The Senkaku Islands, Takeshima and International Adjudication

Kazuhiro Nakatani
(Professor, Graduated Schools for Law and Politics, The University of Tokyo)

1 Introductory Remarks

This short essay considers the following highly hypothetical question: what decisions reasonable judges would make if they have opportunities to consider the merits of the Senkaku Islands and the Takeshima cases at the International Court of Justice (ICJ) ?

2 The Merits of Senkaku Islands Case

As there exist no jurisdictional basis for international adjudication and no dispute involving the Senkaku Islands, it is highly hypothetical that the ICJ would have an opportunity to decide on the merits of the case[1]. Having said that, decisions that ICJ judges would be likely to make on the merits of the Senkaku Islands case based on the orthodox interpretation and application of international law could be summarized as follows.

In January 1895, Japan, having ascertained that the Senkaku Islands *were terra nullius* and there had been no trace of control over them by other States, incorporated them into Okinawa Prefecture by issuing a cabinet decision. As the PCIJ states in its Judgment of the *Legal Status of Eastern Greenland* case, "the intention and will to act as sovereign" and "the display or effective exercise of such authority" are the two requirements for a territorial claim[2]. Japan's occupation over the uninhabited Senkaku Islands and its effective, continuous and peaceful control over the Islands satisfy these two requirements.

Although Japan did not inform other States of the incorporation of the Senkaku Islands in 1895, the notification is not required under general international law unless otherwise provided by a specific treaty. The arbitral award of the *Clipperton Island* case (1931) states: "La régularité de l'occupation française a aussi été mise en doute parce qu'elle n'a pas été notifiée aux autres Puissances. Mais il faut observer que l'obligation précise de cette notification a été stipulée par l'art. 34 de l'acte de Berlin précité, qui, comme il a été dit plus haut, n'est pas appliquable au cas présent. Il y a lieu d'estimer que la notoriété donnée d'une façon quelconque à l'acte suffisait alors et la France a provoqué cette notoriété en publiant l'acte même de la manière sus-indiquée."[3] This Cabinet decision was totally unrelated to the Sino-Japanese war. The decision was made *before* the signature of the Shimonoseki Peace Treaty of April 1895, and the Senkaku Islands were not included in Taiwan and its affiliated islands that were ceded to Japan under the Treaty.

China has not proved persuasively that the Senkaku Islands were not *terra nullius*. In international law the mere discovery of an island is only an inchoate title, as was pointed out by the arbitral award of the *Island of Palmas* case[4]. Maps have only limited probative value. The ICJ, in the *Burkina Faso/Mali Frontier Dispute* case (1986), states: "maps merely constitute information which varies in accuracy from case to case: of themselves, and by virtue solely of their existence, they cannot constitute territorial title, that is, a document endowed by international law with intrinsic legal force for the purpose of establishing territorial rights." [5]

China had *never* lodged protests with Japan and had asserted no territorial title to the Senkaku Islands for as long as 75 years from 1895, when Japan incorporated the Senkaku Islands into Okinawa Prefecture, to approximately 1970. After the United Nations Economic Commission for Asia and the Far East (ECAFE) indicated the possibility of the existence of petroleum in the East China Sea in Autumn 1968, China and Taiwan suddenly began making their assertions about the Senkaku Islands. China's silence for as long as three quarters of a century clearly constitutes *acquiescence* under international law. As pointed out in the ICJ decision on *The Temple of Preah Vihear* case (1962), *qui tacet consentire videtur si loqui debuisset ac potuisset*.[6] Moreover, the Republic of China's Consul in Nagasaki Prefecture writes "the Senkaku Islands, Yaeyama-gun, Okinawa Prefecture, the Empire of Japan" in his letter expressing gratitude addressed to the Japanese who saved a group of shipwrecked Chinese fishermen in May 1920. And on 8 January 1953 the

1 If China would like to submit the Senkaku Islands case to the ICJ, it can do so by accepting the compulsory jurisdiction of the ICJ, as Japan has done since 1958, and then by suing Japan. Even so, Japan might assert that there exists no dispute concerning the Senkaku Islands as a preliminary objection. It pertains to the discretion of the ICJ whether this objection is decided at stage of the preliminary objections or is joined to the merits.

2 *PCIJ Ser.A/B*, No. 53, pp. 45-46.

3 *Reports of International Arbitral Awards*, vol. II, p. 1110. The unofficial English translation (by the present writer) is as follows: "The legality of the French occupation has also been called into question because it has not been notified to the other Powers. But it should be noted that the specific obligation of this notification has been provided by Art. 34 of the Berlin Act, which, as noted above, is not applicable in the present case. There is reason to believe that the publicity given to the Act in any way was sufficient and France made public the occupation by publishing the Act in the manner indicated above."

4 *Reports of International Arbitral Awards*, vol. II, p. 846.

5 *ICJ Reports 1986*, p. 582.

6 *ICJ Reports 1962*, p. 23. The Latin phrase means that the State which remains silent when it should have and could have objected is considered to have consented.

Chinese State newspaper *People's Daily* wrote clearly that "the Senkaku Islands were included in the Ryukyu Islands." These facts clearly indicate China's *admission* that the Senkaku Islands belong to Japan. China's assertion of title to the Senkaku Islands not only lacksgrounds in international law, but also is precluded by the principle of *estoppel*.

3 The Merits of the Takeshima Case

Japan proposed to Korea that the Takeshima dispute be submitted to the ICJ on three occasions (September 1954, March 1962 and August 2012). Those proposals were, however, refused by Korea. The decisions that the ICJ judges are likely to make on the merits of the Takeshima case based on the orthodox interpretation and application of international law could be summarized as follows.

Japan, having been aware of the presence of Takeshima for a long time, established its territorial title to the island by the middle of the 17th century. With a Cabinet decision of 28 January 1905, Japan reconfirmed its sovereignty over Takeshima and incorporated it into Shimane Prefecture. This Cabinet decision has nothing to do with the Japan-Korea Treaty of November 1905 and the Japan- Korea Treaty of August 1910. Following the Cabinet decision, Japan allowed licensees to catch sea lions on and around Takeshima and continued the license program until it was ceased in 1941 due to World War II. Japan kept effective control over Takeshima as its sovereign and displayed its sovereignty continuously and peacefully. The renowned Arbitral Award on the *Island of Palmas* case (1928) states that "continuous and peaceful display of the functions of State within a given region is a constituent element of territorial sovereignty."[7] In view of this criterion, Japan's sovereignty of Takeshima has been firmly established under international law.

Under Article 2 (a) of the San Francisco Peace Treaty with Japan (1951), "Japan, recognizing the independence of Korea, renounces all right, title, and claim to Korea, including the islands of Quelpart, Port Hamilton and Dagelet." However, "Korea," which Japan renounced under the said provision, does not include Takeshima. On 10 August 1951, just one month before the signature of the Peace Treaty, Dean Rusk, U.S. Assistant Secretary of State for Far Eastern Affairs, replied clearly to Yang Yu Chan, Korean Ambassador to the United States as follows: "As regards to the island of Dokdo, otherwise known as Takeshima or Liancourt Rocks, this normally uninhabited rock formation was according to our information never treated as part of Korea and, since about 1905, has been under the jurisdiction of the Oki Islands Branch Office of Shimane Prefecture of Japan. The island does not appear ever before to have been claimed by Korea."[8] The interpretation of the said provision of the Treaty by the United States, the party which played a central role in drafting the treaty, has much probative value.

Moreover, under general international law, renunciation is not presumed and the extent of renunciation, even in cases lacking clarity, has to be interpreted in a narrow sense in favour of the renouncing State. The Arbitral Award of the *Affaire Campbell* (1931) states: "Attendu qu'il est de principe, admis par le droit de tous les pays, que les renonciations ne se présument jamais et que, constitutant des abandons d'un droit, d'une faculté ou même d'une espérance, sont toujours de stricte interprétation."[9] In 1962, Eric Suy, in his monograph on unilateral acts, points out: "Puisque l'effet de la renonciation est l'extinction de droits, la volonté doit être interprétée strictement et, en cas de doute, elle doit être interprétée dans un sens favorable au renonçant."[10]

In the Arbitral Award of the *Indo-Pakistan Western Boundary (Rann of Kutch)* case (1968), the Opinion of Chairman Lagergren seems to be based on the same idea[11].

Therefore it is clear that "Korea" which Japan renounced under the San Francisco Peace Treaty, does not include Takeshima.

It is reasonable to set the critical date of the case as January 1952, when Korea unilaterally delineated the so-called Syngman Rhee Line on the high seas in violation of international law. In August 1954, it was confirmed that Korean security personnel had been stationed on Takeshima. Under international law, no legal title can arise from the invasion and the continuation of the illegal occupation of an island *(ex injuria non oritur jus)*.

7 *Reports of International Arbitral Awards*, vol. II, p. 840

8 Commissioned Research Report on the Takeshima-Related Documents, available at: https://www.cas.go.jp/jp/ryodo_eg/img/data/archives-takeshima03.pdf

9 *RIAA*, vol. II, p. 1156. The unofficial English translation (by the present writer) is as follows: "In principle, it is admitted by the law of all States, that renunciations are never presumed and as they constitute the abandonment of a right, faculty or even hope, they are always subject to strict interpretation.

10 Eric Suy, *Les actes juridiques unilatéraux en droit international public* (LGDJ, 1962), p. 185. The French text means that, as the effect of the renunciation is the extinction of right, its intention should be interpreted strictly and, in case of doubt, it should be interpreted in a sense favourable to the renouncing party.

11 *RIAA*, vol. XVII, p. 565. "Any uncertainty in this respect ought properly to be resolved in favour of Pakistan. The reason therefore is that the claim made by Kutch must, because of the form in which it was made, and because it was unsupported by other action, be interpreted restrictively, to the disadvantage of the claiming party and the statements issued by the British authorities must be understood in like fashion and cannot in the circumstance be extensively interpreted."

(Addendum) The Northern Territories from the Perspective of International Law

Kazuhiro Nakatani
(Professor, Graduated Schools for Law and Politics, The University of Tokyo)

1 Introduction

This paper will examine the territorial dispute between Japan and the Russian Federation over the Northern Territories from the perspective of international law, and in particular, from the perspective of how a reasonable judge would be expected to make a decision on this dispute, in the event that it was referred to the International Court of Justice.

2 History prior to the San Francisco Peace Treaty

The Northern Territories refers to the Etorofu Island, Kunashiri Island, Shikotan Island, and the Habomai Islands. The position of the Government of Japan with regard to these islands is that they are an inherent part of the territory of Japan, which have never been held by foreign countries. The history of the Northern Territories up to the conclusion of the San Francisco Peace Treaty (including the major agreements concluded between Japan and Russia or the Soviet Union) is as follows.

(1) The Treaty of Commerce, Navigation and Delimitation between Japan and Russia (Treaty of Shimoda), which was signed on February 7, 1855 and entered into force on December 7, 1858, was the first agreement between Japan and Russia concerning territorial issues. The Treaty confirmed and demarcated the border between the two countries as had been naturally formed between Etorofu Island and Uruppu Island at that time. Article 2 of the Treaty stipulates the following: "Henceforth the border between Japan and Russia will pass between the islands of Etorofu and Uruppu. The whole island of Etorofu belongs to Japan and the whole island of Uruppu, and the Kurile Islands to the north of the island of Uruppu constitute possessions of Russia. As regards the island of Karafuto (Sakhalin), it remains unpartitioned between Japan and Russia, as has been the case up to this time (hereafter omitted)." [See Map A]

(2) In the Treaty for the Exchange of Sakhalin for the Kurile Islands (signed in St. Petersburg, May 7, 1875, entered into force on August 22, 1875), the rights to the Kurile Islands (18 islands from Shumushu to Uruppu) were ceded from Russia to Japan, in exchange for Japan's cession of the rights to the island of Karafuto (Sakhalin). Article 1 of the Treaty stipulated the following: "His Majesty the Emperor of Japan shall until the reign of His heirs cede the right to possess part of the Island of Sakhalin (Karafuto) and all His sovereignty over the said part to His Majesty the Emperor of all the Russias, so that hereafter the whole of the said island belongs to the Russian Empire, and the Russo-Japanese boundary in these waters shall be La Pérouse Strait." Article 2 goes on to stipulate the following: "In exchange for the cession to Russia of the rights on the island of Karafuto (Sakhalin) stipulated in the first article, His Majesty the Emperor of All the Russias, for Himself and for His descendants, cedes to His Majesty the Emperor of Japan the group of the islands, called Kurile which He possesses at present, together with all the rights of sovereignty appertaining to this possession, so that henceforth all the Kurile Islands shall belong to the Empire of Japan and the boundary between the Empires of Japan and Russia in these areas shall pass through the Strait between Cape Lopatka of the Peninsula of Kamchatka and the island of Shumushu. The Kurile Islands comprises the following eighteen islands: 1) Shumushu, 2) Araido, 3) Paramushiru, 4) Makanrushi, 5) Onekotan, 6) Harimukotan, 7) Ekaruma, 8) Shasukotan, 9) Mushiru, 10) Raikoke, 11) Matsua, 12) Rasutsua, 13) the islets of Suredonewa and Ushishiru, 14) Ketoi, 15) Shimushiru, 16) Buroton, 17) the islets of Cherupoi and Brat Cherupoefu and 18) Uruppu." [See Map B]

(3) Under the provisions of Article 9 of the Portsmouth Peace Treaty, which was concluded following the outcome of the Russo-Japanese War (signed September 5, 1905, entered into force November 25, 1905), Russia ceded to Japan south Karafuto (Sakhalin, south of 50 degrees north latitude), but no changes were made to the legal status of the Kurile Islands. [See Map C]

(4) On August 9, 1945, in violation of the Neutrality Pact between Japan and the USSR, which was still in force, the Soviet Union joined the war against Japan. Immediately following Japan's acceptance of the terms of the Potsdam Declaration on August 14, the Soviet Union began moves to occupy the Kurile Islands on August 18, and from August 28 to September 5 occupied the Northern Territories. Since then, the Soviet Union and subsequently Russia have maintained physical occupation of the islands, in violation of international law. However, in international law, "law does not arise out of injustice" (*ex injuria jus non oritur*). If this issue becomes a case to be tried before an international tribunal, the question of when the critical date for the Northern Territories issue should be set could conceivably arise, and it would be reasonable to set the date at the beginning of the illegal occupation by the Soviet Union from August 28 to September 5, 1945, as it is consistent with the principle that "law does not arise out of injustice." Any actions taken by the Soviet Union / Russia after this time to make a fait accompli of their occupation of the Northern Territories would therefore have no effect on the determination of the attribution of the title to the territory.

(5) Article 2(c) of the San Francisco Peace Treaty (The Treaty of Peace with Japan), which was signed on September 8, 1951 and entered into force on April 28, 1952, stipulates that, "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 September 5, 1905." [See Map D]

3 Who possesses the power of authoritative interpretation of the San Francisco Peace Treaty?

The power of authoritative interpretation of treaties is vested in the parties to such treaties. This point is made clear in the opinion handed down in the Collection of Advisory Opinions on the "Question of Jaworzina" presided over by the Permanent Court of International Justice (PCIJ; 1923), which observed that, "…it is an established principle that the right of giving an authoritative interpretation of a legal rule belongs solely to the person or body who has power to modify or suppress it." [1] Therefore, the States Parties to the San Francisco Peace Treaty possess the right of giving an authoritative interpretation of said treaty.

The meaning of the above mentioned Advisory Opinion is namely that: (1) non-State Parties do not possess the power of authoritative interpretation, and (2) an international court has the right of authoritative interpretation only if both parties have agreed to seek an interpretation from the international court. In terms of (1), given that the Soviet Union / Russia is a non-State Party to the San Francisco Peace Treaty (Ambassador A. A. Gromyko, head of the Soviet delegation boycotted proceedings part way through the conference and did not sign the Treaty), it has no authority to interpret it (in particular Article 2(c) and the scope of the "Kurile Islands" to which Japan renounced its right, title and claim). In terms of (2), if a request were to be made to an international court for an interpretation, the power of authoritative interpretation would be delegated to the international court.

Article 22 of the Treaty stipulates that, "If in the opinion of any Party…there has arisen a dispute concerning the interpretation or execution of the Treaty…the dispute shall, at the request of any party thereto, be referred for decision to the International Court of Justice." The interpretation of Japan is that the "Kurile Islands" to which it renounced "right, title and claim" in Article 2 (c) of the San Francisco Peace Treaty are those islands north of and including Uruppu Island, and do not include Etorofu Island, Kunashiri Island, Habomai Islands, and Shikotan Island. Since no other Party to the Treaty has expressed a view that differs explicitly from this interpretation, it is said that it would not be easy in practice to invoke Article 22 and refer the case to the International Court of Justice. However, there might be some difference between Japan and other Parties (or among other Parties) over the finer points of interpretation of the article, and if that is the case, the matter could reasonably be referred to the International Court of Justice. Given a situation in which Russia's invasion of Ukraine has "unilaterally changed the status quo by force" and represents a blatant violation of "the rule of law in the international community," it would be beneficial to clarify the views of each Party with regard to the interpretation of Articles 2 (c) and 22 of the San Francisco Peace Treaty.

4 Japan's proposal to refer the case to the International Court of Justice and Russia's rejection

On October 23, 1972, on the occasion of a Japan-USSR foreign ministers' meeting in Moscow, Foreign Minister Masayoshi Ohira proposed to refer the Northern Territories dispute to the International Court of Justice. However, Foreign Minister Andrei Gromyko (known as "Mister Nyet") rejected the proposal with a simple "*nyet.*" (See response given by Director-General Hisashi Owada of the Treaties Bureau, Ministry of Foreign Affairs, to the House of Councillors Committee on Foreign Affairs, April 2, 1986). It is for this reason that the issue of the Northern Territories has not been referred to the International Court of Justice.

5 Scope of "the Kurile Islands" to which Japan renounced right, title and claim under Article 2(c) of the San Francisco Peace Treaty

It is no exaggeration to say that this is the most important point of debate in the Northern Territories issue from the perspective international law.

Article 2(c) of the San Francisco Peace Treaty stipulates that, "Japan renounces all right, title and claim to the Kurile Islands."

Renunciation constitutes a unilateral legal act (*acte juridique unilatéral*) under international law (other unilateral legal acts include unilateral promise, recognition, protest, and notification).[2] Renunciation may also be provided for in treaties, and Japan's act of renunciation under the San Francisco Peace Treaty is one of these.

What should first be observed with regard to Japan's renunciation is that Japan did not cede the Kurile Islands to the Soviet Union. This renunciation is unnamed, meaning that the party to which the renunciation is addressed has to date not been specified. That is the reason why, on official Japanese maps, the islands north of Uruppu Island, right and title to which Japan renounced, are not colored the same as those of the Soviet Union / Russia.

The first thing that should be noted with regard to the overall interpretation of the San Francisco Peace Treaty is the existence of the principle of "*contra proferentem*" (against the offeror), which is a basic principle of treaty interpretation. There are also judgments that relied on this principle, including the Permanent Court of International Justice ruling on the "Case concerning the Payment in Gold of Brazilian Federal Loans Contracted in France" (1929).[3] With regard to this point, it is important to note what Kumao Nishimura, Director-General of the Treaties Bureau

1 *PCIJ Ser. B,* No.8, p.37.
2 With regard to unilateral legal acts, see Kazuhiro Nakatani, *Kokka ni yoru Ippo-teki Ishi Hyomei to Kokusaiho* (Unilateral Declaration of Intent by a State and International Law) (Shinzansha, 2021).
3 *PCIJ Ser. A,* No.21, p.115.

of the Ministry of Foreign Affairs, stated in his response to the House of Councillors' Special Committee on the Peace Treaty and the Japan-U.S. Security Treaty on November 7, 1951. "As a principle of treaty interpretation, if any doubts should be raised as to the interpretation of a treaty that imposes obligations, the principle is that it should be taken to be borne lightly by the obligated party. ... In our view, we seek to adhere to the principle of international law that if any doubts should be raised about the interpretation of Japan's obligations arising from this peace treaty, then it should be borne lightly by the obligated party."

This interpretation criterion is also consistent with the interpretation criterion relating to the extent of renunciation. The following two international arbitral decisions set out important interpretive principles for cases where the extent of renunciation is unclear. (1) The Arbitral Award of the *Affaire Campbell* (1931, UK v. Portugal) ruled that under international law, renunciations are never presumed and as they constitute the abandonment of a right, they are always subject to strict interpretation.[4] (2) The Arbitral Award of the *Indo-Pakistan Western Boundary (Rann of Kutch)* case ruled that statements on the British side to the effect that the wetland (Rann) of the state of Kutch may amount to a voluntary relinquishment of potential British territorial rights, and any uncertainty in this respect ought properly to be resolved in favor of Pakistan. The reason was that the claim made by Kutch must be interpreted restrictively to the disadvantage of the claiming party and the statements issued by the British authorities must be understood in like fashion and cannot in the circumstance be extensively interpreted.[5] Similar observations are made in academic papers. In *Les actes juridiques unilatéraux en droit international public*, Suy observes that, "…as the effect of the renunciation is the extinction of right, its intention should be interpreted strictly and, in case of doubt, it should be interpreted in a sense favorable to the renouncing party." [6]

The position of the Government of Japan is that the scope of the Kurile Islands to which Japan renounced its right, title and claim under the San Francisco Peace Treaty is limited to the islands north of Uruppu Island, and that this point is beyond question. However, even if it were to be assumed that some question remained about the scope of the renunciation by Japan of the Kurile Islands, the rules of international law regarding the interpretation of the scope of renunciation suggest a narrow interpretation in favor of the party making the renunciation. In other words, the scope of the "Kurile Islands" to which Japan renounced its right, title and claim are those islands north of and including Uruppu Island, and do not include Etorofu Island, Kunashiri Island, Habomai Islands, and Shikotan Island, is a reasonable interpretation in accordance with international law.

6 The Yalta Agreement

In the Yalta Agreement of February 11, 1945 (a secret agreement between General Secretary Stalin of the Soviet Union, President Roosevelt of the United States, and Prime Minister Churchill of the United Kingdom), the three leaders agreed that, "The Kurile Islands shall be handed over to the Soviet Union."

Under international law, the Yalta Agreement remains a non-binding agreement (soft law, a gentlemen's agreement) that is not legally binding. Even in the case of a legally binding treaty, "a treaty binds the parties and only the parties; it does not create obligations for a third state" (*pacta tertiis nec nocent nec prosunt*). Therefore, the Yalta Agreement, which is no more than a non-binding agreement, has no opposability toward third parties whatsoever, and therefore does not bind Japan as a third state at all. Moreover, the Yalta Agreement cannot in any way serve as a legal basis for the transfer of territory, given that it is merely an interim agreement stating common objectives shared among the three leaders.

On this point, in his response to the House of Councillors' Special Committee on the Peace Treaty and the Japan-U.S. Security Treaty on October 29, 1951, Kumao Nishimura, Director-General of the Treaties Bureau of the Ministry of Foreign Affairs, stated the following. "The Yalta Agreement is, essentially, a political commitment undertaken by a small number of countries regarding the disposition of a part of Japan's territory, and whether and how this commitment is ultimately realized through inclusion in a peace treaty shall depend on negotiations among the Allied nations until such a time as a peace treaty is concluded. Accordingly, I believe that the Government of Japan is not mistaken in its existing position that it is not bound by the Yalta Agreement in any way."

7 Interpretation of paragraph 9 of the Japan-Soviet Joint Declaration

Paragraph 9 of the Japan-Soviet Joint Declaration, which was signed on October 19, 1956 and entered into force on December 12, 1956, states that, "Japan and the Union of Soviet Socialist Republics agree to continue, after the restoration of normal diplomatic relations between Japan and the Union of Soviet Socialist Republics, negotiations for the conclusion of a peace treaty. The Union of Soviet Socialist Republics, desiring to meet the wishes of Japan and taking into consideration the interests of Japan, agrees to hand over to Japan the Habomai Islands and the island of Shikotan. However, the actual handing over of these islands to Japan shall take place after the conclusion of a peace treaty between Japan and the Union of Soviet Socialist Republics."

With respect to the above paragraph, the following interpretation is compatible with provisions regarding the interpretation of conventions and treaties (stipulated in Articles 31 to 33 of the Vienna Convention on the Law of Treaties and has become customary international law).

Firstly, that through this Declaration the Soviet Union agrees to hand over to Japan the Habomai Islands and Shikotan Island, and that this provision is immediately binding on the Soviet Union and the Russian Federation, which is the successor state to the

4 *RIAA,* vol. II, p.1156.
5 *RIAA,* vol. XVII, p. 565.
https://www.cas.go.jp/jp/ryodo_eg/img/data/archives-takeshima03.pdf
6 Eric Suy, *Les actes juridiques unilatéraux en droit international public* (LGDJ, 1962), p. 185.

Soviet Union.

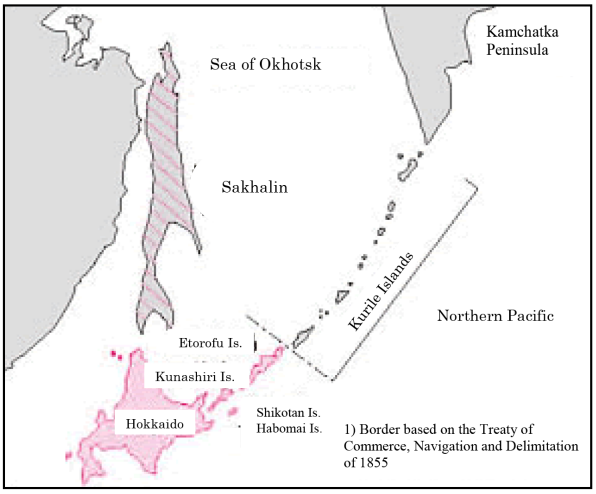
Second, "hand over" does not mean transfer of territorial title, but rather physically handing over the islands.

Thirdly, although the actual handing over of the Habomai Islands and Shikotan Island is stipulated to take place after the conclusion of a peace treaty, this refers to an actual date for fulfilment of obligations that have accrued in advance. This does not mean that the obligation to hand over the islands will not arise until such a time as a peace treaty is concluded, rather that the obligation to hand over the islands arose at the very latest on December 12, 1956, which is the date the Japan-Soviet Joint Declaration entered into force.

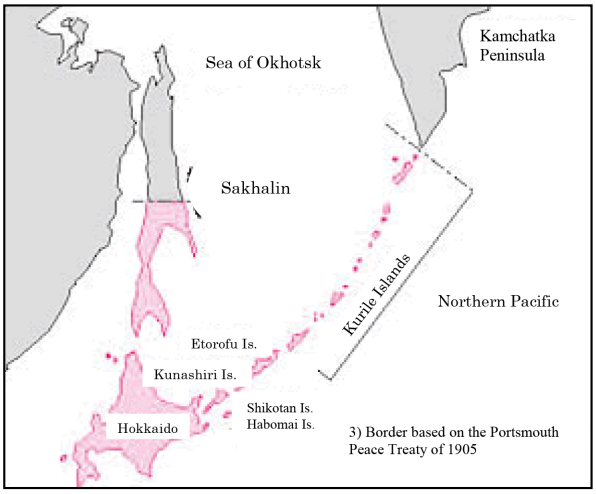
Fourthly, the paragraph makes no mention of Etorofu Island and Kunashiri Island. The Joint Declaration therefore has no influence on the dispute over the territorial rights to these two islands.

8 The struggle to restore the rule of law in the international community

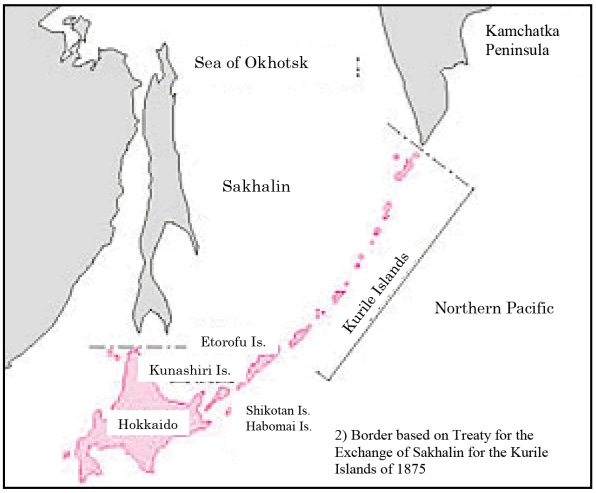
The illegal occupation of Japan's Northern Territories by the Soviet Union that took place from August 28 to September 5, 1945, was, like Russia's invasion of Ukraine on February 24, 2022, a serious violation of international law that constituted "a unilateral change of the status quo by force". The return of the Northern Territories is not just an issue of restoring Japan's subjective rights, but is also an issue of restoring the "rule of law in the international community". Given that the renunciation of right, title and claim to the Kurile Islands was made under the terms of the San Francisco Peace Treaty, the States Parties to the Treaty should extend their support to Japan in its struggle to restore "the rule of law in the international community".



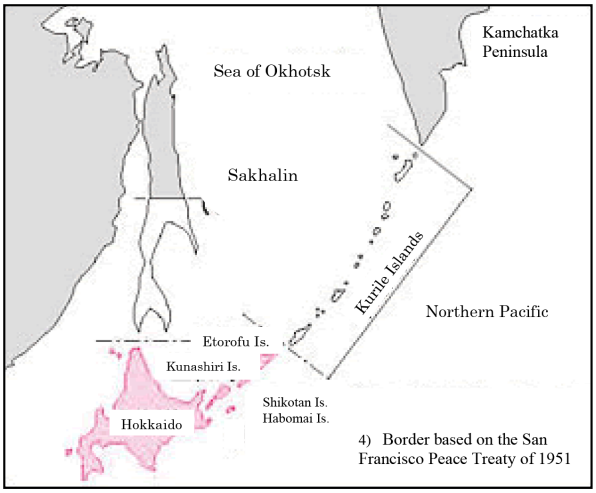
Map A



Map C



Map B



Map D

Maps used are from the Ministry of Foreign Affairs website "Background to the Northern Territories Issue (until the emergence of the territorial issue)".
https://www.mofa.go.jp/mofaj/area/hoppo/hoppo_keii.html