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THE INTERNATIONAL LEGAL STATUS OF THE RYUKYU ISLANDS

A Thesis

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for the Degree of

MASTER OF ARTS

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Richard P. Bray, Jr.

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Off the eastern coast of Asia there rise from the sea an interlocking series of mountain arcs. The bases of these mountains rest upon the ocean-bed, and those parts of them which protrude above the water form the islands which comprise the Empire of Japan.

From the southern tip of Kyushu, the southernmost of the four major islands that form Japan proper, there extends, curving gently toward the southwest, a group of mountain-tops breaking the water's surface - these are the Ryukyus.

Their original settlement occurred sufficiently long ago that its details are buried in the oblivion of antiquity. The islands and their people are first mentioned in Chinese records at the beginning of the seventh century. A native history, apparently for the most part apocryphal, records a glorious descent of the people and their rulers from a group of patron gods.

If we may credit the native account at all for information of that earliest known era of Ryukyuan history, the first outside contact of the islands in 607 A.D. found the islanders of that date grouped into a state, ruled by a king and a nobility. Both the Ryukyuan and Chinese accounts of this early communication are sparse in detail, but they are substantially in accord on the major points: that the date was about 607; that China aked the Ryukyuan king to "submit" to the Chinese Emperor, and that the king refused; that a punitive expedition from China defeated the Ryukyuans and returned to China bearing a number of prisoners.

Before we investigate further the history of this island kingdom, however, we had best get in mind a picture of the kingdom itself. The Japanese today speak of this island arc as being composed of six principal groups.

Furthest north, and almost directly off the Japanese coast, are the

North-Eastern and North-Western groups, and Shichi-to. Next comes the Oshima group, and southbf that the group centering about Okinawa, or "Great Luchu", the largest island in the archipelago, the seat of the original kingdom of Ryukyu (Chung Shan or Chusan) and of the subsequent Japanese administrative unit of Okinawa-ken. Most southerly, and extending almost to Formosa, are the Saki-shima or "Further Isles".

The North-Eastern group was formerly considered a part of the province of Osumi, and the North-Western group of Satsuma. These provinces now being combined into the ken of Kagoshima, the islands in those two groups fall under the administration of that ken. The Shichi-to or "Seven Isles" are all very small, and some are active volcanoes. They are practically uninhabited. They and the Oshima group are also under the jurisdiction of Kagoshima-ken. The Okinawa group and the "Further Isles" comprise the ken of Okinawa. The principal islands comprising the various groups are as follows:

North-Eastern

- Tane-ga-shima
- Make-jima
- Yaku-no-shima
- Kuchi-no-erabu-shima

North-Western

- Take-shima
- Iwo-ga-shima
- Kuro-shima

Oshima

- Amami-Oshima (second largest island in the archipelago)
- Kakeroma-shima
- Yoro-shima
- Uke-shima
- Kikai-ga-shima
- Toku-no-shima
- Oku-no-erabu-shima
- Yoron-jima

Saki-shima

- Miyako-jima
- Yayeyama subgroup
  - Ishigaki-jima
  - Iri-omote-jima
- Yonakuni-jima

Okinawa

Okinawa
Tori-shima (Iwo-zan or Iwo-sima)
Ihiya-jima
Izena-shima
Ie-shima
Akuni-jima
Tonaki-jima
Kerama-jima (a group, whose small detached eastern members are called Mae-jima and Kuro-shima.) The large central island is called Tokashiki-jima, while the small western members /~~five~~ in number/ are collectively known as Nishi-Kerama.)

Regarding "Great Luchu" or Okinawa, itself, Chamberlain has some very interesting comments to make:

> It has, from the most ancient times, been divided into three parts called Kunchan, Nakagami, and Shimajiri. ... The three provinces of Great Luchu are subdivided into districts termed magiri ... A like division into magiri obtains in all the islands formerly subject to the Luchuan kings. The term, though now unknown in Japan, is said to have been current in Satsuma in ancient days.

By the unconditional surrender of Japan on September 12, 1945, de jure as well as the previously acquired de facto control of all the islands of Ryukyu passed to the victors. Ultimately, there must be some disposition made of them; due to their strategic location south of Japan and off the east coast of China, their disposition is a matter of some importance to the United States, to Japan, to China, and perhaps to a number of other nations as well. It is pertinent, then, to inquire whether China has any claim to the Ryukyus superior to that of any other country.

Insofar as any moral claim is concerned, each must form his own opinion on the facts, including in his decision no doubt many imponderables with which this paper does not purport to deal. Our interest here is with legal claims. Legal, we may ask, under what law? It seems self-evident that problems involving at least three "states" in the (Western) international legal sense can scarcely be decided under the domestic law of any of those states. Most of the events upon which we must base a conclusion occurred at a period prior to the "reception" of Western international law by the states concerned. Is there any basis upon which we may nevertheless apply Western international legal concepts? Was there any "Oriental" international law under the aegis of which these countries may be presumed to have acted? Applying such international law as we may find to be applicable, were China's actions with respect to the Ryukyus sufficient to support a claim to sovereignty? Although the Treaty of 1874 will be discussed in more detail at a later point, it seems clear that by it and by subsequent conduct, China relinquished, so far as Japan is concerned, any claim to the Ryukyus, but does this bar the assertion of these rights against other nations? If we assume that there is no such bar, and look only at the state of affairs in 1874, we must ask if China,

at that time, had so acted or was so acting with relation to the Ryukyus as to give her a valid claim to sovereignty in opposition to the claims of other powers, or of the Ryukyuans themselves.

The above considerations, and an attempt to answer the questions presented, have dictated the organization of this paper.

To the question whether any "Oriental" international law prevailed, under which the parties may be presumed to have acted, a negative answer must be given. It is a generally recognized principle among civilized nations that if one affirmatively asserts the existence of a rule or system of law, the burden of proof rests upon the advocate. Applied to the Ryukyu situation, this rule requires that one who maintains that Japan and Ryukyu, or either of them, submitted to the Chinese tributary system qua a system of "international law" must support his case; it is not for one who denies that such occurred to advance evidence until after a prima facie affirmative case has been built up.

As a matter of fact, the available evidence seems to strongly support the negative position. Japan refused to become a tributary of China in 1374, agreed to accept such a status in 1381 (so as to secure the right to trade), and actually sent occasional tribute from 1403 to 1551; even if the acceptance of a tributary status in such haphazard fashion, for such a short period, and so long ago, is to be considered an acceptance of Chinese rules of "international law", the difficulty remains of determining what those rules were and to what extent they provide China with a basis for territorial claims.

This problem of what was involved in tributary status may be best considered with reference to the position of Ryukyu. The many ramifications of the matter are discussed in greater detail below, but the conclusions drawn may be summarized here. In becoming a tributary, Ryukyu assumed only two obligations - to bear tribute and to accept investiture. That these obligations were only symbolic and not indicative of any actual control by China of its tributaries is abundantly borne out by the historical records.

There is nothing to indicate that either Ryukyu or China believed that the act of becoming a tributary involved the assumption of any obligations other than these two. Even were it to be shown, however (say on the basis of newly-discovered records), that submission to China's rules of "international law" was an integral part of tributary status, we may well ask just what those rules were, and whether they in any way provided for the acquisition of sovereignty over territory.

Although an elaborate system of regulations and ceremonies covered tribute- and coronation-missions, thus providing a framework of "international law" governing the relations between China and each of her tributaries, there was no provision for the regulation of intercourse, diplomatic or otherwise, among the tributaries themselves. A glance at the index of any modern Western international law textbook will reveal the broad scope of present-day provisions on this subject, thus pointing up, by contrast, the sketchiness of the Chinese system.

Even where the Emperor-tributary relationship alone was concerned, the "law" for other matters than tribute-bringing and investiture does not appear to have ever attained the dignity of a coherent body to which one could refer in determining rights, duties, or a course of adtion. When Chung Shan and Shang Peh were engaged in war, for example (both being tributaries of the Ming Emperor at the time), the Emperor ordered the cessation of hostilities, but they did not cease until Chung Shan had emerged the victor. Admittedly, our modern international law in the West is sometimes found honored in the breach; the convincing element in this example is that this is the only order found, which deals with other than tribute or investiture, and this order was ignored.

Finally, the Chinese law, as it pertained to tributaries, made no provision for the acquisition of territorial jurisdiction, or "sovereignty"; even, then, were we to consider Japan and Ryukyu both tributaries, and were we to consider tributary status to involve submission to Chinese

"international law", we would here encounter a lacuna in the law, so that reference to other precepts than the law itself would be required to arrive at a decision.

Unless we can apply Western international law concepts, then, we have no acceptable criterion by which to judge the legality of the conflicting claims. What rational bases exist for applying those concepts? We might consider the Western international law of "acquisition" as an embodiment in concrete form of our ethical standards on the matter; in such a view, the weight of the respective "moral" claims of the contenders to Ryukyuan sovereignty might be determined on the scale of that law.

Since both China and Japan have entered the "family of nations" and submitted themselves to Western international law (the entry date of both being about 1900), it is possible to argue that they are thus bound to submit this particular dispute to determination under the rules of that law. This argument increases in merit when we consider the requirement of "effective control"; since before 1900, Japan has been in exclusive control of the islands, and for seventy-five years China has not disputed Japan's right to such control.

A further basis for the application of Western concepts is the comparatively recent assertion by China of any territorial claims to Ryukyu (this is discussed in greater detail in the following text). For six hundred years, no territorial claims were advanced, for the reason, apparently, that the Chinese philosophy of political relationships did not contemplate that the Emperor should directly govern any of the lands tributary to his throne. Only when Western political concepts penetrated the Orient were any claims made to the right of direct governance; if China latterly adopted the "sovereignty" philosophy, is it unfair to ask that she be considered to have adopted that philosophy in its entirety?

It is hoped that this discussion, although not by any means exhaustive of the possibilities, has demonstrated the advisability of considering the

application of Western international legal concepts, relative to the "acquisition of sovereignty", to the problem.

We may now ask what actions will suffice under Western international law to establish the sovereignty of a state over territory. As Oppenheim has pointed out, "No unanimity exists among writers on the Law of Nations with regard to the modes of acquiring territory on the part of the members of the Family of Nations." (1)

Following his suggestion as to the convenience of utilizing the conceptual terminology of Roman Law in this particular, we may examine, as of some pertinence to the Ryukyu situation, those conceptual syndromes labelled "occupation," "cession," "prescription," and "discovery," but we shall not uncritically accept them as stating "the law," for international law is less rigid than municipal law, more concerned with particular solutions than with general certainty. (2)

"Occupation," says Hackworth, "is an original, as distinguished from a derivative, mode of acquisition of territory. It involves the intentional appropriation by a state of territory not under the sovereignty of any other state. It does not involve the transfer of sovereignty from one state to another. Occupation is usually - though not necessarily - associated with the discovery of the territory in question by the occupying state." (3)

This "occupation" originally meant, apparently, just what the term appears to connote, i. e., the actual settlement of territory previously uninhabited (or at least previously uninhabited by a "state" of international law). Today, however, the concept of

"effective occupation" appears to have replaced it. Effective occupation involves possession plus the establishment of an administration over the territory; the requisite elements of possession, according to Oppenheim, are two - settlement and a formal act or announcement indicating the intention of the occupying state to assert its sovereignty.(4)

The concept of "effective occupation" was a 19th Century development of international law, the meaning of "effective" being that the occupation must be such as to "offer certain guarantees to other States and their nationals."(5) This definition was originally arrived at with reference to the occupation of uninhabited or aboriginally inhabited territories. A clearer picture of what effective occupation connotes may be gained from an examination of the following excerpts from cases and text-writers.

"Occupation cannot be held to be carried out except by effective, uninterrupted, and permanent possession being taken in the name of the State, and . . . a simple affirmation of rights of sovereignty or a manifest intention to render the occupation effective cannot suffice."(6)

"It is beyond doubt that by immemorial usage having the force of law, besides the animus occupandi, the actual, and not the nominal, taking of possession is a necessary condition of occupation. This taking of possession consists in the act, or series of acts, by

which the occupying state reduces to its possession the territory in question and takes steps to exercise exclusive authority there. Strictly speaking, and in ordinary cases, that only takes place when the state establishes in the territory itself an organization capable of making its law respected. But this step is, properly speaking, but a means of procedure to the taking of possession, and, therefore, is not identical with the latter." (7)

"Possession and administration are the two essential facts that constitute an effective occupation. . . . The territory must really be taken into possession by the occupying State . . . with the intention of acquiring sovereignty over it. . . . After having . . . taken possession of a territory, the possessor must establish some kind of administration therein which shows that the territory is really governed by the new possessor. If, within a reasonable time after the act of taking possession, the possessor does not establish some responsible authority which exercises governing functions, there is then no effective occupation, since in fact no sovereignty is exercised by any State over the territory." (8)

The next concept, conquest, "is the taking of possession of an enemy state by force; it becomes a mode of acquisition of territory - and hence of transfer of sovereignty - only if the conquered territory is effectively reduced to possession and annexed by the conquering state." (9)

"Conquest is the taking possession of enemy territory through military force in time of war. Conquest alone does not ipso facto make the conquering State the sovereign of the conquered territory, although such territory comes through conquest for a time under the sway of the conqueror. Conquest is only a mode of acquisition if the conqueror, after having firmly established the conquest, formally annexes the territory. Such annexation makes the enemy State cease to exist, and thereby brings the war to an end. And as such ending of war is named subjugation, it is conquest followed by subjugation, and not conquest alone, which gives a title, and is a mode of acquiring territory. It is, however, quite usual to speak of title by conquest, and everybody knows that subjugation after conquest is thereby meant. But it must be specially mentioned that, if a belligerent conquers a part of the enemy territory and afterwards makes the vanquished State cede the conquered territory in the treaty of peace, the mode of acquisition is not subjugation but cession."

The reference to "subjugation" will be noted and deserves some comment. Phillipson's distinction of the terms "subjugation" and "conquest" states that, "The conquest of a territory does not necessarily involve its subjugation; for conquest implies the condition of things brought about prior to subjugation. Therefore subjugation necessarily does involve conquest. Conquest means nothing more than effective military occupation by the enemy forces;

and as such it may be merely a provisional procedure, or as a means to some other end contemplated by the Government of the occupying forces. It may well happen that these occupying forces are eventually expelled by the adversary; if so, the military occupation comes ipso facto to an end, but in the case of subjugation . . . not only have the occupying forces acquired effective possession of the territory concerned, but the adversary has been reduced to impotence and submission, or has been practically annihilated - or at all events, his organized resistance has disappeared - and the victorious Government has clearly manifested its intention to hold the said territory permanently under its dominion. Such intention may be manifested implicitly, as, for example, by a long-continued performance, without intermission, of the functions usually performed by a ruler; or it may be manifested explicitly by some formal act, such as the despatch of a diplomatic circular to the Powers, or publishing a declaration of the transfer of sovereignty. Here, then, we see three steps - conquest, subjugation, and annexation. In conquest alone the military possession was simply de facto, depending on an actual fact, namely, superior force; after subjugation and annexation, the territorial possession becomes de jure, that is, sanctioned by law."(1)

We may note that these two concepts, "occupation" and "conquest" involve a common element. The "subjugation" and "annexation"

of Phillipson, taken together, sound very like the "effective occupation" of Oppenheim, and that a common element does exist should be made clear by a little reflection.

Where territory is uninhabited, the only possible legal effect which the acts of the would-be acquirer can have is with reference to third parties. Law does not operate in a void, nor in a community of one. The acquirer need not justify his position to himself, and in this case the territory has no inhabitants to whom he must justify himself. The only possible purpose of any rule of law for the acquisition of sovereignty in such a case is to protect the rights of third parties, to give them notice of what he is about to do and what he has done, so that they may not plan a course of action in reliance upon a nonexistent state of affairs, and so that they may have a seasonable opportunity for the presentation of such claims as they may believe they possess to the same territory and for the assertion of such rights as they believe are transgressed. The would-be acquirer must exert some act of dominion over the territory involved, for the law recognizes only acts - rarely does it recognize mere expressions of intention, and more rarely still does it recognize such intention when unexpressed. The idea of the Roman law that acts are rarely unequivocal and should not be productive of legal effects except insofar as an intention appears to produce such effects is a sound one. It is questionable,

however, whether a formal expression of intention should be considered essential; admittedly, such an expression conveniently informs third parties of the course of events, but is there any reason for requiring it in those frequent cases where the acts involved are sufficiently unequivocal to at least put the third party "on notice," since it is this notice to third parties which appears to be the basic requirement underlying the entire concept?

When we consider territory inhabited by aboriginal peoples, we find an additional requirement to be satisfied. While we might consider it advisable, in an ethical context, to protect by law the rights of these primitive peoples, the fact remains that such has not been the conclusion reached by international law. Developing in a milieu of "Christian world" philosophies, it is not surprising that international law should recognize only the rights of "civilized" peoples to acquire territory and to otherwise benefit from its protection. Originally, indeed, "civilized" was interpreted as meaning "Christian"; such a restrictive interpretation has been discarded, but there is still a certain minimum level which a people must reach in their cultural (especially their political) development before they are considered capable of becoming a "state," and only "states" are recognized as entitled to invoke the principles of international law.

The additional requirement imposed upon a would-be acquirer

of aboriginally-inhabited territory is that he develop and maintain a sufficiently strong control over the territory and its inhabitants that it will be a safe and proper place for nationals of the "civilized" states of the "family of nations" to journey and to transact business.[13]

The reason for this requirement seems to be the same as the reason underlying the denial of the applicability of international law to "uncivilized" peoples. Under international law, as under all legal systems, the acquisition of rights involves the acquisition of correlative or related duties. A people so culturally undeveloped as to be incapable of understanding these duties and so politically undeveloped as to be incapable of assuring that these duties will be fulfilled would, if granted international legal rights, be likely to exercise them without sufficient regard for the international legal rights of others. Similarly, if one of those states entitled to international legal protection is to exercise, in relation to this territory, and with regard to third parties, those rights which the territorial inhabitants themselves could not exercise, it must be prepared to assume the duties the inability to assume which was the reason for the denial of those rights to the inhabitants.

When the territory to be acquired is inhabited by a state, or nationals of a state, entitled to the protection of international

law, we must, under that law, consider not only the rights of third parties, but of the inhabitants. An act of dominion is still required, as is an expression of an intention to exercise sovereignty (although such an intention may be inferred from all the circumstances)[4]; further, as in the case of aboriginally-inhabited territory, the would-be acquirer must be prepared to accept certain duties toward third parties along with the rights he acquires toward them.

Perhaps "rights of the inhabitants" is not the proper phrase to use here; it may be appropriate in cases of cession, but it is scarcely so in cases of conquest. When we permit force to have legal effect, discussion of rights seems rather pointless. As a matter of fact, we find that in most conceivable circumstances, the actual inhabitants have no rights at all. Cession is a transfer of sovereignty by the sovereign, and, as in the cession of the Virgin Islands (Danish West Indies) to the United States by Denmark, may be carried out without any consideration for the wishes of the actual inhabitants of the islands; it is clear, however, in such case, that rights of the sovereign are being recognized. If he is the sovereign, no one else has any claim to the territory involved, and a formally effected transfer of the territory to another transfers to the latter the pertinent rights-and-duties complex. Such a disregard of the rights of the inhabitants is likely

to be a concomitant of any partial cession of the territory of a state. Where an entire state cedes its territory to another, however, it is likely to be because the inhabitants desire such cession (unless the cession is merely the formal outcome of conquest, which will be subsequently considered) - their rights are here recognized, because "they," as a whole, are the sovereign.

Although it seems a trifle academic to speak of conquest as a legal mode of acquisition of sovereignty, it is true that there are certain ways in which a conquest must be effectuated if the de facto power gained thereby is to be recognized by third parties as conferring legal rights. This is so because the inhabitants of the territory involved have, by hypothesis, at one time been entitled to international legal protection. It is proper, then, that the rules of that law should prescribe the way in which they may be divested of that protection. The examples cited demonstrate, for example, that it is not sufficient for the acquirer to merely announce that he has "conquered" the territory. To permit such a procedure would be to give his desires (usually the term employed is "intention") to be given legal effect, although not accompanied by any acts directed toward the effectuation of those desires. We must bear in mind that the function of "intention" in international, as in domestic, law is to aid in the interpretation of equivocal or ambiguous acts; it is the acts which are productive of legal

effects. Even in the case of uninhabited territory, the law has required certain acts of dominion to be exerted before any legal relations arise; to permit intention alone to change legal relations here would mean that we were setting a lower standard for the acquisition of territory the sovereignty to which is challenged than for the acquisition of territory to which there are no other claimants.

The case-law on the subject, as well as the expressions of opinion (and courses of action) of the several foreign offices, indicate that the requisite "acts" must consist in a sufficient exercise of military power that the state formerly exercising sovereignty over the territory ceases to be a state[15] - at least, this is one possible theoretical explanation as to why it ceases (and the persons who made it up cease) to have any rights under international law.

We have seen that the legally effective acts required of the would-be acquirer of territory are commensurate with the political nature of the territory to be acquired. If it is uninhabited territory, those acts apparently need be only slight, since their primary function is to give notice to third parties of an intention to acquire sovereignty; presumably, they must be more unequivocal and greater in number and intensity if they are not accompanied with a formal notice of intention than if so accompanied.

Where the territory is inhabited by a people not yet competent,

politically or culturally, to enter into reciprocal relations, on a legal basis, with the members of the family of nations, the acts involved must not only be sufficient to satisfy the "notice" requirement, but they must also be sufficient to guarantee to third parties, who recognize the rights of the acquirer, that their rights will be reciprocally respected, should they have contact with the territory in question.

Where the territory lies under the sovereignty of another "state" of international law, the acts of the would-be acquirer must meet a higher standard. Here, he must either so completely subdue or annihilate the inhabitants as to "kill" the state involved, or he must so dislodge the effective power of the state in this particular portion of its territory that since it can no longer guarantee the rights of third states in this territory, it is no longer entitled to claim rights therein itself;(as a matter of practice, these partial conquests are infrequently productive, in themselves, of sovereignty - a formal cession in the treaty of peace usually removes such uncertainty as might otherwise result under circumstances often far from unequivocal).

It is to be hoped that it was sufficiently emphasized in the above discussion of the modes of acquisition of territory embraced within the terms of art, "occupation," and "conquest," that those modes are not qualitatively different; they are merely convenient shorthand terms for describing the essentially similar acts which

must be undertaken by a state under different sets of circumstances, if that state would acquire a legally-recognized sovereignty over territory.

The purpose of the discussion was to attempt a penetration of those terms of art to determine, if possible, the policy grounds underlying their delineation. It was concluded that three basic policy grounds were of some importance - notice to third parties, guaranty of the rights of third parties, and (where the territory involved is already under another sovereignty) protection of the rights of the incumbent sovereign. More than one of these policy grounds, of course, is likely to require consideration in any particular instance; it was merely intended to point out that in certain type situations, as a factual matter, one of these policy grounds is likely to predominate. In the case of uninhabited territory, for example, the idea that only such acts are legally effective as afford "notice" to third parties seems of paramount importance; that is not to say that it is unimportant that the would-be acquirer should insure, through his control of the territory, that third states and their nationals will be properly protected in their rights when within or in proximity to the territory. It is felt, however, that as a practical matter, this latter ground of policy is not so likely to assume importance in this case as when the territory concerned in inhabited by savages. Or again, where the territory is already under the control of a "state" of

international law, it is not so likely that particular attention need be paid to the notice requirement, for it is hard to imagine the case in which a transfer of sovereignty could occur (certainly if by conquest) without other states being fairly placed in a position where knowledge with respect to the change is at least available, even if not actually known, to them;[16] also of importance in this particular is that where sovereignty is transferred, it is the transferor or transferee who is most likely to have the leading claim to sovereignty if the matter is in dispute, and they, of course, will be in complete command of the facts.

Bearing in mind these underlying grounds of policy, what one who seeks to determine the legal status of territory in international law must do is to determine whether a given contender (or contenders) for sovereignty has, by his actions, brought about a state of affairs which is sufficient, under all the circumstances, to satisfy their requirements.

That is to say, under whichever of these concepts one seeks to claim, as a matter of "pleading," in essence one must demonstrate that one's actions amount to "effective occupation," the effectiveness of the occupation to be determined, as noted above, with reference to the enunciated policies and in the light of all the circumstances - the most important "circumstance" to be considered is believed to be the relative political development of the territory concerned.

The next concept we shall consider, prescription, is defined by Oppenheim as "the acquisition of sovereignty over a territory through continuous and undisturbed exercise of sovereignty over it during such a period as is necessary to create under the influence of historical development the general conviction that the present condition of things is in conformity with international order,"[17] and as Hill points out, citing Phillimore, "The authority exercised under a prescriptive title claimed by a state should be characterized by 'publicity, continued occupation, absence of interruption, aided no doubt generally, both morally and legally, by the employment of labour and capital upon the possession by the new possessor during the period of silence or the passiveness, or the absence of any attempt to exercise proprietary rights by the former possessor.'"[18]

Lindley suggests that, "in view of the importance now attached to the effective occupation of any territory which a State wishes to appropriate to itself, it would appear that Prescription should not be considered to run in favour of a claimant who had not occupied the territory effectively [he characterizes effective occupation as that sufficient to "afford security to life and property"] . . . . And, just as the conditions which must be present for Prescription to run may vary in different cases, so also the length of time during which those conditions must operate before it can be said that they have become part of the established international order, will vary according to the circumstances."[19]

Sovereignty may also be acquired by "cession," which is a derivative mode of acquisition, and "involves the transfer of sovereignty by means of an agreement between the ceding and acquiring states." Further, "cession may comprise a portion only of the territory of the ceding state or it may comprise the totality of its territory"[20]; the former would be the case if we found that either China or Japan had ceded sovereignty over the Ryukyus to the other, the latter if we found that the Ryukyuans had ceded their territory to one of the contenders.

"A cession is not . . . void merely by reason of its having been extorted by force threatened or directed towards the State as a whole - cessions have frequently been made by a defeated State as the price of the termination of hostilities. Such a forced cession, from the point of view of morality and justice, may differ in nothing from a conquest; its results are recognized by International Law on a similar footing."[21]

The major advantage of a cession or formal statement of annexation is that it establishes a definite time at which sovereignty passes from the former to the new holder; in the absence of some formal step, there may be some question as to when, if ever, a long-continued occupation ripens into sovereignty. In this latter circumstance, something like the "prescription" of municipal law is involved, as are the "laches" or "acquiescence" or "estoppel" of

possible contenders; these last three concepts will be dealt with shortly in connection with that of "abandonment," and "prescription" has already been treated.

The last of the modes of acquisition with which we have to deal as pertinent to our discussion is that entitled "discovery"; this term is even more deceptive than most in this field, for, as Keller, Lissitzyn, and Mann[22] have pointed out, throughout the "age of discovery" from the 15th to the 19th Centuries, "no state appeared to regard mere discovery in the sense of 'physical' discovery or simple 'visual apprehension,' as being in any way sufficient per se to establish a right of sovereignty over, or a valid title to, terra nullius." They have also, however, concluded that "the formal ceremony of taking of possession, the symbolic act, was generally regarded as being wholly sufficient per se to establish immediately a right of sovereignty over, or a valid title to, areas so claimed and did not require to be supplemented by the performance of other acts, such as, for example, 'effective occupation.' A right or title so acquired and established was deemed good against all subsequent claims set up in opposition thereto unless, perhaps, transferred by conquest or treaty, relinquished, abandoned, or successfully opposed by continued occupation on the part of some other states."

Insofar as the acquisition of title, or "sovereignty," is concerned, then, this mode seems to offer an exception to the general

requirement we have previously noted. Here, to be sure, action is still required as a prerequisite to sovereignty, but it is a "fictitious," not a "real," action - it may satisfy the policy ground of notice to third parties, but it scarcely effectuates the policy of guaranteeing the rights of third parties and their nationals. The essential meaninglessness of asserting sovereignty while failing to settle, occupy, or develop (the less polite word, "exploit," might be more appropriate in many instances) has led some authorities to conclude that, in contemplation of law, this formal "taking of possession" gives its exerciser only an inchoate right to sovereignty over the territory, and that no real, indefeasible sovereignty arises until the requirements of "effective occupation" have been met.

"When a state does some act with reference to territory unappropriated by a civilized or semi-civilized state, which amounts to an actual taking of possession, and at the same time indicates an intention to keep the territory seized, it is held that a right is gained as against other states, which are bound to recognize the intention to acquire property, accompanied by the fact of possession, as a sufficient ground of proprietary right. The title which is thus obtained, which is called title by occupation, being based solely upon the fact of appropriation, would in strictness come into existence with the commencement of effective control, and would last only while it continued, unless the territory occupied had been so long held that title by occupation had become merged in

title by prescription. Hence occupation in its perfect form would suppose an act equivalent to a declaration that a particular territory had been seized as property, and a subsequent continuous use of it either by residence or by taking from it its natural products . . . . In the early days of European exploration it was held, or at least every state maintained with respect to territories discovered by itself, that the discovery of previously unknown land conferred an absolute title to it upon the state by whose agents the discovery was made. But it has now been long settled that the bare fact of discovery is an insufficient ground of proprietary right. It is only so far useful that it gives an additional value to acts in themselves doubtful or inadequate. Thus when an unoccupied country is formally annexed an inchoate title is acquired, whether it has or has not been discovered by the state annexing it; . . . An inchoate title acts as a temporary bar to occupation by another state, but it must either be converted into a definitive title within reasonable time by planting settlements or military posts, or it must at least be kept alive by repeated local acts showing an intention of continual claim. What acts are sufficient for the latter purpose, and what constitutes a reasonable time, it would be idle to attempt to determine. The effect of acts and of the lapse of time must be judged by the light of the circumstances of each case as a whole." (Italics supplied) (23)

"In former times, the two conditions of possession and

administration, which now make the occupation effective, were not considered necessary for the acquisition of territory through occupation. Although even in the age of the discoveries States did not maintain that the act of discovering a hitherto unknown territory was equivalent to acquisition through occupation by the State in whose service the discoverer made his explorations, the taking of possession was frequently in the nature of a mere symbolic act. Later on a real taking possession was considered necessary. However, it was not until the eighteenth century that the writers on the Law of Nations postulated an effective occupation, or until the nineteenth century that the practice of the States accorded with this postulate. But although nowadays discovery does not constitute acquisition through occupation, it is nevertheless not without importance. It is agreed that discovery gives to the State in whose service it was made an inchoate title; it 'acts as a temporary bar to occupation by another State' for such a period as is reasonably sufficient for effectively occupying the discovered territory. If the period lapses without any attempt by the discovering State to turn its inchoate title into a real title of occupation, the inchoate title perishes, and any other State can now acquire the territory by means of an effective occupation."[24] It may be, however, that the effect of such a formal taking of possession is to lower the quantum of action which would otherwise be required as a minimum if such action is to be considered as "effective occupation."

Insofar as such a formal taking of possession affords notice to third parties of a disposition on the part of the taker to acquire sovereignty over the territory, this seems a reasonable rule in relation to uninhabited territory, for it provides an action which can be undertaken with some certainty of its legal effect. Where territory is inhabited by savages, however, it is difficult to see any rational basis for permitting this formal act to have any substantial effect, since, as pointed out above, it is believed that the major reason why states are required to "effectively occupy" such regions if they desire to acquire sovereignty over them is that they must assume the duty to protect the rights of third parties, and it is not apparent in what respect a formal taking of possession can aid in the accomplishment of this duty.

It has been emphasized in the foregoing discussion that an important, probably the most important, circumstance to be considered in each case is the relative political development of the territory - that is, whether it is inhabited, and, if so, by whom. If territory is uninhabited, and subject to no claims of sovereignty, it is considered terra nullius, "the land of nobody," and title to it may be acquired by the so-called "original" modes of acquisition - "occupation," or, in an earlier era, by something a little less than the "effective occupation" of today, the mode of "discovery." Dealing with Ryukyu, we are, of course, concerned with

inhabited territory, but we must consider these "original" modes because of that development of international law which has considered aboriginally-inhabited territory to be also terra nullius - that is, the term has really been interpreted to mean, "the land of no State."

It is believed that Ryukyu was as much entitled to be considered as possessing the necessary capacity to hold sovereignty over territory as was either Japan or China during the periods in question; that is, it was as much entitled to be considered a "state" as either of those countries. A full consideration of the acquisitional concepts applicable to less developed territories was, however, deemed essential if a complete picture of the underlying policy factors and of the application of the entire conceptual system was to be obtained. It is now proper for us to consider the application of the acquisitional concepts to the varying fact situations presented by the history of the Ryukyus. First, however, it would be well to get before us the modes of losing sovereignty, once acquired, and some discussion of what may be called the "equitable" factors which must be considered in determining whether sovereignty has ever been acquired.

A state may lose sovereignty over territory, of course, by being the other party in a "conquest" or "prescription" situation, or by "revolt" which is a species of conquest. It may also lose

sovereignty through "abandonment" (often referred to as "dereliction"). Oppenheim's delineation of this last concept is typical of its juristic treatment:

"Dereliction as a mode of losing territory corresponds to occupation as a mode of acquiring it. Dereliction frees a territory from the sovereignty of the present owner-state. It is effected through the owner-State completely abandoning territory with the intention of withdrawing from it forever, thus relinquishing sovereignty over it. Just as occupation requires, first, the actual taking into possession (corpus) of territory, and, secondly, the intention (animus) of acquiring sovereignty over it, so dereliction requires, first, actual abandonment of a territory, and, secondly, the intention of giving up sovereignty over it. Actual abandonment alone does not involve dereliction as long as it must be presumed that the owner has the will and ability to retake possession of the territory. Thus, for instance, if the rising of natives forces a State to withdraw from a territory, such territory is not derelict as long as the former possessor is able, and makes efforts, to retake possession. It is only when a territory is really derelict that any State may acquire it through occupation."[25]

"Jurists seem to be in agreement that an intention must clearly appear but that this intention need not be expressed and may be gathered from the circumstances surrounding the supposed withdrawal of state authority."[26]

Notice, first, that mantion of "abandonment" is irrelevant in our consideration of the acquiring sovereign; it is pertinent only to the losing sovereign. There can be no abandonment of a sovereignty not yet acquired; there can be only "laches," that is, a failure to to pursue one's commenced course as to ripen one's interest inot sovereignty. This distinction is worth drawing, for in the case of "laches," the test is purely objective; a state is guilty of the same if its conduct is not such as to make it clear to possible competing states that it is attempting to exercise sovereignty over territory; and expression of intention may be important in this connection, as providing part of the circumstances from which the attempted exercise of sovereignty may be deduced, but in the absence of such an expressed intention, the actual intention held is irrelevant, the competing state being required only to observe the acts of the would-be sovereign.

In the case of the concept of "abandonment," however, the derivation of this concept from the Roman law of private property has resulted in the requirement that an apparent relinquishment must be accompanied by an intention to permanently relinquish in order to effect a change in legal relations. It is submitted that here as well unexpressed intention is irrelevant in practice. As Hackworth points out, even defenders of the requirement admit that intention may be "constructive," that is, gathered from the circumstances. If we are to gather the fact of "abandonment" from all

the circumstances, including (if any) expressions of intention, why introduce the intervening logical step of "finding intention" between facts and conclusion? If a sovereign physically relinquishes territory, expressing an intention to abandon it, the territory is legally abandoned; if he retains physical control, while expressing the same intention, no legal change has been effected - intention alone, then, (even if expressed) is not productive of legal consequences. If he relinquishes physical control of the territory, while expressing an intention not to abandon it, this expression does not necessarily preclude the acquisition of sovereignty over the territory by other powers - it suffices to retain in him some legal right, if he objects seasonably to such attempted acquisition, but this limited right which remains to him is defeasible by prescription and scarcely seems equivalent to the full right of sovereignty which, by hypothesis, he held before he had relinquished control.

By the expression of intention in this last case, although accompanied by apparently contradictory action, the sovereign has maintained partially his rights of sovereignty. Suppose he had voluntarily[28] relinquished physical control without expressing any intention at all as to his future relationship to the territory in question; would not the only "intention" deducible from the facts be that to abandon? If his actual intention were not to abandon, the"intention" we would find would be its direct opposite. If his

actual intention were to abandon, why bother to ascertain it - do not his acts speak for themselves? Since we reach the same conclusion without it, its introduction is a needless complexity; my implied major premise of course is that needless complexities are per se bad, since they tend to obscure the real issues (and, in courts of law, the real grounds of decision).

Two closely allied ideas are those of "laches" and "acquiescence." Although the terms might conceivably be used interchangeably, it is believed desirable, for the sake of clarity, to limit the application of each. Where a state acquires an inchoate legal right to territory (as by symbolic annexation) but does not, for a lengthy period, so conduct itself as to ripen this right into sovereignty, it may find itself in a position where it is no longer considered to have any right at all with respect to the territory; denial of this right will be phrased in terms of "laches" or "extinctive prescription" (this is not the same as the "acquisitive" prescription previously discussed). Consider now a state which has neglected to press its inchoate right to certain territory, but has not neglected to do so for a sufficient length of time to be considered guilty of "laches"; suppose further that another state now enters into the territory, settles and administers it, with a view toward the gaining of sovereignty by effective occupation or by acquisitive prescription - the inchoate right of the first state to develop its sovereignty has been transgressed, and we might say that a "cause of action" has accrued. A failure on the part of the first state to attempt to

enforce its right within a specified time would, under municipal law, result in the extinction of that right by the statute of limitations. In international law, it is said that the first state has "acquiesced" in the denial of its rights by the second - the situation is perhaps also analogous to the "estoppel" of municipal law. Realistically, however, international law has provided for the difficulty of bringing disputes to litigation. The rights of the first state may be enforced in a litigation at any later date, if, within a reasonable time, it has protested to the second state at the denial of its rights. As a minimum, then, to avoid "acquiescing," a state need only notify a transgressing state of the rights it claims; it seems that a determination as to the adequacy of the "protest" made is to be based on the facts of each individual case - a mere demand that the second state remove itself, without a detailing of the original claim, and accompanied by no other action, for example, seemingly would not be sufficient.

At this point, it should be possible to tie together the earlier discussion of acquisitional modes and the treatment in the last few pages of modes of divestiture of sovereignty and of applicable "equitable" concepts. In so doing, use will be made of a phrase coined by Max Huber in the Palmas Case - "effective maintainance ~~of~~ authority."

In the Palmas Case, the agreement on which the dispute was submitted to arbitration contained the following language: "Both

Parties are . . . agreed that 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." Decisions of international legal tribunals are not considered as "binding precedents," and it is even arguable that the arbitrator's treatment of the case under consideration was not entirely in the fashion contemplated by the agreement. His discussion is nevertheless provocative and, insofar as it may be considered declaratory of the modern view of the "intertemporal problem" in international law, is extremely valuable.

"As regards the question which of different legal systems prevailing at successive periods is to be applied in a particular case (the so-called inter-temporal law), a distinction must be made between the creation of rights and the existence of rights. The same principle which subjects the act creative of a right to the law in force at the time the right arises, demands that the existence of the right, in other words its continued manifestation, shall follow the conditions required by the evolution of law. . . . It seems therefore incompatible with this rule of positive law [effective occupation] that there should be regions which are neither under the effective sovereignty of a State, nor without a master, but which are reserved for the exclusive influence of one State, in virtue solely of a title of acquisition which is no longer recognized by existing law, even if such a title ever conferred territorial sovereignty."

The arbitrator further stated, ". . . If a dispute arises as to the sovereignty over a portion of territory, it is customary to examine which of the States claiming sovereignty possesses a title - cession, conquest, occupation, etc. - superior to that which the other State might possibly bring forward against it. However, if the contestation is based on the fact that the other party has actually displayed sovereignty, it cannot be sufficient to establish the title by which territorial sovereignty was validly acquired at a certain moment; it must also be shown that the territorial sovereignty has continued to exist and did exist at the moment which for the decision of the dispute must be considered as critical. This demonstration consists in the actual display of State activities, such as belongs only to the territorial sovereignty."[31]

In other words, even if a state has acquired sovereignty in the past, a relinquishment of physical control of the territory ("abandonment," or perhaps a relinquishment of control not quite sufficient to completely constitute the same) will leave the legal situation such that one who first "actually displays sovereignty" (effective occupation?) will have a better right to sovereignty than the relinquisher. To re-emphasize a point made earlier, the unexpressed intention of the "abandoner" should not affect this situation in the least. It does not appear, from Huber's statement, that he believes that the <u>expressed</u> intention would, either, but

this may be said - the degree of control that must be exercised for "effective occupation" is certainly higher (generally speaking) at the time a territory is acquired than it is at a later date when only the preservation of sovereignty is sought; an army, for example, gives way to a group of administrators, smaller in number and exercising a control less stringent. When we judge whether a territory is "effectively"occupied," then, we must consider all the circumstances, from the viewpoints of control and notice; from the latter viewpoint, at least, an expression of intention may be very important - a state aware of such expression may argue that the "erstwhile" sovereign has failed to exercise the requisite control for the preservation of sovereignty, but it cannot argue that it was unaware of the attempt to exercise such control.

Lindley seems to agree by implication when he says ". . . it is not necessary to deal with the past merely in order to show how the present rules have grown up. The contention, which has been put forward in Arbitration Proceedings, that titles which had their beginnings in past ages must be judged today according to the law as it existed at those times, is probably not universally sound - it is sufficient in this connection to refer here to the extended scope which has been given to the doctrine of Effective Occupation in modern times. But such a principle is frequently the right one to apply. . . . and in disputes as to territorial titles it is

sometimes necessary to know which State was pointed out by the law of a particular time as having the best claim to certain territory at that time." (Italics supplied) and passim.

Herewith another view, for comparison; this position, however, is quite extreme, and no example of its application has been found. "How far the mere discovery of a territory which is either unsettled, or settled only by savages, gives a right to it, is a question which neither the law nor the usages of mankind has yet definitely settled. The opinions of mankind, upon this point, have undergone very great changes with the progress of knowledge and civilization. Yet it will scarcely be denied that rights acquired by the general consent of civilized nations, even under the erroneous views of an unenlightened age, are protected against the changes of opinion resulting merely from the more liberal, or the more just, views of after times. The right of nations to countries discovered in the sixteenth century is to be determined by the law of nations as understood at that time, and not by the more improved and more enlightened opinion of three centuries later."

The "intertemporal" and "effective maintenance of authority" problems are here discussed together because this seems to be the most convenient way to treat them. We can perhaps conclude from the preceding quotations that it is not impossible, even if we were dealing only with Western states, members since time immemorial

of the "family of nations," that an international tribunal should apply contemporary legal concepts in determining the effectiveness of past acts as giving rise to sovereignty over territory.

Since we are actually dealing with three Oriental countries, there is another factor which should be takne into account. Before the middle of the nineteenth century, none of the three states involved was even aware of the provisions of Western international law nor in such contact with the Western world as to be 'charged with notice' of those provisions (and it is unlikely that one could so consider them in any case as pertains to their dealings inter sese). Our main justification for applying Western international law to Oriental problems previous to the nineteenth century is that our accepted practice may furnish a guide to what is equitable and just. If equity is our mentor, should we not apply our most modern concepts, which presumably represent a culmination of previous developments, and, in this formerly mechanistic field at least, a greater recognition of reality and of equitable requirements than their predecessors?

Even if this argument is not considered sufficiently persuasive to induce the application of modern international law to the earliest relations of China and Japan with the Ryukyus, it still seems possible to consider the "effective maintenance of authority" idea, in dealing with the more recent relations. It might be

equitable to settle a claim between Spain and Portugal on the basis of sixteenth century law, for it is fair to presume that they acted in contemplation of that law, but it is scarcely realistic to base one's treatment of the Ryukyu situation upon such an argument.

The "effective maintenance of authority" idea seems most applicable to inhabited territory (whether by a state or aboriginally); at any rate, since our primary interest lies with such territory, the concept will be developed with reference to it. Since a detailed discussion of the problem would take us far afield, we shall assume arguendo, that territory actually uninhabited can, in the absence of convention, be acquired without "effective occupation." However, although aboriginally inhabited territory has been discussed by the legal writers as acquirable in the same fashion, it is believed that a distinction must here be drawn, if the assumed statement is correct.

Let us consider first the relationship of the would-be sovereign to third parties; then, let us consider his relationship to the territorial inhabitants, if they have the requisite capacity to acquire sovereignty - i. e., if they form a state.

We have stated that in order to acquire rights against third parties with respect to territory, the acquirer must be prepared

to assume duties toward those parties with respect to the same territory; this proposition, although not indisputable, seems, as we have noted, to be borne out by state practice as this practice has given rise to the so-called modes of acquisition. If, now, a state chronically defaults in this protection of rights at a date subsequent to the acquisition of sovereignty, why should it be entitled to continue to demand that its own rights in the territory be recognized? Insofar as aboriginally inhabited lands are concerned, it is not intended to embrace within this proposition such phenomena as a temporary repulse of settlers by the inhabitants, so long as the acquirer continues, at least, the attempt to establish an effective control; nor is it intended to embrace the circumstance in which the acquirer maintains only an administration which in practice proves to be ineffective, if steps are subsequently taken to increase its effectiveness to the minimum level required for the protection of third parties' rights.

The proposition is specifically directed at the acquirer who, while claiming a nominal sovereignty, neglects not only the establishment of an administration adequate for the safeguarding of rights, but neglects also the development of the territory itself. To paraphrase Huber's statement in the Palmas Case, why should there be regions which are neither under the effective sovereignty of a State, nor without a master, but which are reserved for the

exclusive influence of one State? To permit such a state of affairs would imply that the law considered "sovereignty" to be exactly equivalent to the "title" of municipal law. One may use, misuse, or refuse to use one's private property without loss of title, or without any consequence, so long as the maxim "not to so use one's property as to injure others" is obeyed. (We may note, incidentally, that if such an analogy is to be accepted, then this maxim appears to be applicable in the case of an acquirer who does not take such action within his territory as to safeguard the rights of third parties.) Sovereignty actually, in law as in political philosophy, embraces much more than a bare title. As a matter of fact, "title" in the private law sense of "right of occupation and user" is typically not in the sovereign at all, but in one of the sovereign's subjects - or perhaps even in an alien. The use of the territory is, of course, subject to the sovereign's restrictions, but, as noted, these restrictions, in the case of real property, are not especially numerous. The sovereign is considered to have what we might call a "reversionary" interest in the land - the right to appropriate the land to its own uses, with or without compensation - but this is scarcely the right of a holder of "title" in municipal law.

If we were to attempt briefly to state the power of the sovereign in excess of that of the title-holder, with special

reference to the problem before us, we would note the right of the sovereign to govern on the land.

A sovereign who does not govern then, is not exercising sovereignty, and is a contradiction in terms. To phrase the situation in Huber's terms, he is not a sovereign, although he claims sovereignty, because he is not effectively exercising it. (The reason why uninhabited territory has been omitted from the discussion will now perhaps be evident; one "governs" not territory, but the inhabitants thereof; a different type of analysis would therefore be required to justify the application of the concepts under discussion to such territory.)

None of the foregoing is intended to deny that a state may maintain its exercise of sovereignty through the retaining of a single administrator within the territory, if such is sufficient, under all the circumstances, to effectuate the sovereign's will. Nor is there an intendedddenial of the sovereign's right to govern through administrators drawn from the local inhabitants, if they govern for the sovereign; if, however, they govern with complete independence (as seems to be the case in the China-Ryukyu situation), their connection with the sovereign being merely a nominal one, either for purposes of the deception of third parties or for purposes really unrelated to sovereignty (which, again, seems to have been the case with the Ryukyus), it is certainly a mere play on words to say that the "sovereign" has "exercised sovereignty."

And if he has not exercised sovereignty, upon what does he base his claim that his "sovereignty" should be recognized?

The modern Ryukyuan culture shows a multitude of similarities to the Japanese, and much of this influence may be traced to the exclusive dominion of Japan over the islands during the past seventy years; even the earliest Western observers of the islands, however, seemed to find a preponderance of Japanese over Chinese elements in the culture of Ryukyu. Whether the islands were originally peopled by "Chinese" or "Japanese" is apparently an unanswerable question in our present state of knowledge. One of the most tenable hypotheses is that of Sansom that it was a diffusion from a common centre on the Asiatic mainland /probably in southern China or Indo-China/ which at the same time peopled the islands of the south and furnished the southern strain in the people and culture of Japan." The leading authority on Oriental philology, Chamberlain, has pointed out the strong similarities of the Japanese and Ryukyuan spoken languages, which lend credence to an hypothesis that both tongues spring from a common root; he has also indicated the dissimilarity of both from spoken Chinese in any of its dialectical variations. Even were claims to territory based upon "racial" or "linguistic" connections of antiquity among those recognized in international law, however, evidence on this point is so scanty as to weigh neither for one side nor for the other.

Not even the written records of Ryukyuan contact with the outside world are free from doubt. At the prefectural office at Naha, the capital of the islands, there is what might be regarded as the official history, a manuscript compiled by successive annalists at different times. This history describes the first contact of the Ryukyuans with the Chinese as follows:

> In the fourteenth year of the Emperor Suiko /A.D. 607/ Emperor Yang Ti of China sent out Ukii Shukwan to search after foreign land. Shukwan arrived in this country accompanied by a man called Kaban, but not being able to understand the language, they went back, taking a captive with them. The next year, the Chinese Emperor again sent Shukwan to the islands to advise them to yield. This, however, ended in failure, and Shukwan returned home after capturing some armour. Once more, afterward, Funanrosho, Chinryo, Chosei Taifu, and Chochinshu, accompanied by their army, invaded the islands by order of the Emperor. Among the soldiers

there was a man from Foyryan who spoke our language pretty well. So Chinryo advised the people through this interpreter to yield before taking arms, but the natives did not listen to him. Consequently a great battle took place, and they were defeated so that they were compelled to retreat to Shuri. The enemy pursuing after them set fire to the palace, and went back to China, taking about one thousand prisoners, men and women.

It is difficult to see how China could base any territorial claims upon this "conquest". In the first place, it did not amount to a conquest in the sense in which we have discussed the term above. Secondly, it does not seem even to have carried with it the burdens characteristic of Chinese "suzerainty" - tribute and the recognition of overlordship. Thirdly, the true facts of the situation scarcely seem capable of proof on the basis of the available evidence. Fourthly, China has not, at least until the modern era, some thousand years later, attempted to base any territorial claims upon this incident.

In evaluating such Chinese claims as may be based upon this "conquest", we may note the caveat of Chamberlain concerning the manifest inaccuracy of even the Chinese records in this regard:

> The earliest foreign mention of Luchu (the historian does not state which of the islands he means) is contained in the Chinese annals of the year 605 of the Christian era, where we read of an attempt to find out something about the land and its inhabitants, which failed through want of interpreters. But soon after, an interpreter having been obtained by courtesy of the Japanese, an embassy was despatched to demand peremptorily the submission of the king to the Chinese emperor. Such submission being refused, an army was next sent in 611, the king's castle was burnt and many thousands of men and women were carried away captive. This Chinese account, as will be noticed, is both circumstantial and plausible, and is probably a true one of some attack on some island in the Eastern sea. But which island? That is the question. A thousand years later, when Luchuan history was first put into writing, when Great Luchu had risen into paramount importance, and the name "Luchu" had become more or less confined to it, people seem to have assumed without further inquiry that Great Luchu was the place meant. In my opinion this assumption should not be so easily accepted without clear proof. Japan knew nothing of Great Luchu in the seventh century; yet we hear of the Japanese Court supplying interpreters. It is, therefore, at least possible that one of the northern islands, which were then called Luchu by the Japanese, was intended, or (if we give up the Japanese interpreter detail) that Formosa is intended; for a portion of that island, much nearer to China and far more likely to be attacked by the Chinese, was also anciently known to the latter under the name of Luchu. The former hypothesis does least violence to the text of the Chinese historian. Indeed, it does no violence at all; but in the absence of further evidence, the question remains an obscure one. In any case, be the incident of the Chinese raid on Luchu true or false, it led to nothing; for many centuries passed before intercourse - at least official intercourse, whether warlike or diplomatic - was renewed, though some slight mutual knowledge seems to have been slowly developed during the Middle

> Ages, thanks to a trade which gradually sprang up between Luchu and the Chinese of the neighbourhood of Foochow, as the junk sailors became bolder and ventured further afield.

Similarly shrouded in doubt, contradiction, and obscuring myth is the excursion to Ryukyu of Minamoto Tametomo, descendant of a Japanese Emperor, whose son by a royal Ryukyuan princess, Shunten, ascended the throne of Ryukyu in A.D. 1189. Tametomo's standing seems to have been scarcely that of a national, let alone of an official representative of the Japanese government, however, for he fled to the islands as an outlaw of sorts, following the defeat of the Minamoto clan by the Taira in a battle for supremacy among Japan's feudal lords. A descendant of Shunten abdicated in 1260 and was succeeded, according to the Naha history, by a member of the original Ryukyuan ruling family. Again, the details are neither clear nor verifiable.

Although a claim through Tametomo seems Japan's only basis for claiming any sovereignty over the Ryukyus prior to the Japanese conquest of 1609, the early Japanese records from the seventh century on contain a number of references to the various islands that compose the group. "Sometimes", says Chamberlain, "the precise name of the island is given, sometimes the term Ryukyu (Luchu) is used rather vaguely, leaving us in doubt as to which island is intended." This vagueness of nomenclature provides one of the most puzzling aspects of this entire problem, as the lengthy quotation above from Chamberlain was intended to point out. The Chinese and Japanese records both suffer from this vagueness, and the Ryukyuan records are somewhat apocryphal, both Chamberlain and Leavenworth estimating their earliest compilation date in their present form to be about 1700.

The earliest report of Japanese intercourse with Ryukyu is of a mission from Yaku-no-shima bearing gifts to the Japanese empress Suiko in A.D. 617. In 678, a similar mission came from Tane-ga-shima; the next year, a Japanese envoy visited that island and conferred Japanese rank on the native chieftain. Amami-Oshima and "Kume-jima" (?) followed suit. In 1001, the Japanese government ordered the officials of Kikai-ga-shima to repel an invasion by "Western barbarians" (?). In 1179, Shimazu of Satsuma was granted the superintendence of Ryukyuan affairs - that is, of Tane-ga-shima, Yaku-no-shima, and Oshima. "There also",

says Chamberlain, "exist notices of a Japanese re-conquest of Oshima by warriors of the Taira clan after their expulsion from Japan proper at the end of the twelfth century." Certain of the southern islands, which submitted themselves to the King of Luchu (Chung Shan) about 1289, appear also to have been in contact with, if not originally peopled by refugees from, Japan. "Graves are still pointed out on Ishigaki-jima of warriors whom local tradition represents as clad in what we know to have been medieval Japanese costume. Yonakuni-jima is said to have had living on it, previous to its annexation by Luchu, seventeen families who traced their descent to the great but unfortunate Japanese Taira clan, and graves on several of the Further Isles have yielded finds of magatama, the comma-shaped ornament characteristic of proto-historic Japan."

In 1371, China established in the islands a "tributary" relationship in which Japan must be considered to have acquiesced, since she failed to protest for three and a half centuries. Up to this point, possible claims to the Ryukyu territory have been treated without any discussion of the rights of the Ryukyuans themselves; this has been because it is believed that the incidents so far discussed are of only academic interest. From this point forward, however, the incidents are thought to provide possible bases for existent rights, so the discussion will concern not only the relations of Japan and China with reference to each other and regarding the territory of Ryukyu, but also with reference to the claims of the Ryukyuan government to that territory.

In 1314, as a result of an internal disturbance of some sort, two new kingdoms, Shang Nan and Shang Peh, broke off from the original government of the islands, which was now known as Chung Shan. Apparently, all of these governments had their seats on the island of Great Luchu, or Okinawa, with certain of the minor islands being under the control of each. In 1371, the (Ming) Emperor T'ai Tsu of China sent an envoy to the Ryukyus to demand submission, and the king of Chung Shan, Tsi Don, acknowledged himself to be a subject of China and sent "tribute" to the Emperor. The three separate kingdoms were not again combined into one state until 1430; subsequent to that date, "the records of the Ming Dynasty bear numerous references to tribute from Ryukyu, to gifts from the

"Chinese Emperors, and to the arrival of Ryukyuan students to study in the universities of China."

In an appeal for aid, presented by a Ryukyuan envoy to the Chinese Emperor in 1879, after the Japanese annexation of Ryukyu, the following statement appears:

> In the fifth year of Hung-wu /1372/ Liuchiu became an integral part of China. When the Celestial Dynasty was established at Peking, she hastened to tender her allegiance. During the successive Holy Reigns she received increasing favor, and on her part she dutifully observed the rule of bi-yearly tribute payment in accordance with the Institute of the Ta Tsing Dynasty without any deviation. On the first year of Kuanghsu /1875/ Japan suddenly barred the payment of tribute, as well as the sending of the congratulatory mission on the accession of His Imperial Majesty. Having explained our status to Japan, pleaded with her, and been declined consideration, the King specially despatched me with his commission to Foochow to submit the case.

Considering the circumstances under which this appeal was sent, and that Ryukyu had maintained (as we shall see) an even closer relationship to Japan than she had to China for nearly three centuries at the time of its presentation, we may be excused if we refuse to take at its face value the statement that "Liuchiu became an integral part of China". This statement may very well express the Ryukyuan sentiment at the time it was written, but it is certainly not conclusive as to what the Ryukyuan sentiment may have been in 1372 and subsequently. We must remember also that if the envoy means to imply that Ryukyu would again become an integral part of China voluntarily if China would bring about the removal of Japan, the facts make it evident that he is proposing a state of affairs which was not existent in the past, when Ryukyu was in a condition of "dual dependency" upon Japan as well as China; this tends to mark the statement as a proposal rather than an affirmation of past fact, even though it is couched in pluperfect rather than future terms.

We have mentioned the "overlordship" and "tribute" elements of Chinese "suzerainty". Leaving aside for the moment all questions of Western international law, we note that China, whatever interpretation we are to place upon her relations with Ryukyu subsequent to 1372, made no objection to the exercise by Japan subsequent to 1609 and continuing until the claim of sole dominion was advanced by the Japanese in 1874, of those same perquisites with reference to Ryukyu that she herself enjoyed.

Not only, then, did Japan, for several hundred years, satisfy the same conditions upon which China bases its own claim to sovereignty, but, in addition, Japan has undertaken other acts in the islands which make her claim a better one than China's under Western international law concepts.

Although Japan may be taken to have "acquiesced" in China's claims, whatever they may have been, until 1609, in that year the Daimyo of Satsuma, one of Japan's strongest provinces, was granted by the Emperor (or rather by the Shogun, or military dictator, who was the actual head of the government during Japan's "long sleep", the Bakufu era) the right to conquer the Ryukyus. It appears that when Hideyoshi Toyotomi was planning to invade Korea in 1589, he asked the Ryukyu king for men to reinforce his own army; that king not only refused to accede to this request but forewarned the Chinese government. Whether this incident was the proximate cause of the conquest, or merely an excuse for it, it is not possible to say. At any rate, the Ryukyuans were badly defeated and their king was carried away captive to Satsuma, where he remained for several years, being treated, apparently, with great courtesy. The Japanese Daimyo, according to Leavenworth, "established a local government in the islands, took a census, surveyed the lands and collected taxes from the inhabitants. After this we find a state of dual dependence of the Loochoos both on China and on Japan. The Loochooans were content with this double allegiance, saying that they regarded China as their father and Japan as their mother."

We had, then, in 1609 and subsequently, a military expedition followed by a long-continued occupation. This occupation was characterized by various acts of "governing" and "development". It could scarcely have been unknown to the Chinese, who must be considered to have acquiesced in it. Admittedly, the Chinese rights to "tribute" and "overlordship" were not transgressed by the Japanese. Whatever "inchoate" right to sovereignty the Chinese might otherwise have had, however, was certainly terminated by two hundred and sixty some years of Japanese "effective occupation".

That China was permitted to retain the tribute-overlordship rights seems to have been a unilateral Japanese decision. It would be difficult, then, to predicate upon this fact, in the light of Japan's actual occupation and control

of Ryukyu, any intention upon the part of the Japanese to concede a Chinese right of sovereignty superior or equal to its own.

Consider now the claims of the Ryukyuans to independence. If they had earlier relinquished their "sovereignty" to China, then the conquest of Ryukyu by the Japanese, in default of a defense of them by China, seems sufficient to result in the usurpation of China's sovereignty. If they still retained "sovereignty" over the islands, having granted to China only certain specified rights, that sovereignty was certainly defeasible by conquest, and seems to have been effectively overcome by Japan's peaceful, long-continued occupation.

Previous to this date (1609), there is no record of any foreign contact with Ryukyu, other than Chinese and Japanese. Japan then acquired such rights of sovereignty (or their beginnings) in a "community" of only these three states, so, for the moment, we need consider the possibility of no other claims.

It must by now have become apparent that the history of Chinese and Japanese relations with the Ryukyus, when looked at from the standpoint of "claims to sovereignty", can be most conveniently divided into three periods, each marked by the adoption of a definite active policy by one of the contenders.

We first have the period which terminated circa 1372, when the King of Chung Shan "submitted" to the Chinese Emperor. Previous to this time, there is no pretense made by any nation that the Ryukyus were other than an independent state. Subsequent to 1372, there existed between China and Ryukyu a tributary relationship, with whatever claims to sovereignty that connotes.

With the Japanese invasion of Okinawa in 1609, the era of "dual dependency" upon both Japan and China commences. The key question here seems to be the extent to which Japan exercised control over Ryukyu's foreign and domestic affairs, to the exlusion of Chinese "sovereignty" or "suzerainty".

After 1874, this period of ambivalence terminated and Japan exercised exclusive control; of importance here is the question of China's "acquiescence" in this state of affairs.

Let us endeavor to determine, then, which country had the best claim of title to the various islands of the Ryukyus during these three periods.

There seems to be no dispute that Japan had complete control of the islands north of Oshima from a quite early date, a control which has not been interrupted until our own day. Oshima itself was also under the jurisdiction of Satsuma for a time, but it appears to have been reincorporated into the kingdom of Ryukyu (which, originally, apparently included only Okinawaand perhaps some of the small islands adjacent to it) about 1270. In 1314, remember, commenced the "Period of the Three Kingdoms", which lasted until 1430. Oshima, during that period, probably formed a part of the kingdom of Shang Peh. In 1289, according to the Naha history, Miyako and Yayeyama, the principal southern island groups, brought their first tribute to the king of Chung Shan. We have already noted the possibility, however, that these islands were originally peopled, and perhaps discovered, by Japanese refugees of the Taira clan.

In 1430, when the kingddm of Ryukyu was reunited (through Chung Shan's conquest of Shang Nan and Shang Peh) it appears to have consisted of the sweep of islands from Oshima in the north to (but not including, of course) Formosa in the south. Whatever rights the Chinese Emperor acquired through the "submission" of the Ryukyuan king, then, apply to all of this territory.

This "submission" relationship, we have noted, comprised two essential elements: the sending of "tribute", and the acceptance of the crown from the Chinese Emperor. The answer to Chinese claims based upon these two facts may be stated very briefly - "tribute" was a Chinese euphemism for "trade", and the "acceptance" of the crown was purely nominal. Before these two points are discussed further, that this is the proper interpretation may be made clearer by a glance over abstracts from the "Imperial History of the Ming Dynasty in China."

> Loochoo lies in the southeast part of the great sea. She has never communicated with China in ancient times. Kublai Khan, the second Emperor of the Yuen Dynasty, appointed an official to command the Loochoos to become a dependency of China, but he did not succeed in his aim. /Note the inaccuracy here; it has been indicated above that the earlier Chinese records do refer to Loochoo - e.g., the "conquest" of 607, apparently forgotten by this Ming scribe./
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> In the first moon of the fifth year of the first Hung Wu king, an ambassador was appointed, named Yang Tsai, to go to Loochoo to tell

them about the accession of the Chinese Emperor. Tsi Tu /Tsi Don/ the King of Chung Shan, appointed his brother, T'ai Ch'i /Taiki/ and some other officials to return with Yang Tsai to China and pay audience to the Emperor. They presented China with many kinds of produce from their country as a tribute.

The Cinese Emperor was so very glad he ordered his officials to give to Loochoo the Chinese calendar and many kinds of fine colored cloth, woven with a mixture of both silk and cotton thread. In the winter of the seventh year T'ai Ch'i came to Chinaand brought her tribute again. He delivered a letter to the Crown Prince of China. The Chinese Emperor ordered Li Hao, the vice-Minister of the Board of Justice, to go to Loochoo and give them fine coloured cloth, chinaware, and iron articles, and moreover the Chinese sent to the Prince of Loochoo chinaware, being 70-000 pieces in number and thousands of iron articles to exchange for horses in the Loochoos. In the summer of the ninth year T'ai Ch'i followed Li Hao to China and presented the Emperor with forty horses. T'ai Ch'i said that the Loochooans did not like coloured cloth; but did like chinaware and iron kettles. From this time the Chinese gifts to Loochoo were mostly chinaware and kettles.

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/About 1430, Chung Shan conquered Shang Nan, having previously annexed Shang Peh, both of which countries had apparently sent some tribute to China/ From this time there was only one country which sent tribute to China continually. In the first year of Chen Tung, the Loochoos said that what they wrote on the paper must be all the things they sent to China as tribute, but they forgot to record some shells, which had been taken without being named by the Chinese officials. Now they had no money to go back. The Emperor ordered that they should be given as usual. Next year the tribute ambassador came to Chekiang, and asked China to receive all that they had presented. The Emperor said, "Foreigners come here simply to get some profit, how can we take all these things as gifts from them? We return them all the things and record it as law that we cannot take them all."

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In the first moon of the seventh year, Shang Chung, the Crown Prince of Chung Shan, sent an official to China to announce the death of his father. The Emperor ordered two ambassadors to give the decree that he was King of Chung Shan. They accepted gold, spices and Japanese fans from Loochoo when they returned. The Emperor ordered them to be tried and had them beaten with bamboo sticks and then set them free. In the second moon of the twelfth year, Shang-sze-ta sent an official to announce the death of his father. The Emperor ordered ambassadors to go to Loochoo and decree him as king of Chung Shan. Shang-sze-ta died in the second year of Ching T'ai. He had no heir, but affairs were taken in charge by his uncle Chin Fu, who sent to announce the death of his nephew, the King of Chung Shan. The Emperor ordered ambassadors to give the decree that Chin Fu was the King of Chung Shan. In the secondmoon of the fifth year, T'ai Chiu, Chin Fu's brother, announced that Chin Fu, his elder brother, had died. Pu Li, his second brother, and Chih Lu, the son of Chin Fu, quarrelled about the throne for a time, but they also died. The silver seal presented by China had also been destroyed. All the people of Loochoo elected him to take charge of national affairs. He wanted China to present him with another seal so as to let him be the King of this dependency. The Emperor agreed to it. In the fourth moon of the next year the Emperor sent

ambassadors to decree T'ai Chiu as the King of Chung Shan. In the third moon of the sixth year of Tien Shun, Shang Ta, the Crown Prince, sent an officer to announce the death of his father. The Emperor appointed ambassadors to give the decree that he was the King of Chung Shan.

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In the tenth year, the Loochooan tribute ambassador killed a peasant woman and her husband in Hyaian and burned their houses, and stole their money as they passed through Fukien. The Chinese Government tried to arrest him, but in vain.

The next year, she sent tribute to Chinaagain. The Board of Ceremonies asked the Emperor to make laws so as to restrain them. The laws were that Loochoo should send tribute once to China in every two years, that the attendants of the ambassador cannot be more than a hundred in number; that they, the Loochooans, are not allowed to take anything secretly either from Loochoo to China or from China to Loochoo, and that no one be allowed to make any disturbance or trouble in any place as he passes through. The Emperor granted this and sent to warn the King. The ambassador begged the Emperor to act according to the law fixed by the Imperial ancestor, so that the Loochoos may send tribute to China every year, but this was not granted. ... In the 13th year the ambassador begged again that they must send tribute to China every year. But it was not granted. ... In the fourth moon ofthe next year, the King died. Shang Chen, the Crown Prince, announced the death of his father, and begged to be elected King of Chung Shan and also begged that he might send tribute every year. The minister of the Board of Ceremonies said that "What they wanted to beg over and over againswas simply to want to trade with China. ... They simply wanted to get Chinese money to support a foreign country. This must not be granted." The Emperor ordered ambassadors to present the title to the King, but his wish was not granted. In the sixteenth year Loochoo sent an ambassador to China and pointed out many articles among the instructions of the ancestors of the Ming dynasty. These meant the Emperor must grant the sending of tribute every year; but the Emperor gave a decree, which warned them, and told them that they may have a chance a little later. In the eighteenth year, the Loochooan ambassadorscame to China and mentioned this again, but the Emperor gave them a decree also.

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In the fortieth year of Wan Lieh, the Japanese sent 3,000 strong soldiers to Loochoo. These soldiers entered the city and captured the King and took away the articles which the Loochoos placed in their ancestors' temple. The Japanese plundered Loochoo very much. The Commander in Chief in Chekiang informed the Throne and insisted that China must be careful in order to prevent the coming of the Japanese along the coast. The Emperor granted this. Not long after the Jpanese set the Loochooan King free and he came back to his country again. He sent tribute to China again but the country was very poor and desolate after the Japanese conquest.

The Board of Ceremony now fixed the law that Loochoo might send tribute to China every ten years. But Loochoo sent tribute to China the next year and again sent tribute the year after that. They did this as usual Following the decree of the Throne, the Governor of Fukien refused to accept it, but the Loochooan ambassador was sad and went back.

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> In the third year of T'ien Ch'i, Shang Ning had already died. The Crown Prince, Shang Feng, appointed an officer to go to China to ask when they should send tribute to China and when China would give him the title. The Ministers of the Board of Ceremonies told the Emperor that as a rule Loochoo had sent tribute to China every ten years after the Japanese conquest. Now their dountry had not fully recovered its strength. The best way was to order them to send it to China every five years. This could be considered again after the presenetation of the title to the new King. The Emperor granted this.

The Chinese record itself speaks more eloquently in support of my position than I could hope to do. Two points of importance may be readily gleaned from a persual of the foregoing abstract: (1) Ryukyu continually sought permission to increase its "tribute" to China; (2) in the entire history of Sino-Ryukyuan relations, there is no mention of the Chinese Emperor having even a single time exercised any discretion in the "selection" of a king of the Ryukyus - every candidate proposed for the office received "coronation" at the hands of the Emperor's ambassadors.

That this "tributary" relationship should not be the modern basis for any territorial claims in the Ryukyus on the part of China becomes more evident, however, when we consider the evidence that China never intended any such claims. For, if China's intention to annex the territory of Ryukyu is of latter-day origin, then, if she is to appeal to international law for aid, the equities of her position seem to demand that she submit to the rules of acquisition of latter-day international law, under which her actions are insufficient to support claims to territorial "sovereignty".

The Chinese record itself leads one to such a conclusion, for from its content and tone one may glean a feeling of indifference about the relationship. If these tributaries desire to send ambassadors occasionally, so as to profit from contact with us, then let them, the records seem to say - but only so long as we are not inconvenienced by the ambassadorial presence; let them respect us, for we are the "Middle Kingdom", the center of the universe, the epitome of cultural achievement - but let them not annoy us, for they have nothing we need nor covet, and their contact with us is transient, ephemeral, hanging upon our pleasure.

There are many indications of this attitude of China in her relations to other states. All non-Chinese states were regarded as potential tributaries; a state which would benefit from China's higher culture, either spiritually or materially, must send "tribute", must acknowledge the Chinese Emperor as all-highest. Western scholars of Chinese history, philosophy, and political thought have noted the existence of this attitude of cosmic superiority. A reference to the writings of two, and a quotation from the "Imperial Mandate to the King of England" may serve to clarify and, perhaps, to make the point.

> An understanding of the geographical background of China's international relations must lead inevitably to a comprehension of the fact that many of the misunderstandings which have arisen between China and other countries from the earliest period to the present time have an almost purely psychological basis. The fact that China was powerful and surrounded by a group of satellite states, and that there was no civilization to compete with hers nearer than that of India, separated from her by thousands of miles, resulted in an assumption of superiority which was no mere conceit on a gradiose scale, as it appeared to Westerners in the nineteenth century, but an altogether natural and sincere - albeit mistaken - belief that China among all the nations on earth was supreme in culture and in power. Nearer than India there were no palaces, temples, and other monuments to equal those of Peking. To China for hundreds of years came tribute-bearing embassies; the fact that these embassies actually came quite as much to trade as to pay respect to the rulers of China detracted no whit from the respect required and received by these same rulers, from the members of the embassies.
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> It is necessary to bear in mind that suzerainty, in the Chinese acception of the term, involved something entirely different from the European idea of that political condition. China was like the Roman Empire when it had conquered the Western World, in that China was not yet acquainted with any rival for power in the Eastern World. In European history even the mildest form of continuous interference in the affairs of another country aims at control, or at least of influence, as is shown by the words themselves, 'spheres of influence' and 'protectorates'. This is because various rivals, more or less equal, have struggled to extend their sway or influence over outside peoples. But with China the philosophy of the situation was entirely different. She had no rivals. Hence why should she trouble herself to control or influence peoples on the fringes of the world. It was, as has been well shown, her ideal to be the teacher of her civilization to these peoples and not to be their ruler or their protector. She was content as long as tribute came from them as an acknowledgement of her superiority as a teacher. When Japan appears again in the later act of the Loochooan drama we shall find that she entertained the usually received European conception of suzerainty, and hence a conflict of ideas arose between China and Japan.

In the "Imperial Mandate to the King of England", Chia Ch'ing expressed his imperial displeasure and indignation at the action of Lord Amherst in refusing to perform the kowtow.

Such gross discourtesy is utterly unprecedented; nevertheless, I administer no severe reproof, but confined myself to ordering their immediate departure from Peking. As the mission was not received in audience, your memorial, strictly speaking, should not have beenpresented, but I remembered that your country is afar off, and that the feelings were praiseworthy which led you to memorialize Us and send tribute. Your envoys are alone to blame for their gross breach of respect; I fully recognize the spirit of reverent submission which animated you. ... You live at such a great distance from the Middle Kingdom that these embassies must cause you considerable inconvenience. Your Envoys, moreover, are wholly ignorant of Chinese ceremonial procedure, and the bickering which follows their arrival is highly displeasing to my ears. My dynasty attaches no value to products from abroad; your nation's cunningly wrought and strange wares do not appeal to me in the least, nor do they interest me. For the future, O King, if you will keep your subjects in order and strengthen your national defenses, I shall hold you in high esteem, notwithstanding your remoteness. Henceforward, pray do not trouble to dispatch missions all this distance; they are merely a waste of time and have their journey for nothing. If you loyally accept our sovereignty and show dutiful submission, there is really no need for these yearly appearances at our Court to prove that you are indeed our vassal. We issue this mandate to the end that you may perpetually comply therewith.

China's interpretation of 'tribute' was essentially impractical. So long as her own advantage could be promoted, she regarded as a token of vassalage the presents periodically carried to her Court from neighboring States, but so soon as there arose any question of discharging a suzerain's duties, she classed these offerings as an insignificant interchange of neighborly courtesy.

This criticism of China's "foreign policy" is well borne out by China's conduct upon the occasion of Japan's conquest of Ryukyu in 1609. Whetehr or not China was aware of this conquest until it was a fait accomplit is an open question; some historians have attempted to excuse her "laches" on this basis. In any case, however, with biennial tribute-bearing missions from Ryukyu, China could not long have remained in ignorance of what had occurred, yet so far as is recorded, she made no remonstrance nor attempt at retaliation or defense.

In the late nineteenth century, when Japan annexed the Ryukyus, China protested vociferously for a time, although, by Western international law standards, her basis for protest seems to have weaker than it was at the time of the Satsuma invasion. From this we might conclude that China did not consider her relationship with Ryukyu at that time such as to support any territorial claims or right to protest against foreign invasion.

The extent to which Japan enjoyed contacts with Ryukyu proper (that is, the islands south of, and possibly including, Oshima) before 1609 is not clear and is not sufficiently material to jutify extended investigation. It is reported that an ambassador from the King of Ryukyu presented himself at the Muromachi Shogunate in 1416, but whether as an equal or a vassal we do not know. Presumably Japan, like China, would regard all ambassadors as tokens of vassalage. At any rate, Yoshinori, Shogun in 1441, bestowed Ryukyu on Shimazu Tadakuni, Daimyo of Satsuma, in recognition of meritorious service; it may be, of course, that only the northern islands, traditionally under

the rule of Satsuma, were meant. Shogun Yoshimasa, in 1471, made a law that all vessels sailing to Ryukyu must have Satsuma permits, the Shimazu clan having requested such a law apparently to protect their own economic interests. Shortly after, one Miyake Kunihide attempted to invade Ryukyu (why he was unsuccessful does not appear), and Shogun Yoshitane gave Shimazu permission to punish him.

The projected invasion of China by Hideyoshi Toyotomi in 1589 seems to have been the occasion for the question of Japanese (i.e., Satsuma) supremacy over the Ryukyus coming to a head. Hideyoshi requested troops and military stores of the kings of both Ryukyu and Korea. The traditional account relates that both kings refused co-operation and warned the Chinese Emperor of Hideyoshi's plans, and that, in retaliation, Ieyasu, the first Tokugawa Shogun, permitted Shimazu Iehisa of Satsuma to march against Ryukyu.

A recent Japanese writer, highly critical of Japan's aggressive foreign policy, has pieced together a different story from the records of the time. His interpretation is that the affair was carefully planned to provide an excuse for the invasion of Ryukyu. Never an especially productive country, Ryukyu had apparently no surplus of food. The levy against Ryukyu, instead of soldiers, was to be 7500 rations for ten months. With no choice, Ryukyu agreed to provide the same, but was unable to furnish more than half the amount asked for. This failure became the excuse for the Satsuma invasion.

Whether Shimazu's expedition was justified or "aggression", however, seems beside the point. The records are clear that he did invade the island of Okinawa, and that he defeated the Ryukyuan army, which apparently had not been kept an anything near an adequate strength since the unification of the Three Kingdoms. The king and his high officials were captured and taken hostages to Japan, where they remained for two years.

This time was spent in an extensive sightseeing trip of Japan. The king was presented to the Shogun and was, by all accounts, well treated. The motives of Shimazu in thus entertaining the king become evident when we ask what happened in the Ryukyus while the king was gone. Although part of the Satsuma

army returned home in triumph, a detachment was left to "keep peace" in the Ryukyus. This detachment was also charged with investigating the territory of Ryukyu and the country's trade with China. Just what their findings may have been, we do not know in detail, but "a minute investigation was made", and the findings were probably in the hands of the Shimazu clan when, before the King of Ryukyu was permitted to return to his capital, he was required to sign a "Covenant in Three Articles" / /.

A copy of that Covenant is not available, but we can, to some extent, piece together its terms. It provided for the sending of tribute to Japan. It appears also to have provided that Ryukyu would forward Japanese goods to China for trading purposes, returning the proceeds of this trade to Satsuma.

Whether the conquest of Ryukyu was originally designed to further Sino-Japanese trade or merely to add Ryukyu to the holdings of Japan we can not say, but subsequent developments lead to the condlusion that the trade aspect was the most important - at any rate, the major benefit actually derived by Japan from her control of the islands was the profit of the China trade.

China had banned trade with Japan when Hideyoshi invaded Korea. Had Japan not seized the Ryukyus, then, unless some other subterfuge could have been arranged, the profitable and, in some respects, essential Chinese trade would have been lost entirely. The difficulty of the situation was intensified in 1636, when the Tokugawa Shogunate forbade Japanese merchantmen to navigate in foreign waters. Through purpose or oversight, Ryukyu was not included in this ban.

"For over two hundred years following the Tokugawa Shogunate's isolation decree, ... Loochoo was the only port whence the Japanese could freely dispatch their merchantmen to foreign countries for trade."

Not only does this later development of trade with China cast some light upon the motivations of Shimazu in originally invading Ryukyu, but it also

is the "key", it has been suggested, to the "rather curious" fact that "though he was in perfect control of the islands, the Lord of Satsuma tacitly permitted the people of Loochoo to have intercourse with or serve China as their mother country. ... The Lord of Satsuma wanted to utilize this, the only trade port in the Japanese Empire, for his own interests, and assumed such a peculiar attitude in the Loochoo Islands for this purpose." This same author concludes that Satsuma financed Loochoo's trade with China to the extent of about 90,000 ryo a year.

> The Satsuma merchants, as a matter of fact, controlled the Loochoo's trade with China, and in 1688, at the request of Satsuma, the government of the Loochoo appointed Hara Zenbei, of Kyoto, agent for the sale of China goods imported to them. Not only that, but in 1691 the Daimyo of Satsuma sent one of his retainers, called Ijichi Shinzetsu, with the envoy of the Loochoo to China, and this man, dressed as a Loochooan, went to Fukien in South China for trade. After this visit the official ships of the Loochoo dispatched to China always took products of Satsuma to dispose of in China, and on the return voyage brought raw silk and textiles. The Shin Dynasty permitted the Loochoo merchants to establish a "factory" of their own in the port of Fukien, after which trade quickly increased. The trade was all done in the name of the King of Loochoo, and the goods shipped to Nagasaki were consigned to him, but the actual beneficiary was Shimadzu of Satsuma. Moreover, at ports on the Eastern coasts of the provinces of Osumi, the clan established ship-controlling offices, and from these ports vessels were dispatched to the Loochoo twice a year, fifteen ships each time. The clan also made tin coins for use in China and the Loochoo. ... The result of all this energy was that Shimazu made great profits from foreign trade.

In an order dealing with the amount of tribute expected from Ryukyu, Ieshisa noted that, "Oshima, Tokunoshima, Kikai, Okinoerabu, Yoro; these five islands will be under the direct control of Satsuma". Whatever we may find to be the relation of Japan to the Okinawa group and the islands farther south, then, it seems clear that from this time Japan directly controlled all the islands of what is designated on the map as the "Oshima Group", with the possible exception of the small island of Yuronjima.

A consideration of the delicate position of the Lord of Satsuma should help to explain his "peculiar attitude". Internally, Japan had just undergone a certain amount of centralization of political authority. The Shogun was rather primus inter pares than "ruler", as the succession of different clans indicates; his authority was dependent upon his military might. In an endeavor to strengthen his somewhat precarious position, Tokugawa Ieyasu had

forbidden foreign intercourse, so as to remove the danger of his opponents' gaining support, material or ideological, from without. The subjugation of Kyushu by Hideyoshi Toyotomi, which had involved the defeat of the Shimazu clan, was in the immediate past; this must have made the clan somewhat chary of deliberately affronting the Shogunate, made "touchy" by weakness.

A smuggling trade, however, carried out with proper denials of its existence, would scarcely amount to an open affront, and might even have been approved by Ieyasu, could he profit from it without weakening the effect of the regulation on other clans by permitting an evident breach. The following extract from a letter sent from the Shimazu clan to the king of Ryukyu throws some light on the question, although it is of course not certain that the sentiments therein credited to Ieyasu were actually his:

> Your country is located near China. It is now over thirty years that one has been unable to send merchant ships between China and Japan. Our Shogun, /Ieyasu/, is very disturbed by this, and through Iehisa consults with your country; for many years merchantment have been sent to your country, and now we desire to bring about the existence of a Sino-Japanese commerce. T... This is our Shogun's hope.

Consider now how Shimazu's attitude toward the Ryukyus must have been influenced by China's attitude toward those islands and toward Japan. It was not to be expected that a China that had refused to trade with Japan would be any more friendly toward a Ryukyu made an integral part of Japan. Toward a Ryukyu that bore the outward appearance of the former Ryukyuan kingdom, however, there could be little reason for China to change its policy.

Caught between these two pressures, is it surprising that Shimazu, desiring the development of commerce between China and Japan, should have pursued the course he did? That course, apparently, involved a certain amount of control over the foreign affairs of Ryukyu, while leaving local administrative matters largely under the care of the king and local officials.

It has been said that Japan maintained at the court of the king, subsequent to 1609, an official whose function it was to handle the foreign affairs

of the kingdom. As one item of evidence to prove this fact, we may note the observations of Captain Basil Hall, of the Royal Navy, who visited Ryukyu in 1816. He speaks of an apparent Ryukyuan, one Madera, who attached himself to the English upon their arrival and became their almost inseparable companion:

> He is quite at ease in our company, and seems to take the most extraordinary interest in every thing belonging to us; but his ardent desire to inform himself on all subjects sometimes distresses him a good deal; he observes the facility with which we do some things, and his enterprising mind suggests to him the possibility of his imitating us; but when he is made sensible of the number of steps by which alone the knowledge he admires is to be attained, his despair is strongly marked. ... From the earnest way in which he inquired into every subject, we were sometimes inclined to think that he must have been directed by the government to inform himself on these topics; and certainly a fitter person could not have been selected; for he adapted himself so readily to all ranks, that he became at once a favourite, and every person took pleasure in obliging him.
>
> * * * * * * *
>
> With all these endowments and attainments he is unaffectedly modest, and never seems aware of his being superior to the rest of his countrymen. We were a long time in doubt what was his real rank; for at first he kept himself back, so that he was well known to the midshipmen, before the officers were at all acquainted with him; he gradually came forward, and though he always wore the dress of the ordinary respectable natives, his manners evidently belonged to a higher rank, but he never associated with chiefs, and disclaimed having any pretensions to an equality with them. Notwithstanding all this, there were occasional circumstances, which, by shewing his authority, almost betrayed his secret. One morning a difficulty arose about some supplies which the chiefs had engaged to procure, but which they had neglected to send; as soon as Madera was told of the circumstance, he went to Captain Maxwell, and undertook to arrange it to his satisfaction, at the same time begging that if any difficulty occurred in future, he might be applied to.

One can scarcely read Hall's book through without carrying away a strong impression that Madera was some sort of special representative of the Japanese, rather than a Ryukyuan.

During the visits of the Chinese ambassadors who came for the coronations of new Rykyuan kings, the relationship of Ryukyu to Japan was kept as secret as possible. "In place of Japanese money, Chinese money was used. Japanese ships in the harbor of Naha had to go to Unten or Maki, both in the north of the island /Okinawa/. Chinese-style clothing was worn. Chinese living in Naha and Shuri were strictly watched by the officials, and the houses

were searched. Regulations concerned with the slightest details made for a good impression; breaches were punished."

A comparison of various Ryukyuan and Japanese source materials relating to the Ryukyus has disclosed that between 1403 and 1606, thirty-one missions were sent to Japan from Ryukyu. Those previous to 1466, as well as those in 1481 and in 1527 are recorded as tribute-bearing missions; the rest were for purposes of trade.

In 1609 or 1610, the king of Ryukyu made his voyage to Japan, and after that date, we find periodic tribute-bearing missions recorded. These missions are apparently in addition to the much more frequent trading voyages. They occurred in 1613, 1634, and then, at average intervals ofnine years until 1850. (This is not to say that they ceased at the latter date, but the search was not carried beyond that point.)

Coronation missions from China to Ryukyu, after the Satsuma conquest of 1609, occurred only nine times before Japan's total annexation of the islands: in the years, 1633, 1663, 1683, 1719, 1756, 1800, 1808, 1838, and 1866.

From 1662 to 1875, something over a hundred "tribute" missions were sent from Ryukyu to China; it must be remembered, however, that these were the only Ryukyuan missions to China during this period. These missions,were not, as in the case of Japan, supplemented with "trading" voyages.

A graphic comparison of these various tabulations would reveal that all of these various relations were existing at once. While Ryukyu sent tribute to China, then, it also sent tribute to Japan (and here, "tribute" and "trade" seem to have been distinguished"); while China sent coronation ambassadors to the Ryukyuan court, the Japanese maintained a "foreign minister" at that court.

In September, 1872, the new king of Ryukyu, Sho Tai, went to Tokyo at the request of the Japanese government to announce his accession to the throne and to congratulate the Emperor on his restoration to power. While there he was recognized by the government as the rightful occupant of the throne and made a peer of Japan; since Japanese law requires that all peers of the realm reside at Tokyo, he was given a house and pension and required to remain there (he died shortly after 1900, and he was not replaced.) New bonds guaranteed by the Japanese Imperial Department of Finance were issued to cover the Ryukyuan national debt of 200,000yen.

In response to an inquiry by the American Minister in Tokyo as to the effect of these changes on the United States-Ryukyuan treaty of 1854, the Japanese Minister for Foreign Affairs replied: "The Lew Chew Islands have been dependencies of this empire for hundreds of years, and to them the title of Han was recently given. ... Lew Chew being an integral portion of the Japanese Empire it is natural that the provisions of a compact entered into between Lew Chew and the United States on the 11th of July, 1854, will be observed by this government."

Ryukyu had, as a matter of fact, been made a han in September, 1872, when Sho Tai was made a peer. The term is usually translated "barony"; Satsuma, for example, was a han. The effect of making it one, in 1872 at least, was to make it directly a portion of the Emperor's domain, under the quasi-feudal system of territorial holdings and administration then obtaining.

In 1874, it was reported to the American minister that "some officials of the interior department (Naimusho) reside there who are authorized to manage all the matters which concern foreign countries"; apparently these officials first took up their residence in the islands in July of that year.

In December, 1871, some Ryukyuan fishermen, shipwrecked on Formosa, had been killed by the aboriginal inhabitants and, reportedly, eaten. The Japanese government demanded redress for this outrage. Li hung-chang, the Chinese Statesman, conferred with Japanese Foreign Minister Soyeshima Tanecmi in April 1873; Li accepted the responsibility for the outrage and undertook to obtain orders from Peking to punish the Formosan tribesmen and keep them in order in the future, but the imperial ministers at Peking were not in accord. "A conference was held in Peking on June 21 between the ministers of the Tsungli Yamen and the Japanese Minister to China, Lord Yanagiwara, representing Count Soyeshima. Although the former stated that Liuchiu was a Chinese territory, they advanced no official counter-claim to suzerainty in answer to Yanagiwara's statement that the islands had always belonged to Japan. Moreover, they informed the Japanese that China claimed no control over the savage tribes in the mountainous eastern half of Formosa."

Before this meeting, the Japanese Ambassador had told the American Minister to China that he had come to discuss the Formosan matter with China, but that, "In regard to the kingdom of Loo Choo, which ... Japan has taken formal and actual possession of, he has nothing to say. The Loo Choo Islands, he says, are now a part of the Japanese Empire; nor will China or any other country be permitted to question the right of Japan to exercise complete jurisdiction over what was formerly the kingdom of Loo Choo."

On August 27, 1873, the Italian Charge d'Affaires at Tokyo addressed a note to the Minister for Foreign Affaris of Japan, requesting that Japan extend to Italy the treatment accorded other states in the islands of Ryukyu. On September 19, the Minister replied: "Following your request, I will inform the authorities of Ryukyu to treat the Italian ships and subjects in the same manner as /those of/ America, France, and Holland, which have already concluded a treaty with the Ryukyu Islands." (Translation)

"The Formosan expedition was organized in April, 1874. ... The Japanese effected a landing early in May, and showed every intention of remaining in possession of the eastern portion of the island. In October, 1874, a Japanese envoy arrived in Peking to settle the Formosa dispute. There was a war of words and then a rupture of the negotiations. ... Sir Thomas Wade, the British Minister, had already, so it is believed, intimated to the Japanese that Great Britain would not view the Japanese occupation of Formosa with satisfaction owing to the close trade relations of Formosa with the British merchants in China, and now he intervened and became mediator of the dispute. An agreement was signed October 31, 1874."

The treaty signed on October 31 provided for the withdrawal of Japanese troops from Formosa and for the payment by China of an indemnity to the families of the slain Ryukyuan fishermen. China thus acknowledged the Ryukyuans as subjects of Japan, without making any reference to the islands as a dependency of China. The treaty is sufficiently important to the history of this problem that it is here quoted in its entirety.

> OKUBO, High Commissioner Plenipotentiary, Councillor of State, and Minister of the Interior, on the part of Japan; and
>
> The Prince of KUNG and the Ministers of the Yamen of Foreign Affairs, on the part of China;
>
> Have together agreed upon the following Articles, and hereby execute the present instrument in testimony of the arrangement determined upon, that is to say:
>
> Whereas the subjects of every Government are entitled to its protection against injury, an obligation rests upon every Government to adopy measures by which their safety shall be provided for; and should any trouble have come upon /the subjects of/ any particular Government, it is incumbent upon that Government to institute inquiry and take action.
>
> Certain Japanese subjects / / having been wantonly murdered by the unreclaimed savages on Formosa, the Government of Japan, regarding these savages as responsible, despatched a force against them to exact satisfaction. An understanding has now been come to with the Government of China that his force shall be withdrawn, and certain farther steps taken; all which is set forth in the three Articles following: --
>
> ARTICLE I
>
> The present proceedings having been undertaken by the Government of

Japan for the humane object of affording security to its own subjects / /, the Government of China will not therefore impute blame to it.

ARTICLE II

The Government of China will give a certain sum to compensate the families of the shipwrecked Japanese / / who were murdered /on Formosa/. The roads made and buildings erected by the Japanese on the ground, the Government of China is prepared to retain for its own use, and it agrees to make a farther payment on this account. the details of the engagement on these points will be elsewhere stated.

ARTICLE III

All correspondence that this question has occasioned between the two Governments shall be cancelled, and the discussions dropped forevermore. It shallbe the duty of the Chinese Government to take such steps for the due control of the savage tribes in the region referred to as will forever secure the navigation /along their coasts/ against any farther atrocities on their part.

/L.S./ (Signed) OKUBO

/L.S./ (Signed) CHINESE MINISTERS

Countersigned: YANAGIWARA
Japanese Minister Plenipotentiary

(The amount of compensation to be paid by China to the Ryukyuans and Japan was stipulated in a separate engagement attached to the treaty.)

The Japanese government, "in May, 1875 ... ordered the Ryukyu King to stop its tributary relationship with China and garrisoned the Islands with a portion ofthe Kumamoto division of the Imperial Army. Finnally, in June, it introduced a complete administrative reorganization, including the use of the Japanese calendar. ... This was followed in 1876 by the establishment of the judiciary system and the organization of the police." Matsuda Michizuki, Secretary of the Naimusho, made a trip to the Islands in March, 1879, at which time "the King officially transferred all rights to the Japanese authorities. the Islands were2then formally termed Okinawa prefecture, and King Sho Tai was pensioned."

It was a difficulty over a tribute-bearing mission to China in April, 1875, which led to the prohibition of the tributary relationship. Mr. Tei, Chargé d'Affaires of Japan at Peking, hearing that a Ryukyuan tribute mission had arrived in that city, endeavored to see them but was prevented from

doing so by the presence of Chinese guards outside the quarters in which they were staying. These guards also refused to deliver a note, so Mr. Tei communicated with Prince Kung and the Tsung li Yamen, protesting his treatment by the guards; this resulted in an interview with the Prince several days later:

> In the interview ... I again recounted these circumstances, and added that Lew Chew was tributary to Japan, of which fact the deputation from that island now in Peking could not be ignorant, and I requested that the Yamen would see that the heads of the deputation were sent to my legation, that I might have conversation with them.
>
> Prince Kung replied that these people had come to Peking to prostrate themselves before the Emperor of China and to bring him tribute, as had been the custom of the people of Lew Chew for more than two hundred years, during which time Lew Chew had been tributary to China; that their business had no connection with Japan, and there was no reason why the Japanese charge should wish to see them; and further, that the Lew Chewans now in Peking were, as had been stated, under the directing care of men appointed for that purpose by the board of rites and the office of the imperial household, and the Tsung li Yamen did not control those two officers, and could not either order the men sent to the Japanese legation or interfere in the matter in any way whatever.
>
> To this I replied by saying that I could not avoid the consideration of this question, as it was one directly affecting the jurisdiction and sovereignty of my master, the Emperor of Japan, to whom the Lew Chew Islands were tributary; that I understood that the Tsung li Yamen had the control of all questions touching the relations of the Chinese empire with foreign powers, and I asked whether the prince was willing that I should report to my government that the Chinese foreign office disclaimed all power to move in the matter.
>
> Prince Kung replied, 'O, yes; send that report if you wish.'
>
> I again asserted the jurisdiction of Japan over Lew Chew, and asked that the Yamen would direct the board of rites and the office of the imperial household to send the headmen of the Lew Chewan deputation to my legation. To which the prince replied, 'O, Lew Chew is tributary to Japan, is it? Well, you send to Lew Chew and prevent the people of those islands from sending tribute-bearing deputations to China, and then we will believe that they are tributary to Japan. They haven't said that they were subject to your government.'

On May 30, 1875, the American Minister at Peking wrote the Secretary of State as follows:

> Mr Tei tells me that his government has instructed him not to pursue the matter, for the reason that it will be taken up and definitely settled at Yedo.
>
> He gives me to understand that the complete jurisdiction of Japan over the islands will be asserted, that provision will be made for governing them in all respects like the rest of the empire, and that then the Lew

Chewans, instead of purchasing a limited periodical trading-privilege with China, by paying tribute and obeisance, will be entitled to trade regularly with this country on an equal footing with other subjects of Japan, under the protection of Japanese consuls.

On October 21, 1878, the Chinese government forwarded to the American Minister a memorial by two Lew Chewan commissioners, Mao Gung-tai and Ma Kien-tsai:

> Japan has within a few years /enforced its/ oppressive rule upon our little state, and has taken upon itself to change our old established regulations. The treaty which Lew Chew, in the 5th year of Hien Fung, entered into with Commodore Perry, of the United States Navy, Japan forcibly constrains us to deliver up to the department of foreign affairs /of Japan/, and the tribute hitherto paid /by us/ to the Chinese Empire Japan has perversely prohibited and stopped. We /the Lew Chewan commissioners/ have already represented the state of the case to your excellency and begged you to exhort Japan to allow Lew Chew to remain in every respect as heretofore, and having been favored by your excellency with a personal interview, we /the Lew Chewan commissioners/ beg to memorialize the supreme authority of your honorable country in reference to the case as we have stated it, that suitable action may be taken, &c.

The following article appeared in the Nichi Nichi Shimbun, on May 5, 1879:

> When Mr. Matsuda came the second time to Loo Choo, he found the King ill, and the order by which the han was abolished and replaced by a ken, was communicated to Prinhe Shohitsu, who also received the Imperial message brought by the chamberlain, Mr. Tomikoji. But ... /various Ryukyuan mandarins/ ... were all very much perplexed. The records of the Hancho were examined by the newly appointed officers, who sealed them up, and guards of police were stationed at the castle gates; the Loo Chooan officers were summoned to the Tenkaiji, where they were officially informed of the change that had taken place, and warned not to be led astray by idle rumors. But the whole han was in a state of excitement, and on the following day, the 20th March, a deputation of more than forty persons, representing the Prince ... /and the nobles and mandarins/ ... proceeded to the Kencho, where they handed in a written memorial. This was however rejected, and returned to them with a kind reproof. Under these circumstances it was thought advisable to remove the ex-King from the castle, and this was consequently done on the 29th March at midnight; on the 31st March the Imperial troops occupied the castle, and then the people saw that there was no help for it, but that they must submit. It being though proper that the ex-King himself should advise the people of the abolition of the han, the people were summoned on the 2d April, and the ex-King made a speech to them. The gentry are now to be ranked among our shizoku and will receive pension bonds. In the meantime Mr. Kinashi issued the following notification:
>
> "To the officers of Shuri, Tomari, Kume, Naffa and other districts: As the Loocho han has now been abolished, and replaced by the Okinawa ken, the Han officers have all been dismissed, but you, the local officers of Shuri, Tomari, Kume, Naffa and other districts, and all the village and street officers, are hereby ordered to continue your duties as before."

On March 11, 1880, the Japanese government issued a proclamation notifying all persons having claims against the former Ryukyu-han to present them to the Japanese Department of Finance within a limited time, and promising that such claims would be paid, if contracted since 1844.

While in China on his journey around the World, General Grant had been requested by Prince Kung and Li Hung Chang to use his "good offices" in the Ryukyu matter; in July, 1879, he consulted in Japan with Count Ito, Minister of the Interior, and General Saigo, Minister of War. As a result of these talks, he wrote Prince Kung a letter from Tokyo, approved by the Japanese, on August 18, 1879, proposing that each country appoint a commission, the two commissions to meet and settle the differences between China and Japan.

"Both nations accepted Grant's proposal and the two commissions met in Peking. After three months' discussion they arrived at a settlement according to which the islands were to be divided. However, on the day fixed for the signatures China suddenly withdrew the question from the commission, and referred it to the Chinese superintendent of trade of the northern and southern districts. 'A glaring instance of international treachery' on the part of China, the North China Daily News (January 27, 1883) called it, but it was subsequently discovered that Japan, not content with the settlement of the Lew Chew question by its self, had, at the last minute, insisted upon the inclusion in theagreement of some additional provisions opening new ports and trading privileges in China to Japan.

"China had been predisposed to settle the matter in 1880 because of the strained relations with Russia, although the surrender of Chinese territory to foreign powers druing the minority of the emperor was a risk such as few Chinese statesmen would have dared to assume. As soon as the trouble with Russia was over, the Lew Chew question again became the subject of great irritation. Li Hung Chang outlined China's positions as follows: China would not under any circumstances consent to the destruction of the autonomy of the islands, or the division of them between Japan and China. He desired that the islands should be restored to their original conditions of

to

"tributary state to both China and Japan. Failing this, he thought China would agree to enter into treaty stipulations with Japan by which both powers would guarantee the absolute independence of the Lew Chews."

However, nothing further was heard from China concerning the Ryukyus. In 1882, Li Hung Chang was ordered by the Emperor of China to submit a plan for the invasion of Japan and was made responsible for its execution. Li, in his memorial to the Emperor, counselled caution and the strengthening of defenses. He advocated also the building up of a strong navy and the development of policy such as would gain the sympathy of the Western nations. Said he, "Our best case for causing a rupture with Japan is not over the Korean question but in regard to the Loochoo Islands. We have an indisputable right to these islands, and every foreign Power would have to admit our claim, if we demand the restoration of our rights over them."

The statment has been frequently made that China "formally" recognized Japanese sovereignty over the islands in 1881; there does not appear to be any basis for such a statement. November 20, 1880, was the date upon which the Chinese commissioners announced to the Japanese high commissioner, Mr. Shishido, that "an imperial decree had been issued, referring the whole subject to the northern an d southern superintendents of trade, for consideeration and report"; this resulted in the withdrawal of the Japanese commission from China, and appears to have been the last formal communication between the two countries concerning the Ryukyu situation.

SUMMARY OF CONCLUSIONS

Thesis: China has no stronger legal claims to sovereignty over the Ryukyu archipelago, or any part thereof, than any other nation.

1. In the search for a suitable standard by which to measure China's claims, it is not possible to find any Oriental international law which may be considered binding upon China and the other parties to the various relevant events, Japan and the Kingdom of Ryukyu (Chung Shan).

2. Modern Western international law furnishes such a standard, and its application may be justified on the following bases:
   a. That it represents a concrete summary of the ethical position on the problem of acquisition of sovereignty over territory of all the Western nations who have a substantial interest in this question; and
   b. That China, as well as Japan, by acceding to Western international law at the beginning of the twentieth century, bound herself to the determination of disputes according to its rules; and
   c. That China made no claims to territorial sovereignty in the Ryukyus until she was introduced to Western concepts of sovereignty, and she is now estopped to accept the benefit of those concepts while rejecting their correlative obligations.

3. Japan acquired sovereignty over the northernmmost islands of the archipelago at an early date, by occupation for a sufficient length of time to cause title to arise by prescription, if not, indeed, because

of discovery succeeded by occupation.

4. Japan acquired sovereignty of the islands in the Oshima group, with the possible exception of Yuronjima, by right of conquest and annexation, after the Satsuma affair of 1609.

5. As regards the Further Isles, Japan's claim appears, if anything, better than her claim to the Okinawa group proper, since there are manifold evidences of Japanese discovery and original occupation of those islands. The effect of the submission of those islands to the king of Chung Shan does not require detailed discussion, since they were thus made part of the kingdom which became tributary first to China and then to Japan, and their sovereignty will be determined by the same considerations as will that of the rest of that kingdom.

6. It is in regard to the Okinawa group proper that the major problem arises. Aside from the Okinawa group and the Further Isles, China has not the slightest basis for claims to sovereignty in the archipelago.

7. The tributary relationship of Chung Shan to China is not sufficient to support territorial claims.

8. Even if it were, the existence of a dual tributary relationship to both China and Japan for over three hundred and fifty years leads to the conclusion that during that period neither country exercised the exclusive sovereignty which alone will give rise to territorial claims.

9. The provision for investiture that was a part of the China-tributary

relationship, and the earlier birth of the relationship with China, is more than offset by the continuing effective control exercised by Japan over the foreign relations of Chung Shan.

10. It is also of significance in this regard that Japan (Satsuma) actually conquered Okinawa and seized the king of Chung Shan; this fact lends credence to the position that only a desire for the China trade led to Japan's permitting Chung Shan to maintain a pretence of independence. Consequently, if either country is to be considered to have acquired sovereignty prior to 1872, China's claim is far the weaker, if her contacts with Ryukyu were, in effect, licensed by Japan.

11. The making of Chung Shan into a han in 1872, and into a ken in 1879 (the latter at least, if not the former) was an effective annexation by Japan of the islands conquered earlier; that this annexation was long delayed is unimportant in view of Japan's diligence in preventing the exercise on the territory of Chung Shan, by China, of any of the perquisites of sovereignty.

12. The recognition of Ryukyuans as Japanese subjects in the treaty of 1874 is conclusive that China did not consider the Ryukyuans subjects of her own, although it may have been her ignorance of treaty procedure which led her to refer to them as Japanese subjects when she actually considered them members of an independent nation. Even on this latter hypothesis, China formally announced her own lack of pretensions to sovereignty over the islands by becoming a party to the treaty, as well as by her willingness, expressed in the negotiations, to formally recognize Ryukyuan independence if Japan would do [redacted] the same.

13. The subsequent long-continued peaceful occupation of the islands by Japan, accompanied by no protest or further claim by China, for a period of over seventy-five years, is sufficient basis upon which to predicate China's acquiescence in this state of affairs. This is so even though China has given no formal notification of her acquiescence; it has been erroneously stated that she gave such notice in 1881, but the absence of such a formal notice is irrelevant in the presence of the undisputed facts.

14. Whatever disposition the victors in the recent war, or the present United Nations Organization, decide to make of the Ryukyuan archipelago, then, there is no reason for considering China as having a better case in law for Ryukyuan sovereignty than any other nation.

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