island of Ulleungdo (near Dokdo) in order to control the movements of the Russian fleet, as is well known, sailed from the strategic port of Vladivostok. Therefore, Dokdo became one of the areas most sought after by the Japanese war machine.

Another event precipitated the annexation of Dokdo. A Japanese fisherman called Nakai Yozaburo, asked his government for an exclusive license to hunt sea lions in these rock formations which, incidentally, were known officially by the Japanese with the European designation "Liancourt".

On January 28, 1905 Japan approved the incorporation of that territory to its imperial rule, claiming the character of terra nullius (land that does not belong to an owner). Subsequently, the Ministry of the Interior notified the Shimane Prefecture on that agreement. The Prefecture merely issued a public communication (Prefectural Notice Number 40) on the new status of the islands, known as Takeshima, in the course of the day February 22, 1905.

Driven by its expansionist policy, it took over Japan and many other Asian territories until the end of World War II. At the end of the war in the Pacific, Japan had to return illicitly acquired territories under its imperialist policy. Then comes one of the most enigmatic and obscure events in the history of Dokdo. The victorious U.S required Tokyo to restore the "status quo ex ante belli", in other words, to return the captured territories to their original sovereignty. The fact is that the U.S. finally falters on the future island, leaving it in an undetermined legal and political status. It is therefore an open issue for discrepancy. For some researchers, USA dreamed of seizing Dokdo, given its privileged geostrategic location. Others indicate that the Japanese made effective lobbying efforts to silence discussion on the future of the island. There are those who believe that the dispute over Dokdo is as old as it is complex, sinking roots in prior to World War I and II, for which the United States decided not to put an end to the controversy. The corresponding article 4 of the Constitution of the Republic of Korea defines its territory by including the Korean peninsula and its adjacent islands. Consequently, although Dokdo is not explicitly cited, there is an implicit reference to that as to so many other Korean islands.

After the Constitution came into force in 1948, there was another event of great significance. On January 18, 1952, the President of the Republic of Korea, Syngman Rhee, enacted the Presidential Declaration of Sovereignty over the Seas, also called "Peace Line" or, as the Japanese name, "Rhee Line", whereby he included Dokdo in Korean jurisdictional boundaries. A few days later, Japanese diplomacy protested and denied legal validity to that behaviour. Therefore, they considered that

statement as a unilateral decision and declared it incompatible with any approach supported by international standards.

When the two countries normalized diplomatic relations through the Japan-Korea Treaty on Basic Relations in 1965, the dispute over Dokdo / Takeshima was suspended, so it did not reach a viable solution.

When, in 1977, the establishment of the 200 nautical miles exclusive economic zone was verified, there was another clash of interests on the issue of Dokdo. To further complicate matters, in 2005 the Shimane Prefecture (Japan) adopted an Ordinance that authorizes celebrating "Takeshima Day", which raised an uproar in Korea, although - the truth be told and thus revealing Japanese sources - central government remained neutral on the decision adopted by a local authority.

The South Korean news agency Yonhap reported on a story that is of great importance for the purposes of our study. Some recently unveiled Japanese documentation strengthens the case for a Korean Dokdo. It is, therefore, of Ordinance No. 24 of the Prime Minister's Office (June 6, 1951) and Ordinance No. 4 of the Ministry of Finance (February 13, 1951), which exclude Takeshima (Dokdo) from its administrative and governmental jurisdiction.

Interpretation of the contents of documents and evaluation of the arguments put forward by both parties

As we have had occasion to see, we are witnessing an old controversy, with passionate components, which is not easy to settle between the Korean peninsula and the Japanese archipelago. There is a respectable number of verbal notes issued by each government. The arguments brought forward by a specialist replicate the reasoning and evidence of another, belonging to another country. And so on. There are even some fingers pointing in the direction of exaggerating, misinterpreting or distorting the events and History sources.

The maps, documents and historical records are abundant. Koreans exhibit a wide range of old maps - Korean, Japanese or European - that record, expressed or implied, membership of Dokdo (formerly called Usando or Sambongdo) to map territorial proximity Korean or Korean coasts.

The Japanese also provide maps and documents for their cause. However, there are also Japanese studies and statements that benefit the Korean party, as with Hideki Kajimura, which states that the first appearance of Takeshima / Dokdo in Japanese documentation was much later than in the Korean one, and Hori Kazuo, that spreads some doubt on the good faith in the incorporation of the islands to Japan.

Korea defends its sovereignty from the Shilla Dynasty, precisely when it was conquered by General Yi Sa-bu in the year 512. During the Joseon Dynasty, Ahn Yong-bok, considered a patriot by Koreans themselves, travelled to Japan to remember Korean membership for Ulleungdo and Dokdo. Moreover, the Imperial Ordinance No. 41 joined the island to the territorial jurisdiction of Uldo-Gun in 1900. Meanwhile, Japanese sources believe that Takeshima "historically belongs to Japan" and are based on the right of maritime traffic Takeshima, declared by the Tokugawa Shogunate in 1618, which allowed two traders, Jinkichi Ohya and Murakawa Ichibei, monopoly exclusive fishing on the water. It also reinforces the argument of Japanese approval for Matushima transit right, declared in 1661. We have to record here an argument widely used by the Japanese Ministry of Foreign Affairs: If the Shogunate had doubted Takeshima's Japanese character, no doubt that would have prohibited the transit through the islands in 1635, the date on which Japan was closed to foreigners, banning travel to foreign lands. It is justified, and that since antiquity that "inherent territory" belongs to Japan.

The key issue, likely to arise in terms of controversy boils down to whether, from the standpoint of legal and political occupation (incorporation, in Japanese terminology) of the islands by Japan was lawful or not.

We already know that the formal occupation occurred in 1905. The Japanese lawyers say that Takeshima was unoccupied and no formal declaration of sovereignty raised protests in their Korean counterpart. Hence, applying the legal maxim "silence, concedes". Therefore, Korean criticisms are unsubstantiated.

Logically, Korea does not accept such arguments, citing two arguments in its favor:

- 1) It is not true that Dokdo was "terra nullius" in 1905.
- 2) Korea could not formalize a protest over the illegality of the annexation, since this event was informed of much later and also its diplomatic powers were very limited by Japan's direct influence.

It is pertinent to stop at each of those arguments, deepening its content and significance.

Regarding the Japanese belief that the islands belonged to no one (or, in any case, Korea had left the island domain) some advocates of the Korean point of view argue that Dokdo was not inhabited because of the Japanese pirates (wako) and to prevent the site from becoming a haven for Korean tax evaders.

In addition, one question is to vacate it and another is to leave it. There was no abandonment, no formal waiver to exercise sovereignty, as some papers reported the existence of Korean inspectors to control Japanese incursions. Thanks to an inspection in 1881, the Korean government complained to the Japanese authorities about the illegal presence of Japanese, receiving apologies for the incident.

In short, the lack of fixed population in territory does not necessarily imply renunciation of sovereignty. A number of countries have part of its territory or population uninhabited because geographical or climatic conditions make habitability difficult. Let us take the examples of Sahara or Gobi deserts. Do these countries renounce sovereignty over uninhabited territory? The answer is clearly negative.

It falls now to consider the second question: Why did Korea not raise a formal protest to the International Community in 1905? In August 1904, i.e. six months before the Shimane Prefecture islands made its demarcation, Korea (or rather, "Imperial Korea") had virtually cut its diplomatic powers, as the country was controlled by Japan (Agreement on Foreign Guest Participation in Government under the First Japan-Korea Protocol).

Japanese specialists (Yoneda, Sakurai) indicate that it was from November 1905, that is, from the Second Japan-Korea Agreement (Treaty of Eulsa), signed nine months after the incorporation of Takeshima, that Japan took over Korea's diplomatic rights. Therefore, from the Japanese perspective, Korea was not devoid of diplomatic powers to protest the inclusion of the islands in January 1905. However, in the face of the Japanese argument Korean stands as follows: the news of the incorporation of the islands to Japan was made by a local authority, the Shimane Prefectural Office, and not by the central government. It is well known that the reports were in some Japanese areas and in the early twentieth century very limited in scope and impact. Those news could barely go beyond its narrow local limits. It was only in 1906 that the Korean government came to know the extent of such incorporation, the date on which the country was already stripped of its sovereign powers through the Second Japan-Korea Agreement.

Summarizing the web of circumstances that was forged over the fate of the islands, in 1905 the Japanese government did not make an official announcement about their new status in an official journal or gazette. Not even did they notify the Korean government, who discovered the true extent of the news in March 1906, a year after surprising Dokdo's occupation.

THE EMOTIONAL VALUE OF THE ISLANDS

Judging by the comments that appeared on the website of the two Foreign Ministries, the subject matter is of more serious study than what at first glance outsiders believe about this controversy.

North Korea also intervened in the defence of the Korean Dokdo. It did so through a commentary in the newspaper Rodong Shinmun, which, in its issue of February 11, 1977, criticized the South Korean President, Park Chung-hee, for not being more demanding in the defense of sovereignty over the island territory. The manifestos and policy statements in favor of the cause often have a broad impact on public opinion, either their own or that of others. Recall that the decision of the Shimane Prefecture in 2005, establishing the "Takeshima Day" sparked angry protests in Korea. To cite another example of the other party, in 2004 Korea released a series of stamps on the Nature of Dokdo. After three hours on sale, the stamps were sold out with great enthusiasm from the Koreans and the Japanese complained that it violated the cooperative spirit of the Universal Postal Union. We must recognize that governments, whether Korean or Japanese, sometimes are driven to calm down their constituencies in order not to offend the other party. Clear proof of this is the flat ban imposed by the South Korean government in 1983, for five months on interpreting the popular song "Dokdo is our land" on the occasion of the official visit by the Japanese Prime Minister Yasuhiro Nakasone. The Japanese Ministry of Foreign Affairs stated in its Memorandum of July 13, 1962 that Takeshima has been an integral Japanese territory since ancient times. When you ask the Japanese what means "inherent territory since ancient times", they often respond that the presence and use of Japanese on the island dates back to antiquity, while the formal incorporation in 1905 means rather a "confirmation" of what is already theirs.

In February 1996, the Japanese Foreign Minister, Yukihiro Ikeda, said to the press that Takeshima is "clearly part of Japan." Such statements seriously offend Korean sensitivity. Much of the population believes that Japanese claims on the islands of reference involve a new version of expansionism and imperialism, reminiscent of the old Japanese colonial dream. As the South Korean Foreign Minister, Lee Dong-won, pointed out: Dokdo can be a political issue for the Japanese, but for Koreans it is like dynamite that can explode the collective feeling every minute. Another member of South Korean diplomacy, Myung Hwan You said in April 2006 that "the incorporation (by the Japanese of Dokdo) was an early sign of colonization of Korea."

We can very easily check that this dispute involves national identity existing in both countries, albeit more pronounced to Koreans, who consider the annexation of Dokdo in 1905 is illegal from the legal point of view, so unacceptable from a political perspective.

LIKELY PROCEDURES OF SOLUTION

It seems difficult to maintain a set of intense and harmonious bilateral relations without resolving previously this old controversy, indeed, it merely poisons emotional ties between Korea and Japan. This explains the convenience, it would seem necessary, to find a satisfactory solution to the question of reference. An effective way to settle territorial disputes impeachment is the subject matter of dispute in the International Court of Justice. There are precedents that teach us the value of resolving these lawsuits. Now, while this formula calls for Japan, the Republic of Korea does not agree with judging sovereignty of a territory such as Dokdo, whose membership to Korea should not be discussed. We noticed a Korean foreign minister who explained that Dokdo cannot undergo diplomatic negotiations or consideration by the International Court of Justice, since it is part of Korean territory on historical, geographical and legal grounds.

There is not a mutual agreement when considering other traditional means of conflict resolution, like Mediation or Arbitration. Ohno Banboku, a member of the Liberal Democratic Party of Japan, unsuccessfully proposed an output in 1963. He raised the sharing of territorial control by a mutual commitment involving co-sovereignty. This proposal would be put in line with other precedents, like Andorra or New Hebrides.

The range of proposals is enriched through other more exotic and, why not, more imaginative, even unreal or chimerical ones. We refer, therefore, to proposals that offer ecological or scientific solutions. For example, Japan recognized Korean sovereignty, but afterwards the islands would become a natural protection area, to act as a symbol of environmental cooperation among East Asian countries. That would open the islands to any scientist who wants to study or conduct research work.

But above ideas more or less imaginative, more or less feasible, the fact is the following approach:

- a) The Republic of Korea now exercises its sovereign power over Dokdo.
- b) Korea clings to its historical and legal arguments to counter the Japanese demands.

To make matters worse, the Korean people would never forgive any presidential decision to put forward proposals on surrendering in whole or in part, temporarily or permanently, Dokdo to Japan. These islands are a national symbol that recalls the Korean resistance against Japanese expansionism.

To be willingly accepted or not, Japan could have lost the territorial dispute, at least in the long term. It is symptomatic that as time passes, Tokyo is moderating the tone of their claims. It imposes increasing realism and a certain amount of political pragmatism.

In time, and through discreet but effective work, the Japanese government will have to sensitize public opinion and especially the influential lobbyists and interest groups, that there are important benefits in waiving the claims for control of the islands. In doing so, Korea should not corner Japanese national pride. A cooperative spirit is mutually needed.

Alongside the formal waiver to sovereign claims, Tokyo may negotiate with Seoul, with the respect and protection of certain historical rights, like the right to fish in its waters through the allocation of generous fishing quotas. There is already a similar agreement, but the execution is far from being outstanding.

Japan is leading to closer strategic policy with the Republic of Korea. It is gradually managing to remove obstacles to this convergence of interests, which, once brought together, can yield mutual benefits. We have recently seen the new mood in the way the Japanese present their sincere apologies to the Korean people for their painful stage of colonialism on the Korean peninsula. It

is clearly revealing that Japan apologized to Korea directly and without reservation, but it does not follow the same procedure with China, which, incidentally, also suffered - and greatly - the severe consequences of Japanese imperialism.

The current economic, political, military and cultural boom of China in East Asia is forcing us to rethink regional policy. The Chinese economic weight already exceeds the Japanese, and we can see already on the horizon some future conflict between China and Japan for the exploration and, where appropriate, the extensive exploitation of marine resources to be found in the Asia Pacific coastal strip. Japan cannot afford to be isolated or to be obscured by the Chinese potential. In fact, the Basic Maritime Law enabled the Japanese government to create an oceanic maritime strategy that addresses the new regional challenges.

Hence they need to weave closer relations of cooperation in the Asian-Pacific. Japan currently shares common values - such as democracy, market economy, the future of the Korean peninsula - with the United States of America and the Republic of Korea. For its part, the United States will not allow China's hegemonic policy in the region, although this requires the assistance and cooperation of its two main Asian allies: Japan and South Korea. The economic potential and especially possible technological integration of high intensity or partnership between them is huge. However, first they must establish measures to strengthen trust between South Korea and Japan. The weight of historical memory hurts the Japanese archipelago, which still arouses feelings of mistrust, rivalry and grievances in Korea, a country that in the historical dilemma of having to suffer the subjugation of their neighbours, whether China or Japan, has always preferred submission to the lesser evil, which in this case is called China, more tolerant with the Korean identity.

In this context of stimulating cooperation and good neighbourliness, Japan must close the permanent chapter on the periodic claims to sovereignty over Dokdo for good. Far from provoking Korea, insisting on impracticable territorial demands, Tokyo would wait for the best time and appropriate circumstances for having returns on the price of a decision which is certainly hard, but it will be more bearable if Korea facilitates this historic opportunity.

There is an issue collateral to the issue of Dokdo, silenced by the scholars and which, besides being controversial, appears camouflaged with the said territorial dispute. We refer to the consequences that the geographical name of the sea area may experience.

Dokdo is located midway between the Korean peninsula and the Japanese archipelago. If Japan finally gives up its sovereign claims, then Korea more effectively may question the validity of the challenged term "Sea of Japan". Actually, Dokdo and Ulleungdo are located just in its central area. With so many Korean flags planted in that sea, it would increase the reasons to claim the name "East Sea," a designation defended by Korea in international forums. Japan will not allow the end of the controversy over Dokdo to serve to feed the other. Korean diplomacy could reassure Japan saying that Dokdo's Koreanness does not serve as an advantage for other bilateral disagreements.

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