

The Historical and Legal Status of Pre-modern Ryukyu and the Sovereignty over the Diaoyu Islands

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Abstract: In the Sino-Japanese dispute over the Diaoyu Islands, Japan, on the one hand, strives to evade the relations of its acquisition of “sovereignty” over these islands with the Treaty of Shimonoseki; on the other hand, it assumes that the Diaoyu Islands is a part of Ryukyu under its administrative system, and Ryukyu constitutes a part of Japanese territory, therefore, Japan has the sovereignty of the Diaoyu Islands. In this regard, Japan’s absurd logic lies in that “the Diaoyu Islands belongs to Ryukyu, and the latter belongs to Japan, hence the Diaoyu Islands belongs to Japan”. This paper attempts to eliminate the misstatements about the status of Ryukyu, by examining the status of pre-modern Ryukyu (1609-1879) in history and international law, and the marine boundaries between China and Ryukyu in history. In doing so, the paper further demonstrates that the Diaoyu Islands is an inherent part of China, thereby providing compelling evidences to support China’s claim to the sovereignty of these islands.

Key Words: Status of Ryukyu; International law; Diaoyu Islands dispute

The Japanese government attempted to purchase the Diaoyu Islands in 2012. Since this “farce” staged by the Japanese side concerning the Sino-Japanese

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disputes over Diaoyu Islands,¹ the tensions between the two States escalated, and an acrimonious standoff between them still continues. In Chinese academia, especially in Chinese Mainland, few studies have paid enough attention to Ryukyu when examining Japanese claims to the sovereignty over the Diaoyu Islands. The debate on Ryukyu,² becomes more heated during the tense standoff following the Japanese move to “purchase the Diaoyu Islands” in 2012. The issue of the sovereignty over the Diaoyu Islands is intertwined with the status of the Ryukyu Islands. We should eliminate the misstatements about the status of Ryukyu. In other words, when discussing whether the sovereignty over Ryukyu rests with Japan, if we fortify China’s claims to the Diaoyu Islands from the perspectives of history, geography and international law, and rationally and forcefully refute Japan’s claims based on the subordination of the Diaoyu Islands to Ryukyu³ with convincing facts, then we can reject Japan’s claims with its own arguments.

I. The History of Ryukyu and Its Relationship with China and Japan

Ryukyu is an ancient kingdom with a long historical and cultural tradition.

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- 1 Diaoyu Islands is also called “Diaoyu Dao” or “Diaoyutai” in China, or “Senkaku Islands” in Japan. Except as otherwise stated herein, the term Diaoyu Islands is used throughout this paper to refer to Diaoyu Island and its affiliated islets.
 - 2 In recent years, concerns over the sovereignty of Ryukyu grew quickly in Chinese civil society. Calls for the “restoration of Ryukyu Kingdom” appeared in the internet social media. In Chinese academia, Xu Yong, Tang Chunfeng and other scholars also argue that the status of Ryukyu is uncertain. This argument, first raised by Taiwanese scholars, rose to prominence in Chinese Mainland around 2012, which sparked the attention of media in Japan and Okinawa. Sino-Japanese relations have become strained after Japan’s move to “nationalize” the Diaoyu Islands. On 8 May 2012, *People’s Daily*, the official newspaper of China, published an article titled “The Treaty of Shimonoseki and the Diaoyu Dao Issue”, by Zhang Haipeng and Li Guoqiang. This article, in its conclusion, says that “it is the high time to reconsider the pending issue of Ryukyu.” As to the position of Chinese government toward Ryukyu, a Chinese Foreign Ministry Spokesman asserted, “Chinese government has never changed its position to some relevant issues. The history of Okinawa and Ryukyu is a long-time concern in the academia, which stood up again recently, against the backdrop where the territorial sovereignty of China was jeopardized by Japan’s provocative acts concerning the Diaoyu Islands issue. The articles by scholars reflect the concerns and studies on the Diaoyu Islands and the relevant historical issues by Chinese civil society and academia”.
 - 3 Ministry of Foreign Affairs of Japan, The Basic View on the Sovereignty over the Senkaku Islands, at http://www.mofa.go.jp/region/asia-paci/senkaku/basic_view.html, 8 October 2016; Ministry of Foreign Affairs of Japan, Senkaku Islands Q&A, at http://www.mofa.go.jp/region/asia-paci/senkaku/qa_1010.html, 8 October 2016.

With its thriving trade, the kingdom was known as a trade transit center in Northeast and Southeast Asia, which earned itself a reputation of “Bridge of Nations”. The geographical boundary of the kingdom is greatly different from that of today’s Okinawa Prefecture. However, as time goes by, Ryukyuan tributary relations with China is lesser known to the modern generation. Ryukyu was a kingdom having its unique history before 1879, when it was formally annexed by Meiji Japanese government. Ryukyuan history was briefly divided into three times: the primeval, the ancient and the pre-modern times. The primeval Ryukyu includes the old stone age and the shell mound age. The ancient Ryukyu starts with the early 12th century and ends with the invasion of the Ryukyu Kingdom by the Shimazu clan of Satsuma Domain⁴ in 1609, spanning 500 years. And the pre-modern Ryukyu covers a period of 270 years, beginning from Satsuma’s invasion of Ryukyu in 1609 until 1879, when the Meiji government abolished the Ryukyu Kingdom and transformed it into the Okinawa Prefecture.⁵

A. The History of Ryukyu Kingdom and the Tributary Relations between Ryukyu and China

From the unification of the Ryukyu Kingdom in 1429, to the annexation of the kingdom by Japan in 1879, the Ryukyu Kingdom spans two periods, i.e., the ancient and the pre-modern Ryukyu. King Satto became, in 1372, the first Ryukyuan king to submit to Chinese suzerainty. Investiture (*cefeng*) mission confirmed Satto as king of Chūzan. From 1372 to 1879, when the Ryukyu Kingdom was annexed and transformed into Okinawa Prefecture by Japan, the tributary relations between China and Ryukyu had been maintained for more than 500 years. In all, investiture missions were undertaken 24 times during the Ming and Qing

4 Satsuma Domain is the local authority controlling the southern Kyushu Island before the Meiji Government replaced its feudal domain system with prefecture system. It is associated with the provinces of Satsuma in the western modern-day Kagoshima Prefecture, Osumi in the eastern modern-day Kagoshima Prefecture and Osumi Islands, and Hyūga in southwestern modern-day Miyazaki Prefecture. After the creation of the Tokugawa regime in the Edo period (1603-1868), this authority became the Satsuma Domain, which was formally named the Kagoshima Domain following the Meiji Restoration. See Sadafumi Fujii and Rokurō Hayashi, *Hanshi Jiten*, Tokyo: Akita Shoten, 1976, p. 342, quoted from Yuan Jiadong, *The Japanese Satsuma Invasion of Ryukyu and the Changes in East Asian Geopolitics*, *Social Sciences in China*, No. 8, 2013, p. 189. (in Chinese)

5 He Ciyi, *The History of the Relations between Ryukyu and Japan in Ming and Qing Dynasties*, Nanjing: Jiangsu Ancient Books Publishing House Co. Ltd., 2002, pp. 3~5. (in Chinese)

Dynasties.⁶ Ryukyu Kingdom sent more envoys to China.⁷ Since the establishment of diplomatic relations between the two States, upon the accession of a new king after the death of an old king, Chinese envoys would be dispatched to perform investiture ceremonies for the new king, formally acknowledging him as king on behalf of the Chinese Imperial Court. Only after the performance of imperial investitures, can the king officially declare himself to the world as the king of Ryukyu.⁸ Historical descriptions of the Diaoyu Islands can mostly be found in the detailed written reports submitted by the envoys to the Ming and Qing Emperors about their journeys upon return to China.

B. Issue concerning Ryukyu's Dual Subordination to China and Japan in the Context of Multilateral Relationship among the Three States

The period between 1609 (the year Ryukyu was invaded by the Satsuma Domain) and 1879 (the year that the Ryukyu Domain was abolished and transformed into a prefecture by the Meiji Government), is called “a period of dual subordination” in Ryukyuan history by historians. In 1609, the Shimazu clan

6 There is little debate, among the Chinese and Japanese scholars, over the times that the Qing Court sent imperial envoys to Ryukyu. It is generally maintained that the Qing Court sent envoys 8 times to perform investiture ceremony for Ryukyuan kings, involving 16 envoys in all. However, historians failed to reach a consensus over the total times that China dispatched envoys to Ryukyu in the two dynasties of Ming and Qing. It is generally believed to be 24 times, but some scholars also assert that it is 23 times. The main difference lies in their different views on the times of investiture missions sent in the Ming Dynasty. Xie Bizhen, Wu Shangqing and Akamine Seiki all believe that the Ming Court sent investiture missions 15 times, involving 27 envoys; in contrast, Fang Baochuan asserts that the numbers are 14 (times) and 26 (envoys) respectively. Some scholars contend that the times of investiture missions should be determined on whether the central government has sent envoys to perform investiture ceremony for Ryukyuan King on the land of the kingdom, therefore, the mission carried out by Yang Zai should not be counted, and the Ming and Qing Courts sent envoys 23 times, rather than 24 times to Ryukyu to perform investiture rituals for its kings. See Xie Bizhen and Hu Xin, *Historical Data and Research on the History of Sino-Ryukyuan Relations*, Beijing: China Ocean Press, 2010, pp. 125~126 (in Chinese); Xu Bin, *Literati and Officialdom in Ming and Qing Dynasties and Ryukyu*, Beijing: China Ocean Press, 2011, p. 83. (in Chinese)

7 *Veritable Records of Emperor Ming Taizu* (Vol. 71) stated, the imperial edict that Ming Taizu, also known as the Hongwu Emperor, ordered Yang Zai to carry along to confirm King Satto as king of Chūzan said: “only your country Ryukyu, which is located to the southeast of China and far away in the oversea land, was not informed of the news. Therefore, now I send my envoys to tell you the news.” See *Veritable Records of Emperor Ming Taizu*, Vol. 71, 16 January 1372 (lunar calendar).

8 Xu Bin, *Literati and Officialdom in Ming and Qing Dynasties and Ryukyu*, Beijing: China Ocean Press, 2011, p. 36. (in Chinese)

of the Satsuma Domain dispatched troops to invade Ryukyu, and Ryukyuan King Shō Nei and his councilors were taken prisoner. This battle is known to history as “Satsuma Invasion of Ryukyu 1609”. After the battle, Ryukyu was subordinated to China nominally but to Japan technically and secretly.⁹ This situation continued to the early years of Meiji Restoration. In the Chinese Qing Dynasty, the late Second Shō Dynasty of Ryukyu began, during which Ryukyu requested Chinese Qing Court for investiture. Shō Hō, then known as Prince Sashiki Chōshō, filed petitions to Chinese Imperial Court for investiture in 1625, 1626 and 1627 respectively. Such petitions were made under the secret control of Satsuma Domain after the “Satsuma Invasion of Ryukyu 1609”.¹⁰ Thereafter, constantly pushed by Satsuma Domain, Ryukyu restored its tributary and trade relations with China in 1633. In September 1872, the Meiji Emperor issued an imperial decree, granting the royal lineage of Ryukyu the title “seignior, and included them in the kazoku of Japan”.¹¹ This decree set the stage for Japan’s annexation of Ryukyu, which was formally annexed by Japan in 1879. The facts mentioned above explain the origin of the dual subordination of Ryukyu.

Following the Satsuma invasion of Ryukyu, Satsuma controlled the kingdom politically and economically. However, in order to gain benefits from the tributary and trade relations between Ryukyu and China, Satsuma made great efforts to obscure its domination of Ryukyu from the Chinese Court. The measures Satsuma took in this regard include: a). to forbid Ryukyu from adopting Japanese system, and the Ryukyuan from adopting Japanese names, so that Chinese envoys would not discover the real relations between Satsuma and Ryukyu. For example, *Ji Kao (A Research)* said that, on 20 August 1624, the premier (the Satsuma Domain internally called itself a State) was appointed to serve in Ryukyu according to an imperial decree; thereafter, Ryukyuan hierarchical court system and criminal law and policies would be decided by the Ryukyu king himself; Ryukyuan were forbidden from adopting Japanese names, clothes, or customs.¹² b). During the stay of Chinese envoys in Ryukyu, for the sake of hiding truths from Chinese envoys,

9 Zheng Hailin, *The History of Diaoyu Islands and the Relevant Jurisprudence (Revised and Enlarged Edition)*, Hong Kong: Ming Pao Publications Ltd., 2011, p. 124. (in Chinese)

10 Xu Bin, *Literati and Officialdom in Ming and Qing Dynasties and Ryukyu*, Beijing: China Ocean Press, 2011, p. 4. (in Chinese)

11 Mi Qingyu, *A Research on Ryukyuan History*, Tianjin: Tianjin People’s Publishing House, 1998, pp. 112~114. (in Chinese)

12 Yang Chungkui, *Ancient and Modern Ryukyu, and the Issue of Diaoyutai*, Taipei: The Commercial Press, Ltd., 1990, pp. 64~65. (in Chinese)

Satsuma required all Japanese officials residing in Ryukyu, including *zaibanbugyou* and *yamatoyokome*, if not properly camouflaged, to move to some remote places on east coast of Ryukyu, which were far away from the west coastal areas frequented by Chinese; also, Satsuma banned all posters and shop signs written in Japanese; moreover, it required all books, records and reports not to mention the relationship between Japan and Ryukyu in the “Satsuma Invasion of Ryukyu 1609”.¹³ c. The authorities of Ryukyu compiled and published some books or documents, which included, among others, *Questions & Answers about Ryukyu* and *Experiences of a Traveler*. *Questions & Answers about Ryukyu* is a list of questions and answers developed under the auspice of the king residing in Shuri, with an aim to prevent the “Ryukyuan castaways”¹⁴ from telling Satsuma’s technical control of Ryukyu. In this list, the first question is about the territory ruled by the Ryukyuan king. The answer given to this question is: “the territory includes three principalities: Chūzan, Nanzan and Hokuzan, and 36 islands, including Yaeyama and Yonaguni-jima islands in the south, Amami-Ōshima and Kikaigashima in the north, Kume Island in the west, and Ikei and Tsuken Islands in the east”. However, at that time, Amami-Ōshima and Kikaigashima were actually under the jurisdiction of Satsuma Domain. Obviously, it deliberately concealed this situation from the Chinese Qing Court.¹⁵ *Experiences of a Traveler*, published in 1759, is a pamphlet by a Chinese-Ryukyuan politician named Cai Wen, which is full of standard answers to questions regarding China and Ryukyu. It aims to tell the Ryukyuan officials, students whose fathers are officials, and ordinary businessmen in China how to reply to questions

13 Yang Chungkui, *Ancient and Modern Ryukyu, and the Issue of Diaoyutai*, Taipei: The Commercial Press, Ltd., 1990, pp. 64–65. (in Chinese)

14 Ryukyuan castaways incidents: since the establishment of tributary relations between China and Ryukyu in the Ming Dynasty, 12 Ryukyuan ships or ships used for tribute missions had been wrecked and wandered into the coastal areas of China. Both the Qing and Ming Courts had the practice of salvaging and resettling the castaways, including those from Ryukyu, granting pensions to them, and sending them back to their home countries. Such practices formed a sino-centric marine salvage mechanism, with participation from its tributary and non-tributary States (such as Japan). Since the shipwrecks were caused mainly by the miscalculation of the monsoon season, in the period of dual subordination, Shuri Royal Government ordered its subjects to strictly follow the right time to leave or return to its ports. Even in that case, shipwreck incidents still happened. See Lai Zhengwei, *A Research on the Sino-Ryukyuan Relations in the Qing Dynasty*, Beijing: China Ocean Press, 2011, pp. 56–60 (in Chinese); [Japan] Murata Tadayoshi, *The Origin of Sino-Japanese Territorial Disputes: the Diaoyu Islands Issue Seen from Historical Archives*, translated by Wei Pinghe, Beijing: Social Sciences Academic Press (China), 2013, p. 52. (in Chinese)

15 [Japan] Murata Tadayoshi, *The Origin of Sino-Japanese Territorial Disputes: the Diaoyu Islands Issue Seen from Historical Archives*, translated by Wei Pinghe, Beijing: Social Sciences Academic Press (China), 2013, pp. 52–53. (in Chinese)

that Chinese people may raise, most importantly, the questions concerning the relationship between Satsuma and Ryukyu.¹⁶

II. The Status of a Vassal State in International Law: A Perspective from *Elements of International Law*

The Asian tributary system was a China-centered international structure featured by suzerain-vassal relations between China and its neighbors. The system of the law of nations, also known as the treaty system, is an international system based on the international order in the world upholding the law of nations, which is a network of treaty relations dominated by the Western colonial powers shaped during the colonial expansion in modern times.¹⁷ Western modern international law was first formally and systematically introduced into China in the 19th century. However, in the late 19th century, when Vietnam, Burma, Korea and other vassal States of Qing Court turned into colonies and protectorate of occidental powers and Japan, the tributary system disbanded.

A. *The Introduction of Elements of International Law into China and Its Influences on the Diplomacy of Qing Government*

As mentioned above, Western modern international law was first formally and systematically introduced into China in the 19th century. The Chinese edition of *Elements of International Law*,¹⁸ which was translated by William A. P. Martin (1827-1916), an American missionary to China, was the first work on Western jurisprudence in Chinese history. When first published in China, the book caused

16 Yang Chungkui, *Ancient and Modern Ryukyu, and the Issue of Diaoyutai*, Taipei: The Commercial Press, Ltd., 1990, pp. 64-65. (in Chinese)

17 The term "treaty system", which coexisted with the tributary system in late Qing Dynasty, was proposed by Fairbank. See J. K. Fairbank, The Early Treaty System in the Chinese World Order, in J. K. Fairbank ed., *The Chinese World Order: Traditional China's Foreign Relations*, Cambridge, MA/London: Harvard University Press, 1969, pp. 257-275.

18 The Chinese version of *Elements of International Law* (named "万国公法" in Chinese) is translated by William A. P. Martin (1827-1916), an American missionary, from its English version, which was published by the American publicist Henry Wheaton (1785-1848) in 1836. This Chinese version was printed by Beijing Chongshi School in the winter of 1864. See Lin Xuezhong, *From Elements of International Law to Diplomacy Based on International Law: the Reception, Interpretation, and Application of International Law in the Late Qing*, Shanghai: Shanghai Ancient Books Publishing House, 2009, p. 113. (in Chinese)

a stir in the East Asia. In the following year, recarved and kanten-marked editions appeared in Japan, which became one of Japanese bestsellers in a short time. Subsequent editions also appeared in Korea and Vietnam.¹⁹ In the early 19th century, China became a country occidental powers plotted to colonize in East Asia. China was afterwards drawn into the Opium Wars. In 1901 when the Boxer Protocol was signed, China completely turned into a semi-colonial and semi-feudal country. Against this backdrop, the attitudes towards the introduction of Western international law into China are sometimes contradictory among different social strata in China. On one hand, cases really existed where the Qing Government won in diplomatic negotiations against Western countries by applying international law, such as Lin Zexu's prohibition of the sale of opium²⁰ and the handling of *Lin Weixi Case*²¹ in 1839, and the settlement of the dispute concerning Prussia's seizure of Danish ships in Chinese territorial sea;²² to some extent, the successful resolution of these diplomatic disputes led to Qing Government's quick approval of the printing of *Elements of International Law*. On the other hand, Qing Government and its officials inclined to use international law as an instrument, seeking to invoke relevant rules to defeat foreigners in diplomatic negotiations.

The international community, in the wake of the First Sino-Japanese War (1894-1895), has its unique connotation. This community, also called an "international law community" or "civilized community", is a Euro-centric binding system

19 Zou Zhenhuan, *A Comparative Study on the Distribution of the Elements of International Law Translated by W. A. P. Martin in China, Japan and Korea*, in Center for South Korea Studies of Fudan University ed., *South Korea Studies*, Vol. 7, Beijing: China Social Sciences Press, 2000, pp. 258~278. (in Chinese)

20 Mao Haijian, *Collapse of the Celestial Empire: A Re-examination on the Opium Wars*, Beijing: Joint Publishing, 1995, pp. 104~112. (in Chinese)

21 In July 1839, a local named Lin Weixi in the village of Tsim Sha Tsui was beaten to death by a British sailor. For research on this incident, see Lam Kai-yin and Lam Kam-yuen, On the Approaches and Attitudes of the Chinese and British Governments in Dealing with the Lin Weixi Incident, *Historical Research*, No. 2, 2000, pp. 97~113. (in Chinese)

22 In April 1864, when the Prussian minister H. Von Rehfues came to China by the warship *Gazelle*, he, without causes, captured three Danish commercial ships in the waters of Dagou Port, Tianjin, China. *Zongli Yamen* (Ministry of Foreign Affairs) of Qing China protested against Prussia's act immediately, by invoking international legal concepts. The Prussian minister was accused of capturing Danish ships in Chinese "inner ocean" (or "territorial sea"), over which China had jurisdiction. The Prussians were further informed that should the ships not be released then China could refuse a reception to their officials. Ultimately, Prussia released two of the captured ships, and paid a compensation at the amount of \$1500. This incident was thus settled peacefully. For the details of this incident and the invocation of international law by Qing Court, see Wang Weijian, Prussian-Danish Incident in Dagou Port and the Introduction of Western International Law into China, *Academic Research*, No. 5, 1985, pp. 84~90. (in Chinese)

of rules of modern international law, which is composed of European sovereign States, reflecting Western values. Kikoh Nishizato, a historian with University of the Ryukyus, stated that the modern East Asia has undergone an era where the relationship between the East Asian States and nations and occidental powers was reversed, and also an era where the traditional international system in East Asia, i.e., the tributary system, was replaced by the modern international order dominated by the occidental powers, which was also known as the system of the law of nations.²³ Chinese professor Wang Hui contended that, the conflicts between Chinese Qing Court and European powers were not ordinary inter-State conflicts, but rather those between two world (or international) systems and their rules.²⁴ Here, the two systems refer to the tributary system and the modern system of the law of nations respectively. In the latter system, the world was divided into civilized, partially civilized, barbarous and savage States (Table 1). Being considered as “barbarous States”, China and other Asian States were not full legal persons as States, where only partial principles of international law could be applied. Such differentiation of States rights under this international order can be best explained by those unequal treaties, whose principal provisions include unilateral most-favoured-nation treatment, consular jurisdiction and agreement tariff. Such an international order is utterly based on Euro-centrism. However, in the political arena in the late 19th century and the early 20th century, everything was staged exactly under this kind of prejudice.²⁵

23 [Japan] Kikoh Nishizato, *A Study on the History of Relations between Ryukyu and Japan in the Late Qing Dynasty (I)*, translated by Hu Liancheng et al., Beijing: Social Sciences Academic Press (China), 2010, p. 17. (in Chinese)

24 Wang Hui, *The Rise of Modern Chinese Thoughts*, Beijing: SDX Joint Publishing Company, 2004, p. 680. (in Chinese)

25 Lin Xuezhong, *From Elements of International Law to Diplomacy Based on International Law: the Reception, Interpretation, and Application of International Law in the Late Qing*, Shanghai: Shanghai Ancient Books Publishing House, 2009, p. 243. (in Chinese)

Table 1 The International Order in the World Upholding the Law of Nations in the Late 19th Century²⁶

States of civilized humanity	States of partially civilized humanity	States of barbarous humanity	States of savage humanity
States of Europe and North America	States of Central and South America	Turkey, Persia, the Middle East, Siam and Japan, etc.	The residue of mankind
<p>1) Municipal law of civilized States is in place;</p> <p>2) International law is applicable;</p> <p>3) Enjoy plenary political recognition.</p>	<p>1) A complete set of municipal law of the civilized States is not available;</p> <p>2) Be obliged to treat foreigners in accordance with the criteria set by the civilized States.</p>	<p>1) Municipal law of the civilized States is absent;</p> <p>2) Enjoy partial political recognition;</p> <p>3) The States which unequal treaties, such as consular jurisdiction, are to be imposed upon;</p> <p>4) The application of international law should be recognized by “civilized States”.</p>	<p>1) Enjoy natural or mere human recognition;</p> <p>2) Could become the territory of civilized States under the principle of international law – possession by occupation.</p>

26 James Lorimer, *The Institutes of the Law of Nations: A Treatise on the Jural Relations of Separate Political Communities*, Vol. 1, Edinburgh/London: W. Blackwood & Sons, 1883-1884, pp. 102~103.

B. Tributary/Vassal States Defined in the Elements of International Law

A comparison of two masterpieces in international law – *Elements of International Law* written in the 19th century and *Oppenheim's International Law*²⁷ in the 20th century, shows that “colony” is one category of the “international persons” in modern international law. The international law concepts closely related to the tributary system, such as “protectorate”, “half sovereign State” and “tributary State”, were discussed in the chapter “Nations and Sovereign States” under the *Elements of International Law*. An “international person”, in the modern international law, is one who possesses legal personality in international law, meaning one who is a subject of international law so as itself to enjoy rights, duties or powers established in international law.²⁸ An analysis of the meaning and evolutions of the concept “international person” in modern international law would provide some important insights into the discussion on the status of Ryukyu in modern international law. With regards to the status of Ryukyu, authorities have invoked and applied the principles, rules and theories embodied in the *Elements of International Law* in the diplomatic negotiations between China, Japan and Ryukyu.

In order to understand the categories and meaning of international persons in the 19th century, we need to trace the concept back to its origin – *Elements of*

27 *Oppenheim's International Law* is considered as another internationally renowned book, following the *Elements of International Law*, in the 20th century. This book finds its early form in the two volumes of *International Law: A Treatise* initially published in 1905-1906, by the internationalist L. F. L. Oppenheim (1858-1919). This work won him enough prestige to be appointed as the Whewell Professor of International Law in the University of Cambridge. The second edition of the book was revised by Oppenheim himself. *Oppenheim's International Law* was afterwards edited by Ronald Francis Roxburgh, Arnold Duncan McNair, Hersch Lauterpacht and other renowned scholars of international law, and is known as a “Cambridge Monograph”. Robert Jennings and Arthur Watts eds., *Oppenheim's International Law, Vol. 1, No. 1*, translated by Wang Tieya et al., Beijing: Encyclopedia of China Publishing House, 1998, pp. III~V. (in Chinese)

28 Robert Jennings and Arthur Watts eds., *Oppenheim's International Law, Vol. 1, No. 1*, translated by Wang Tieya et al., Beijing: Encyclopedia of China Publishing House, 1998, p. 90. (in Chinese)

International Law. From its Chinese edition translated by William A. P. Martin²⁹ and the eighth English edition published by Little, Brown and Company, a publisher based on Boston, in 1866,³⁰ we can find that Wheaton's *Elements of International Law*³¹ mentioned, in Volume I, Chapter II, "State", "semi-sovereign State", "protectorate", "vassal State" and other categories enjoying full or partial international personality. Particularly, the discussion on the sovereignty of a vassal State in this book deserves our attention.

Quoting the words of Cicero, *Elements of International Law* defined "a State to be, a body of politic, or society of men, united together for the purpose of promoting their mutual safety and advantage by their combined strength." In order to explain the requisite of a State, Wheaton added, "the legal idea of a State necessarily implies that of the habitual obedience of its members to those persons in whom the superiority is vested, and of a fixed abode, and definite territory

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- 29 It is noteworthy that, Prof. He Qinhua, the proofreader of the Chinese version of *Elements of International Law* (Beijing: China University of Political Science and Law Press, 2003) stated, William A. P. Martin's translation was abridged and adjusted from the original work, with some contents deleted and its structure, style or chapters adjusted. For example, nearly 90% of original words of Volume 1, Chapter 2, Section 23 (titled "Germanic Confederation") were deleted by William in his translation, only retaining a summary. Additionally, subject to the historical conditions and the translator's Chinese proficiency, the Chinese version is fraught with translation errors. See Henry Wheaton, *Elements of International Law*, translated by William A. P. Martin, proofread by He Qinhua, Beijing: China University of Political Science and Law Press, 2003, Preface by Proofreader, p. 51 (in Chinese). By virtue of it, the paper pays a special attention to the difference between the Chinese and English versions, particularly those parts deleted or omitted in the Chinese version.
- 30 The National Library of China collected several editions of *Elements of International Law* in its House of Foreign Literature. This book has been reprinted many times since its first publication in 1836. The main contents of this book remained unchanged, but with notes or international conventions added by editors as appendix. The author referred to the 8th edition published in Boston in 1866, edited with notes, by Richard Henry Dana. See Henry Wheaton, *Elements of International Law*, edited, with notes, by Richard Henry Dana, Boston: Little, Brown and Company, 1866, p. viii.
- 31 William A. P. Martin's translation of *Elements of International Law* was published in 1864 by Beijing Chongshi School. This Chinese edition is translated from the 6th edition of *Elements of International Law: With a Sketch of the History of the Science*, which was edited with notes by William Beach Lawrence (1800-1881) (Boston: Little, Brown and Company, 1855). See Lin Xuezhong, *From Elements of International Law to Diplomacy Based on International Law: the Reception, Interpretation, and Application of International Law in the Late Qing*, Shanghai: Shanghai Ancient Books Publishing House, 2009, p. 113. (in Chinese)

belonging to the people by whom it is occupied.”³² In the international law of the 19th century, the indispensable requisites of a State include persons of fixed abode, definite territory and borders,³³ which are much easier to meet than those requisites set in modern international law. *Elements of International Law* divided States into sovereign and semi-sovereign ones. A sovereign State means “a community or a number of persons permanently organized under a sovereign government of their own, and by a sovereign government we mean a government, however constituted, which exercises the power of making and enforcing law within a community, and is not itself subject to any superior government.”³⁴ And semi-sovereign States were termed as “States which are thus dependent on other States, in respect to the exercise of certain rights, essential to the perfect external sovereignty”. In addition to the United States of the Ionian Islands and Cracow, which were prescribed as “semi-sovereign States” by treaties, protectorate or dependent States also fell under this category.³⁵ Sovereignty may be exercised either internally or externally. “internal sovereignty is that which is inherent in the people of any State, or vested in its ruler, by its municipal constitution or fundamental laws ... External sovereignty consists in the independence of one political society, in respect to all other political societies. It is by the exercise of this branch of sovereignty that the international relations of one political society are maintained, in peace and in war, with all other political societies.”³⁶

Elements of International Law contains a section entitled “Tributary States”.³⁷ In the eye of international law, the autonomy of a tributary or vassal State depends

32 Henry Wheaton, *Elements of International Law*, translated by William A. P. Martin, proofread by He Qinhu, Beijing: China University of Political Science and Law Press, 2003, pp. 25~26. (in Chinese)

33 Henry Wheaton, *Elements of International Law*, edited, with notes, by Richard Henry Dana, Boston: Little, Brown and Company, 1866, p. 22.

34 Henry Wheaton, *Elements of International Law*, translated by William A. P. Martin, proofread by He Qinhu, Beijing: China University of Political Science and Law Press, 2003, p. 37. (in Chinese)

35 Henry Wheaton, *Elements of International Law*, edited, with notes, by Richard Henry Dana, Boston: Little, Brown and Company, 1866, pp. 45~46.

36 Henry Wheaton, *Elements of International Law*, translated by William A. P. Martin, proofread by He Qinhu, Beijing: China University of Political Science and Law Press, 2003, pp. 35~36. (in Chinese)

37 Section 37, Chapter 2 of Wheaton's *Elements of International Law* is entitled “Tributary States”, see Henry Wheaton, *Elements of International Law*, edited, with notes, by Richard Henry Dana, Boston: Little, Brown and Company, 1866, pp. 48~49.

on the sovereignty it enjoyed.³⁸ That is to say, tributary States are still considered as sovereign, as far as their sovereignty is not affected by the tribute. Wheaton illustrated some categories of tributaries:³⁹ First, the tribute, formerly paid by the principal maritime powers of Europe to Barbary, did not at all affect the sovereignty and independence of the former; Second, “the King of Naples had been a nominal vassal of the Papal See, ever since the eleventh century, but this feudal dependence, abolished in 1818, was never considered as impairing the sovereignty of the Kingdom of Naples.”⁴⁰

C. Diplomacy Based on International Law that Qing Court Used to Defend Its Vassal States – Korea, Burma and Vietnam

The tributary system, as an important constituent of the political structure of ancient China, traces its roots to the Han Dynasty. The Tang Dynasty continued this system while making some innovations, by establishing Jimo Prefectures, another kind of vassal, in its border areas inhabited by minority nationalities. Following the tributary system of the Tang and Yuan Dynasties, the Ming Dynasty also devised some new measures to improve the system. And the system flourished in the Qing Dynasty.⁴¹ The economic exchanges between the suzerain and tributary States were primarily conducted through tributes paying, gifting, and tributary

38 Henry Wheaton, *Elements of International Law*, translated by William A. P. Martin, proofread by He Qinhua, Beijing: China University of Political Science and Law Press, 2003, p. 41. (in Chinese)

39 Henry Wheaton, *Elements of International Law*, translated by William A. P. Martin, proofread by He Qinhua, Beijing: China University of Political Science and Law Press, 2003, pp. 41–42. (in Chinese)

40 Wheaton, *Elements of International Law*, edited, with notes, by Richard Henry Dana, Boston: Little, Brown and Company, 1866, p. 49.

41 Huang Songyun, Theoretic Problems in the Study of Chinese Tributary System, *Social Science Front*, No. 6, 2004, p. 121. (in Chinese)

trades. The tributary system is termed by John King Fairbank⁴² as a graded and concentric hierarchy of foreign relations with peoples and States grouped in three main zones: firstly, the Sinic Zone, consisting of the most nearby and culturally similar territories, including Korea, Vietnam, Ryukyu Islands and, at brief times, Japan; secondly, the Inner Asia Zone, consisting of tributary tribes and States of the nomadic or semi-nomadic peoples of Inner Asia; thirdly, the Outer Zone, consisting of the “Outer barbarians”, generally at a farther distance over land or sea, including Japan, some Southeast and South Asian States and Europe.⁴³ The Qing Court roughly classified foreign States into two groups: one is “tributaries” (see Table 2), which are States having formal diplomatic relations with China, including Korea, Ryukyu, Annam (today’s Vietnam), Siam (today’s Thailand), Burma, Laos and Sulu (Sulu Archipelago in today’s Philippines); the other group is States that traded with China but had no formal diplomatic relations, including Portugal, Spain, the Netherlands, the UK, France and other European States.⁴⁴

**Table 2 Timetable for Chinese Main Tributaries in the Qing Dynasty
to First Pay Tributes and Receive Investiture⁴⁵**

Name of State	Time for the First Payment of Tribute	Investiture Time
Korea	1637	1637
Ryukyu	1651	1654
Annam	1660	1666

42 John King Fairbank has done some pioneering researches on the Sino-centrist worldview, which is the theoretic basis of Chinese tributary system, as well as on the characteristics of the tributary system which merge politics, trade and diplomacy into its network. Plus, he also studied the trend of modern China with his impact-response model. Many concepts advanced by scholars afterwards, such as “Huayi Order”, “Chinese Confucian system”, “Chinese world order” and “East Asian world order”, are considered as related to ancient China’s foreign relations, diplomatic institutions and thoughts, which, however, are all associated with Chinese tributary system. Fairbank’s views above described the structure of the tributary system. Yet, it should be noted, inner Asian Nomads were greatly different from the tributary States within the Chinese culture circle, albeit in the same tributary system. Siam, Burma and other tributaries also varied from European States, which cannot be put under the same category, because the former States maintained an official tributary relations with China. See Wang Peipei, Tributary and Treaty Systems, *Social Sciences Review*, Vol. 26, No. 8, 2011, pp. 115~117. (in Chinese)

43 John King Fairbank ed., *The Chinese World Order, Traditional China’s Foreign Relations*, Cambridge: Harvard University Press, 1968, p. 2.

44 Li Yunquan, *The History of Tributary System: A Study on Institutions Related to the Foreign Relations of Ancient China*, Beijing: Xinhua Press, 2004, pp. 134~148. (in Chinese)

45 Li Yunquan, *The History of Tributary System: A Study on Institutions Related to the Foreign Relations of Ancient China*, Beijing: Xinhua Press, 2004, p. 137. (in Chinese)

Siam	1664	1673
Sulu	1726	
Loas	1730	1795
Burma	1750	1790

Diplomatic affairs that the Qing Government had to handle with its tributary States, are not limited to the status of the latter; they are also closely related to complex issues like international treaties, rules of engagement, law of neutrality, customary international law and territorial boundaries of States, which this paper is not able to exhaust. Nevertheless, the status of tributary States is an issue that the Qing Government has to deal with in its diplomatic negotiations. When it comes to the issues like whether Korea, Vietnam, Burma and other tributaries were autonomous on their own, and how to protect or support them, Qing's actual approaches to these issues deviated a bit from its diplomatic policy.

Among the tributaries of China, Korea was called a "junior Middle-Kingdom". In order to maintain their suzerain-vassal relation, Qing provided omnibearing protection to Korea. It not only send troops to Korea, but also directly interfered with its internal and foreign affairs at the cost of changing the traditional approach, and reinforced its suzerainty over Korea by applying international law and the treaty system. Even after the signing of the Convention of Tientsin, also known as the Tianjin Convention, in 1885, Qing did not recognize Korea as a sovereign State. In the aftermath of Ganghwa Island Incident started by the Japanese in 1876, following the traditions of "balance-of-power" diplomacy, Qing encouraged Korea to open fire with Europe and America, struggling to maintain its suzerainty over Korea by building a balance of power there. Being aware that the tenets underpinning traditional Chinese world order was unable to maintain Sino-Korean relationship any more, Qing changed its diplomatic strategies, even attempting to continue their suzerainty-vassal relationship through the application of rules of international law. After the Imo Incident in 1882, Qing recognized Korea's autonomy in form, but in substance, Qing started to interfered with its internal and foreign affairs; additionally, Qing concluded the Sino-Korean Commercial Treaty with Korea in October 1882, proclaiming its traditional suzerainty over Korea in writing under the treaty system.⁴⁶

46 Lin Xuezhong, *From Elements of International Law to Diplomacy Based on International Law: the Reception, Interpretation, and Application of International Law in the Late Qing*, Shanghai: Shanghai Ancient Books Publishing House, 2009, pp. 276~278. (in Chinese)

Adhering to the border security idea of “protecting China’s tributaries to consolidate its own borders”,⁴⁷ Qing dispatched troops to aid Vietnam, trying to keep its enemy from the gates, but with no intention to have any direct conflict with France initially. France annexed Vietnam mainly through diplomatic negotiations and conclusion of treaties, during which it also destroyed many evidences supporting China’s suzerainty over Vietnam. First, France asserted, in accordance with the tributary system in Western international law, “if a State is superior to another, then the former should decide and manage all the government and administrative affairs for and on behalf the latter”, therefore China had no effective jurisdiction over Vietnam.⁴⁸ Subsequently, France required China to remain neutral, as a third State, in the wars against Vietnam.⁴⁹ Second, it used a series of treaties, including Tientsin Accord, concluded on 11 May 1884 between France and China, and the Treaty of Hué, concluded on 6 June 1884 between France and Annam (Vietnam), to gradually effect the change of Vietnam from a “sovereign State” to a French protectorate. Particularly, before the execution and exchange of text of the Treaty of Hué, Jules Patenôtre, the French minister to China, coerced the Nguyen Dynasty to turn in the gold plated seal presented by the Qing Emperor several decades earlier to the Vietnamese king, which was then melted down,⁵⁰ so as to permanently destroy the proof evidencing China’s suzerainty over Vietnam. In this regard, one comment says, “resembling those negotiations between China and Japan over the tributary status of Korea, the negotiations between China and France over the tributary status of Vietnam are doomed to be a fruitless tug-of-war.”⁵¹

47 Ma Dazheng ed., *An Outlined History of Chinese Borders/Book Series on the General History of China’s Borders*, Zhengzhou: Zhongzhou Ancient Books Publishing House, 2000, p. 398. (in Chinese)

48 Kuo Ting-yee et al. eds., *Archives on Sino-French Negotiations over the Vietnam Issue (II)*, Taipei: Institute of Modern History, “Academia Sinica”, 1962, p. 927. (in Chinese)

49 For example, Li Hongzhang, in June 1883, received a letter from France, which said: “Currently, France and Vietnam are at war, which, in accordance with international law, any third States should not intervene, therefore, we should discuss the matter after a ceasefire between France and Vietnam.” Kuo Ting-yee et al. eds., *Archives on Sino-French Negotiations over the Vietnam Issue (II)*, Taipei: Institute of Modern History, “Academia Sinica”, 1962, p. 910. (in Chinese)

50 Zhang Denggui et al. eds., *Đại Nam Thực Lục*, Tokyo: Keio University, 1961-1981, p. 4, quoted from Li Yunquan, Sino-French Negotiations over the Vietnam Issue before the Sino-French War and the Change of Sino-Vietnamese Relations, *Social Science Journal*, No. 5, 2010, p. 155. (in Chinese)

51 Li Yunquan, Sino-French Negotiations over the Vietnam Issue before the Sino-French War and the Change of Sino-Vietnamese Relations, *Social Science Journal*, No. 5, 2010, p. 151. (in Chinese)

Burma's official relation with China was not established until the mid-18th century. In response to UK's question towards the tributary status of Burma, Marquis Zeng Jize, China's minister to Britain, denied UK's claims and demonstrated that Burma was tributary to China based on sound grounds and tangible evidences. The British government claimed that the treaty concluded between China and Burma in 1770 was an equal treaty between the two; Marquis Zeng refuted this claim, pointing out that the treaty was only a declaration of surrender to China made by Burma.⁵² And he had received a telegraph from *Zongli Yamen* (Ministry of Foreign Affairs) of Qing China, informing him of the size, font and content of the seal that the Qing Emperor presented to the Burma King.⁵³ The UK also proposed that Burma, in the process of their conflicts, failed to raise any request for protection from Qing Court. Qing explained it by saying that Burma violated its obligations as a tributary,⁵⁴ but did not, in substance, intervene in British occupation of Burma, which indicated that Qing adopted a pragmatist approach to deal with its relations with Burma. In the late 18th and early 19th century, Siam, Burma's southern neighbor, grew in power and brought huge threats to Burma. Afterwards, the UK invaded into the southern and western Burma. Under this context, Burma frequently sent tributes to China exactly in this period. In practice, Burma maintained an "ambiguous attitude"⁵⁵ towards its tributary status; it neither treated China as a "Middle Kingdom", nor proactively acknowledged its tributary relation with China.⁵⁶

52 The text of the telegraph reads: "The Seal of Burma King was presented in 1790. The writing style of the characters on the seal was *Shangfang Dazhuan* (one type of greater seal scripts in ancient China) in the languages of Han and Manchu. The seal is made of silver and has a camel-shaped golden handle. The base of the seal is 3.5 * 3.5 Chinese cun (1 cun = 3½ cm) and 1 Chinese cun thick. And the words on the seal reads 'Seal of Burma King in Mandalay'." See He Xinhua, *An Analysis on the Tributary Status of Burma in Qing Dynasty*, *Historical Archives*, No. 1, 2006, p. 75. (in Chinese)

53 Wang Yanwei, *Historical Documents on Qing's Foreign Relations (Vol. 61)*, Beijing: The Palace Museum, 1932, p. 29. (in Chinese)

54 He Xinhua, *An Analysis on the Tributary Status of Burma in Qing Dynasty*, *Historical Archives*, No. 1, 2006, p. 75. (in Chinese)

55 Burma' ambiguous attitude can be detected from Burma King's attitude towards the seal presented by Qianlong Emperor in 1790. When "Chinese envoys carried the camel-shaped seal signifying Burma's subordination to China, the Burma King, fearing to be controlled by Qing Court, was initially reluctant to accept the seal. However, he was also unwilling to reject such a piece of gold weighing 3 peittha (10 lb), eventually he decided to accept it, but ordering his court recorder not to recount this matter." G. E. Harvey, *History of Burma (Vol. 2)*, translated by Yao Ziliang, Beijing: The Commercial Press, 1973, p. 453. (in Chinese)

56 He Xinhua, *An Analysis on the Tributary Status of Burma in Qing Dynasty*, *Historical Archives*, No. 1, 2006, p. 72. (in Chinese)

In the middle and late 19th century, “British invasion of Burma, French invasion of Vietnam and Japanese invasion of Ryukyu, were all started by the foreign sides. Caught in troubled times, China struggled to rise from the ashes, but beyond its strength.”⁵⁷ Qing was eventually defeated in the First Sino-Japanese War by the end of the 19th century. After the collapse of the tributary system, China was forced to abandon its idea of Middle Kingdom, and to accept Western values based on the system of the law of nations.

III. The Historical and International Law Status of Pre-modern Ryukyu Viewed from Sino-Japanese Negotiations concerning Ryukyu

In 19th century, Japanese Meiji government incorporated Ryukyu Kingdom into its territories with armed forces within about 10 years, which is called the “Disposal of Ryukyu” in history by Japanese. With regards to the “Disposal of Ryukyu”, against the backdrop where the colonialism pursued by great powers of Europe and America in Asia was spreading at that time, China and Japan carried out decades-long negotiations. The dispute over Ryukyu was shelved, when the formal negotiations between Japan and China over the division of Ryukyu Islands and revision of the treaty concerned was completed in 1880. This Sino-Japanese dispute is still pending.

A. Sino-Japanese Negotiations over Ryukyu in the Period between 1871 and 1880

The early Sino-Japanese Negotiations over Ryukyu can be tracked back to the

57 Lu Fengshi, *Veritable Records of Qing Emperor De Zong (Vol. 232, September 1886)*, Beijing: Zhonghua Book Company, 1987. (in Chinese)

Mudan Incident of 1871,⁵⁸ which was finally settled with the conclusion of the Sino-Japanese Peking Treaty in 1874. However, Qing China paid great compensation to Japan against the incident,⁵⁹ while Japan quickened its step in annexing Ryukyu, even after forcing China to recognize its invasion of Taiwan as an act to protect its citizens. Further, Japan abolished Ryukyu Domain in 1879, which was renamed Okinawa Prefecture with governor appointed by Japan.⁶⁰ Immediately after that, Qing Government submitted *notes verbales* to Japan, strongly protesting against its unilateral disposal of Ryukyu.

Mediated by U.S. ex-president Ulysses S. Grant, Japan and China started the negotiations on the divisions of Ryukyu Islands and revisions of the treaty concerned, where division of the islands into two or three parts were deliberated.⁶¹ On 21 October 1880, in line with the plan favored by Japan (dividing the islands into two parts), China and Japan came to an agreement and temporarily signed the Draft Treaty of Ryukyu and the Supplementary Provisions. The Draft Treaty of Ryukyu (originally in Chinese) provides, “the Qing Empire and the Imperial Japan agreed, except the territory at the north of Okinawa Island is under the jurisdiction of Japan, Miyako and Yaeyama Islands are under the jurisdiction of Qing, so as to clarify the boundaries of the two States; the two States should administrate

58 The Mudan Incident of 1871: in the November of 1871, a Miyako Island ship encountered a violent storm at sea and was shipwrecked. 66 crewmen landed on November 7, at the Mudan Community where Gaoshan people (raw or wild tribes in Taiwan) lived. Unfortunately, an armed conflict erupted between the crewmen and the local aborigines. Of the 66 crewmen, 54 were killed, and 12 were rescued by Yang Youwang and other Han Chinese and were transferred to Miyako via Fujian. On 25 February 1872, Wen Yu, the Fuzhou General and Governor of Fujian and Zhejiang Provinces, reported the incident to Beijing. And *Dibao*, a kind of newspaper distributed in the capital of Qing Empire, also covered this incident. See Mi Qingyu, *The Ryukyuan Shipwreck Incidence and Japanese Invasion of Taiwan (1871-1874)*, *Historical Research*, No. 1, 1999, pp. 21~36. (in Chinese)

59 Mi Qingyu, *The Ryukyuan Shipwreck Incidence and Japanese Invasion of Taiwan (1871-1874)*, *Historical Research*, No. 1, 1999, pp. 21~36. (in Chinese)

60 Ju Deyuan, *A Comment on the Basic View on the Sovereignty over the Senkaku Islands Issued by the Japanese Government 30 Years Ago*, *The Journal of Studies of China's Resistance War against Japan*, No. 4, 2002, pp. 147~166. (in Chinese)

61 [Japan] Kikoh Nishizato, *A Study on the History of Relations between China, Ryukyu and Japan in Late Qing Dynasty (I)*, translated by Hu Liancheng et al., Beijing: Social Sciences Academic Press (China), 2010, p. 312. (in Chinese)

their own territories without mutual intervention forever.”⁶² Nevertheless, Qing refused to formally sign the agreed scheme on the division of Ryukyu Islands at the end, which made the Draft Treaty of Ryukyu an abrogated treaty. As to why Qing eventually refused to sign the scheme on the division of Ryukyu Islands and revision of the treaty concerned, historians have varied views. One view holds that it is primarily caused by the easement of the Qing-Russian relations. Since Qing and Russia had smooth negotiations concerning the Ili issue, Qing changed its attitude midway, towards the division of Ryukyu Islands and revision of the treaty concerned.⁶³ Another believes that it is mainly caused by the internal conflicts within the Qing Court. Due to the severe disagreements among the Qing officials, the government adopted the strategy of delaying the issue, as proposed by Li Hongzhang, and decided not to ratify the draft treaty, with an initial aim to protect the kingdom of Ryukyu and avoid “losing Chinese interests in its hinterland”.⁶⁴ The third argues that it is chiefly affected by the suicide of Lin Shigong (*aka* Rin Seikou), a Ryukyuan aristocrat.⁶⁵ While Qing officials were discussing about whether to sign the treaty on the division of Ryukyu or not, Lin, who fled secretly to China before that, committed suicide in Beijing after submitting a petition to Qing Court, seeking to stop the Qing Court from signing the treaty. Lin’s suicide affected, to some extent, the result of the internal debates over the signing of the treaty in Qing Court.

Eventually, Qing was defeated in the First Sino-Japanese War, and forced to

62 *Matters Relating to the Treaty concerning the Disposal of Ryukyu*, in Ministry of Foreign Affairs of Japan ed., *An Chronological Table of Japanese Foreign Policy and Important Documents, 1840-1945 (I)*, Tokyo: Hara Shobo, 1965, pp. 81~85 (in Japanese); Ju Deyuan, A Comment on the Basic View on the Sovereignty over the Senkaku Islands Issued by the Japanese Government 30 Years Ago, *The Journal of Studies of China’s Resistance War against Japan*, No. 4, 2002, pp. 147~166. (in Chinese)

63 Ueda Toshio, Negotiations between Japan and China over the Sovereignty of Ryukyu, in Institute for Advanced Studies on Asia ed., *The Memoirs of the Institute for Advanced Studies on Asia*, No. 2, 1951. (in Japanese)

64 Mi Qingyu, *A Research on Ryukyuan History*, Tianjin: Tianjin People’s Publishing House, 1998, p. 226. (in Chinese)

65 [Japan] Kikoh Nishizato, *A Study on the History of Relations between Ryukyu and Japan in the Late Qing Dynasty (I)*, translated by Hu Liancheng et al., Beijing: Social Sciences Academic Press (China), 2010, p. 35. (in Chinese)

sign the Treaty of Shimonoseki in 1895,⁶⁶ which provided that China should cede to Japan the Pescadores group, Formosa (Taiwan) and Liaodong Peninsula. At that time, Qing was unable to resume its relation with Ryukyu. Nonetheless, up until the breakout of the First Sino-Japanese War, both States still considered the status of Ryukyu as unsettled. Unsatisfied with Japan's governance after its annexation of Ryukyu, many Ryukyuan fled to Qing China, seeking to restore the kingdom.

B. The Status of Pre-modern Ryukyu in International Law

Japanese historian Kikoh Nishizato observed that, when debating the issue of the sovereignty over Ryukyu, both China and Japan had, in different stages of diplomatic negotiations, frequently or voluminously invoked the *Elements of International Law*; moreover, during the period between 1875 and 1879, the Ryukyuan envoys, who were sent to Tokyo to give a full account of Ryukyu's situation, also invoked the *Elements of International Law*, in a petition effort, to protest against Japan's exclusive claims over Ryukyu.⁶⁷ Viewed from intertemporal law,⁶⁸ the international law status of Ryukyu in the second half of the 19th century can only be determined impartially, by applying the international law at that time, i.e., *Elements of International Law*, and considering the political pattern of Asia in the context of colonial invasion. Obviously, theories of modern international

66 The Treaty of Shimonoseki (Japanese: 下関条約, "Shimonoseki Jōyaku") was a treaty signed in Shimonoseki, Japan on April 17, 1895, between the Empire of Japan and the Qing Empire, ending the First Sino-Japanese War. It was signed by Li Hongzhang and Li Jingfang on behalf of the Emperor of China and Ito Hirobumi and Mutsu Munemitsu for the Emperor of Japan.

67 Ryukyuan envoys sent to Tokyo asserted that the existence of a State subordinated to two other States was permitted under the *Elements of International Law*, since, for example, Poland was once subject to three States: Prussia, Austria and Russia. [Japan] Kikoh Nishizato, *A Study on the History of Relations between Ryukyu and Japan in the Late Qing Dynasty (I)*, translated by Hu Liancheng et al., Beijing: Social Sciences Academic Press (China), 2010, pp. 29~32. (in Chinese)

68 Intertemporal Law, also known as Transitory Law, deals with the complications caused by the conflict of laws in time, which determines the time when a law is applicable. In territorial disputes, intertemporal law is a critical legal element to be considered. The origins of Intertemporal Law as a legal theoretical concept, are to be found in arbitrator Huber's discussion in the *Palmas Arbitration Case* before the Permanent Court of Arbitration, where he stated "a juridical fact must be appreciated in the light of the law contemporary with it, and not of the law in force at the time when a dispute in regard to it arises or falls to be settled." This concept has gradually developed in the practice of territorial disputes settlement and treaty laws. See *The Island of Palmas Case (or Miangas)*, United States of America v. The Netherlands (1928), Permanent Court of Arbitration, pp. 4~6, p. 37.

law, especially the theories and practices relating to States, sovereignty and territorial disputes, would facilitate a better understanding of the international law status of Ryukyu. The historical and legal status of pre-modern Ryukyu should be demonstrated in the following aspects.

First, Ryukyu's secret subordination to Japan in history, does not imply that Satsuma's invasion of Ryukyu, at that time, conformed to the international law rules regarding acquisition of territory. On the contrary, the claim that Japan had exclusive sovereignty over Ryukyu, which was raised by Japanese representatives in Sino-Japanese negotiations over Ryukyu, is ill-founded both in history and in international law at that time. As described above, after Satsuma's invasion of Ryukyu in 1609, Ryukyu had undergone a stage called "dual subordination to Japan and China". However, the Ryukyu Kingdom was conquered by the local authorities of Satsuma Domain, rather than the Tokugawa Shogunate on behalf of the Japanese central government. From 1609 to the end of the Edo period, Tokugawa Shogunate did not intend to incorporate Ryukyu into its territory, but considered it a separate kingdom, independent from more than 60 provinces under its jurisdiction. This fact can be illustrated by the following examples. Example 1: in May 1610, Honda Masazumi, the rōjū (one of the highest-ranking government posts under the Tokugawa Shogunate) of Tokugawa Shogunate, wrote to Shimazu Iehisa of Satsuma Domain, commanding the latter to take the captured Ryukyuan King, like a Korean envoy, to Edo;⁶⁹ Example 2: in September of the same year, Tokugawa Hidetada, the second shogun of the Tokugawa dynasty, publicly promised the Ryukyuan King, saying, "the Shō family has been the King of Ryukyu for generations; they should return to their kingdom as soon as possible, so as to enshrine and worship their ancestors, to promote the prestige and good name of this dynasty, and hand down the throne to their later generations forever."⁷⁰ In this connection, the author asserts that being a local authority, Satsuma's invasion of Ryukyu in 1609 had not been authorized, or retroactively recognized, by the central government, therefore this invasion fails to meet the requisite in form for acquisition of territory. Then take the historical facts into account, does Satsuma's conquest of Ryukyu by violence have the effect of obtaining the territorial

69 He Ciyi, *The History of the Relations between Ryukyu and Japan in Ming and Qing Dynasties*, Nanjing: Jiangsu Ancient Books Publishing House Co. Ltd., 2002, p. 55. (in Chinese)

70 [Japan] Kuroita Katsumi, Tokugawa Jikki (Chapter 1), in *Shintei Zoho, Kokushi Taikei (Vol. 38)*, Tokyo: Yoshikawa Kobunkan, 1929. (in Japanese)

sovereignty of Ryukyu? Conquest means a State, without the consent of other States, places the territory of other States under its control by force of arms. It is a way of territory transfer acknowledged by the ancient international law, but no longer a legal means to obtain territorial sovereignty in recent international law.⁷¹ Furthermore, in general international law, the acquisition of territory by conquest often has to take two steps: the first is to defeat and dissolve a State (*de bellatio*); the second is to annex the defeated State into the victor's national territory after its dissolution.⁷² This is greatly different from the act of Japanese central government in 1879, when Japanese forces were sent to Ryukyu and Ryukyu was transformed into Okinawa Prefecture. After its invasion of Ryukyu, Satsuma was ordered by the central government to send the Ryukyuan King back to the kingdom; and Ryukyu had maintained its political regimes and rule over the kingdom for a long period. Thereafter, in order to seek gains from Sino-Ryukyuan trades, Satsuma did not cut off the tributary relation between China and Ryukyu; instead, both Satsuma and Ryukyu chose to hide their own relations from the international community, including China. It can be argued that Ryukyu had maintained both internal and external sovereignty, even in modern international law. Therefore, Ryukyu's secret subordination to Japan, due to the threats from Satsuma, does not imply that Japan had obtained the sovereignty over the pre-modern Ryukyu. In later negotiations between China and Japan over Ryukyu, the Qing Court asserted that Ryukyu, an independent State, accepted China's investiture for generations, and considered China as its suzerainty; "Ryukyu was subordinated both to China and Japan".⁷³ However, the claim of Japan's exclusive sovereignty over Ryukyu, mainly proposed by Japanese foreign minister Terashima in his book *A Brief Introduction*, insisted that the issue over Ryukyu was the "internal affairs" of Japan, since it was not an

71 Su Yi-xiong, *International Law in Peacetime*, Taipei: San Min Book Co., Ltd., 1993, p. 178. (in Chinese)

72 Suya P. Sharma, *Territorial Acquisition, Disputes and International Law*, The Hague/Boston/London: Martinus Nijhoff Publishers, 1997, p. 143.

73 Mi Qingyu, *A Research on Ryukyuan History*, Tianjin: Tianjin People's Publishing House, 1998, p. 199. (in Chinese)

independent State, nor “subordinated to both China and Japan”.⁷⁴ The core issue underlining these negotiations was the international status of Ryukyu. Japanese claims have big loopholes both in history and international law. After Satsuma’s invasion of Ryukyu in 1609, the latter not only retained its political institutions and reign title, but also had diplomatic and trade exchanges with its Asian neighbors, including the Japanese shogunate. In the mid-19th century, Ryukyu, in the name of a State under modern international law, signed commercial treaties with the U.S., France and the Netherlands. In a word, historical facts concerning the diplomatic relations between China, Japan and Ryukyu reveal that, it is historically true that albeit an independent kingdom, the pre-modern Ryukyu, in the period between 1609 and 1879, was subordinated both to Japan and China; the issue concerning the status of Ryukyu at that period does not fall under the category of “Japanese internal affairs”, as claimed by the Meiji Government, not to say Japanese “sovereignty” over Ryukyu.

Second, the fact that Ryukyu, as an independent State, was subordinated both to China and Japan in history, is consistent with international law. During Sino-Japanese diplomatic negotiations on the issue of Ryukyu, the Qing Government claimed that Ryukyu was “subordinated both to China and Japan”, but at the same time, it was also an independent and autonomous State. Japan refuted China’s claims, pointing out that “if it is a State, it can not be subordinated to other States; likewise, if it is subordinated to other States, then it cannot be an independent State.” Japan further invoked the *Elements of International Law* to prove the illogicality of Qing’s claims, and insisted that Ryukyu was a part of Japan.⁷⁵ In this connection, Kikoh Nishizato observed, “deduced from the logic of the traditional

74 The claim of Japan’s exclusive sovereignty over Ryukyu was mainly proposed by Japanese foreign minister Terashima in his book *A Brief Introduction*. With regards to this claim, the Meiji Government stressed the similarity and connection between Ryukyu and Japan, prior to the Satsuma Invasion of Ryukyu in 1609, in terms of geographical relationship and location, as well as culture and ethnics, and also mentioned that Ryukyu paid tributes to Japan earlier than to China, which was subject to the administration of Daizaifu specially set up by Japan. Japan also emphasized, after 1609, Shogunate had already given Ryukyu to Satsuma Domain, which exercised political rule over Ryukyu in many aspects, including military, tax, and law-making. Mi Qingyu, *A Research on Ryukyuan History*, Tianjin: Tianjin People’s Publishing House, 1998, p. 199. (in Chinese)

75 Ministry of Foreign Affairs of Japan ed., *Documents on Japanese Foreign Policy, Vol. 12*, Tokyo: International Association of Japan, 1973, quoted from [Japan] Kikoh Nishizato, *A Study on the History of Relations between Ryukyu and Japan in the Late Qing Dynasty (I)*, translated by Hu Liancheng et al., Beijing: Social Sciences Academic Press (China), 2010, p. 30. (in Chinese)

tributary system, a State can be autonomous in terms of internal affairs, and also tributary to other States in terms of foreign relations, which are not contradictory to each other. However, this logic is not so persuasive to Japan, which did not accept the tributary system. In this context, the debate between the two States stalled.”⁷⁶ Does Qing’s argument that Ryukyu, being an independent State, was subordinated to both China and Japan, square with international law? The answer lies in the theories, as contained in the *Elements of International Law*, relating to the constitution of a State.⁷⁷ *Elements of International Law* divided “international persons”, a concept in modern international law, into several categories, including sovereign State, semi-sovereign State, protectorate and tributary. Different from sovereign and semi-sovereign States, the autonomy of a tributary or vassal State depends on the sovereignty it enjoyed.⁷⁸ That is to say, tributary States are still considered as sovereign, as far as their sovereignty is not affected by the tribute. After Satsuma’s invasion of Ryukyu in 1609, Ryukyu entered into a stage called “dual subordination”, to China nominally and to Japan technically and secretly. This stage continued up until the early years of the Japanese Meiji Restoration. As a tributary State, Ryukyu had the autonomy to handle its internal affairs, which were not interfered by its suzerain – China; China only dispatched envoys to perform symbolic investiture ceremonies for new kings of Ryukyu.⁷⁹ China, being a suzerain

76 [Japan] Kikoh Nishizato, *A Study on the History of Relations between Ryukyu and Japan in the Late Qing Dynasty (I)*, translated by Hu Liancheng et al., Beijing: Social Sciences Academic Press (China), 2010, p. 30. (in Chinese)

77 Existing literature has attempted, by invoking the relations between the principal maritime powers of Europe and Barbary States, to draw an analogy between the status of Ryukyu and these powers of Europe. See Wang Xin, Historical Changes of the Legal Status of Ryukyu under International Law, *Graduate Law Review. CUPL*, Vol. 24, No. 2, pp. 112~120 (in Chinese); Wang Xin, *An Exploration of the Diaoyu Islands Disputes Seen from the Historical Changes of the Legal Status of Ryukyu* (master thesis), Beijing: China University of Political Science and Law, 2010, p. 8 (in Chinese); Zhang Yi, *The Study on Legal Status of the Ryukyu Islands on International Law* (doctoral thesis), Beijing: China University of Political Science and Law, 2013, pp. 63~64. (in Chinese) Such practice has appeared in history: in order to protest against the Meiji Government’s claim of exclusive sovereignty over Ryukyu, Ryukyuan envoys sent to Tokyo asserted that the existence of a State subordinated to two other States was permitted under the *Elements of International Law*, since, for example, Poland was once subject to three States: Prussia, Austria and Russia. [Japan] Kikoh Nishizato ed., *Petitions for Salvation of Ryukyu Kingdom*, Tokyo: Hosei University Institute for Okinawan Studies, 1992. (in Japanese)

78 Henry Wheaton, *Elements of International Law*, translated by William A. P. Martin, proofread by He Qinhu, Beijing: China University of Political Science and Law Press, 2003, p. 41. (in Chinese)

79 Xiu Bin and Jiang Bingguo, The Subjugation of Ryukyu and Losing the Function of the Investiture-Tributary System in East Asia, *Japanese Studies*, No. 6, 2007. (in Chinese)

State, did not attempt to seek interests from tributary trades, but offer financial aid to its tributaries by gifting. China strove to maintain its influence on its tributaries, mainly through its own strong political, economic and cultural appeal and vitality, rather than military conquest and annexation. During this period, Ryukyu relied on its original political structure to deal with internal affairs, and in terms of foreign relations, it concluded bilateral treaties with France, the U.S., and the Netherlands as a State. Although the internal affairs of Ryukyu were subject to Satsuma, and Ryukyuan customs were gradually integrated into Japanese culture, Japanese residing in Ryukyu would leave in advance, when they were aware of the arrival of Qing envoys. This paper holds, based on the historical facts and the international law at that time, Ryukyu was dually subordinated to China and Japan, but still independent and autonomous at the same time, which are not contradictory to each other. Certainly, it is undeniable, when Ryukyu was annexed and incorporated into Japanese territory in 1879, it became a colony of Japan, which impaired the sovereignty of Ryukyu.

Third, Ryukyu and the great powers of Europe and America all considered the kingdom as an independent State. Shō Tai, the last king of Ryukyu, believed that the kingdom “belonged to Japan and China ... the two are the parent countries of Ryukyu.”⁸⁰ In 1867, Michihira Iwashita attended the opening ceremony of the Paris Exposition, presenting himself as the envoy representing the Ryukyuan king. In protest, Japanese Tokugawa Shogunate, declared to the Exposition that “Ryukyu was conquered by the Satsuma Domain as commanded by the Tokugawa Shogunate, therefore, it became a vassal State of Satsuma, rather than a State independent from Japan.” However, this protest had not been accepted.⁸¹ During the period from 1875 to 1879, the Ryukyuan envoys, who were sent to give a full account of Ryukyu’s situation, initiated petition efforts in Tokyo and nearby areas. In these efforts, Ryukyuan envoys reiterated the need to “act in good faith”, and expressed their reluctance to renounce the political independence of the kingdom, and the unwillingness to cut off its relations with China.⁸² In 1879, Shō Tukukō, a

80 [Japan] Chōken Kishaba, *Ryūkyū kenbunroku (Vols. 1~2)*, Tokyo: Perikansha Publishing Inc., 1977 (in Japanese), quoted from [Japan] Kikoh Nishizato, *A Study on the History of Relations between Ryukyu and Japan in the Late Qing Dynasty (I)*, translated by Hu Liancheng et al., Beijing: Social Sciences Academic Press (China), 2010, p. 31. (in Chinese)

81 Ming Juinn Li, The Sovereignty of the Ryukyu Islands from the Perspective of International Law, *Taiwan International Studies Quarterly*, Vol. 1, No. 2, 2005, p. 56. (in Chinese)

82 [Japan] Kikoh Nishizato ed., *Petitions for Salvation of Ryukyu Kingdom*, Tokyo: Hosei University Institute for Okinawan Studies, 1992.

Ryukyuan aristocrat and government official who fled to China to seek help from Qing Court, refuted the views expressed by Japanese foreign minister Terashima in his book *A Brief Introduction*.⁸³ In terms of the attitudes of the international community, the major powers of Europe and America, in the period between 1840 and 1879, not only had the knowledge of Ryukyu's dual subordination, but also mediated between China and Japan by adopting the pragmatic diplomatic policy, seeking to open the country to trade. For example, U.S. ex-president Grant had mediated between China and Japan concerning the issue of Ryukyu. In 1879, when discussing the Ryukyu issue with Li Hongzhang, Grant said: "Ryukyu is an independent State, but Japan intends to expand its own territory by annexing it. China is fighting for land, rather than tribute, which is reasonable. In this regard, it is better for China and Japan to sign a separate treaty in the future."⁸⁴ Afterwards, Grant actively coordinated the diplomatic negotiations between Japan and China over the division of Ryukyu Islands and revision of the treaty concerned. Further, Ryukyu concluded bilateral treaties (see Table 3) with France, the U.S., and the Netherlands as a State. The capability to carry out exchange activities and conclude treaties with foreign States, in the eye of international law at that time, is an important index to determine the status of a State. Therefore, the sovereignty of Ryukyu was widely acknowledged by the then international community.

83 Shō Tukukō argued, "Japan claims that the government system and political structure of Ryukyu was established by Japan, and Ryukyu is not a sovereign and independent State. However, to determine a State's government system and political structure, the following rituals or factors are critical: investiture rituals, granting title of a reigning dynasty, giving a royal name, following the calendar, laws and decrees, and rites of a certain dynasty. Ryukyu has paid tribute to China since 1372, when King Satto was conferred as king of Chūzan by China, and the country's name was changed from "琉求" to "琉球" in Chinese. During the reign of Yongle Emperor, Ryukyu King was given the surname of Shō. Ryukyu follows the calendar, rites and rituals, as well as laws and statutes of China, which has never changed up till now. The post and rank of Ryukyuan officials, the recruitment and resignation of its staff, the issuing and abolishment of imperial orders or decrees, and the clothing system, are all decided by the King and councilors of Ryukyu, without being intervened by Japan. In the treaties signed by Ryukyu with France, the United States, and the Netherlands respectively, Ryukyu signed the date following Chinese calendar and the names of its own officials. Ryukyu is a sovereign State, which is known to all States. That Ryukyu is not subject to Japan is a self-evident fact, which does not need to be proved through debate." See Wang Yunsheng, *China and Japan in the Last Six Decades, Vol. 1*, Tianjin: Ta Kung Pao, 1932, pp. 127~129. (in Chinese)

84 [Japan] Kikoh Nishizato, *A Study on the History of Relations between Ryukyu and Japan in the Late Qing Dynasty (I)*, translated by Hu Liancheng et al., Beijing: Social Sciences Academic Press (China), 2010, p. 307. (in Chinese)

Table 3 List of European and American Ships Visiting Ryukyu and the Treaties Concluded⁸⁵

Time of Voyage	Nationality and ship name	Shipmaster and number of visitors	Landing port	Purpose of voyage	Treaties concluded
1 July 1854 – 17 July 1854	American fleet	Commodore Perry	Port of Naha	Negotiations about the opening of the country to bilateral trade	The Ryukyu-U.S. Treaty of Amity was signed on 17 July 1854
6 November 1855 – 28 November 1855	<i>Virginie</i> and other two French ships	700 persons including Admiral Nicolas Francois Guerin	Port of Naha	Treaty negotiations	The Ryukyu-France Treaty of Amity was signed on 24 November 1855
29 May 1859	Holland fleet	Van Kappeler	Port of Naha	Treaty negotiations	The Treaty of Amity was signed between Ryukyu and the Netherlands on 6 July 1859

85 [Japan] Kikoh Nishizato, *A Study on the History of Relations between Ryukyu and Japan in the Late Qing Dynasty (I)*, translated by Hu Liancheng et al., Beijing: Social Sciences Academic Press (China), 2010, pp. 154~155. (in Chinese)

Fourth, when facing foreign invasion or colonial rule, other tributary States having the same status with Ryukyu under Chinese tributary system, such as Vietnam, Korea and Burma, had settled the issue concerning their status through the conclusion of treaties, and eventually won their independence in the 20th century. In Chinese tributary system, Ryukyu, Vietnam, Korea and Burma fell under the same category of tributary or vassal States, among which Ryukyu was the most submissive one. However, when Ryukyu domain was abolished and transformed into a prefecture by Japan in 1879, Ryukyu became a Japanese colony. In contrast with Ryukyu, Vietnam, Korea and Burma renounced their traditional links with China in accordance with the relevant treaties. Specifically, in the wake of the Sino-French War (1885), France forced China to sign the Treaty of Tientsin, supplanting China's suzerainty over Vietnam, and placing Vietnam under French protection. The Convention Relating to Burma signed between China and Britain in 1886, agreed that China would recognize Britain's rights in Burma while Britain continued the Burmese payment of tribute every ten years to China, by which Britain gradually turned Burma into its colony. After the First Sino-Japanese War in 1894, China was forced to agree to renounce its suzerainty over Korea in the Treaty of Shimonoseki. These facts show, in the late Qing, the change of status of China's neighboring tributaries was provided by treaties, and also recognized by their suzerain State – China. Nevertheless, from Japanese annexation of Ryukyu in 1879 to the end of World War II, China and Japan, with respect to the change of the sovereignty of Ryukyu and the arrangement of Ryukyuan territory, failed to conclude any formal agreements, except the negotiations over the draft treaty on the division of Ryukyu. In the 20th century, those tributaries (other than Ryukyu) under Chinese tributary system, after suffering many mishaps, freed themselves from colonial rule, and became independent States in the UN framework.

In the middle and late 19th century, Sino-Japanese negotiations over Ryukyu were carried out against the backdrop, where the tributary system came into conflicts with the system of the law of nations. It is proved that, hugely impacted by the invasion of great powers and the international situation at large, Qing China, with declining national and military strength, only hoped to invoke international law to “convince its opponents with just grounds and settle disputes

appropriately”.⁸⁶ However, it merely knew how to use Western international law as an instrument or tool, but had little knowledge on how to use it flexibly and skillfully, as such, Qing learned many painful lessons for that. Tang Caichang, a well-known activist in the Constitutional Reform Movement in late Qing Dynasty, pointed out the reasons for China’s failure in foreign negotiations, saying that “the failure was caused by China’s declining strengths, also by its failure to invoke international law, as well as the lack of talents familiar with international law to fight for China’s rights and interests based on reasonable grounds.”⁸⁷ The result of Sino-Japanese negotiations over Ryukyu proved this point exactly.

IV. The Legal Status of Ryukyu and the Disputes over the Sovereignty of Diaoyu Islands

The claims to sovereignty over the Diaoyu Islands made by the Ministry of Foreign Affairs of Japan are closely related to the issue of Ryukyu. In order to demonstrate that Japan’s incorporation of Diaoyu Islands into its territory was an act of “occupation” under international law, Japan argued that “the Senkaku Islands have historically and consistently been part of the Nansei Shoto Islands which have been part of the territory of Japan”, using the surveys of the Diaoyu Islands conducted by the agencies of Okinawa Prefecture in the late 19th century

86 On 12 April 1877, Shō Tukurō, the Grand Master with the Purple-Golden Ribbon (a government official of Ryukyu), sailed to Fujian Province to seek assistance from Qing Court. When meeting He Jing, the Viceroy of Minzhe, and Fujian Provincial Governor Ding Richang, Shō submitted the petitions written by the Ryukyu King to them, requesting Qing Government to help Ryukyu settle its problems. He Ruzhang, a Chinese envoy sent to Japan, warned and suggested, “Japan incessantly prevented Ryukyu from paying tribute to China, it would surely annex Ryukyu. When Ryukyu is annexed, Korea would be in peril.” However, Li Hongzhang asserted, “among the best, the second best and the worst plans (presented by He Ruzhang), the best plan is to dispatch forces to call Japan to account, and the second best is to reach an agreement with Ryukyuan to require them to resist the Japanese and China would assist them, when necessary. These two plans seem to make a great fuss about nothing, which might cause panic. However, if we repetitively debate with Japan, Japan would become aware that it is in the wrong, then it might not dare to transform the Ryukyu domain into a prefecture. In that way, Ryukyuan would retain their land, and the invaders would withdraw without violence being used. The last plan seems to be the worst, however, it is actually the one we have to choose today.” See *Complete Works of Li Hongzhang – Letters to the Imperial Prince in Charge of Zongli Yamen*, Vol. 8, p. 1.

87 Tang Caichang, *Rules about the Establishment of a School of Chinese and Western Law*, in Hunan Provincial Institute of Philosophy and Social Science ed., *Collection of Tang Caichang’s Works*, Beijing: Zhonghua Book Company, 1980, p. 27. (in Chinese)

as “historical evidences”.⁸⁸ These claims, apparently, have been raised by Japanese authorities after considering historical facts, international law theories associated with territorial disputes and law of treaties. In addition, China’s “initial discovery” of the Diaoyu Islands, and China being the “initial holder of the sovereignty” over the Diaoyu Islands, were denied by the Japanese academia, which, instead, made some claims to these islands favorable to Japan.⁸⁹ This paper holds, an examination of the geographical scope of Ryukyu Kingdom and the delimitation of Sino-Ryukyuan boundary, would provide significant insights into a further discussion over the sovereignty of the Diaoyu Islands from the perspectives of history and geography. Chinese, Japanese and Ryukyuan historical accounts, concerning the period between 1429 and 1879, are important historical evidences supporting China’s sovereignty claims to the Diaoyu Islands. Overall, the Diaoyu Islands has constituted an inherent part of China, rather than Ryukyu, ever since ancient times, which can be substantiated by historical accounts from China, Japan and Ryukyu, and also by social, cultural, geographical and hydrological evidences.

A. Social, Cultural, Geographical and Hydrological Factors Supporting China’s, rather than Ryukyu’s, First Discovery of the Diaoyu Islands

The Diaoyu Islands, since the early Ming Dynasty, has always been a part of Chinese territory, which was employed as sea marks to aid navigation. These

88 Ministry of Foreign Affairs of Japan, Senkaku Islands Q&A, at http://www.mofa.go.jp/region/asia-paci/senkaku/qa_1010.html, 12 October 2016; Ministry of Foreign Affairs of Japan, The Basic View on the Sovereignty over the Senkaku Islands, at http://www.mofa.go.jp/region/asia-paci/senkaku/basic_view.html, 12 October 2016.

89 In all the researches on the Diaoyu Islands from the perspective of international law, the most representative works or papers by Japanese scholars include: Keishiro Iriye, The Basis for the Development of the Oceans Surrounding Senkaku Islands, *Kikan Okinawa [Okinawa Quarterly]*, March 1971, p. 56 (in Japanese); Keishiro Iriye, Sino-Japanese Peace Talk and the Status of Senkaku Islands, *Kikan Okinawa [Okinawa Quarterly]*, December 1972, p. 63 (in Japanese); Okuhara Toshio, The Sovereignty Issue of Senkaku Islands, *Kikan Okinawa [Okinawa Quarterly]*, March 1971, p. 56 (in Japanese); Ozaki Shigeyoshi, Territorial Sovereignty over the Senkaku Islands, *Reference*, No. 263, 1972 (in Japanese); Midorima Sakae, *The Senkaku Islands*, Naha: Hirugisha, 1984 (in Japanese); Unryu Suganuma, *Sovereign Rights and Territorial Space in Sino-Japanese Relations-Irredentism and the Diaoyu/Senkaku Islands*, Honolulu: University of Hawaii Press, 2000; Ozaki Shigeyoshi, Territorial Issues on the East China Sea: A Japanese Position, *Journal of East Asia and International Law*, No. 3, 2010; Ozaki Shigeyoshi, Senkaku Islands and Japan’s Territorial Rights, *Diplomacy*, No. 12, 2012 (in Japanese); *Ishii Nozomu*, The Available Historical Data and Materials about the Prehistory of Senkaku and *Terra Nullius* (Land without Owner), *Yaeyama Nippo*, 3 August 2013. (in Japanese)

islands have never been a part of Ryukyu, basically because the Ryukyans failed to discover them before the Chinese.⁹⁰ Chinese first discovery of the Diaoyu Islands was greatly facilitated by its suitable social and cultural, as well as geographical and hydrological conditions.

First, Ryukyu was inferior to China, with respect to iron producing and shipbuilding technology, as well as sailing skills. Since ancient times, Ryukyu lacked the iron sand needed in the production of wrought iron, therefore even ironware of every uses was not available in its market.⁹¹ At some time in history, Ryukyu “had no commercial, industrial or mineral industry, nor traders or merchants”, and its people “used bamboo to make rafts, instead of taking ships or boats”.⁹² In the 14-15th century, the Ryukyuan shipping industry was still at a primary stage. Considering the poorly-developed shipbuilding and shipping technology of Ryukyu, Zhu Yuanzhang, the first emperor of Chinese Ming Dynasty, presented, in 1392, Ryukyu with sea-going ships, and also sent “Fujian citizens bearing 36 different surnames, who are good at shipping, to Ryukyu, and ordered them to carry out tributary missions.”⁹³ These factors decide the impossibility for the Ryukyans to first discover the Diaoyu Islands. In contrast, the Chinese, at that time, had good shipbuilding and shipping skills, and invented the compass, a necessary tool used in navigation, it is therefore justified to say that China first discovered the Diaoyu Islands.

Second, judging from the distance to the compass route and the number of islands serving as navigational aids, ancient Chinese had better chance to first discover the Diaoyu Islands. According to Chinese historical records about compass routes and the distance concerned, the distance between Minjiang River estuary and the Diaoyu Islands was 330 km approximately; on west of Keelung, there were islands used for navigational aids, such as White Dog Islands, and

90 Sha Xuejun, Historical and Geographical Evidences Supporting China's, Rather Than Ryukyu's Ownership of Diaoyutai, *Journal of Xuecui*, Vol. 14, No. 2, 1972, p. 16. (in Chinese)

91 Sha Xuejun, Historical and Geographical Evidences Supporting China's, Rather Than Ryukyu's Ownership of Diaoyutai, *Journal of Xuecui*, Vol. 14, No. 2, 1972, p. 16. (in Chinese)

92 Li Tingji, *Li Wen Jie Gong Wen Ji (Collected Works of H.E. Mr. Li)*, in Chen Zilong et al. eds., *Ming Jing Shi Wen Bian (The Collection of the Articles on the Management of State Affairs in the Ming Dynasty)*, Vol. 460, Beijing: Zhonghua Book Company, 1962. (in Chinese)

93 Long Wenbin, *Ming Hui Yao (Records of Ming Dynasty)*, Vol. 77, *Foreign State 1, Ryukyu*, Beijing: Zhonghua Book Company, 1956. (in Chinese)

Dongshashan (island), hence it was quite convenient for the Chinese to reach the Diaoyu Islands. Plus, Keelung was only 200 km away from the Diaoyu Islands, and HoapinSu and Pengjia Islet were used as sea marks between them. In contrast, the distance between Naha of Ryukyu and the Diaoyu Islands, and that between Kume-jima and the Diaoyu Islands were 460 km and 410 km respectively, both of which were one times longer than that from Keelung to the Diaoyu Islands. More importantly, a small island called Chiwei, also used as a navigation mark, was lying between Kume-jima and the Diaoyu Islands. To cross the distance of 280 km on the sea between Chiwei Island and Kume-jima, seemed to be an impossible challenge to Ryukyuan, since their navigation and shipbuilding technology was poorly developed. Even though Chiwei Island was only 130 km away from the Diaoyu Islands, it was still difficult for the Ryukyuan to reach there by sea, due to the long distance from the Diaoyu Islands to Naha and Kume-jima and the resulting inconvenience of contact and communication.⁹⁴

Third, based on the flow direction of the Black Tide, the hydrological conditions of the waters surrounding Diaoyu Islands, and the routes of the investiture missions, we can see that the Chinese were more inclined than the Ryukyuan to discover the Diaoyu Islands, and Japanese claim of these islands being *terra nullius* is groundless. From time immemorial, the Chinese, relying on the monsoon and Black Tide (also called “Japan Current”),⁹⁵ had travelled to Ryukyu and Japan. In ancient times, Chinese ships usually sailed from Minjiang River to Ryukyu, via northern Taiwan. The Chinese ships were sailing downward with the branch of the Black Tide and the southeast monsoon, implying that these ships could travel faster and had greater chances to discover the Diaoyu Islands. In contrast, to reach the Diaoyu Islands, Ryukyuan ships had to first go through the Ryukyu Trench, and sail against the Black Tide, which would drag down the sailing speed and further add to the difficulties of sailing. Therefore, the Ryukyuan had lesser chances to first

94 Sha Xuejun, Historical and Geographical Evidences Supporting China's, Rather than Ryukyu's Ownership of Diaoyutai, *Journal of Xuecui*, Vol. 14, No. 2, 1972, p. 17. (in Chinese)

95 “Black Tide” is a north-flowing branch of the Pacific North Equatorial Current when it flows along the coast of mainland. It begins off the Philippines, Taiwan Strait, the east coast of Taiwan and flows northeastward past Yaeyama, Miyako and Diaoyu Islands, and then towards Japan and South Korea. It flows at a speed of 4-5 nautical miles per hour on average. When it pasts Yaeyama, Miyako, Ryukyu Islands and Diaoyu Islands, its western part returns south, owing to the wind direction and impact of coast. See Yang Chungkui, *China, Ryukyu and Diaoyu Islands*, Hong Kong: Union Research Institute, 1972, p. 135. (in Chinese)

discover the Diaoyu Islands.⁹⁶

Fourth, the relevant submarine topography information tells that a natural boundary exists between China and Ryukyu. From Tsushima Strait, to South of the Diaoyu Island and the Chiwei Island, the northern coast of Taiwan, the entire Taiwan Strait, and then to the coast of Guangdong Province, there are continental shelves within 200 meters, which are the natural prolongation of China's land territory. In comparison, the waters near the Southeastern Ryukyu Islands is, on average, more than 3,000 meters deep, with a maximum depth of 7,000 meters above. Plus, the trench located between the Ryukyu Islands and the Diaoyu Islands is called the Ryukyu Trench. Most part of the trench is 1000~2000 meters deep. The trench trends north-northeast to south-south west, with its southern part lying between the Yaeyama Islands and Taiwan. The Black Tide, which moves from south to north in the Ryukyu Trench, together with the trench, forms the natural boundary between China and the Ryukyu Kingdom.⁹⁷ From time immemorial, the Ryukyuan have lived on the eastern side of this boundary, and the Chinese on the western side. To conclude, due to the social, cultural, geographical, geological and hydrological factors above, the Ryukyuan did not have the chance to discover the Diaoyu Islands earlier than the Chinese.

B. The Existence of a Natural Boundary Between China and Ryukyu: Evidences from Historical Accounts of Many States

The fact that a boundary exists between China and Ryukyu, and that the Diaoyu Islands is a part of Chinese territory, is a common understanding reached between the two States. During almost five centuries, spanning from 1372 to 1866, the imperial courts of the Ming and Qing Dynasties sent imperial envoys to Ryukyu 24 times to perform investiture ceremonies and rituals for Ryukyuan kings, and the Diaoyu Islands was exactly located on their route to Ryukyu. Ample volume of records about the Diaoyu Islands could be found in the mission reports written by Chinese imperial envoys, including Chen Kan, Xie Jie, Xia Ziyang, Wang Ji and

96 Sha Xuejun, Historical and Geographical Evidences Supporting China's, Rather Than Ryukyu's Ownership of Diaoyutai, *Journal of Xuecui*, Vol. 14, No. 2, 1972, p. 17. (in Chinese)

97 Sha Xuejun, Historical and Geographical Evidences Supporting China's, Rather Than Ryukyu's Ownership of Diaoyutai, *Journal of Xuecui*, Vol. 14, No. 2, 1972, p. 17. (in Chinese)

Zhou Huang. In 1650, Shō Shōken, the Ryukyuan *sessei* (“prime minister”) at that time, compiled the first history of the Ryukyu Kingdom, *chūzan seikan* (Mirror of Chūzan). This book quoted the full passage concerning the Diaoyu Islands from the *Record of the Imperial Envoy’s Visit to Ryukyu*, a book written by Chinese envoy Chen Kan. Notably, Shō Shōken raised no objection to the sentence “Then Gumi Mountain (known as Kume Island today) comes into sight, that is where the land of Ryukyu begins”, which was used to describe the boundary between China and Ryukyu in Chen’s book.⁹⁸ In addition, in 1708, Tei Junsoku, a noted scholar and the Grand Master with the Purple-Golden Ribbon (a government official) of Ryukyu, attached a map in his book *A General Guide*, which put Diaoyutai together with Huangwei and Chiwei Islands, forming a clear boundary line between Kume Island.⁹⁹ These Ryukyuan historical accounts indicate that Chiwei and Huangwei Islands belong to the territory of China, while Kume Island belongs to Ryukyu, and that *Hei Shui Gou* (today’s Okinawa Trough), lying between Chiwei Island and Kume Island, constitutes the boundary line between the two States. The boundary of Ryukyuan territory can also be found in Japanese records. A perfect example in this case is the Map of the Three Provinces and 36 Islands of Ryukyu, which was attached in the book *Sangoku Tsūran Zusetsu (An Illustrated Description of Three Countries)* written by Hayashi Shihei (1783 – 1793).¹⁰⁰ Historical documents of Ryukyu, including *Chūzan Seifu*, which was edited by Sai Taku and rewritten by his son Sai On, have all clearly depicted the boundary of Ryukyu Kingdom.¹⁰¹

98 Zheng Hailin, *The History of Diaoyu Islands and the Relevant Jurisprudence*, Beijing: Zhonghua Book Company, 2007, p. 98. (in Chinese)

99 This map, in practice, best explained the following statements by Chinese envoys Chen Kan and Guo Rulin: “Then Gumi Mountain comes into sight, that is where the land of Ryukyu begins”, and “Chi Yu is the mountain that marks the boundary of Ryukyu”. See Zheng Hailin, *The History of Diaoyu Islands and the Relevant Jurisprudence*, Beijing: Zhonghua Book Company, 2007, pp. 98~99. (in Chinese)

100 *Sangoku Tsūran Zusetsu (An Illustrated Description of Three Countries)* by Hayashi Shihei was published in Japan in the Autumn of 1785. This illustrated book is attached with five maps, namely: Complete Picture of World Distances of the Outline of the Three Countries, Complete Picture of the Country of Ezo, Complete Picture of the Country of Korea, Picture of the Uninhabited Islands, and the Map of the Three Provinces and 36 Islands of Ryukyu. See [Japan] Murata Tadayoshi, *The Diaoyu Islands Disputes*, *Hundred Year Tide*, No. 6, 2004, pp. 56~62. (in Chinese)

101 According to *Chūzan Seifu*, the Ryukyu Island was composed of three principalities, five provinces and 15 prefectures (35 prefectures in fact). The three principalities were Chūzan, which was constituted of five provinces and 11 prefectures, Nanzan (15 prefectures) and Hokuzan (9 prefectures). In addition to that, there were also 36 islands. See [Japan] Murata Tadayoshi, *The Diaoyu Islands Disputes*, *Hundred Year Tide*, No. 6, 2004, pp. 56~62. (in Chinese)

In a word, historical accounts and maps from the three States, China, Japan and Ryukyu, all show that, Ryukyuan islands do not include Diaoyu, Huangwei and Chiwei Islands, which was a common understanding among the three States.

*C. Japanese Claim of the Diaoyu Islands Being Terra Nullius Is
Ill-grounded in Historical Facts and International Law*

Japan declared, “[f]rom 1885 on, surveys of the Senkaku Islands were thoroughly carried out by the Government of Japan ... Through these surveys, it was confirmed that the Senkaku Islands had been uninhabited and showed no trace of having been under the control of the Qing Dynasty of China.”¹⁰² The Government of Japan has alleged for years that it has, in accordance with the principle of “occupation of *terra nullius*”, legally incorporated the Diaoyu Islands into its territory. In this regard, “surveys of the Senkaku Islands”, in the words of Japan, concerns the issue of history, and “occupation of *terra nullius*” is a question of international law.

Japan maintained that it had conducted on-site surveys of the Senkaku Islands time and again since 1885, which, however, is contrary to the truth. Official documents of the Meiji Government confirm that, Japan only carried out one survey of the Diaoyu Islands in October 1885, where the Japanese merely landed on the Diaoyu Island, but not Huangwei and Chiwei Islands.¹⁰³ Inoue Kaoru, Japan’s Minister of Foreign Affairs at that time, came to know that the Diaoyu Islands “which are close to the national border of Qing China and adjacent to Taiwan

102 Ministry of Foreign Affairs of Japan, The Basic View on the Sovereignty over the Senkaku Islands, at http://www.mofa.go.jp/region/asia-paci/senkaku/basic_view.html, 12 October, 2016.

103 The results of this survey can be seen in the *Summary Report of Inspection of Uotsuri Island and Two Other Islands* submitted by Ishizawa Heigo, and the *Report of Voyage to Uotsuri Island, Kuba Island, and Kumeakashima Island* by Hayashi Tsurumatsu, the captain of the Ship *Izumo Maru*, to Mori Nagayoshi, the senior executive secretary of Okinawa Prefecture, who was acting on behalf of the Okinawa Governor Nishimura Sutezo. See [Japan] Murata Tadayoshi, *The Origin of Sino-Japanese Territorial Disputes: the Diaoyu Islands Issue Seen from Historical Archives*, translated by Wei Pinghe, Beijing: Social Sciences Academic Press (China), 2013, pp. 166~169 (in Chinese); Li Li, *Japan’s Illegal Investigation and Theft of Diaoyu Islands in Modern Times*, Beijing: Social Sciences Academic Press (China), 2013, pp. 12~14. (in Chinese)

Island ... belong to Qing China”.¹⁰⁴ The document of the Ministry of Foreign Affairs of Japan (Qin Zhan No. 38) indicated that, Inoue Kaoru expressed its objection to the setting up of national sovereignty markers on the Diaoyu Islands, saying to the Home Minister Yamagata Aritomo: “At this time, if we were to publicly place national markers, this must necessarily invite China’s suspicion.”¹⁰⁵ This point can also be proved by the statement in an official document prepared by Nishimura Sutezo, the governor of the Okinawa Prefecture, on November 24 of the same year: “since this matter is not unrelated to China, if conflicts do arise, please give me instructions on how to deal with them.”¹⁰⁶ On November 30, 1885, Japan’s Chancellor of the Realm Sanjō Sanetomi gave an order [Mi No. 218(2)] to Inoue Kaoru, deciding to put off the setting of sovereignty markers.¹⁰⁷ The following evidences can substantiate this conclusion. First, documents unearthed from the Navy Ministry of Japan indicated, the governor of the Okinawa Prefecture Maruoka Kanji, on January 27, 1892, wrote to the Navy Minister Kabayama Sukenori, saying that “surveys of the Diaoyu Islands are incomplete”. Consequently, he requested that the naval ship *Kaimon* be sent to survey the islands, but ultimately the “bad weather” made it impossible for the survey to take place.¹⁰⁸ Second, the Okinawa governor Narahara Shigeru wrote, in May of 1894, to the Home Ministry of Japan, confirming that ever since the islands were first investigated in 1885, there had been no subsequent field surveys conducted.¹⁰⁹ After

104 An American Newspaper Article: Japan Should Respect the International Treaties concerning the Diaoyu Islands, at http://news.xinhuanet.com/world/2012-10/22/c_123850855.htm, 1 November 2016. (in Chinese)

105 Construction of National Markers on the Kumeakashima Island, Kuba Island and Uotsuri Island of Okinawa Prefecture (JCAHR: B03041152300), *Documents on Japanese Foreign Policy*, Vol. 18, p. 572. (in Japanese)

106 B03041152300 ① 17, *Documents on Japanese Foreign Policy*, Vol. 18, p. 576.

107 Construction of National Markers on the Kumeakashima Island, Kuba Island and Uotsuri Island of Okinawa Prefecture (JCAHR: B03041152300), *Documents on Japanese Foreign Policy*, Vol. 18, p. 572. (in Japanese)

108 Han-yi Shaw, The Inconvenient Truth Behind the Diaoyu/Senkaku Islands, *The New York Times*, 19 September 2012; “Ministry of Foreign Affairs” of Taiwan, Taiwan Government Response to the Diaoyutai Islands Q&A on the Website of Japan’s Ministry of Foreign Affairs, at <http://www.mofa.gov.tw/cp.aspx?n=FBFB7416EA72736F&s=FAA8620A0EE72A91>, 30 January 2015. (in Chinese)

109 Construction of National Markers on the Kumeakashima Island, Kuba Island and Uotsuri Island of Okinawa Prefecture (JCAHR: B03041152300) (in Japanese); Han-yi Shaw, The Inconvenient Truth Behind the Diaoyu/Senkaku Islands, *The New York Times*, 19 September 2012; “Ministry of Foreign Affairs” of Taiwan, Taiwan Government Response to the Diaoyutai Islands Q&A on the Website of Japan’s Ministry of Foreign Affairs, at <http://www.mofa.gov.tw/cp.aspx?n=FBFB7416EA72736F&s=FAA8620A0EE72A91>, 30 January 2015. (in Chinese)

a number of Chinese defeats in the Sino-Japanese War (started in the August of 1894), Japan's Home Minister Nomura Yasushi, in December 1894, sent a secret document (Classified No. 133) to the Foreign Minister Mutsu Munemitsu. On how to reply the request for setting up sovereignty markers on the Diaoyu Islands, which was submitted by the governor of Okinawa Prefecture a year ago for the third time, this document stated, "this matter has already been discussed with your ministry, and an order has been made ... but the situation today is greatly different from back then."¹¹⁰ The sentence "but the situation today is greatly different from back then", completely uncovered the conspiracy of the Japanese Government to steal Chinese territory, by taking advantage of the First Sino-Japanese War, and also made it difficult for the Japanese to justify its claim that the Diaoyu Islands was irrelevant to the Treaty of Shimonoseki. The truth is that the Okinawa Prefecture only carried out a one-day survey on the Daito Islands and then placed markers on them.¹¹¹ In contrast, the so-called "on-site surveys time and again" carried out by the authorities of Okinawa Prefecture and the Diaoyu Islands being *terra nullius*, are fictions made by the Japanese against China. Furthermore, the survey report prepared by the Okinawa Prefecture in 1885, titled *Summary Report of Inspection*

110 "B03041152300 の 29", *Documents on Japanese Foreign Policy, Vol. 18*.

111 In June and July, 1885, the Home Ministry of Japan sent a secret order to Okinawa Governor Nishimura Sutezo, asking him to survey the Daito Islands located to the east of Okinawa Island. Ordered by Nishimura, on 29 August of the same year, a group led by Ishizawa Heigo landed on Minamidaito Island by the ship *Izumo Maru*. On 31 August, they came to the Kita-Daito Island, where they conducted field surveys, as ordered, and erected a national marker saying "under the jurisdiction of Okinawa Prefecture". And Captain Hayashi Tsurumatsu set up a navigation mark, saying "under the order of the Okinawa Prefecture, Empire of Japan, *Izumo Maru*, a ship owned by Osaka Shosen, created this sea route for steamships". *Izumo Maru* returned to the port of Naha on 1 September. See [Japan] Murata Tadayoshi, *The Origin of Sino-Japanese Territorial Disputes: the Diaoyu Islands Issue Seen from Historical Archives*, translated by Wei Pinghe, Beijing: Social Sciences Academic Press (China), 2013, pp. 150~152. (in Chinese)

of *Uotsuri Island and Two Other Islands*,¹¹² repetitiously mentioned “Hoa Pin Su” and “Tia u su”. These two names appearing on maps charted by British cartographers are, actually, names of the Diaoyu Islands given by the Chinese.¹¹³

Under international law, acquisition of territory through occupation is an act of a State intending to place the territory which has never been subject to the sovereignty of any State, i.e., *terra nullius*, under its own sovereignty.¹¹⁴ One prerequisite of occupation is that the land subject to occupation is *terra*

112 *Summary Report of Inspection of Uotsuri Island and Two Other Islands* stated, “this island, when compared with the map of the sea areas between Japan and Taiwan published by Great Britain, refers to ‘Hoa Pin su’, which is recorded as ‘Tia u su’ on the map. The use of ‘Tia u su’ is actually a misnomer. ‘Kumeakashima Island’ refers to Raleigh Rock, which is merely a rock ... The map also mistook ‘Pinnacle’ for ‘Kuba Island’. The word ‘Pinnacle’ means “a high pointed piece of rock” ... Therefore, these mistakes are hereby corrected: ‘Uotsuri Island’ should be recorded as ‘Hoa Pin Su’, ‘Kuba Island’ as ‘Tia u su’, and ‘Kumeakashima Island’ as ‘Raleigh Rock’.” Murata Tadayoshi pointed out that, Ishizawa Heigo, the submitter of the Summary Report, mistook “Hoa Pin Su” for “Uotsuri Island”. See [Japan] Murata Tadayoshi, *The Origin of Sino-Japanese Territorial Disputes: the Diaoyu Islands Issue Seen from Historical Archives*, translated by Wei Pinghe, Beijing: Social Sciences Academic Press (China), 2013, p. 169. (in Chinese)

113 Zheng Hailin, *The History of Diaoyu Islands and the Relevant Jurisprudence*, Beijing: Zhonghua Book Company, 2007, p. 75. (in Chinese)

114 The term “occupation” was translated into “占领” in the Chinese version of *Oppenheim’s International Law (9th edition)*, by scholars led by Wang Tiejia, an internationalist from Chinese Mainland. However, this term was translated into “先占” by Taiwanese internationalist Chiu Hungdah in his book *Modern International Law* (edited by Chan Shun-ye), when he quoted the wording concerning territorial disputes from the same edition of *Oppenheim’s International Law*. In the view of Chiu, in the context of territorial acquisition, “occupation” should be translated into “先占” in Chinese; however, under law of war, it should be translated into “占领”; they have different connotations. Sovereignty cannot be acquired through military occupation. The Chinese version of this paper adopted Chiu’s translation. See Chiu Hungdah, *Modern International Law (3rd edition)*, edited by Chan Shun-ye, Taipei: San Min Book Co., Ltd., 2013, pp. 514~515 (in Chinese); Robert Jennings and Arthur Watts eds., *Oppenheim’s International Law, Vol. 1, No. 2*, translated by Wang Tiejia et al., Beijing: Encyclopedia of China Publishing House, 1998, pp. 74~79. (in Chinese)

nullius,¹¹⁵ which belongs to no State. Such a piece of land is either uninhabited or inhabited by indigenous peoples that do not sustain social and political organization qualified as a State.¹¹⁶ Although the doctrine of occupation is still used in modern international law, internationally accepted *terra nullius* is increasingly fewer. As a result, the influence and public acceptance of this doctrine is gradually declining. Moreover, occupation of territory should be effective rather than fictitious.¹¹⁷ The international law, in its early stage, failed to provide that to constitute an act of occupation, two requirements (possession and administration) need to be met; instead, it asserted that discovery alone is sufficient to create title of sovereignty. Nonetheless, international law theories and state practice in the 19th century uphold that only an effective occupation can acquire territorial sovereignty.¹¹⁸

The Basic View on the Sovereignty over the Senkaku Islands,¹¹⁹ issued by the Foreign Affairs of Japan in 1972, shows that the Japanese Government, based on the doctrine of the occupation of *terra nullius*, raised its claim to the sovereignty of Diaoyu Islands, and also alleged that the formal incorporation of the Diaoyu

115 *Terra nullius* is a prevailing concept of the international law in the 18th century, which was employed by European States to defend their colonial activities. The concept *terra nullius* in international law was expounded by Emmerich De Vattel, a renowned internationalist in the 18th century, in his book *Le Droit des Gens*. He justified British occupation of Oceania or European States' occupation of the whole North America. He divided the land of indigenous peoples into two categories: cultivated or uncultivated. Vattel argued, the Europe-led international law should provide that humans were obliged to exploit and cultivate the land they inhabited and used. The failure of unsettled hordes to fulfill such an obligation implied that they had never "actually and legally" occupied these lands. Due to the lack of any recognizable forms of social leaders, these hordes cannot be considered as having occupied the lands under international law, which means that their lands were *terra nullius*. In that case, according to the principle of discovery and occupation, *terrae nullius* were open to all colonizers. See De Vattel, *Les droit des Gens, ou Principes de la Loi naturelle, appliqués a la conduit at aux affaires des Nations et des Souverains* (1758), translated by Charles Ghequiere Fenwick, Washington: Carnegie institution of Washington, 1916, p. 194.

116 Robert Jennings and Arthur Watts eds., *Oppenheim's International Law, Vol. 1, No. 2*, translated by Wang Tieya et al., Beijing: Encyclopedia of China Publishing House, 1998, p. 74. (in Chinese)

117 Robert Jennings and Arthur Watts eds., *Oppenheim's International Law, Vol. 1, No. 2*, translated by Wang Tieya et al., Beijing: Encyclopedia of China Publishing House, 1998, p. 75. (in Chinese)

118 Robert Jennings and Arthur Watts, *Oppenheim's International Law, Vol. 1*, 9th ed., Harlow: Longmans Group UK Limited, 1992, pp. 689~690.

119 Ministry of Foreign Affairs of Japan, The Basic View on the Sovereignty over the Senkaku Islands, at http://www.mofa.go.jp/region/asia-paci/senkaku/basic_view.html, 12 October 2016.

Islands into its territory was conducted through a legal procedure, i.e., through the adoption of a Cabinet Decision on 14 January 1895. However, is the concept “uninhabited island” identical with the concept of *terra nullius* in international law? Further, does the procedure that Japan relied on to incorporate the Diaoyu Islands into its territory comply with international law?

First, albeit uninhabited, the Diaoyu Islands has been included in the coastal defense areas, and placed under the jurisdiction of Fujian Province, by Chinese authorities ever since the Ming Dynasty. This act qualifies as an effective occupation. The surveys of uninhabited islands, including Daito Islands, carried out by the authorities of Okinawa Prefecture in the 19th century, showed that Japan possessed many uninhabited islands. However, the fact that an island is uninhabited does not imply that this island is subject to no owner or possessor, or an owner should be found for it. The Japanese Government gave up its intention to place national markers on the Diaoyu Islands in 1885, because it was knowledgeable of the relevance between these islands and Chinese Qing Empire. In that case, the Japanese Government cannot claim the sovereignty of these “uninhabited islands”, if it had not inquired the Qing Court about their sovereignty and received a reply from Qing Court, saying these islands “do not belong to Chinese territory”.¹²⁰ In practice, at that time, the Japanese was not unaware of the principle that *terra nullius* should be confirmed and occupation thereof should be proclaimed. For example, when the Meiji Government incorporated Iwo Jima into its territory in 1891, the incorporation was made public by the Imperial Decree No. 190 issued on 9 September of the same year, following the Cabinet Decision dated 19 August 1891; and when the Meiji Government incorporated Minami-Tori-shima in 1898, the incorporation was publicized by the Official Gazette of Tokyo Prefecture (No. 58) issued on 24 July of the same year, after the Cabinet Decision dated 1 July 1898. These facts demonstrate that Japan’s clandestine occupation of the Diaoyu Islands deviated from international law and international customs and practices, and also from its domestic practices.¹²¹

Second, Japan alleged that, by virtue of its Imperial Decree No. 13 concerning

120 [Japan] Murata Tadayoshi, *The Origin of Sino-Japanese Territorial Disputes: the Diaoyu Islands Issue Seen from Historical Archives*, translated by Wei Pinghe, Beijing: Social Sciences Academic Press (China), 2013, pp. 150~177. (in Chinese)

121 “Ministry of Foreign Affairs” of Taiwan, Taiwan Government Response to the Diaoyutai Islands Q&A on the Website of Japan’s Ministry of Foreign Affairs, at <http://www.mofa.gov.tw/cp.aspx?n=FBFB7416EA72736F&s=FAA8620A0EE72A91>, 30 January 2015. (in Chinese)

the division of Okinawa Prefecture into several districts in 1896, the prefecture was divided into five districts. However, the decree said nothing about the Diaoyu Island and its affiliated islands, nor listed Diaoyu, Chiwei and other islands together with the Yaeyama Islands. That is to say, Diaoyu and Chiwei Islands had not been included in the Okinawa Prefecture by the Imperial Decree No. 13. Even after the end of the Sino-Japanese War, the Japanese Government did not formally go through the procedure to take possession of the Diaoyu Islands.¹²² Additionally, the national markers approved to be erected on the Diaoyu Islands by the Cabinet Council, actually, had not been set up by the authorities of Okinawa Prefecture. In 1968, the United Nations Economic Commission for Asia and the Far East, also known as the “ECAFE”, issued a conclusive report on the seabed resources in the East China Sea. It is against this backdrop that the authorities of Ishigaki promptly placed boundary markers on the Diaoyu Island on 9 May 1969.¹²³ Furthermore, legal rights cannot derive from illegal acts. Two other documents can prove that Japanese claims are void *ab initio*. One is the *Fishery Survey of Miyako and Yaeyama Districts*, edited by the Aquaculture Technician (an official title) of Okinawa Prefecture in 1913. This Fishery Survey recorded the following facts about “Senkaku Islands”: Tatsushiro Koga intended to lease the islands from Japanese Government, but at that time, “it is said that these islands belong to Qing China, therefore, Koga has not received a reply from the government for a long time. However, with the advent of the Sino-Japanese War, resulting in the incorporation of Taiwan into Japanese territory, the ownership of these islands (Senkaku Islands) becomes clear.” This passage reveals that, prior to the incorporation of the Diaoyu Islands, the Meiji Government had already known that they were not *terra nullius*. The second document is the Government Gazette No. 2507 dated 9 December 1920. This gazette includes two items: “the incorporation of territories whose ownership is uncertain” and their “naming”. Here, “territories whose ownership is uncertain” refer to Chiwei Island, which was renamed “Taishō-tō” by the Japanese. It implies that Japan’s secret Cabinet Decision of 14 January 1895 neither complied with its national law, nor the international law. Further,

122 [Japan] Murata Tadayoshi, *The Origin of Sino-Japanese Territorial Disputes: the Diaoyu Islands Issue Seen from Historical Archives*, translated by Wei Pinghe, Beijing: Social Sciences Academic Press (China), 2013, pp. 222~223. (in Chinese)

123 [Japan] Murata Tadayoshi, *The Origin of Sino-Japanese Territorial Disputes: the Diaoyu Islands Issue Seen from Historical Archives*, translated by Wei Pinghe, Beijing: Social Sciences Academic Press (China), 2013, pp. 201~202. (in Chinese)

when listing the territories to be incorporated, it contained such a major omission that Japan had to unilaterally incorporate Chiwei Island and renamed it as “Taishō-tō” after 25 years upon the end of the Sino-Japanese War.¹²⁴

To sum up, one prerequisite of occupation is that the land subject to occupation should be *terra nullius*, or land without owner. Second, in accordance with the general international law rules recognized by civilized States, the doctrine of effective occupation of *terra nullius* under international law requires that *terra nullius* should be confirmed and occupation thereof should be proclaimed, which are two indispensable requirements in this regard. Third, by virtue of the international law principle that a State cannot acquire legal rights or entitlements through unlawful acts or omissions, Japan’s stealing of Diaoyu Islands, as an illegal act, cannot be served as the ground to obtain legal rights. Great volumes of facts demonstrate that Japan’s claims to the sovereignty of Diaoyu Islands by invoking the doctrine of occupation of *terra nullius*, is not well grounded.

V. Conclusions

This paper argues, taking into account of the history of the pre-modern Ryukyu and the international law of the 19th century, represented by the *Elements of International Law*, Ryukyu should be defined as a sovereign State, even in the period when it was subordinated both to China and Japan.

First, the historical status of Ryukyu can be examined by reviewing its own history and other tributary States under the same tributary system with Ryukyu. Chronologically, the historical status of Ryukyu may be discussed in three stages. In the period before the Satsuma’s invasion of Ryukyu in 1609 (Stage 1), Ryukyu was an independent Kingdom, which is without much debate among the historians of many States. In the period between 1609 and 1872, also called “the period of dual subordination” (Stage 2), whether Ryukyu was an independent Kingdom, is full of opposing views. In this stage, Ryukyu not only retained its political institutions and reign title, but also had diplomatic and trade exchanges with its Asian neighbors, including the Japanese shogunate. From 1854 to 1859, Ryukyu, in the name of a sovereign State under modern international law, signed commercial treaties with the U.S., France and the Netherlands. More importantly, in order to

124 Han-yi Shaw, The Inconvenient Truth Behind the Diaoyu/Senkaku Islands, *The New York Times*, 19 September 2012

seek gains from Sino-Ryukyuan trades, both Satsuma and Ryukyu deliberately hid the relations between them from the international community, including China. Viewed from the history of the diplomatic relations between China, Japan and Ryukyu, and from international law, Japan cannot acquire the sovereignty over Ryukyu through Satsuma's invasion of the latter, therefore, it is true to say: Ryukyu was subordinated both to China and Japan, and simultaneously remained an independent Kingdom. In the third stage, that is the period from 1872 to 1880 when the Sino-Japanese negotiations about Ryukyu were conducted, the status of Ryukyu was pending. The frequent diplomatic negotiations between China and Japan over the ownership of Ryukyu, and the mediation or good offices offered by some third State to settle the Sino-Japanese dispute over Ryukyu in this Stage, as well as the draft treaty with regards to the division of the Ryukyu Islands and the revision of the treaty concerned in 1880 (which was not signed by Qing Court at the end), all prove that the status of Ryukyu was pending at this stage. Additionally, around the time Japan and China were negotiating, Qing Court also negotiated with the major powers of Europe concerning the other three tributaries, Korea, Vietnam and Burma. Different from the case of Ryukyu, the change of the legal status of these three tributary States had been confirmed through treaties, and acknowledged by their suzerainty – China. In contrast, from 1879 when Japan annexed Ryukyu by violence, to the end of World War II, Japan and China failed to reach any formal agreements with respect to the change of the sovereignty over Ryukyu and the arrangement for Ryukyuan territories, except some negotiations over the draft treaty concerning the division of the Ryukyu Islands in 1880. More importantly, those tributaries (other than Ryukyu) under Chinese tributary system, had freed themselves from colonial rule, and now become independent States in the UN framework.

Second, based on the doctrine of intertemporal law, the international law status of Ryukyu should be viewed in the eye of modern and contemporary international law. As we know, *Elements of International Law*, by Henry Wheaton, is a masterpiece, representing modern international law. When Japan and Qing were negotiating over the Ryukyu issue, the status of Ryukyu in the period of dual subordination became a focus of contention, where China, Japan and Ryukyu all invoked the book *Elements of International Law* as legal grounds to support their own arguments. In accordance with the theories concerning sovereignty and legal persons contained in the said book, Ryukyu's dual subordination to China and Japan, did not contradict with its status of being an independent Kingdom.

However, after 1879, when Ryukyu was annexed by Japan and incorporated into its territories, Ryukyu became a colony of the latter, which impaired the sovereignty of Ryukyu. This is an undeniable truth. Following Japan's annexation of Ryukyu in 1879, many Ryukyuan fled to Qing China, seeking to restore the kingdom, and the "restoration movement" was also staged in the homeland of Ryukyu, which vividly manifest the resistance from Ryukyuan. Furthermore, China, being the suzerainty of Ryukyu, had never publicly recognized the legality of Japan's annexation. Japan's occupation of Ryukyu in the period between 1879 and the end of World War II, actually, is a kind of conquest in light of the theories of territorial acquisition under international law. Nevertheless, the Japanese cannot, by virtue of its conquest, evade the truth that the legal status of Ryukyu at that time was uncertain. In addition, according to the modern international trusteeship system, China and the U.S., in the Cairo Conference of 1943, agreed to joint administration of Ryukyu by the two States under the trusteeship of an international organization. However, after the end of the World War II, Ryukyu was under the *de facto* administration of the U.S. alone. Thereafter, despite the desire of many inhabitants of the Ryukyu Islands for independence, the U.S., through signing the Okinawa Reversion Agreement of 1971, "returned" the power of administration of Ryukyu to Japan, which severely violated the four principles of international trusteeship and the juridical logic of trust law in the trusteeship system. At the meantime, in view of the concept of "residual sovereignty", Japan only obtained the power of administration rather than sovereignty of Ryukyu.¹²⁵

In conclusion, during the time from 1372 to 1879, Ryukyu, being a tributary State of China, was a sovereign State under international law. Japan's annexation of Ryukyu by violence was resisted by the inhabitants on the islands, whose legality had never been publicly recognized by China, the suzerainty of Ryukyu. Therefore, it is well grounded to consider the legal status of Ryukyu uncertain in this period. Due to the uncertainty of Ryukyu's own legal status, Japan's claim to the sovereignty over the Diaoyu Islands, based on the assertion that the Diaoyu Islands belonged to Ryukyu, must be ill-founded and unjustified.

Translator: XIE Hongyue

125 Liu Dan, Ryukyu Trusteeship Viewed from International Law: A Related Analysis of the Sovereignty Problem of Diaoyu Islands, *Pacific Journal*, Vol. 20, No. 12, 2012, pp. 82-97. (in Chinese)