

Some Thoughts on the Concept of Territory in the Late Edo and Early Meiji Periods*

Yanagihara Masaharu
(Professor, Kyushu University)

- I. Introduction
- II. The Concept of “Territory” in Early Modern Japan
 1. Territory and Lands Outside Imperial Influence
 2. “External” Relations: “Four Portals;” “Foreign Countries; “Foreign Areas;” “Countries of Communication” and “Countries of Trade”
 3. Takeshima Ikken (Takeshima Affair)
- III. Establishment of “territory” in the late Edo and early Meiji periods
 1. Treaty of Commerce and Navigation between Japan and Russia
 2. The Incorporation of Ezochi
 3. Karafuto/Sakhalin
 4. Treatment of Ryukyu
 5. Occupation of terra nullius Islands
 6. Takeshima
- IV. Conclusion

I. Introduction

International law, founded upon prerequisite concepts of sovereignty, the modern nation and modern law as well as the idea of a community nations predicated on the balance of power, is an inherent idea of modern Europe. Within each state exists its people, who are possessed of the nationality of their nation. The realm of such a state, or “nation-state,” composed of these nationals is separated clearly from other states by its boundary. “Defined territory” is one of the qualifiers to be considered a state. There can basically be no state without territory defined by boundaries. Under modern European international law, the state is a territorial state.¹

Modern European international law had been gradually taking form since the late 15th century in Europe and came to complete fruition only in the first half of the 19th century. By this time, the concept of “state territory” wherein sovereign authority (also referred to as “state ownership,” “territorial sovereignty of the state” and “territorial sovereignty”) extends exclusively to and is defined by the

* This article was originally published in Takeo Matsuda et al, *Gendai kokusaihō no shisō to kōzō I: Rekishi, kokka, kikō, jōyaku, jinken* [The Thought and Structure of Modern International Law I: History, States, Organizations, Treaties, and Human Rights], Tōshindō, 2012.

¹ Conventional practice, however, accepts that the existence of an effective political community is sufficient to form a new state, even if its boundary is not perfectly defined (as in the cases of Albania and Israel). It is considered that “defined territory” means the core area of the state and that marginal small areas along the border may not be included. See Jennings, R. Y. & Watts, A., ed., *Oppenheim’s International Law* (9th ed., Harlow, 1992), Vol. I: Peace, Parts 2 to 4, p. 563; Brownlie, I., *Principles of Public International Law* (7th ed., Oxford, 2008), pp. 69-72, 105.

boundary--together with the theoretical framework that the attribution of a certain area to the state's territory is determined by the territorial title--had been clearly established.²

The past three decades have seen remarkable development in the study of Japanese early modern and modern external relations by historical researchers.³ Today, the mainstream of these studies has shifted to repositioning the subject within the East Asian historic context, from the perspective of 海禁 (*Haijin*; sea ban), a common isolationist policy adopted by East Asian countries at the time, rather than from the former viewpoint of 鎖国 (*sakoku*; the complete isolation of Japan from the outside world).⁴ The outcomes of these recent studies, however, are not necessarily well known to academic specialists in the fields of international law and the history of international law. This paper endeavors to serve as a preliminary attempt to clarify the overall picture of how Japan came to comprehend the modern European concept of “territory,” and how it configured the state territory of Japan in the process of bringing itself into conformity with modern European international law between the end of Edo Period and the early Meiji Period, in other words, how the early modern “state” of Japan reorganized itself into a “modern territorial state.” The author attempts to reframe the outcomes of these recent studies from the perspective of international law, with a special focus on the establishment of “territory” and delimitation of “borders.”⁵ In order to do this, it is first essential to study and explicate how the concepts of “territory” and “borders” are understood in contemporary Japan.

The study of the process by which the early modern Japanese “state” redefined itself from its previous model to that of a “modern territorial state” is not only meaningful in terms of historical study, but is also essential to an understanding of the present day territorial issues (or disputes) that Japan is facing. Problems regarding the Northern Territories, the Takeshima Islands and the Senkaku Islands all fall within the scope of this study, although they may differ in detail from one another.

Dr. Yoshirō Matsui has already pointed to this aspect as regards the Senkaku Islands issue. He

² Indeed, throughout the 19th century, there was no consensus among debaters on the issue of whether the title of the state to state territory constitutes *dominium* (ownership) or *imperium* (right of control). Also on the issue of territorial titles, while there was a broad consensus regarding occupation, cession and subjugation (e.g. *British Law Officers' Reports*), hardly any certain standard theory existed even in the early 20th century, as there were varied opinions regarding other titles. Lord McNair, *International Law Opinions: Selected and Annotated* (Cambridge, 1956), Vol. I, pp. 284, 294; Verzijl, J.H.W., *International Law in Historical Perspective* (Leyden, 1970), Part III, pp. 1-13.

³ See Arano Yasunori et al., ed., *Nihon no Taigaikankei 1: Higashiajiasekai no Seiritsu* [Japanese External Relations 1: Emergence of the East Asian World] (Yoshikawakōbunkan, 2010), pp. 1-57.

⁴ Momoki Shirō, ed., *Kaiiki Ajiashi Kenkyū Nyūmon* [An Introduction to Maritime Asian History] (Iwanami Shoten, 2008), pp. 99, 105-106, 121. See also Ronald Toby, *Zenshū Nihon no Rekishi, Dai 9-kan: Sakoku to Iu Gaikō* [Complete Series of Japanese History, Vol. 9: The Foreign Policy Called *Sakoku*] (Shōgakukan, 2008), pp. 10-20. Concerning the view that Japan maintained relatively closed external relations during the Edo Period, see Mitani Hiroshi, foreword in *Perry Raikō* [Preface in “Coming of Perry”] (Yoshikawakōbunkan, 2003), p.4. Furthermore, it has already been pointed out that the meaning of the word *sakoku* in the first half of the Edo period had changed markedly by the second half of the era in Inobe Shigeo, *Ishin Zenshi no Kenkyū* [Study on History Preceding the Meiji Restoration] (Chūbunkan Shoten, 1935), p. 5.

⁵ See Taijudō, K., “Japan’s early practice of international law in fixing its territorial limits,” *Japanese Annual of International Law*, Vol. 22 (1978), pp.1-20; Serita Kentarō, *Nihon no Ryōdo* [Japanese Territory] (Chūōkōron-shinsha, 2002), pp.18-34; Momose Takashi, *Shiryō Kenshō Nihon no Ryōdo* [Data Verification: Japanese Territory] (Kawade Shobō Shinsha, 2010).

observes that the conflict is a disagreement between the European international order and 華夷秩序 (*kai-chitsujo*; Sinocentric order) or the East Asian international order, making it, in a sense, a conflict between two different conceptions of international orders. China for its part perceives that the Senkaku Islands (Diaoyutai Islands) were traditionally within the Chinese 版図 (*bǎntú*; territory) under 華夷秩序, the basis of which assertion is said to be the records of emperors' tributary missionaries, the coastal defense zone put in place by China during the Ming Dynasty and the shelter use of islands and other ocean features by fishermen at times of rough weather. China insists, based upon this premise, that Japan's claim to the Senkaku Islands is not valid, just as Japan, operating on the premise of the concept of "territory" in the European international order, claims that Japan's territorialization of the islands constituted occupation of *terra nullius* that theretofore had been outside the effective control of any nation. Dr. Matsui takes the view that there is a collision of the theory of occupation of *terra nullius* (the European international order) and the traditional theory of territory based on *kai-chitsujo*, or the Sinocentric order.⁶

At this point we should take note of the "Memorandum on the response to the enquiry from the Chinese Government on August 22, 1879" prepared in September 1879 by the government of Japan, during discussions between Japan and China (Qing Dynasty) on the abolishment of feudal domains and the establishment of a Japanese prefecture in the Ryukyu islands. The Memorandum is an annex to a letter from Kaoru Inoue, Minister of Foreign Affairs, to Tamaki Shishido, minister plenipotentiary stationed in China, dated October 8, 1879. The gist of the memorandum's argument is as follows:

"Under "Chinese traditional customary law," the Chinese Emperor calls himself the Monarch of the World, all other countries being his subjects. The territory of the Chinese Empire is supposed to cover "all the four seas" and its authority is never limited anywhere under the sun. On the other hand, according to current international law, the right of possession of territory is entitled only to the party that owns the land, governs the land, and collects taxes from it, rather than being based on ungrounded ancient texts. The conceit of letters and imperial demands of gifts under the false name of tribute should be regarded as a favored ploy of the Chinese."

The memorandum concludes with the statement that the "right of eternal landlord (territorial sovereignty) is based on the fact of ownership together with the disputant state's silence and

⁶ Matsui, Y., "International law of territorial acquisition and the dispute over the Senkaku (Diaoyu) Islands," *Japanese Annual of International Law*, Vol. 40 (1997), pp. 3-31; id., *Kokusaihō kara Sekai o Miru. Shimin no Tame no Kokusaihō Nyūmon, Dai 3-han* [Looking at the World from the Perspective of International Law: Introduction to International Law for Citizens ed. 3] (Tōshindō, 2011), pp. 12-15. As for the observation that "the notion of possessing territory" based on Sinocentrism did not develop smoothly into the concepts of "territory" and "boundary" under a world order founded upon international law, see Akizuki Nozomi, "Chō-shin kyōkai mondai ni mirareru chōsen no 'ryōiki-kan': 'kankai kaidan' go kara nichiro sensōki made" ['Korean concept of territory' as observed on the question of borders between Korea and Qing Dynasty: after the 'Kamgye Conference' to the period of Russo-Japanese War], *Chōsenshi Kenkyūkai Ronbunshū, Dai 40-shū* [Collection of Articles of Society of Korean Historical Studies], Vol. 40 (2002), pp. 125-126; *ibid.*, "Higashi ajia no kyōkai to teritorī ishiki: Kōkuri-mono terebi dorama no haikai" [East Asian notions of borders and territory: the background of Goguryeo TV dramas], *Meijigakuin Daigaku Kokusai Gakubu Fuzoku Kenkyūsho Nenpō* [Annual Report of the Institute for International Studies, Meiji Gakuin University], No. 12 (2009), P. 69.

negligence.⁷ Here the contrast between the Chinese traditional “concept of territory” and the notion of “territory” under modern international law is further clarified.

The author would now like first to consider and contrast the concepts of 領域 (*ryōiki*; territory) and 境界 (*kyōkai*; boundary) in early modern Japan with the Chinese traditional notion of 疆域 (*jiāngyù*; territory within boundary). This will be followed by a review of the establishment of “territory” and the demarcation of the “state boundary” in the late Edo and the early Meiji periods.

II. The Concept of “Territory” in Early Modern Japan

1. Territory and Lands Outside Imperial Influence

Tōgai Itō (1670 - 1736), an Edo Period Confucian scholar, published *Heishokudan* in 1729. In this book, he wrote that “Yakukoku” had been “a separate country in early times and 化外ノ地 (*kegai no chi*; land outside imperial influence) as had been Ezo, and did not yet seem to be included in Japanese 版図 (*hantō*; territory).” Here we see a clear distinction drawn between “Japanese territory” and “land outside Japanese influence.” Tōgai continued that Yakukoku was now called “Yakunoshima” (probably the present-day Yakushima in Japan’s Kagoshima Prefecture) under the jurisdiction of Satsuma Domain.⁸

Such a perception reminds us of Chinese traditional concepts of “territory” as 版図 (*bāntú*; territory) and 疆域 (*jiāngyù*; territory within boundary). According to Motegi Toshio, the Chinese concept of territory denotes the ideology of imperial domain: “every inch of ground within the realm owns its load in the Emperor.” The virtue of the emperor is universal, stretching out in concentric circles *ad infinitum*. Although there is an established boundary surrounding the territory, it is not an absolute one like the borders of a modern state. Nor is sovereignty intended to extend its influence homogeneously throughout the whole domain. Even within the territory, exceptional peoples of 化外 (*kegai*; outside imperial influence), who do not accept the emperor’s enlightenment, continue to exist. They are outside the grace of the Emperor’s rule. When chiefs of peripheral countries or peoples bring gifts as a token of their service as a subject (tributary), the emperor gives them a royal gift and nominates them as the king of that country (a so-called tributary relationship). The Chinese universe is a space created by attraction through a network of autonomous exchange, rather than by enclosing it as a territory. In summation, Chinese governance did not aspire to rule homogeneously the whole surface delimited by absolute borders, i.e. the boundary of the state. Rather, its main focus was on the control of people. It was perceived as a “personal order” that takes form accordingly to the degree that the virtue of the emperor influences the people.⁹

⁷ *Nihon Gaikō Monjo* [Documents on Japanese Foreign Policy], Vol. 12, pp. 191-200.

⁸ Itō Tōgai, “Heishokudan,” *Nihon Zuihitsu Taisei* [Compilation of Japanese Essays], Vol. 6, (Yoshikawakōbunkan, 1927), p. 209.

⁹ Motegi Toshio, *Henyō Suru Kindai Higashi Ajia no Kokusai Chitsujo* [Changing International Order of Modern East Asia] (Yamakawa Shuppansha, 1997), pp. 4-5, 9-10, 14-19; id., “Chūgokuteki sekaizō no henyō to saihen,” Wataru Iijima et al., ed., *Shirizu 20-Seiki Chūgokushi 1: Chūka Sekai to Kindai* [20th Century China 1: Qing China and the

Hamashita Takeshi presents a different perception of the issue. In China's view, Hamashita suggests, it was surrounded by four sets of barbarians: 東夷 (*dōngyí*; Eastern barbarians), 南蠻 (*nánmán*; Southern barbarians), 西戎 (*xīrōng*; Western barbarians) and 北狄 (*běidí*; Northern barbarians). In the process of enlightening these four groups of barbarians by the virtuous rule of the emperor, there was created an expanding concentric relationship wherein Chinese civilization was transmitted from the center, influencing local areas, different peoples and outside areas. Although it was a unified order system, if we examine the functionality of those ruling relationships, there were areas ruled directly by the emperor, areas ruled indirectly through 土司 and 土官 (*tǔsī* and *tǔguān*; tribal leaders appointed as officials), areas autonomously ruled by non-Chinese people, areas ruled through the tributary system, equal trading partner countries without tributary relationships, and lastly, “areas outside imperial influence.”¹⁰

Thus, the difference in opinion can be seen as lying in the question of whether “the lands outside imperial influence” are believed to exist within Chinese territory or outside of it.¹¹ Indeed, if the Sinocentric order is a “personal order” rather than “land-based order”, it would be literally impossible to draw a clear borderline between one area and the area lying outside of it. At least ideologically, the Sinocentric order extends in concentric circles *ad infinitum*, as “the territory of Imperial China covers the all four seas and its authority is never limited under the sun.”

While Tōgai Itō basically agrees with one of these traditional Chinese “territorial” ideas, he clearly contrasts 版圖 (*hantō*; territory) with 化外の地 (*kegai no chi*; lands outside imperial influence). He expresses no clear views, however, on the relationship between territory and the principle of rule by a virtuous person, nor on the concentric image of the state's territory.¹²

Modern World] (University of Tokyo Press, 2009), p. 38. There is a view, however, that the concept of the tributary system did not mean a one-dimensional lord/subject relationship nor a functioning system as a whole. Today, there are different views on how to comprehend the meanings of 朝貢 (*chōkō*; tributary) and 冊封 (*sakuhō*; bestowing peerage by imperial edict). See Kawashima Shin & Hattori Ryūji, *Higashi Ajia Kokusai Seijishi* [History of East Asian International Politics] (The University of Nagoya Press, 2017), pp. 6-7. As for the Qing Dynasty, it is also explained using the dual world view of the “Northeastern Crescent” of Mongolia, Tibet and Xinjiang and the “Southeastern Crescent” of Korea through to Southeast Asia. See Mancall, M., “The Ch'ing Tribute System: An Interpretive Essay”; Fairbank, J. K., ed., *The Chinese World Order: Traditional China's Foreign Relations*, (Cambridge, 1969), pp. 72-75.

¹⁰Hamashita Takeshi, *Chōkō Shisutemu to Kindai Ajia* [The Tribute System and Modern Asia] (Iwanami Shoten, 1997), pp. 9-11. Also see Matsui, *ibid.*, Note 6 (2011), pp. 12-14.

¹¹Kawashima takes the view that the tributary states are perceived as being within the Chinese territory but that the areas outside the tributary states are also outside the territory. See Kawashima & Hattori, *ibid.*, Note 9, p. 6. As for the Chinese understanding of the meaning of 邦土 (*bāngtǔ*; domain) according to Li Hongzhang, see Note 51 below.

¹²In this regard, the term “Japanese version of Sinocentric order” is sometimes used. This refers to a Japanese-centric world order with the Tycoon of Japan (the diplomatic title of the *Shogun* in the Edo period) at its center that regarded Ryukyu, the Ainu lands, and Korea as tributary states. In this case, however, the concept is founded upon military strength or “unbroken imperial line,” rather than upon cultural superiority as in Sinocentric order. See Arano Yasunori, *Kinsei Nihon to Higashi Ajia* [Early Modern Japan and Eastern Asia] (University of Tokyo Press, 1988), pp. 29-65; Motegi, *ibid.*, Note 7, p. 11. There is another view that only the “perception of the Japanese version of the Sinocentric order” should be discussed since, in reality, such conditions did not exist in early modern East Asia (See Ikeuchi Satoshi, *Taikun Gaikō to “Bui”*: *Kinsei Nihon no Kokusai Chitsujo to Chōsen-kan* [Tycoon Diplomacy and Military Strength: International Order of Early Modern Japan and Perceptions of Korea] (The University of Nagoya Press, 2006), pp. 4-6, 12-14, 22). Also, to see how Confucian scholars in the Edo period understood the relationship of “China as the center of the world” and “non-

Which areas, then, were contained within “Japanese territory” in the Edo period, in the sense that Itō mentions? And where were the borders and the boundaries?

Itō does not write anything on this matter other than noting that Yakunoshima was included in Japanese territory and that Ezo was not.¹³ In this regard, the core Japanese territory must have been 五畿七道 (*gokishichidō*; five central provinces and seven circuits), local administrative districts that had been defined by the regal codes of ancient Japan. The problem was now how to position those areas beyond the *gokishichidō*, territories such as Ezo and Ryukyu.¹⁴

A reference in this regard is *Bakufusen Nihonzu* (maps of Japan prepared by the Shogunate), produced in conjunction with the Shogunate’s Kuniezu (provincial land map) project. Each of all the 68 Japanese provinces at the time was depicted in a map, and those maps were then combined together to produce a map of all Japan.

According to Kawamura Hirotada, chiefly four kinds maps of Japan were produced. The first of those have been traditionally called *Kan’ei Nihonzu* or *Keichō Nihonzu*. There are two versions, *Kan’ei A-type Kuniezu* (completed somewhat later than 1633) and *Kan’ei B-type Kuniezu* (completed in 1638), neither of which includes Ezo (today’s Hokkaido and other northern islands) or the kingdom of Ryukyu (today’s Okinawan islands). The second map is *Shōhō Nihonzu* (the earliest completed in 1648), which does not include Ryukyu but does include Ezo.¹⁵ It also includes the southernmost part of Korean

Chinese people” in the context of China and Japan, see Kojima Yasunori, “Edoki nihon no chūgoku ninshiki” [Japanese perception of China in the Edo Period], Japan-China Joint History Research Committee, ed., *Nittchū Rekishi Kyōdō Kenkyū Dai 1-ki Hōkokusho* [The 1st Report, Japan-China Joint History Research] (The Japan Institute of International Affairs, Jan. 2010), pp. 217–238.

¹³Itō regarded the Netherlands as a “barbarian country outside the south-west sea,” and Vietnam as “one of barbarian countries,” Itō, *ibid.*, Note 8, p.152.

¹⁴Murai concluded that the boundaries of the mediaeval state could be narrowed down, based on 13 examples of boundaries of Japan in historical materials, to Sotogahama in Tsugaru, to the east and Kikaigashima (Iwo Jima), or Ikinoshima and Tsushima to the west, with areas outside of those, specifically Ezoichi to the east and Ryukyu or Kōrai (Goryeo) to the west, regarded as foreign areas (Murai Shōsuke, *Ajia no Naka no Chūsei Nihon* [Mediaeval Japan within Asia] (Azekura Shobō, 1988), pp. 114-116). According to a map of Japan (created around the 14 century) kept in Shōmyōji, Tsushima and Oki no Kuni were outside the boundary and Iki was within (See Toby, *ibid.*, Note 4, pp. 112–126). But, at least in the Edo period, Tsushima was supposed to be within the Saikaidō (Western Sea Circuit) and Oki within the San’indō (Northern Side of Mountain Circuit) (See Kawamura Hirotada, *Kuniezu* [Provincial land maps for Administration] (Yoshikawakōbunkan, 1990), pp. 77-78). The subtle position of Tsushima will be discussed later. See also Kinda, A. & Uesugi, K., “Landscapes and Maps,” Kinda, A., ed., *A Landscape History of Japan* (Kyoto, 2010), pp. 202–207. Additionally, in the Edo period most people who lived in Honshu, Shikoku, Kyushu and islands around them clearly recognized a group of people who were people of “Japan” in contrast to 唐人 (*karabito/tōjin*; Chinese or foreigners); See Watanabe Hiroshi, *Nihon Seiji Shisōshi: 17-19 Seiki* [A History of Japanese Political Thought: 1600-1901] (University of Tokyo Press, 2010), pp. 2-3, 301-304.

¹⁵In the Ministry of Foreign Affairs of Japan and the Ministry of Foreign Affairs of the Russian Federation, The Joint Compendium of Documents on the History of the Territorial Issue Between Japan and Russia (1992) [Webpage: <http://www.mofa.go.jp/region/europe/russia/territory/edition92/index.html>,] the first material is the 正保御国絵図 (Shōhō on-Kuniezu), 1644, which was used as the basis of this map. As for the Nihon Sōzu (“map of whole Japan”) kept at the National Institute of Japanese Literature which is said to be the Shōhō Nihonzu (the first edition), see Fujii Jōji, “Futatsu no Shōhō Nihonzu [Two Shōhō Maps of Japan]”, Fujii Jōji et al., ed., *Daichi no Shōzō* [Portrait of the Land] (Kyoto University Press, 2007), pp. 326-344.

Peninsula with names such as 朝鮮 (*chōsen*; Korea) and 釜山海 (*Pusankai*; Sea of Busan).¹⁶ The third map is *Genroku Nihonzu* (1702) that for the first time includes both Ezo and Ryukyu. Again, the southern end of Korean Peninsula is drawn and includes text: for example, 草梁項 (*Sōryōkō*; Busan) and 和館 (*wakan*; guest house built by Korean dynasty to entertain guests and envoys from Japan). The last map produced was *Kyōhō Nihonzu* (1725) that includes Ezo. Remote islands such as Ryukyu and Yakushima are not included in the main Japanese map proper, but are recorded in a separate section.¹⁷ The text *wakan* was likely there as well.¹⁸

It would be too simplistic to assume that these lands were regarded as a part of Japan's territory simply because they were included in the maps of Japan prepared by the Shogunate¹⁹; even the southern part of Korea is included on the map. Therefore, *Bakufusen Nihonzu* is only an additional reference point when we examine the historic definition of Japanese "territory."

It is also necessary to consider the matter from another point of view, that is, in connection with the Japan's policy of so-called "*sakoku*."

2. "External" Relations: "Four Portals;" "Foreign Countries;" "Foreign Areas;" "Countries of Communication" and "Countries of Trade"

The conventional understanding of the Edo period is that it was an era of *sakoku* during which Japan was consistently and totally closed to the outside world between 1639 and 1854. The implications of the term *sakoku* so far have been:

- (1) Migration control of Japanese nationals;
- (2) Prohibition of Christianity and expulsion of missionaries already in Japan;
- (3) Prohibition on vessels from Western countries entering the Port of Nagasaki, with the exception of vessels from the Netherlands.

As mentioned earlier, however, in recent years the general understanding has shifted to the perception that Japan was in fact not as totally closed to the world as heretofore believed, and that greater emphasis should be placed on the country's ongoing exchanges especially with the rest of the East Asian world.²⁰

The "four portals" theory is one such reassessment now drawing attention in aiding our

¹⁶A *Ryukyu Kuniezu* (map of the province of Ryukyu) exists as well. The Korean Peninsula is not included in the reproduction of the *Shōhō Nihonzu*, 1670.

¹⁷Kawamura, *ibid.*, Note 14, pp. 204-240; *id.*, *Edo Bakufu no Nihon Chizu* [Maps of Japan by the Edo Shogunate] (Yoshikawakōbunkan, 2009), pp. 48-58, 67, 85-94, 159-165.

¹⁸The original of the *Kyōhō Nihonzu* no longer exists. The word *Wakan* is not found within the displayed reduced remaining version of the map, now in the National Museum of Japanese History. See Kawamura, *ibid.*, Note 14, p. 240.

¹⁹Although Toby argues that this "reflects the Shogunate's perception of territory," (Toby, *ibid.*, Note 4, p. 115), certain reservations would be needed as discussed in the main text.

²⁰See *ibid.*, p.19. The word "*sakoku*" was, as is widely known, first used by Shizuki Tadao in his work *Sakokuron* (Essay on *sakoku*) published in 1801, which was a partial translation of *The History of Japan* by Kaempfer (1727). The Shogunate never officially used the word *sakoku* before or after the publication of the book. See The Historical Science Society of Japan, ed., *Nihonshi Shiryō, 3 Kinsei* [Materials on Japanese History, 3 Early Modern Times] (Iwanami Shoten, 2006), pp. 388-389.

comprehension of Japanese external relations in early modern times. Arano Yasunori introduced this idea for the first time in a presentation at the annual meeting of the Historical Science Society of Japan in 1978. According to Arano, Japan in fact maintained exchanges with foreign countries and people through four portals that he called the “four mouths” i.e. the Satsuma Portal for the relationship with Ryukyu, the Nagasaki Portal for the relationship with the Chinese and the Dutch, the Tsushima Portal for the relationship with Korea and the Matsumae Portal for the relationship with the Ainu. The Satsuma, Tsushima and Matsumae Domains were in charge of controlling these foreign affairs, a large part of which was a traffic control operation.²¹

Although Arano cited three foreign countries--Ryukyu, Korea and Ezo-- as 異国 (*ikoku*: foreign countries), today it is loudly insisted to distinguish 異国 from 異域 (*iiki*; foreign areas). This relatively new approach was first presented in Katō Eiichi et al., ed., *Bakuhan-sei Kokka to Iiki/ikoku* [Shogunate System State and Foreign Areas/Foreign Countries] (1989). In this work, “foreign countries” are explained just as in today’s international relationships; Korea is the closest foreign country to Japan, and Chinese and Dutch visitors could be recognized within the scope of Japan’s affairs. On the other hand, he argued that Ryukyu and Ezo are “difficult to separate from Japan as foreign countries in many ways, in spite of both being “societies with unique cultural styles,” because, if we view them in the timespan of early modern times, their continuation itself had been inseparable from the Shogunate system in terms of social structure, rather than in terms of foreign policy. Still, there were many factors that clearly could not be dealt with as social issues under the Shogunate system, and given this perception, Ryukyu and Ezochi were identified as ‘foreign areas.’”²²

While there is one example of the use of the word “*iiki*” (foreign area) in a copy of a document originally written by Toyotomi Hideyoshi on February 28, 1590, including the passage “...have contact with *iiki* (Ryukyu) ...,”²³ it is not clear how widely the term was in use in those days.

²¹See Arano Yasunori, “Bakuhan taisei kokka to gaikō: Tsushima-han o sozai to shite” [Shogunate system state and foreign relations: using Tsushima Domain as materials], *Sekaiishi nin’ shiki ni okeru minzoku to kokka – 1978-nendo Rekishigaku Kenkyū taikai hōkoku* [Race and state in the perception of world history – reports from the 1978 annual meeting of Historical Science Society of Japan] (1978), pp. 104-105; id., *ibid.* Note 12, p. 161. It is worth noting that Kondō Jūzō, famous for his expedition into Ezochi, wrote that “passages between our country and foreign countries exist only in four places; Nagasaki, Satsuma, Tsushima and Matsumae” in “Matsumae Ezochi shochi narabi ni ikoku zakai torishimari ni tsuki kengensho sōan” [draft recommendations on Matsumae’s dealings with Ezochi and control of the borders with foreign lands] (probably written in 1797), Historiographical Institute, the University of Tokyo, ed. *Dai Nihon Kinsei Shiryō: Kondō Jūzō Ezochi Kankei Shiryō 1* [Materials on history of early modern Japan Vol. 1: Materials relating to Jūzō Kondō and Hokkaido] (University of Tokyo Press, 1984), p. 8. See also Matsui, *ibid.*, Note 6 (2011), p. 15.

²²Fukaya Katsumi, “Sōron – Bakuhan-sei Kokka to Iiki/ikoku” [General Theory – The Shogunate System State and Foreign Areas/ Foreign Countries], Katō Eiichi et al., ed. *Bakuhan-sei Kokka to Iiki/ikoku* [Shogunate System State and Foreign Areas/Foreign Countries] (Azekura Shobō, 1989), pp. 10-11. The term “*ikoku*” is found in *Gyokuyō* (Diary of Kujo Kanezane) and *Heike Monogatari* (The Tale of the Heike). For the use of the term in early modern times, see Tsuruta Kei, “Kondō Jūzō ni okeru ‘ikoku’ to ‘ikoku zakai torishimari’” [‘Foreign countries’ and ‘control of borders’ in Kondō Jūzō], *Annual Report of Historiographical Institute, The University of Tokyo No. 24* (1989), pp. 28-29. The term 外国 (*gaikoku*; foreign countries) has been used since ancient times, but 外国奉行 (*gaikoku bugyō*; commissioners of foreign affairs) was a newly created post in 1858.

²³The Historical Science Society of Japan, *ibid.*, Note 20, p.45. For the use of the term “foreign areas” already found in *Shoku Nihongi* (797), see *Nihon Kokugo Daijiten, Dai 1-kan* [Japanese Dictionary, Vol. 1] (2nd ed., Shōgakukan, 2000), p. 775.

Regarding Ezochi, it is now generally agreed that it was regarded as a “foreign area” during the Edo period (strictly speaking, until the end of the 18th century.) Yet what was the reality of the situation? There are no divergent views on *Wajinchi* (“the area of Japanese people,” i.e. Matsumae Domain) being ruled by the Matsumae Domain. For Ezochi, however, only the right of trade with the Ainu, “*akinaiba chigyō taisei*” (trading right system) and “*basho ukeoi seido*” (trading right system with merchants as middlemen from the first half of 18th century on), was recognized, and not the total dominium of the Matsumae Domain.²⁴

Even today, there are different interpretations regarding whether Ryukyu was considered a “foreign area” or a “foreign country,” and this issue is further connected to the positioning of Ryukyu as a “country of communication” (perceived as a political fiction or fictional foreign country), as will be discussed later.²⁵ In *Ryukyu-koku Chūzan-ō Shōnei’s Kishōmon* (written vow by Shōnei, King of Chūzan, Ryukyu) (November 1611), the text goes: “Since ancient times, Ryukyu has been dependent on the Shimazu Family of Satsuma Domain.” Regarding the meaning of “dependence” as used here, one interpretation is that, since Ryukyu was positioned as a foreign and dependent county within the state of Shogunate system, it could be identified as a subordinate, tributary country to Satsuma Domain (i.e. Japan). Another interpretation is that Ryukyu should be viewed as having been annexed by Japan, rather than being invaded by the Satsuma Domain alone, and that Ryukyu’s tribute mission to the Ming in China in 1612 was secretly manipulated by Japan.²⁶ There is also a view that Ryukyu continued to be a tributary to Qing even under the military control of the Satsuma Domain, a dependency that the Qing dynasty deliberately ignored. This complicated situation can be regarded as the dual existence of “control under the Shogunate system” and the “tributary system,” or again, the coexistence of Ryukyu as a “dependent” on Japan and a tributary country to Qing.²⁷

Kitaoka Shin’ichi, in his recently published “Japan-China Joint History Research Report,” wrote: “Since the 17th century, the actual ruler of the Ryukyu Kingdom had been Satsuma. ... Qing knew that Ryukyu was in fact under the Satsuma Domain’s control.”²⁸ China, however, has a different

²⁴For example, see Fukaya Katsumi, “Kinsei nihon to higashi ajia,” [Early modern Japan and East Asia], *Shisō*, 2010, No. 1, pp. 182-183.

²⁵See Umeki Tetsuto, “Ryukyu ōkoku shokan no kentō – ikoku no kōzō shiron,” [Research into letters of the Ryukyu kingdom – essay on the structure of a foreign country], *Chihōshi Kenkyū*, Vol. 35, No. 5 (1985), pp. 21-22.

²⁶Ming decided to let the tribute be paid again “after waiting for 10 years so that the country’s strength would be somewhat enough.” According to Fuma Susumu, this did not mean that the previous biennial tribute was revised into decennial tribute, but rather that the Ming did not want any tribute for 10 years as the dynasty feared that Japan might invade Keelung and Tamsui, Taiwan. See Fuma Susumu, “1609-nen, nihon no ryukyu heigō ikō ni okeru chūgoku chōsen no tai-ryukyu gaikō” [China and Korea’s external policy to Ryukyu after Japan’s annexation of Ryukyu 1609], *Chōsen-shi Kenkyūkai Ronbunshū* No.46 (2008), pp. 7,15-23.

²⁷Some examples of those varied interpretations can be seen in: Tomiyama Kazuyuki, “Ryukyu okinawa-shi no sekai” [World of history of Ryukyu and Okinawa], id., ed., *Ryukyu Okinawa-shi no Sekai* [The World of Ryukyu and Okinawa History](Yoshikawakōbunkan, 2003), pp. 53-57; See also Maruyama Yasunari, *Kyushu: Sono Rekishi Tenkai to Gendai* [Kyushu: Its Historic Development and Today] (Bunkenshuppan, 1994), pp. 197-203.

²⁸Kitaoka Shin’ichi, “Kindai nittchū kankei no hottan” [Origins of the modern Japan-China relationship], Japan-China Joint History Research Committee, *ibid.*, Note 12, pp. 328-329.

interpretation,²⁹ and even among Japanese documents there seems to be no agreement on this point.³⁰

As this was to evolve into an immensely serious issue in the years between the end of the Edo period and the early Meiji period, the issue will be discussed in greater detail in the next section.

Another perception in regard to *sakoku* that should be noted is the distinction drawn between “countries of trade” and “countries of communication,” an idea that appeared in the late 18th century.

Matsudaira Sadanobu, a *rōjū* senior councilor of the Shogunate, refused to receive a sovereign message from Catherine the Great of Russia because Russia was “a country without communication,” as explained in “*Ikokujin ni onkokuhō o satosareru sho*” (letter to foreigners to teach Japanese National Law) dated June 21, 1793.³¹ Further, the “*Kyōyusho*” (letter of instruction) dated March 7, 1805, to Rezanov, the Russian envoy, stated that it was “successive imperial law” or “conventional law of our state protecting the country” that prevented Japan from entering into a trade relationship with any country other than Qing, Korea, Ryukyu and the Netherlands.³²

A letter in reply to the Dutch Regent Minister dated June 1, 1845, further explains that Korea and Ryukyu are “countries of communication” and the Netherlands and China are “countries of trade,” and states that it is against the ancient law to communicate trust with the Netherlands.³³ To “communicate trust (communication)” implies the existence of a diplomatic relationship wherein diplomatic documents are exchanged and envoys received. A “country of trade,” however, means that individuals from that country are allowed to enter Japan as merchants to carry out trading business, but nothing more.³⁴

As seen above, the concept of “communication and trade” makes it clear that Japan had “communication” relationships with Korea and Ryukyu and “trade” relationships with the Netherlands

²⁹Xu Yong, Zhou Song Lun & Mi Qingyu, “Kindai nittchū kankei no hottan” [Origins of the modern Japan-China relationship], Japan-China Joint History Research Committee, *ibid.*, Note 12, pp. 351-353.

³⁰For example, see Shimomura Fujio, ed., *Meiji Bunka Shiryō Sōsho Dai 4-kan Gaikō-hen* [Meiji Cultural Materials Series, Vol. 4, Diplomacy] (Kazamashobō, 1962), p. 6, “Kaidai” (Bibliographical Note). There is a perception that the position of Ryukyu was something baffling not only for Westerners but for the Japanese as well. See Sakai, R. K., “The Ryukyu (Lin-Ch’ in) Islands as a Fief of Satsuma,” Fairbank, *ibid.*, Note 9, p. 112.

³¹ *Tsūkō Ichiran*, Vol. 7, pp. 94-96.

³²*Tsūkō Ichiran*, Vol. 7, pp. 192-193. Also see “Hayashi Shiba ryōshi jōsho” [Recommendation letter by Hayashi and Shiba], The Historical Science Society of Japan, *ibid.*, Note 20, pp. 389-390.

³³*Tsūkō Ichiran Zokushū*, Vol. 2, pp. 527-528. Hayashi Fukusai, the editor of *Tsūkō Ichiran*, wrote in its introduction (1853) “following the uprising by believers of false religion during the Kan’ei period, the Imperial Court established that (Japan) communicate with Korea and Ryukyu and have trade only with China and the Netherlands, and no relationship with any other country” (*Tsūkō Ichiran*, Vol. 1, p. 1.)

³⁴A label that Ido Iwami no Kami attached to an official document includes the sentence: “Trade is limited to China and the Netherlands and communication is limited to Korea and Ryukyu” (1854). See “Furoku 2 Ryukyu shozoku mondai kankei ōsetsukata shorui” [Appendix 2, Reception Department documents about attribution issues of Ryukyu], Samuel Wells Williams, *A Journal of the Perry Expedition to Japan* (translated by Hora Tomio) (Yūshōdōshoten, 1970). For the regular visits to Edo, the term 参府 (*sampu*: commuting as *daimyo* commuted to Edo) was used for the chief of Dutch traders and envoys from Ryukyu, while 来聘 (*raihei*: visiting to pay tribute) was used for Korean (Joseon) missions. The meaning of the difference is explained in Fukaya, *ibid.*, Note 24, p. 179.

and China. This concept was, however, put forward only at the end of the 18th century when Russia, England, France and other nations pushed closer to Japan. It was intended to establish that Japan's "external" relationships should be limited to the current four "countries" only pursuant to ancient law, and that it would not enter into any new relationships with any other countries. This concept is sometimes called *sakoku sohō-kan* (seclusion of the country based on ancestral law).³⁵

It should also be noted that Ezochi was totally outside the area of consideration, while Ryukyu, a "country of communication," was regarded as a "country" with which Japan maintained diplomatic relations. To counter growing Russian pressure, the Shogunate brought Eastern Ezochi (the Pacific coast side of Hokkaido and the Kuril Islands up to Iturup) under its direct control in 1799, and Matsumae and Western Ezochi in 1807 (this was known as *agechi*: the first direct rule by the Shogunate, and continued until 1821.) Thus, Ezochi was no longer regarded as a "foreign country." Indeed, we can even perceive in this the clear intention to shift the position of Ezochi out of its previous status as a conventional "foreign area" (i.e., the "incorporation of Ezochi into the mainland"³⁶.) In addition, in November 2, 1799, the Morioka and Hirosaki Domains were ordered to guard Eastern Ezochi, with the Morioka made responsible for "Nemoro," Kunashiri and Iturup and the Hirosaki for "Sahara" and Iturup.³⁷ This shows the intent of the Edo Shogunate to include all the land as far as Iturup within its definition of "Japanese territory."

From the Japanese point of view, maintaining a trade relationship with China rather than a diplomatic relationship made it possible to avoid to being perceived as a "tributary" country within China's "Sinocentric order."³⁸

3. *Takeshima Ikken* (Takeshima Affair)

In its narrow sense, the term "*Takeshima Ikken*" means fishing activities on and around Takeshima (which at the time did not refer to the present contested Takeshima/Dokdo islands but rather was the name given by the Japanese to the much larger Utsuryo Island/Ulleungdo), and the negotiations

³⁵ Historical Science Society of Japan, *ibid.*, Note 20, pp. 389-390.

³⁶ See Kikuchi Isao, *Bakuhan Taisei to Ezochi* [Shogunate System and Ezochi] (Yūzankakushuppan, 1984), pp. 91-115.

³⁷ Habuto Masayasu, "Kyūmeikōki," Hokkaido-chō, ed., *Shinsen Hokkaido-shi*, Vol. 5 [Newly collected history of Hokkaido, Vol. 5] (Hokkaido-chō, 1936), p. 343. Also see Inobe Shigeo, *Shintei Ishin Zenshi no Kenkyū* [Revised Study on Prehistory of Restoration] (Chūbunkanshoten, 1942), pp. 156-157. For reality of the situation of guarding operation by the two Domains, especially Hirosaki Domain, see Asakura Yūko, *Hoppōshi to Kindai Shakai* [History of the North and Modern Society] (Seibundō, 1999), pp. 115-187.

³⁸ See Arano, *ibid.*, Note 21, p.105; Watanabe, *ibid.*, Note 14, p.64. Regarding the Japan-Korea relationship, which was not a simple 敵礼 (*tekirei*: equal amity) relationship, as typically observed in the abolition of *Wakan* in Seoul and Japan's refusal of Korean missions, see Fukaya, *ibid.*, Note 24, pp. 178-179. Also see Note 51 below. Another interesting point in association with *sakoku* is the fact that each coastal defense system created by each Domain had distinctive characteristics, such as the installation of *Tōmi Bansho* (sentry stations to watch for foreign ships) and the prohibition of smuggling, showing that each area had different methods of establishing contacts with the "outside world" (See Momoki, *ibid.*, Note 4, pp. 121-122). In this respect, there is a noteworthy observation, focusing on the *tōjin shōmon* (required certificate for foreigners) system implemented in Ryukyu, that Japan's boundary under the Shogunate system was not homogeneous. See Watanabe Miki, "Kindai no ryukyu to 'nihon no kokkyō'" [Modern Ryukyu and 'Japan's Boundary'], Kikuchi Isao & Maehira Fusaaki, ed., *Kinsei Chiiki-shi Fōramu I Retto-shi no Minami to Kita* [Early Modern Area History Forum I: North and South of Islands History] (Yoshikawakōbunkan, 2006), pp. 107-108.

between Japan and Korea concerning possession of the island carried out between 1693 and 1696.³⁹

There are many points in dispute regarding this *Takeshima Ikken*. Vigorous discussions related particularly to the present “Takeshima Dispute” are still ongoing.⁴⁰ In this essay, however, the author would like to examine this case in order to ascertain whether we can bring modern European legal concepts such as “territorial ownership,” “territorial sovereignty of state” and “boundary” into the discussions on the issue at that time.

A Republic of Korea Ministry of Foreign Affairs webpage outlining the dispute titled “The Government’s Basic Position on Dokdo” describes the issue as the “ownership issue regarding Dokdo” (Translated from the Japanese version of the webpage. On the English-language version: “Issue of ownership over Ulleungdo and Dokdo”).⁴¹ In contrast, in its “10 Issues of Takeshima”, the Japanese Ministry of Foreign Affairs refers to “the negotiation with Korea requesting that it prohibit its people from traveling to Utsuryo Island” and “negotiations concerning the attribution of Utsuryo Island.” In addition, it includes the phrase: “Japan had established its sovereignty over Takeshima by the mid-17th century.”⁴²

Needless to say, concepts like “dominium” and “boundary” peculiar to that area must have existed in those days as well. Yet the problem is whether or not we can interpret these Japanese concepts those days in a consistent manner as we view the concept of dominium and imperium in the modern European context.

Negotiations between the two countries were originally initiated to establish rights--primarily fishery rights--over Takeshima and the surrounding marine area. At first, the Tsushima Domain, responsible for the negotiation, clearly stated to its Korean counterpart that the purpose of the

³⁹For a detailed account of the incident, see Kawakami Kenzō, *Takeshima no Rekishi Chirigaku-teki Kenkyū* [Historical and Geographical Study of Takeshima] (Kokonshoin, 1966), pp. 139-175; Shimojō Masao, *Takeshima wa Nikkan Dochira no Mono ka* [Which Owns Takeshima, Japan or Korea?] (Bungeishunjū, 2004), pp. 16-19; Ikeuchi, *ibid.*, Note 12, pp. 77-78, 244-245.

⁴⁰Ministry of Foreign Affairs Northeast Asia Division, “Takeshima:Takeshima mondai o rikai suru tame no 10 no pointo” [10 Issues of Takeshima], Ministry of Foreign Affairs of Japan, 2008; Kankoku Kaiyō Suisan Kaihatsuin Dokdo Kenkyū Center, “Dokdo wa daikanminkoku no koyū no ryōdo desu.” [Dokdo is territory inherent to Korea], Kankoku Kaiyō Suisan Kaihatsuin Dokdo Kenkyū Center [now the Ministry of Oceans and Fisheries], 2008. New controversy has arisen over “*Genroku 9 hinoenedoshi chōsen shū chakugan ikkan no oboegaki*” [1696 one-volume memorandum of Korean boat reaching the shore] (owned by Murakami Sukekurō) found in 2005. On the one hand, there is an opinion that this historical document undermines the statement of the Japanese government that An Yong-bok’s account was completely false. The interpretation is that as it is described in the document, at the time there was a recognition that the islands called Takeshima and Matsushima by the Japanese were actually Utsuryo/Ulleungdo and Dokdo (Usando), and that this was conveyed to the Japan side (“Gangwon-do, within the Province there are Takeshima and Matsushima.”) On the other hand, another interpretation focusses on the fact that the document contains no description at all of An driving Japanese fishermen away from Utsuryo Island, which, among other aspects, conflicts with An’s statement as recorded in “Fact Record of Sukjong.” See Shimaneken Takeshima Mondai Kenkyūkai [Takeshima Issue Study Group, Shimane Prefecture], *Takeshima Mondai ni Kansuru Chōsa Kenkyū, Saishū Hōkokusho* [The final report of research about the Takeshima dispute], March 2007.

⁴¹ <http://www.mofat.go.kr/english/political/hotissues/dokdo/index.jsp>, last update: 15 December 2011.

⁴²Ministry of Foreign Affairs Northeast Asia Division, *ibid.*, Note 40, pp. 5-6.

negotiations was not to “dispute over the island.”⁴³

During the negotiations, however, the talking points shifted to a discussion over whether Takeshima, known as Utsuryo in Korean--should be considered as one island or as two “separate islands” for negotiating purposes, and whether or not the island lay within Korean territory. The factor behind this shift was a Korea’s proposal to draw a distinction between “your (Japan’s) Takeshima” and “our (Korea’s) border island of Utsuryo.” This proposal was a desperate measure by Korea to resolve the *Takeshima Ikken* peacefully by making it sound as if there were a separate Takeshima Island within Japanese territory and a separate Utsuryo Island within Korean territory, rather than the single island in contention.⁴⁴ The Korean side proposed this solution in full awareness that the phrase “your Takeshima” actually referred to what they called Utsuryo Island. In spite of this compromise offered by the Korean side, however, the two countries still could not reach an agreement, as the Japanese side could not suppress its displeasure over the phrasing, “our (Korea’s) border Utsuryo Island.”

Subsequently, with the ascendancy of hard-liners on the Korean side due to political changes within the Korean government, the Korean side began to clearly assert that Takeshima Island and Utsuryo Island were in fact one and the same island and that it lay within Korean territory. During this same period, opinion within the Tsushima Domain, whose territory included the disputed island, also split following the death by illness of the lord of Tsushima, Sō Yoshitsugu, with some beginning to argue that the Utsuryo Island did indeed lie within Korean territory. The negotiation between the Tsushima Domain and the Korean government came to a deadlock.⁴⁵

Thus, at this initial stage of negotiations and in the Korean proposition, we can see that both countries at the time did indeed have the “wisdom to avoid a border issue if it might provoke a conflict between the two countries.”⁴⁶ In the end, however, the situation deteriorated to the point that they would severely “dispute over the island” face to face.

It still remains not altogether clear what the specific concepts of “territory” and “border” were like at the time. We can find one clue in the “*Kōjō-oboē*” (unofficial memorandum) of January 9, 1696, drawn up by Abe Bungo no Kami Masatake, the senior councilor of the Shogunate on duty for that month. He wrote of Takeshima that the situation would have been different if “Japan had taken it (Takeshima) into Japan, or Japanese people lived on it.”⁴⁷

⁴³ Ikeuchi, *ibid.*, Note 12, pp. 278, 288.

⁴⁴ Kawakami, *ibid.*, Note 39, p.150.

⁴⁵ See *ibid.*, pp.139-175; Shimojō, *ibid.*, Note 39, pp.16-91; Ikeuchi, *ibid.*, Note 12, pp. 77-78, 244-245.

⁴⁶ Murai Shōsuke, *Kyōkai o Matagu Hitobito* [Those Who Step Across the Border] (Yamakawa Shuppansha, 2006), pp. 95-96. Murai sees that a “border” is a dynamic space that expands and contracts through the activities of border people; it has swirling energy that produces rich wealth even though it can be seen as a region remote from the center of the nation. According to Murai, it might be possible to see in “*Takeshima Ikken*” a step out of the medieval “border” into the “modern boundary” (*ibid.*, pp. 3, 96, 98.)

⁴⁷ *Takeshimakiji* [Takeshima articles], entry of January 9th, 1696, p. 160. There is another entry noting, “if Japanese lived there or if the island had been taken by us...” (*Takeshimakiji*, January 28th, 1696, p. 159.)

Here we can see two factors in play: “to take it into Japan” and “to inhabit.” “To take” in this context means “to obtain” or “to acquire.” But what sort of action did the word imply? To simply fish or hunt abalone and sea lions on the island? Or did it perhaps presuppose that people would have to live on the island?

The importance of human habitation in the dispute is clear in a letter of response sent to the Edo Shogunate from the Tottori Domain dated May 22, 1693, stating that: “as Takeshima is a remote island, there is no human habitation.”⁴⁸ Here the focus of the debate seems to be whether “habitation” is to be the only criterion considered.⁴⁹ Yet it is also possible to interpret Abe’s statement as indicating something else other than inhabitation. What, then, would these other criteria be? It is essential to look more closely into materials from the time for an answer.

III. Establishment of “territory” in the late Edo and early Meiji periods

From around the end of the 18th century on, when fleets of ships from Russia, France and England arrived to try to open contact with Japan, the Shogunate had to face the decision on whether it could continue to maintain its conventional external policy. As seen above, it at first used the maintenance of ancestral law as justification for refusing to open the country. The Shogunate, however, could not stand up against the demand to open its doors presented by the American East India Squadron led by Commodore Perry with its overwhelming military power (“gunboat diplomacy”).⁵⁰

Through its growing contacts with Western countries, it became necessary for Japan to adopt such concepts of modern European international law as “territory” and “boundaries.” In particular, the positioning of Ezochi and the Ryukyu Kingdom--conventionally regarded respectively as a “foreign area” and a “foreign country” --became subject to severe scrutiny. In addition, the treatment of surrounding islands had to be clearly decided. Establishing Japan’s “territory”⁵¹ and “boundaries”

⁴⁸“Takeshima no kakitsuke 5 ‘takeshima tokai no oboe” [Takeshima documents 5, Memorandum of voyage to Takeshima], Tsukamoto Takashi, “Takeshima kankei kyū-Tottori-han bunsho oyobi ezu (jōkan)” [Former Tottori Domain documents and pictorial diagrams about Takeshima, Vol. 1], *Reference*, April issue (1985), p. 83.

⁴⁹Apart from the concept of *ikoku zakai* (border areas within Japanese territory), Kondō Jūzō also set forth the idea of an artificially established *kokkyō* (boundary). He emphasized the importance of residents as a factor affecting when the boundary is established. See Tsuruta, *ibid.*, Note 22, pp. 33-34. The concepts of *ikoku zakai* and *kokkyō* are found in “Matsumae wakasa no kami e tōbun agechi no gi ōsetsukerare sōrō on kakitsuke” [official letter to Matsumae Wakasa no Kami stating the land is now returned to the central government] (1799). See Habuto, *ibid.*, Note 37, p. 534.

⁵⁰Certainly, some perceive the “opening of the country” not as a simple humiliating compromise made under military pressure, but rather as, at least in one aspect, a voluntary decision made as the result of an examination of universal “rationales.” (Watanabe Hiroshi, “Shisō mondai to shite no ‘kaikoku’: Nihon no ba’ai” [The ‘opening of the country’ as an intellectual problem: The case of Japan], Park Choong Seok and Watanabe Hiroshi, ed., *Kokka Rinen to Taigai Ninshiki: 17-19 seiki* [National Philosophy and Foreign Policy Concept: 17-19 Centuries] (Keiō University Press Inc., 2001), pp. 281-329.)

⁵¹The term 領域 (*ryōiki*: territory), and similar terms (in Japanese original terms in Chinese characters), such as 領土 (*ryōdo*; territorial land) and 領海 (*ryōkai*: territorial sea), however, came into common use only from the late Meiji era onwards. The first treaty containing the word *ryōiki* was, within the scope of our search, the Franco-Japanese Treaty of 1907. Before that, conventional terms such as 版図 (*hanto*; territory), 所領 (*shoryō*; territory), 邦土 (*hōdo*; domain), 領地 (*ryōchi*; appanage), 国土 (*kokudo*; domain), 境土 (*kyōdo*; territory within boundary) were used. Li Hongzhang, in the negotiation between Japan and Qing in 1876 and again when he met the American ex-president Ulysses S. Grant on April

became a serious and urgent issue.

Settlement with Russia was particularly problematic when it came to the demarcation process, as this was closely related to the positioning of Ezochi.⁵²

Another problematic issue was the positioning of Ryukyu. In the *uru'u* intercalary month of July in the traditional Japanese calendar, and early September 1854 in the Western calendar, Commander-in-chief Stirling of the British East Indies and the China Station, arrived in Nagasaki. He announced that Britain was at war with Russia (the Crimean War) and requested permission to enter the port of Nagasaki and other Japanese harbors.⁵³ This presented an opportunity to discuss Japan's "territory" and "boundary" between Japan and Korea. The Nagasaki *Bugyō* (Magistrate of Nagasaki) expressed his opinion in an official letter to the Japanese government dated August 7, 1854: "Ryukyu is a dependency of Japan and Tsushima is within Japan's territory."⁵⁴ This letter clearly shows that, quite unlike the case of Tsushima, Ryukyu was not seen as an inherent territory of Japan. Was this the view generally accepted at the time? The letter further raises the issue of the positioning of Tsushima in connection with the "boundary" matter with Korea.⁵⁵

23rd, 1879, expressed his interpretation of the word 邦土 (*bāng tǔ*; domain) used in the first article "Domains belonging to both countries" of the Sino-Japanese Friendship and Trade Treaty" (1871). According to Li, the character 邦 meant countries such as Korea (i.e. 外藩 (*gaihan*; territories governed by a ruler who is a subject of the king/emperor), 外属 (*gaizoku*; foreign countries) and 属国 (*zokkoku*; subject state), and the character 土 meant territories directly governed by China (i.e. 内属 (*naizoku*; subject countries) or 内地 (*naichi*; mainland)). See "Furoku Amerika zen-daitōryō to no kaidan-roku" [Appendix: meeting record with the former American president], *Shinpen Genten Chūgoku Kindai Shisō-shi: Dai 2-kan: Bankoku Kōhō no Jidai* [New Edition, Original Texts of Chinese Modern History of Thought, Vol. 2: Age of the Law of Nations] (Iwanami Shoten, 2010), p. 172. Motegi Toshio, "Nittchū kankeishi no katarikata: 19-seiki kōhan" [How to speak of Japanese-Chinese history: the second half of 19th century], Liu Jie et al., ed., *Kokkyō o Koeru Rekishi Ninshiki: Nittchū Taiwa no Kokoromi* [Contending issues in Sino-Japanese relations: toward a history beyond borders] (University of Tokyo Press, 2006), p. 14. A letter written by Minister Mori Arinori, stationed in Qing and dated February 1st, 1876, to Prince Gong of Qing, contains the sentence "Korea is actually a country that belongs to China..." (*Dai-nihon Gaikō Monjo Dai 9-kan* [Documents on Japanese Foreign Policy, Vol.9], p. 182.) Morita Yoshihiko sees the possibility that the Qing side intentionally communicated a different form of the meaning of 邦土 to Japan. Morita Yoshihiko, "Nisshin kankei no tenkan to nisshin shūkō jōki" [Turnaround of Sino-Japanese relations and Sino-Japanese Friendship and Trade Treaty], Okamoto Takashi and Kawashima Shin, ed., *Chūgoku Kindai Gaikō no Taitō* [Emerging diplomacy in late imperial China] (University of Tokyo Press, 2009), pp. 55-56.

⁵²See Tajūdō Kanae, *Ryōdo Kizoku no Kokusaihō* [International Law on the Attribution of Territory] (Tōshindō, 1998), pp. 157, 160, 240.

⁵³Though his original intention had been to request Japan to clarify its attitude about British and Russian ships entering Japanese ports, the Anglo-Japanese Friendship Treaty was signed as the result of a mistranslation of Stirling's letter. For details, see Ishii Takashi, *Nihon Kaikoku-shi* [History of the Opening of Japan] (Yoshikawakōbunkan, 1972), pp. 133-139; Mitani, *ibid.*, Note 4, pp. 205-218.

⁵⁴*Tsūkō Ichiran Zokushū*, Vol. 3, p.99. As for the question of whether "the small island at the side of Goryeo" is "within Japan's territory," they did not answer this, as "the border between Japan and Goryeo is outside the scope of duty of this *bugyō*." We can assume this small island as being Utsuryo Island. See Maehira Fusaaki, "19-seiki no higashi ajia kokusai kankei to ryukyu mondai" [19th century East Asian international relations and Ryukyu Issues], *Ajia Kara Kangaeru: (3) Shūhen kara no Rekishi* [Series Asian perspectives: (3) Periphery in the Asian studies] (University of Tokyo Press, 1994), p. 258.

⁵⁵There are various discussions on how to perceive the relationship between Tsushima and Korea in the Edo period, especially from the 18th century onward, focusing on whether Korea regarded Tsushima as a subordinate (*Kibi-Kōrin* relationship) and whether the *wakan* (guest house built by the Korean dynasty to entertain guests/envoys from Japan) in Sōryōkō/ Cholyanghang (Busan) was a place for paying tribute. For instance, see Tashiro Kazui, *Wakan: Sakoku Jidai no Nihonjin Machi* [Wakan: A Japanese Town in the Sakoku Era] (Bungeishunjū, 2002); Tsuruta Kei, *Tsushima Kara*

A little later, in the early Meiji period, when preparations were being made for sending the study mission headed by Iwakura Tomomi to the United States and Europe, a document titled “*Shuppan ni tsuki yōyō shirabe*” (matters of importance for consideration on departure) (1871) was produced. In this document, there are entries such as “the matter of the Karafuto (Sakhalin) border; matter of Takeshima border; matter of Bu-ninjima (uninhabited islands) border; dealing with exchanges with Korea; dealing with exchanges with Ryukyu.” The borders of Karafuto, Takeshima and Bu-ninjima (Ogasawara Islands) and diplomatic issues with Korea and Ryukyu were issues selected to be researched.⁵⁶ From this we can see clearly that the Japanese government had questions on where to demarcate the boundary and how to communicate that border to the West. It should be noted that Karafuto, Takeshima (most probably meaning Utsuryo Island, and not the present Takeshima)⁵⁷ and Bu-ninjima were categorized under “territory” demarcation issues, and that Korea and Ryukyu were categorized as diplomatic issues.

In this essay, partly due to limitations of space, it is not possible to examine in detail how Japan established its “territory” and demarcated its “boundary.” The author would like to give simple sketches of six main issues: (1) Treaty of Commerce and Navigation between Japan and Russia; (2) Incorporation of Ezochi; (3) Karafuto/Sakhalin; (4) Treatment of Ryukyu; (5) Occupation of *terra nullius* islands; (6) Takeshima.

1. Treaty of Commerce and Navigation between Japan and Russia

The negotiation with Putyatin, the commander of the Russian Far East fleet, included the matter of the demarcation of the border, as well as a treaty of peace and amity (calling for the opening of Japan’s ports). The main dispute centered around in which part of the Kuril Islands they should draw the “border,” and to which country--Japan or Russia--Sakhalin should belong to.⁵⁸

The Treaty of Commerce and Navigation between Japan and Russia (The Treaty of Shimoda) was concluded on February 7, 1855. The first article stated: “From now on, both countries should everlastingly be amicable, and mutually protect the safety of persons and property of both nations in each other’s territory,” clearly indicating the concept of each other’s state “territory (*bezittingen* in

Mita Nittchō Kankei [Japan-Korea Relationship Viewed from Tsushima] (Yamakawa Shuppansha, 2006); Watanabe Miki, “Ryukyukan to wakan” [House of Ryukyu and Wakan], Arano Yasunori et al., ed., *Nihon no Taigai Kankei 6: Kinseiteki Sekai no Seijuku* [Japanese External Relations 6: Maturity of the Modern World] (Yoshikawakōbunkan, 2010), pp. 217-234.

⁵⁶Nihon Shiseki Kyōkai, ed., *Iwakura Tomomi Kankei Monjo*, Vol. 7 [Documents Related to Iwakura Tomomi, Vol. 7], Facsimile edition, [University of Tokyo Press, 1969], pp. 306-309.

⁵⁷ See “Chōsenkoku kōsai shimatsu naitansho” [Report on exchanges with Korea], on May 15th, 1870.

⁵⁸On October 10th, the Shogunate instructed Tsutsui Masanori and Kawaji Toshiakira who were responsible for the negotiation that discussion should be limited to the matter of the opening of ports only and that the matter of the demarcation of Ezochi’s border should be left until a later date (*Bakumatsu Gaikoku Kankei Monjo* [Documents Related to Foreign Affairs in the Late Shogunate Period], Vol. 8, pp. 34-35.) Tsutsui and Kawaji, in the internal document to explain the circumstances of the conclusion of the Treaty, wrote: 1) to insist on Japan’s rights over the whole island of Karafuto would cause a long-time dispute, as it would make enemies of both Russia and Qing; 2) on the other hand, giving up the whole of Karafuto would have adverse effects in the future; 3) therefore, they provided the arrangements as shown because it can be altered in any way depending on our future national strength (ibid., pp. 504-505.)

Dutch).” The second article set out: “Hereafter, the border between Japan and Russia shall be the line between Iturup and Urup, ...with the status of Sakhalin left undetermined between Japan and Russia, and to continue as we have been.”⁵⁹

Japan and Russia had very different claims over Sakhalin. Russia insisted on ownership of the whole island, or at least most of the island including Aniva Bay and northward.⁶⁰ It seems that Japan did not have enough knowledge about the geography of the island when the negotiations began. On December 9, 1853, however, Abe, the senior councilor of the Shogunate, issued an instruction to claim rights over all of Sakhalin, saying “the fact that the whole of Sakhalin Island belongs to Japan seems reasonable, as the report by Hori Oribe no Shō who recently returned to the central office, suggested ... and I have heard that the arrival of Russians on the island is only very recent.”⁶¹

Some point out subtle differences between the Japanese version and the Russian version of the treaty as the result of negotiation. In the Japanese version, the phrase “to continue as we have been” was regarded as a sentence independent from “left undetermined,” which was meant to maintain the status quo in both countries’ advances. On the other hand, the Russian (and Dutch) version states “...with the status of Sakhalin left undetermined as it has been in the past,” which mainly meant to simply leave the demarcation as it presently was and did not truly mean the perpetual maintenance of the current status.⁶²

2. The Incorporation of Ezochi

Closely related to the treaty between Japan and Russia is the positioning of Ezochi. Was Japanese sovereignty over Ezochi recognized internationally through the treaty? If we interpret literally the second article (“Hereafter, the border between Japan and Russia should be the line between Iturup and Urup”), then we can say that the demarcation of the border between Japan and Russia was established between Iturup and Urup and was understood to include Ezochi (now Hokkaido) and the Kurile islands up to Iturup as being within Japanese territory.

This did not mean, however, that Ezochi was immediately positioned among other “territories” within Japan. On February 22, 1855, two months after the treaty was signed, the Shogunate established

⁵⁹As for the Kurile Islands, at the start of the negotiation in December 1853, Putyatin claimed Russian rights over half of Iturup Island, saying “the Kuriles have always belonged to Russia and, only Russians lived on Iturup Island 50 years ago, although Japan acquired it later.” In the instruction from Nicholas I dated February 27th, 1853 (old Julian/Russian calendar), which Putyatin received before his arrival at Nagasaki, however, it was clearly stated that the southernmost extent of Russian territory was Urup Island. It is presumed that the Putyatin’s claim for Iturup Island was a diplomatic negotiating strategy. See Kimura Hitoshi, *Nichiro Kokkyō Kōshō-shi* [History of Japanese-Russian Border Negotiations] (Chuōkōron-shinsha, 1993), pp. 48-51; Akizuki Toshiyuki, *Nichiro Kankei to Saharintō* [Japanese-Russian Relations and Sakhalin] (Chikumashobō, 1994), pp. 83-84; Fumoto Shin’ichi, “Nichiro tsūkō jōyaku ni tsuite: nichiro kōshō to E. B. Putyatin e no kunrei o chūshin ni” [Regarding the Treaty of Peace and Amity: Focusing on Japanese-Russian Negotiations and the Instructions Given to E. B. Putyatin], *Bulletin of the Historiographical Institute of the University of Tokyo*, No. 17 (2007), pp. 171-172.

⁶⁰ As for the instruction given to Putyatin, see Fumoto, *ibid.*, Note 59, pp. 171-173.

⁶¹See Katsu Kaishū, “Kaikoku kigen 3” [Origin of the Opening the Country No.3], Katsube Mitake et al., ed., *Katsu Kaishū Zenshū 3* [Complete Works of Katsu Kaishū, Vol.3] (Keisō Shobō, 1979), p. 227; Akizuki, *ibid.*, Note 59, pp.115-116.

⁶² Akizuki, *ibid.*, Note 59, p. 117.

the post of Hakodate *Bugyō* magistrate to directly govern all of western and eastern Hokkaido (including Iturup and Urup, but excepting the areas around the castles of the provincial lord). This was the second direct ruling by the Shogunate. In September 1859, The Shogunate further divided a part of Ezochi into six areas and assigned them to six provinces of Tohoku, with Sendai Domain receiving most of Iturup and Urup, and further assigned the Domains the duty of guarding Northern Ezochi, i.e. Sakhalin. Subsequently, the new Meiji government in April 1868 established the Hakodate Court of Justice (later Hakodate-*fu*: Hakodate prefecture) to administer the Hakodate area. The most decisive action was to change the name Ezochi to Hokkaido, with Hokkaido to be organized into 11 provinces and 86 counties (including the Kurile Islands). With this reorganization, the old Ezochi disappeared as a “foreign area,” and was incorporated into Japan’s traditional category of *gokishichidō* (five central provinces and seven circuits.) Even at that time, however, the native Ainu population was regarded as a different ethnic group living within Japanese imperial territory.⁶³

3. Karafuto/Sakhalin

The legal status of Karafuto/Sakhalin, as mentioned above, involves the question of the second article of the Treaty of Commerce and Navigation between Japan and Russia. On February 25, 1867, a provisional regulation for Karafuto/Sakhalin between Japan and Russia (with the official text in both Japanese and Russian) was signed. For a treaty, the format of this provisional regulation was quite unusual. In the preamble, the proposals of the Russian side were listed first, namely that: 1) The whole of Karafuto/Sakhalin Island should be Russian territory; 2) Japanese fishing activities would be allowed on and around the island as before; 3) the islands of Chirihito/Chirpoy, Chirihominamito/Brat Chirpoev, and Burotonto/Broutona, as well as the existing Russian territory of Urup, would be ceded to Japan. However, as in the end the two countries did not reach an agreement on this proposal, it is presumed that Sakhalin “was left as before in common possession” and the provisions below were agreed.⁶⁴

Now Sakhalin was regarded as “both countries’ common possession”, i.e. a condominium. There are, however, still several issues that remain unclear about the provisional regulation of Sakhalin at this time. One issue is what the legal status of this “provisional regulation” was. Did the Meiji government inherit this “treaty” when it came to power, and if it did not, then what would have been the basis to justify its legal consequence?⁶⁵

⁶³Kaiho Yōko, *Kindai Hoppō-shi: Ainu Minzoku to Josei to* [Modern Northern History: Ainu People and Women] (San-ichi Shobō, 1992), p. 126. The Family Registration law was promulgated in 1871 and under it the Ainu people were categorized as “commoners.” In 1899 they were reclassified as *kyūdojin* (former natives) through a proclamation by the Hokkaido Colonization Office. See the Protective Act for the Former Natives in Hokkaido (1899).

⁶⁴This matter is explained in detail in Akizuki, *ibid.*, Note 59, pp. 134-177. See also Peter A. Berton, *Nichiro Ryōdo Mondai: 1850-1875* [The Russo-Japanese Boundary:1850-1875] (translated by Tamura Kōsaku) (Kajima Institute of International Peace, 1967), pp. 38-45; Ishii Takashi, *Zōtei: Meiji Ishin no Kokusaiteki Kankyō* [Expanded and Revised: The International Environment of the Meiji Restoration] (Yoshikawakōbunkan, 1966), p. 698.

⁶⁵Taniguchi Yasusada, *Wabun Jōyaku Isan 1* [Collection of Treaties in Japanese, Vol. 1] (publication authorized by Ministry of Foreign Affairs) (Hakubunsha, 1889). On page 123, there is a remark that the Provisional Regulation of Karafuto “is not valid due to the Treaty of Saint Petersburg.”

Another unanswered question is what exact legal status “condominium” possessed under international law in a case such as this, where neither of the two countries concerned had a clearly defined share of the island under their control. This arrangement is quite different from the usual situation under national law. No particular precedent for the situation on the ground existed: there was no special joint organization established to govern, no division of the island for each party to rule, nor any delegation of powers to either country to rule. It was a condominium under which organizations of each country simultaneously ruled a province with mixed inhabitants that included both their own respective nationals and the original native population.

Between 1860 and 1870, Japan repeatedly protested the active colonization of Sakhalin by the Russians. Could these protests be justified as acts of protest against a violation of international law? Or were they merely protestations devoid of legal grounding, as no share over the territory in question had been assumed in any way?

Both countries continued to negotiate over Sakhalin thereafter, and various suggestions for policies to address the issue were raised by people from both within and without Japan and Russia.⁶⁶

During this period there were also frequent disputes between the local authorities on Sakhalin. The so-called “*Hakkotomari Shukka Jiken*” (The Hakkotomari Fire Incident), an event that occurred in Hakkotomari in April, 1873, was symbolic of these affairs. On September 6, 1873, soon after the incident, the “Karafuto Multiple-habitation Treaty between Japan and Russia” was concluded between Development Executive Hori Motoi and Chepurnov, the acting commander of the battalion. While Article 6 of this “treaty” describes the document as “provisional regulations,” it is generally regarded to bear some semblance to a “semi-treaty (sponson)” signed by local parties concerned.⁶⁷

Article 5 of this treaty stipulates the importance of friendly association and good-natured amity, as well as compliance with the existing treaty. The state of condominium of Karafuto/Sakhalin was thus reconfirmed, the details of which were agreed to in Articles 1-4.⁶⁸

⁶⁶See, for example, The Third Section, Political Affairs Bureau, Ministry of Foreign Affairs, ed., *Nichi-Ro Kōshō-shi: Jōkan* [History of Russo-Japanese Negotiation, Vol. 1], reprinted edition (Hara Shobō, 1969), pp.115-122; Ishii Takashi, *Meiji-shoki no Nippon to Higashi-ajia* [Japan and East Asia in Early Meiji Period] (Yūrindō, 1982), pp. 207-248.

⁶⁷Kameyama Ikuo & Kawai Tadanobu, “Meiji-shoki nichiro kōshō karafuto monjo: 1” [Sakhalin documents on Russo-Japanese negotiations in the early Meiji period, No. 1], *Biblia*, No. 82(1984), pp. 158-159. The Japanese draft of this treaty is recorded in *Dai-nihon Gaikō Monjo* [Documents on Japanese Foreign Policy], Vol. 6, pp. 353-354. See, Akizuki, *ibid.*, Note 59, p.213.

⁶⁸The specific provisions were as follows: nationals of either country shall not trespass the other’s settlement without reason, obstruct the freedom of people, or interfere with their occupations (Article 1); if any national of either country commits a crime such as theft, forced buying and pickpocketing within the area of the opposite party, he or she shall be arrested and passed over to the commissioner of his/her own country to be tried; when (either of the authorities) cannot arrest a criminal armed with a weapon, that authority shall take measures to block his/her escape and inform the other party (Article 2); when any person, in order to erect a new building on a spot close to other buildings or close to any already developed site, removes existing items or uses a location that has been used in the past, he/she cannot begin construction before mutual consultation by the commissioners from both sides (Article 3); Permission in writing by the commissioner is required for sales of alcoholic drink to Russians (Article 4).

Following conclusion of the treaty, however, conflicts between nationals of both nations on the island continued unabated. To definitively resolve the situation, the Treaty of Saint Petersburg was negotiated and ultimately signed in 1875, assigning the rights over Sakhalin to Russia and rights over the 18 Kuril islands to Japan.

4. Treatment of Ryukyu

In April 1853, before setting sail for Uruga, American Commodore Perry landed at Naha in Ryukyu and forced his entry to Shuri Castle. Earlier in Madeira, the first port of call on the route of the Japan expedition, Perry had written a letter dated December 14, 1852, to John P. Kennedy, Secretary of the Navy. In this letter, Perry wrote: “The islands called the Lew Chew [Ryukyu] group are said to be dependencies of Japan, as conquered by that power centuries ago, but their actual sovereignty is disputed by the government of China. These islands come within the jurisdiction of the prince of Satsuma, the most powerful of the princes of the Empire...”⁶⁹ At this time, Abe Masahiro, a senior councilor of the Shogunate, wrote in “*Ryukyu shozoku mondai kankei ōsetsukata shorui*” (Reception Department documents regarding issues concerning Ryukyu): “Although Qing offered an imperial ruling and sent an envoy to bestow peerage and (Ryukyu) did not display any aggressive reaction, Ryukyu is totally submissive to Japan.”⁷⁰ We can see in these two documents that the relationships between Ryukyu and Japan and Ryukyu and Qing were still extremely complex in the late Edo period.

As a practical matter of state, however, by the late Edo period it had become a particularly serious problem that Western countries were sending envoys directly to the kingdom of Ryukyu to request that it enter into treaty relations. Indeed, Ryukyu did sign treaties of amity with the United States in 1854, with France in 1855, and with the Netherlands in 1859, although the last two treaties were not ratified by France and the Netherlands.

As far back as March, 1844, a French ship had arrived at Naha and requested that Ryukyu agree to a relationship of amity and trade. The reaction of the Satsuma Domain to this news is recorded in “*Ryukyu Hisaku*” (Strategic Policy for Ryukyu) by Godai Hidetaka, a Satsuma Confucian scholar. In his entry of August, 1844, Godai writes that though he perceives two possible policies—“rejection of trade” and “amity and trade”—his conclusion is that: “Although Ryukyu is a part of Satsuma’s Domain, it is ostensibly a tributary state of China, and therefore is nominally somewhat different from ours within Japan. Being a dependent territory of Satsuma is a notion that holds only within Japan.” He continues: “Viewed from countries overseas, it [Ryukyu] is a country opposable to Japan.”⁷¹ Here we

⁶⁹Tanaka Akira, *Kaikoku: Nihon Kindai Shisō Taikei 1* [Opening the County: Compendium of Japanese Modern Thought, Vol. 1] (Iwanami Shoten, 1991), p. 32; Brad D. Lookingbill, ed., *American Military History: A Documentary Reader* (Wiley & Sons, 2010), p.126. Commodore Perry’s position paper written in 1856 states: “Concluded treaties with prosperous kingdoms of Japan, Ryukyu and Siam which will surely bring good profits. ...those Eastern states which are known to be independent, *de facto*, from any other states...,” (ibid., pp. 11-12.)

⁷⁰ Williams, *ibid.*, Note 34, pp. 447-449.

⁷¹Godai Hidetaka, “Ryukyu hisaku” [Strategic policy toward Ryukyu], *Nanhei Kikō* (Okinawa Rekishi Kenkyūkai, 1966), pp. 105-114.

can see what could be described as a “policy of Ryukyu separateness” wherein Ryukyu is positioned outside the Shogunate system by regarding it as a detachable “foreign country.”⁷²

Based on a similar interpretation, Shimazu Narioki, the lord of the Satsuma Domain, on May 25, 1846, expressed his opinion in a letter to Abe Masahiro, a senior councilor of the Shogunate, stating: “as Ryukyu’s affairs can cause difficulty for Japan, it is recommended to allow trade within the area to limit the harm within the one island.”⁷³

This issue came up again as an even more serious matter later, when Japan was establishing its “territory” (demarcation of “boundary”) in accordance with the concepts of modern European international law in the early Meiji era. Notably in November 1871, when the status of Ryukyu became an issue following the *Taiwan Jiken* (Mudan incident), at first there was no consensus of opinion within the Meiji government itself as to whether or not Ryukyu had previously been a “subject of both countries” and whether or not it still was.

In a letter of recommendation presented to the *Seiin* (Central Chamber of the Dajōkan) dated May 30, 1872, Inoue Kaoru, *ōkura taifu* (senior vice minister of the Ministry of Finance), proposed that a “system identical with the mainland” should be applied to Ryukyu. He was clearly looking toward the complete incorporation of Ryukyu into the mainland in the future.⁷⁴

On the other hand, the first chapter of “*Ryukyu-koku shisha settai narabi ni sono kuni o shochi suru no gi*” (discussion on the reception of Ryukyu missions and the treatment of the country) from the *Sain* (Chamber of the Left), the legislature of the Meiji government at this time in June of the same year, states: “As it has been Ryukyu’s status that it is so clearly dependent on both our country and on Qing, there is no need for further discussion about it.”⁷⁵ The writers clearly considered Ryukyu’s dependence on both countries to be self-evident.

⁷²Nishizato Kiko, *Shinmatsu Chū-Ryū-Nichi-kankeishi no Kenkyū* [A Study of Relations Between China, Ryukyu and Japan in the Late Qing period] (Kyoto University Press, 2005), pp. 119, 123, 780.

⁷³*Ishin Shiryō Kōyō* [Essential Materials of the Meiji Restoration Period], Vol. 1 (Ishin Shiryō Hensan Jimukyoku, 1937), p. 20. Further, Shimizu Nariakira, heir to the Satsuma Domain, wrote a letter addressed to Tokugawa Nariaki and others dated May 24, 1846, stating: “Of the three requests from the foreigners, if (you) do not allow trade, Chūzan (Ryukyu) might fall within a short period of time ... but it should be all right to reject [both the demands regarding] diplomatic relations and Christianity.” (Kagoshima-ken Ishin Shiryō Hensanjo, ed., *Nariakira-kō Shiryō* [Materials on Lord Nariakira], Vol. 1 (Kagoshima Prefecture, 1981), pp. 35-36.) On the other hand, it has been pointed out by some that the Satsuma Domain regarded Ryukyu’s trading activities as essential to rebuilding the Domain’s struggling finances. (Nishizato, *ibid.*, Note 72, pp. 123-124.) On September 8, 1854, the Satsuma Domain ordered Ryukyu to amend the wording in its treaty with the United States that permitted direct buying and selling with the United States, as well as demanding that it refuse to sign any treaties with any other foreign countries in the future (*Ishin Shiryō Kōyō* [Essential Materials on the Meiji Restoration Period], Vol. 1, p. 648). However, the state of affairs did not develop as hoped. Further, in November 1855, within the Chūzan (Ryukyu) government itself, there is said to have been a discussion on whether or not to send an envoy to Qing to explain the details of the treaty that Ryukyu had also signed with France (*Ishin Shiryō Kōyō* [Essential Materials on the Meiji Restoration Period], Vol. 2 (Ishin Shiryō Hensan Jimukyoku, 1937), p. 146). Still, it has not yet been confirmed whether or not this envoy was actually dispatched to Qing.

⁷⁴Matsuda Michiyuki et al., “Ryukyu Shobun” [Treatment of Ryukyu] (1879) [contained in Shimomura, *ibid.*, Note 30], p. 8 (In subsequent pages, this material is referred to as “Ryukyu Shobun” [Treatment of Ryukyu]. See Maehira, *ibid.*, Note 54, p. 261.

⁷⁵ “Ryukyu Shobun” [Treatment of Ryukyu], p. 8. See Motegi, *ibid.*, Note 51, pp. 8-12.

The Meiji government, however, ultimately rejected the idea of Ryukyu being simultaneously a tributary nation to both Japan and Qing. On September 14 of that year, Ryukyu-koku as a state was abolished and Ryukyu Domain was established by the promulgation of the “Ryukyu kokuō o hanshu to suru shōsho”(Rescript appointing the king of Ryukyu to be the governor of Ryukyu) (“*Dajōkan Nisshi*” (Cabinet Diary), 1872, Vol. 70). With this rescript, Ryukyu’s previous status as a dependent state of the Satsuma Domain was clearly abandoned once and for all.

Further, in the first *Hōshi Ryukyu Fukumeisho* (Report of the Ryukyu Mission), dated September 25, 1875, Matsuda Michiyuki wrote: “(Ryukyu) being a dependent state of two countries brought disgrace upon Japan as an independent state, and caused serious harm to Japan under international law.”⁷⁶ Matsuda also stated “it is so obvious that (Ryukyu is) in our territory that there is no need to discuss further about this.” (“*Matsuda Naimu Daijō Dai 1-kai Hōshi Ryukyu Shimatsu*” (Matsuda, Home Ministry official, “Overview of the first Ryukyu mission”), May 13, 1875.)⁷⁷

Further a transcript of dialogue between the British minister stationed in Japan and Japan’s Foreign Minister on January 13, 1879 states: “(Ryukyu) has never been a dependent state to both Japan and China. In its relationship with Qing, it occasionally sends envoys to present gifts to the Emperor of Qing but not to pay taxes.... At the time of the *Taiwan Jiken* (Japan’s punitive Formosa Expedition of 1874, launched in response to the massacre of Ryukyuan sailors by aboriginal peoples on Taiwan), in correspondence with the Qing government it was made clear that the island does not belong to Qing.... Although Ryukyu is a small island country, it has been our territory.”⁷⁸

The same interpretation was clearly expressed again in “Ryukyu-han Shobun-an” (Suggested Policy Toward Ryukyu Domain) included in the appendix of Matsuda’s second *Ryukyu Shimatsu* document (undated but drawn up sometime in January or February, 1879). The appendix states: “(Ryukyu) should not be regarded as a ‘*reizoku no kuni*’ or ‘*hanshukoku*’ as defined in international law. It is simply one province of Japan.”⁷⁹ It appears that in this document, “*reizoku no kuni* or *hanshukoku*” meant a subordinate state or a protected state which did not have full diplomatic power of its own. The understanding of such countries as constituting half-sovereign states (*halb-souveraine*

⁷⁶“Ryukyu Shobun” [Treatment of Ryukyu], p.157. Gustave Émile Boissonade de Fontarabie's opinion brief “Ryukyu-jima mikomian” [Prospect of the Ryukyu island] commissioned by *Naimukyō* (Home Minister) Ōkubo Toshimichi (March 17, 1875) states that Japan’s claim over Ryukyu has been accepted by Qing and “the Ryukyu island should be always contained within a map of Japan,” but he added that it would be appropriate to have full discussion between Japan and Qing to abolish the association as a subject state, such as paying tribute and homage (*Itō Hirobumi Kankei Monjo: Sono ichi* [Documents Relating to Ito Hirobumi, Vol. 1], Collection of Modern Japanese Political History Materials Room, National Diet Library, Japan <354>).

⁷⁷ “Ryukyu Shobun” [Treatment of Ryukyu], p. 94.

⁷⁸ “Ryukyu Shobun” [Treatment of Ryukyu], pp. 214-215.

⁷⁹“Ryukyu Shobun” [Treatment of Ryukyu], p. 203. ‘Ryukyu setsuryaku (Briefing on Ryukyu)’ was a counter-argument made on the basis of international law to Qing’s assertion that Ryukyu belonged to both the Shogunate system of Japan and the tributary system of Qing. It was sent to Qing China’s Zongli Yamen (Office of External Affairs) on August 2, 1879. This document states: “In the first place, if it is a state itself, it cannot be another country’s domain. If it is already another country’s domain, it cannot be a state itself” (*Nihon Gaikō Monjo* [Documents on Japanese Foreign Policy], Vol. 12, p.185).

Staaten, mi-souverains) had been previously established during the first half of the 19th century.⁸⁰

In March 1879, Ryukyu Domain was abolished and Okinawa Prefecture was established. As discussed in the Introduction, Qing protested these steps when they were taken, and there were continuing disputes between Japan and Qing over the issue. Later, with the help of reconciliation efforts by former U.S. President Ulysses S. Grant, Japan proposed a “division of the islands and revision of the treaty,” a proposal which Qing in the end did not accept.⁸¹ The issue was left unresolved, and, with the outbreak and prosecution of the First Sino-Japanese War, Qing’s claim was in effect abandoned.⁸²

5. Occupation of *terra nullius* Islands

During the negotiation between Japan and Qing concerning the Japanese military’s punitive expedition to Taiwan in May 1874, there was a noteworthy discussion regarding whether or not Taiwan was Qing’s 版圖 (territory; Romanized as *bǎntú* in Chinese and *hanto* in Japanese). It was a battle of words between Home Minister Ōkubo Toshimichi and Zongli Yamen, Qing’s Office of External Affairs, that took place in Beijing in September and October of the same year.⁸³ Ōkubo presented his legal grounds for Japan’s case in “*Kōhō ishō*” (Compendium of International Law), an appendix to his counter-argument document dated September 27. In this appendix, Ōkubo explained the principle of occupation of *terra nullius* in modern international law, quoting the theories of Vattel, Martens,⁸⁴

⁸⁰ Yanagihara Masaharu, “Shinsei rōma teikoku no shoryōhō no kokusaijō-jō no chi’i o meguru ichi kōsatsu: 18-seiki kōhan ni okeru riron jōkyō o chūshin to shite” [A study on the status of domains belonging to the Holy Roman Empire under international law: focusing on theoretical concepts in the second half of 18th century], *Narita Yoriaki-sensei Yokohama Kokuritsu Daigaku Taikan Kinen: Kokusaika Jidai no Gyōsei to Hō* [Essays Commemorating Narita Yoriaki’s Retirement from Yokohama National University: Public Administration and Law in the Age of Internationalization] (Ryōsho Fukyūkai, 1993), p. 686.

⁸¹ In a letter written by Qing’s negotiator He Ruzhang, there was mention of the idea of a three-way split of Ryukyu, proposed by former U.S. President Grant. This plan would have assigned the middle part of Ryukyu (the Okinawa Island) to the kingdom, the southern part (the Miyako and the Yaeyama islands) to Qing, and the northern part (the Amami Islands, etc.) to Japan. Although He Ruzhang regarded this as the optimal solution, we do not know whether or not Grant actually presented it in the negotiations. For details on the negotiation, see Nishizato, *ibid.*, Note 72, pp. 318-411.

⁸² From Qing’s perspective, Korea was an important “subject state” along with Ryukyu, and probably of greater importance than Ryukyu. When the Treaty of Ganghwa (Korea-Japanese Treaty of Amity) was signed, there was an intense exchange between Japan and Qing. To overview the difference between China and Japan in their understanding of the suzerain-tributary relationship between China and Korea, we can reference the dialogue between Mori Arinori and Chinese minister Shen Guifen on January 13, 1876. Chen remarked of Ryukyu, “It can freely have relationships with other countries as it is of no concern to China,” and continued, “a so-called ‘subject state’ is not a territory we possess but rather a country that pays tribute when necessary and receives peerage and calendar from us.” (*Dai-nihon Gaikō Monjo* [Documents on Japanese Foreign Policy], Vol. 9, p. 146.) Further, in meetings with Li Hongzhang on January 24 and 25, 1876, Mori expressed his opinion that Korea was an independent and free state, and that it is assumed a subject state stance only due to the demands of etiquette related to China-Korea relationship. Li, on the other hand, said that, although Korea was an independent state, it was also a subject state of China because its king was enthroned under the order of the present Chinese Emperor (*ibid.*, p. 172). It should be noted, however, that according to Chinese records the content of this meeting was quite different. The term “independent” does not appear at all in the Chinese account. Rather, Li asserts that everybody knows that Korea has been a “subject country” of China for several thousands of years (李文忠公全集: 譯署函稿 [Complete works of Li Hongzhang: Letters to the Foreign Office] (Wen Hai Press Company, 1962), p. 107.)

⁸³ *Dai-nihon Gaikō Monjo* [Documents on Japanese Foreign Policy], Vol. 7, pp. 220-223, 227-228, 230-235. Regarding the arguments of both sides, see, for instance, Emori Susumu, “Kindai nihon to hokkaido ainu minzoku” [Modern Japan and Hokkaido Ainu people], Nagai Hideo, ed., *Kindai Nihon to Hokkaido* [Modern Japan and Hokkaido] (Kawade Shobō Shinsha, 1998), pp. 389-395.

⁸⁴ Although the entry is “Englishman Martens,” it is believed that the real identity of the author is Georg Friedrich von

Heffter and Bluntschli.⁸⁵ The conclusion of his argument was expressed as follows: “If a state nominally assumes that it is in charge of a domain but in actuality is not, a violation of international law does not occur when any other country takes the domain.”⁸⁶ Ōkubo claimed that there was no such “effective control” by Qing in the case of Taiwan. Therefore, Taiwan was “barbaric *terra nullius*” and could not be regarded as Qing’s territory because “neither the right over the territory nor sovereign right has been recognized.”

The Qing side issued a rebuttal, arguing that: “Since international law was formulated recently in various countries in Europe and it does not particularly mention Qing, it is useless to conduct discussions based upon it.”⁸⁷ Qing then claimed that “Taiwan is evidently Qing’s territory as it pays 餉稅(*xiǎng shuì*; transit duties) to Qing every year.” It also argued, “(Qing) allows the native’s life and customs, allows them living together, defeats rebels and tolerate those obedient.”⁸⁸ In this way, Qing insisted upon its rights over Taiwan based on its own traditional concept of “territory.” This concept was a system wherein Qing allowed the natives to maintain their manners and customs but imposed a “food tax” on those who agreed to assimilation.⁸⁹

Although Japan was unable to achieve its original intention of applying the legal theory of the occupation of *terra nullius* to Taiwan⁹⁰ in these negotiations, it did proactively utilize the theory to territorialize other islands in its surroundings. According to “*Kokusaihō Senrei Ishū (2): Tōsho Sensen*” (Collection of Precedents Under International Law (2): Occupation of islands) prepared by the Treaties Office of the Ministry of Foreign Affairs in October, 1933, there are six prime examples: the

Martens, a German diplomat.

⁸⁵ See Tajudō, *ibid.*, Note 52, p. 221.

⁸⁶ *Dai-nihon Gaikō Monjo* [Documents on Japanese Foreign Policy], Vol. 7, p. 245. In the document one discerns the influence of Gustave Émile Boissonade de Fontarabie. See, for example, Ōkubo Yasuo, *Nihon Kindaihō no Chichi: Bowasonādo* [The Father of Japan’s Modern Law: Boissonade] (Iwanami Shoten, 1977), p. 78; Ishii, *ibid.*, Note 66, p. 130. Also, in “*Taiwan banchi shobun yōryaku*” [Summary of measures for barbaric Taiwan], submitted jointly by Ōkuma Shigenobu and Ōkubo Toshimichi on February 6, 1874, the authors wrote that Taiwan should be regarded as “*terra nullius*” (Ministry of Foreign Affairs, ed., *Nihon Gaikō Nenpyō narabi ni Shuyō Monjo jō* [Japanese Diplomacy Chronology and Documents, Vol. 1] (Hara Shobō, 1965), p. 54).

⁸⁷ *Dai-nihon Gaikō Monjo* [Documents on Japanese Foreign Policy], Vol. 7, p.230.

⁸⁸ *Ibid.*, p. 221.

⁸⁹ It is important to note that Qing on another occasion expressed the opinion that Japan’s action was not in accordance with international law (Kawashima Shin, *Chūgoku Kindai Gaikō no Keisei* [Formation of Modern Chinese Diplomacy] (The University of Nagoya Press, 2004), pp. 15-16). In a meeting between Mori Arinori and Li Hongzhang on January 24 and 25, 1867, it is known that Li said: “violating a treaty using force is not permitted under international law” (recorded only in the Chinese official document, *李文忠公全集* [Complete Works of Li Hongzhang], *ibid.*, Note 82, p. 106). See Motegi, *ibid.*, Note 51, pp. 13-14. Li also stressed the utility of international law that regulates relationships between “the strong and the weak” in his correspondence from January 1876 on with Yi Yu-won of Korea, particularly in regard to the change in Ryukyu’s status from a feudal province of Japan to a modern Japanese prefecture. It should be noted that in his reply to Li, Yi Yu-won expressed his distrust of international law, given its inability to block Ryukyu’s status change, although he also admitted that international law existed in part to maintain the independence of smaller states (such as Turkey, Belgium and Denmark). Harada Tamaki, *Chōsen no Kaikoku to Kindaika* [Korea’s Opening and Modernization] (Keisuishā Co., Ltd., 1997), pp. 191-218.

⁹⁰ The October 31, 1874, bilateral agreement between Japan and Qing does not acknowledge *terra nullius* but does acknowledge that Japan’s military intervention in Taiwan was a “righteous act to protect people.” This acknowledgement has been interpreted to indicate that Ryukyuan were acknowledged to be people belonging to Japan. Nishizato, *ibid.*, Note 72, p. 29.

Ogasawara Islands in October 1876, Iwōtō in September 1891, Kumeakashima, Kubashima, Uotsurishima (the Senkaku Islands) in January 1895, Minami-Tori Shima in July 1898, Okidaitōjima in September 1900, and Nakanotorishima (Ganges Island) in August 1908,⁹¹ although it was subsequently confirmed that this last, “Nakanotorishima,” did not actually exist.

Of these examples of territorialization, only the case of Minami-Tori Shima resulted in a minor conflict over territorial sovereignty with concerned nationals.⁹² In the other cases, there was no conflict at all regarding sovereignty.⁹³

6. Takeshima

The Japanese government’s position regarding Takeshima is that occupation of the island cannot be regarded as a case of occupation of “*terra nullius*.” The Japanese cabinet’s decision of January 28, 1905 (“...we believe it is justifiable to give it [Takeshima] the status as being a part of our nation and to incorporate it into the administration of Shimane Prefecture, as we recognize there has been effective occupation under international law...”) is understood as a reconfirmation of Japan’s decision to territorialize Takeshima.⁹⁴ Takeshima was, similar to the four northern islands, regarded by the government as inherent territory of Japan in the light of historical fact as well as in accordance with international law.

“*Kokusaihō Senrei Ishū (2): Tōsho Sensen*” written in October 1933 listed only the six cases cited above as examples of Japan’s occupation of “*terra nullius*” islands, and significantly Takeshima is not mentioned.⁹⁵ Taking this into consideration as well, we may say that, at least at that stage, it was the official interpretation of the Japanese government that Takeshima was not a case of occupation of “*terra nullius*”.

⁹¹Treaties Office of the Ministry of Foreign Affairs, *Kokusaihō Senrei Ishū (2): Tōsho Sensen* [Collection of precedent cases in international law (2): occupation of islands] (October, 1933), pp. 1-52. Out of these six cases, it is clear that Iwōtō is not a case of *terra nullius*, and the Ogasawara Island case is disputable whether it is *terra nullius*. Other cases in question include the Pratas Islands atoll in the South China Sea (1907-1909), the Paracel Islands (1932-1941) and the Spratly Islands (1938-1945). As for the Paracel Islands and the Spratly Islands, see *Kokusaihō Jirei Kenkyūkai, Nihon no Kokusaihō Jirei Kenkyū (3): Ryōdo* [Study of Japanese International Law Cases (3): Territory] (Keiō Tsūshin, 1990), pp. 63-67.

⁹²Treaties Office of Ministry of Foreign Affairs, *ibid.*, Note 91, pp.39-50; Ministry of Foreign Affairs records, 1.4.1.7. “Teikoku hantō kankei zakken” [Empire’s territorial affairs] and A.4.1.0.3. “Honpō tōsho ryōyū kankei zakken” [Japanese territorial island affairs].

⁹³As for the Ogasawara Islands, Britain, the United States and others claimed extraterritorial rights to the islands, but not possession itself (Treaties Office of Ministry of Foreign Affairs, *ibid.*, Note 91, p. 2).

⁹⁴Asia Division of Ministry of Foreign Affairs, *ibid.*, Note 40, p. 8. As for the question whether or not it can be regarded as a precedent case per the occupation of islands, see, for example, Pae-Keun Park, “Nihon ni yoru tōsho sensen no shosenrei” [Precedent cases of occupation of islands by Japan], *The Journal of International Law and Diplomacy*, Vol. 105, No. 2 (2006), pp. 44-46.

⁹⁵Tachi Sakutarō dealt with only the four cases of the Ogasawara Islands, Minami-Tori Shima, Iwōtō and Nakano-Tori Shima (Ganges Island) in his essay published in September 1933 (Tachi Sakutarō, “Mushu no tōsho no sensen to senrei” [Theory and precedents of occupation of *terra nullius* islands], *The Journal of International Law and Diplomacy*, Vol. 32, No. 8 (1933), pp. 43-48.)

IV. Conclusion

The Meiji government's reply to the inquiry from China about the various treaties that the Ryukyu Kingdom had concluded is recorded in "1879-nen 8-gatsu 22-nichi shina seifu no shōkai ni taisuru tōben no oboegaki" (Memorandum on the response to the Chinese government's inquiry, August 22, 1879). There is a sentence in the document stating: "at that time, our imperial nation had a completely feudal system and frequently allowed local lords to carry out what today's central government would never permit."⁹⁶ If we consider the status of Ryukyu as a "foreign country" or "foreign area," and the attitudes shown by the Satsuma Domain and the Shogunate in handling the issue, it is open to question whether or not this issue can be reduced to a simple matter of different governing systems. However, we can also feel in this memorandum the authors' pride in governing their nation in accordance with modern law and modern European international law after having finally emerged from the turbulent period of the Meiji restoration. It demonstrates a clear awareness of "discontinuity" between Japan's late Shogunal period and the early Meiji period.

Also in this memorandum--as discussed in the Introduction--we can see the clear contrast between the Chinese traditional concept of territory and the concept of territory based on modern international law. It was the notion that territorial sovereignty in accordance with modern international law--that is, "to possess the land, to govern the land and collect tax"-- should be clearly distinguished from the Chinese traditional concept of territory based on "imperial demand of gifts under the false name of tribute."

Certainly, it would be inaccurate to say that the construction of external relationships and the demarcation of Japan's territory based on modern international law took place for the first time only post the establishment of the Meiji government, and that no attention had been paid to modern international law during the Edo period and even the late Shogunate period. As we have seen in such examples as the bringing of Ezochi under direct rule, the establishment of the border with Russia (between the Kurile Islands and Sakhalin) and the handling of the status of Ryukyu through negotiations with Russia, France, Britain and America--which throughout the Edo period were considered neither "countries of trade" nor "countries of communication"--the Japanese government in the late Shogunate period was continually faced with situations where it had to address matters of "boundaries" and "territories" in the sense used in modern international law.

Those efforts were, however, quite insufficient, and knowledge about modern European international law in Japan at that time could not have been fully adequate. In its early stage, there are

⁹⁶*Nihon Gaikō Monjo* [Documents on Japanese Foreign Policy], Vol. 12, pp. 192-193. The Meiji government conveyed the implementation of these treaties to the US minister to Japan (See the letter of Foreign Minister Soejima Taneomi dated on October 5, 1872), *Treaties Office of Ministry of Foreign Affairs, Kyū Jōyaku Isan* [Collection of Old Treaties], Vol. 3 (1934), p. 663). It is not easy to explain this matter logically, because, in connection with the status of Ryukyu Kingdom, it is problematic to discuss it as totally in the same category as the succession of those treaties the Shogunate had concluded. Incidentally, the Grand Council of State issued a directive to the Ministry of Foreign Affairs on September 28, 1872, instructing it to administrate the "previous treaties with various countries by Ryukyu Domain" (*Nihon Gaikō Monjo* [Documents on Japanese Foreign Policy], Vol. 5, pp. 392-393).

indications that the Meiji Government suffered from insufficient knowledge of international law and was in some state of confusion regarding it (Japan's declaration of neutrality at the time of the 1870 Franco-Prussian War was a typical example). Eventually, however, as a basic policy of its foreign affairs, the new government gave priority to revising the old, unequal treaties concluded by the Shogunate and made active efforts to clearly establish Japan's "territory," prime examples of this being the incorporation of Ezochi, Ryukyu's incorporation as a prefecture, and the occupation of *terra nullius* islands.

In such situations, the scope for applying the theory of occupation of *terra nullius* can be quite arbitrary. As mentioned above, that was especially obvious in the case of Taiwan. It might be said that the Taiwan incident well reflects the inherent "arbitrariness" present within the theory of occupation of *terra nullius* itself.

This essay has sought to present an overview of the key points of contention among historians as a preparatory study for arriving at a complete picture of the concept of "territory" as it existed in Japan during the late Edo and early Meiji periods.

There are many issues that demand much closer study. Particularly important is research into the transitions in the concept of "territory" as it was and is understood in modern China and Korea (the negotiation of the border agreement at Mount Paeku in 1712, to cite but one example).⁹⁷ Only then--by contrasting that understanding with the equivalent Japanese concepts--will we be able to see more clearly the transitions in the concept of "territory" within Japan itself.

⁹⁷For example, see Moon Soonsil, "The Chonggye Boundary Stele on Mt. Paekyu and 18th Century Korean Views of Territory," *Bulletin of the Society for the Korean Historical Science Japan Journal of Korean History*, Vol. 40 (2002), pp. 39-66. As for the recent study of the history of perceptions of "territory" and "State" in the Arab world and the relationship between Islamic law and European international law, see Burgis, M., "Faith in the State? Traditions of Territoriality, International Law and the Emergence of Modern Arab Statehood," *Journal of the History of International Law*, Vol. 11 (2009), pp. 37-79.