

# Ryūkyū Attribution Issue and Ernest Satow

## *Assessment of the Newspapers Debate between Japan and Qing and Its Background*

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### 1 Introduction

At the end of March 1879, tensions between Japan and China's Qing Dynasty heightened following the Government of Japan's abolishment of the Ryūkyū Domain and establishment of Okinawa Prefecture ("Ryūkyū Disposition"). The Qing Government demanded that Japan withdraw its disposition because the Ryūkyū Kingdom was a tributary state of China, leading to increased tension between both countries over the attribution of the Ryūkyū Kingdom ("Ryūkyū Attribution Issue").

In May 1879 and thereafter, there were two inquiries and replies between the Qing Government and the Government of Japan, where the claims of each party were reciprocated, and running parallel to this, mediation<sup>1</sup> was carried out by former US President Ulysses S. Grant. Both Qing and Japan responded to this mediation and explored a venue for direct negotiations, with preliminary negotiations commencing in March 1880 and official negotiations taking place between August 18 and October 21, 1880. These resulted in an agreement<sup>2</sup> in

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1 There are documents that position Grant's involvement as "good offices." However, good offices and mediation are more or less the same in the sense that they are non-binding on the parties to the dispute, and it has been pointed out "the two are often used interchangeably in positive law" (Yamamoto Sōji 山本草二, *Kokusaiho* 国際法 [International Law] (Tokyo: Yūhikaku, 1994 (New Edition)), 681). In the latter half of the 19th century, negotiations between the parties to the dispute, mediation that is non-binding on the parties to the dispute, and arbitration that binds the parties to the dispute were commonly mentioned when discussing dispute resolution procedures. (William Edward Hall, *International Law* (Oxford: Clarendon Press, 1880), 306 provides one example of discussion that is largely in the same era as Grant's involvement.) In this chapter, the author follows the original text when quoting, but generally uses the word "mediation."

2 This agreement was originally scheduled to be signed 10 days after the conclusion of the agreement with the approval of the Emperor of the Qing Dynasty. However, the Qing side later withdrew its agreement to the signing. On March 5 of the following year, 1881, the Qing side issued an imperial order to renegotiate, and rescinded the draft amendment to partition

which the main island of Okinawa and all islands north of it were designated as Japanese territory, while Miyako Islands and the Yaeyama Islands were designated as Qing territory, and the Sino-Japanese Amity Treaty was effectively revised.

How was the Ryūkyū Attribution Issue perceived under international law by Japan, China and the Western powers that had entered the region?

This question concerns the “acceptance of international law”<sup>3</sup> by Japan and Qing, but it also goes beyond that. From the 1860s to 1870s, Japan not only accepted international law in its relations with Western powers, but also attempted to apply it to its relations with the countries of East Asia. Meanwhile, it has been pointed out that Qing had also begun using international law in its relations with Western powers, but instead of applying this

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the islands. For the Ryūkyū Disposition, including the development leading up to it, see Watanabe Miki 渡辺美季, “Ryūkyū Shobun’ to Ryūkyū Bunkatsu Kōshō – Nisshin Kankei no Tenki” 『琉球処分』と琉球分割交渉—日清関係の転機 [Ryūkyū Disposition and Negotiation on Ryūkyū Partitioning: Turning Point of Japan–Qing Relations] in *Handobukku Kindai Chūgoku Gaikōshi* ハンドブック近代中国外交史 [Handbook of Modern Chinese Diplomatic History], Okamoto Takashi 岡本隆司 and Hakoda Keiko 箱田恵子 (eds.) (Kyoto: Minerva Shobō, 2019), 90–91; Nishizato Kikō 西里喜行, *Shinmatsu Chū Ryū Nichi Kankeishi no Kenkyū* 清末中琉日関係史の研究 [A Study of Relations between China, Ryūkyū and Japan in Late Qing Period] (Kyoto: Kyoto University Press, 2005), 282–392; and Hakoda Keiko 箱田恵子, “Ryūkyū Shobun o Meguru Nisshin Kōshō to Chūsai Saiban Seido” 琉球処分をめぐる日清交渉と仲裁裁判制度 [The Arbitration System and the Sino-Japanese Negotiation over the Annexation of Ryūkyū], *Shisō* 史窓, no. 77 (2020), 17–22. As for the legal positioning of the Ryūkyū Disposition, see Yanagihara Masaharu, “Some Thoughts on the Concept of Territory in the Late Edo and Early Meiji Periods,” [https://www.jiia-jic.jp/en/resourcelibrary/pdf/Shioki\\_Fuyo\\_Zokkoku\\_and\\_Sovereignty.pdf](https://www.jiia-jic.jp/en/resourcelibrary/pdf/Shioki_Fuyo_Zokkoku_and_Sovereignty.pdf), 20–22; Yanagihara Masaharu, “Shioki, Fuyō, Zokkoku and Sovereignty,” [https://www.jiia-jic.jp/en/resourcelibrary/pdf/Shioki\\_Fuyo\\_Zokkoku\\_and\\_Sovereignty.pdf](https://www.jiia-jic.jp/en/resourcelibrary/pdf/Shioki_Fuyo_Zokkoku_and_Sovereignty.pdf), 17–24; and Matsui Yoshiro 松井芳郎, *Kokusaiho gakusha ga Yomu Senkaku Mondai* 国際法学者がよむ尖閣問題 [The Senkaku Issue as Read by International Law Scholars] (Tokyo: Nippon Hyōronsha, 2014), 33–36.

3 There is much literature on the subject. For leading Japanese works in the field of international law, see Yanagihara Masaharu, “Significance of the History of the Law of Nations in Europe and East Asia,” *Recueil des Cours de l’Academie de droit international de la Haye*, vol. 371 (2015), 317–349; and Hamamoto Shōtarō, “International Law, Regional Developments: East Asia,” in *The Max Planck Encyclopedia of Public International Law*, Rüdiger Wolfrum (ed.) (Oxford: Oxford University Press, 2012), vol. 5, 907–926; for diplomatic history, see *Higashi Ajia Kindaishi* 東アジア近代史, vol. 2 (March 1999), and *Higashi Ajia Kindaishi* 東アジア近代史, vol. 3 (March 2000). For a work that addresses questions concerning the expression “acceptance of international law,” see Toyota Tetsuya 豊田哲也, “19 Seiki Higashi Ajia to Kindaikokusaiho no Kokkachūshinshugi no Keisei” 19世紀東アジアと近代国際法の国家中心主義の形成 [19th-century East Asia and the Formation of State-Centrism in Modern International Law], *Kokusaiho Gaikō Zasshi* 国際法外交雑誌, vol. 116, no. 4 (2018), 2–3. Note that the above references are not discussions of simple “acceptance.”

to its relations with Asian countries, Qing maintained its traditional stance of handling these relations as issues of the East Asian order.<sup>4</sup> Taking into consideration this inconsistency, the abovementioned question also concerns, amid the dispute over the attribution of Ryūkyū, the perceptions of Qing and Japan regarding the application of international law to their bilateral relations, as well as the perceptions of Western powers regarding how international law applied to Japan–Qing relations.<sup>5</sup>

The relationship between acceptance of international law and the traditional East Asian order has conventionally been described in formulaic terms, with the arrival of European powers in East Asia bringing a view of order based on modern international law to the region, which collided with the traditional East Asian order, and Qing's loss during the Sino-Japanese War paving the way for its collapse.<sup>6</sup> This perception is likely an appropriate one, but as this discussion seems to have emerged, connecting several major points over the course of time, it has created room for a more detailed analysis of this process of change.

For example, until the 1860s, Western powers demanded and established their relations with Japan and Qing respectively based on international law, but in the 1870s, they “began to pay attention to the relationships between Qing and the vassal states surrounding the Chinese Empire.”<sup>7</sup> In this context, the questions of what, at a certain point in time, Western powers thought about the norms applicable to Japan–Qing relations or the order underlying them, and how such perceptions evolved over time, together with the perceptions of Asian countries, including Japan and Qing, are expected to provide important clues for elucidating how the view of order in this region changed.<sup>8</sup>

4 Kawashima Shin 川島真, *Chūgoku Kindai Gaikō no Keisei* 中国近代外交の形成 [Formation of Modern Chinese Diplomacy] (Nagoya: Nagoya University Press, 2004), 17; Nishizato, *supra* note 2, 284.

5 Suzuki Shōgo argued, regarding attribution issues of Ryūkyū, that “the abolition of the Ryūkyū Kingdom and the subsequent dispute between China and Japan are the early clashes of two disparate international systems,” (Suzuki Shōgo, *Civilization and Empire: China and Japan's Encounter with European International Society* (London: Routledge, 2009), 161).

6 See Ōnuma Yasuaki, “When was the Law of International Society Born? – An Inquiry of the History of International Law from an Intercivilizational Perspective,” *Journal of the History of International Law*, vol. 2 (2000), 1–66, esp., 30–32, 51–54; Suzuki, *supra* note 5, 175.

7 Motegi Toshio 茂木敏夫, “Chūkateikoku no ‘Kindai’ teki Saihen to Nihon” 中華帝国の『近代』的再編と日本 [The Modern Reorganization of the Chinese Empire and Japan], in *Iwanami Kōza Kindai Nihon to Shokuminchi 1 Shokuminchi Teikoku Nihon* 岩波講座近代日本と植民地1 植民地帝国日本 [Iwanami Lectures Modern Japan and Colonies vol. 1 Colonial Empire Japan], Ōe Shinbu 大江志乃夫 et al. (eds.) (Tokyo: Iwanami Shoten, 1992), 63.

8 Matsui hints at many discussions on this topic. See Matsui, *supra* note 2, 113 *et seq.*

The differences in the perceptions of international law between Japan and China, as well as how the Western powers, especially Britain, which played a leading part, were aware of and involved in them, have been examined in detail in relation to the dispatch of military forces to Taiwan prior to the “Ryūkyū Disposition” and the related negotiations between Japan and Qing. These previous studies point out that Qing was opposed to Japan advocating the application of international law, that Japan did not consistently give its view based on international law, and that the British Minister to Qing Thomas Francis Wade, who mediated the negotiations, ultimately prioritized a solution based on the traditional East Asian view of order.<sup>9</sup>

In contrast, there are not very many papers or discussions focusing on international law regarding the Ryūkyū Attribution Issue.<sup>10</sup> In addition, except

- 9 On these points, see Aoyama Harutoshi 青山治世, “Taiwan Shuppei Jiken” 台湾出兵事件 [Taiwan Expedition Incident], in Okamoto and Hakoda (eds.), *supra* note 2, 88–89; Kobayashi Takao 小林隆夫, 19 Seiki Igrisu Gaikō to Higashi Ajia 19世紀イギリス外交と東アジア [19th Century British Diplomacy and East Asia] (Tokyo: Sairyūsha, 2012), 38–63; Kobayashi Takao 小林隆夫, Taiwan Jiken to Ryūkyū Shobun – Rujandoru no Yakuwari Saikō – (2) 台湾事件と琉球処分—ルジャンドルの役割再考—(2) [Taiwan Incident and Ryūkyū Disposition: Reconsidering the role of Le Gendre (2)], *Seiji Keizai Shigaku* 政治経済史学, no. 341 (1994), 17–28; Ōkubo Yasuo 大久保泰甫, *Bowasonādo to Kokusaihō – Taiwan Shuppeijiken no Tōshizu* ボワソナードと国際法—台湾出兵事件の透視図 [Boissonade and International Law: Perspective of the Taiwan Expedition] (Tokyo: Iwanami Shoten, 2016); Kurihara Jun 栗原純, “Taiwan Jiken (1871–1874 Nen) – Ryūkyū Seisaku no Tenki to Shiten Taiwan Shuppei” 台湾事件 (1871–1874年) —琉球政策の転機としての台湾出兵 [Taiwan Incident (1871–1874): Dispatch of troops to Taiwan as a turning point in Ryūkyū policy], *Shigaku Zasshi* 史学雑誌 vol. 87, no. 9 (1978), 61–64; Robert Eskildsen, “Meiji 7 Nen Taiwan Shuppei no Shokuminchiteki Sokumen” 明治7年台湾出兵の植民地的側面 [Colonial Aspects of the 1874 Taiwan Expedition], in *Meiji Ishin to Ajia* 明治維新とアジア [Meiji Restoration and Asia], Meiji Ishin shigakukai (ed.) (Tokyo: Yoshikawa Kōbunkan, 2001), 61–76; Ichinose Norie 一瀬啓恵, Meiji Shoki ni okeru Taiwan Shuppei Seisaku to Kokusaihō no Tekiyō 明治初期における台湾出兵政策と国際法の適用 [Taiwan Expedition Policy and Application of International Law in the Early Meiji Era], *Hokudaishigaku* 北大史学, no. 35 (1995), 23–43; Zhang Chixiong 張啓雄, Nisshin Gokan Jyōyaku ni Oite Ryūkyū no Kizoku wa Kettei Saretaka? 日清互換條約において琉球の帰属は決定されたか [Did the Sino-Japanese Treaty Determine the Attribution of Ryūkyū?], *Okinawa Bunka Kenkyū* 沖縄文化研究, no. 19 (1992), 100–107.
- 10 In addition to Ueda Toshio 植田捷雄, Ryūkyū no Kizoku o Meguru Nisshin Kōshō 琉球の帰属を繞る日清交渉 [Sino-Japanese Negotiations Concerning the Ryūkyū Attribution], *Tōyō Bunka Kenkyūsho Kiyō* 東洋文化研究所紀要, no. 2 (1951), 151–201, prominent examples of more recent literature include Hakoda, *supra* note 2, 1–23, which focuses on how the arbitration tribunal was perceived in the same negotiation process, and Zhang Tian-en 張天恩, Ryūkyū Mondai o Meguru Nisshin Kōshō to Kokusaihō 琉球問題をめぐる日清交渉と国際法 [Sino-Japanese Negotiations and International Law over the Ryūkyū Issue], *Socio-science* ソシオサイエンス, no. 26 (2020), 18–39, which illustrates the difference in understanding of international law between Japan and Qing.

for the personal mediation by Grant that was touched upon earlier, perhaps because of the lack of major involvement of Western powers, there has been almost no review of their perceptions of international law as far as the author is aware. However, that is not to say that Western powers such as Britain had no interest in this issue; rather they were proactive in gathering information on this subject.<sup>11</sup> Within this context, it is of particular interest that, over the period from January 1879 to February 1880, the assessment of this issue within the British Legation in Japan changed a great deal.

Prior to the Ryūkyū Disposition, at a meeting with Minister of Internal Affairs Terashima Munenori, held on January 13, 1879, British Minister to Japan Harry Smith Parkes pointed out, “Generally speaking, the Ryūkyū Islands are believed to belong to both Japan and Qing.” In response, Terashima said, “The islands do not belong to both countries. Ryūkyū has merely dispatched missions to present gifts to the Qing Emperor on occasion and does not pay taxes to Qing.” However, Parkes added, “As long as tribute is paid to Qing, the Ryūkyū Islands will be considered to belong to Qing.” Terashima replied by again pointing out that no taxes had been levied by Qing and stated that the Taiwan Expedition made clear that Ryūkyū did not belong to Qing. Parkes responded that he had seen the provisions exchanged between Japan and Qing during the Taiwan Expedition, and that it contained no such text.<sup>12</sup>

11 Britain had compiled a booklet of “confidential” information from letters and public telegrams between its ministers to Japan and Qing and its Foreign Secretary (*Confidential Print: Correspondence respecting the LOOCHOO ISLANDS. 1879–82. Printed for the use of the Foreign Office. February 1883* (The National Archives (UK), FO881/4718)), which indicates that Britain had great interest in the matter. In addition, as will be mentioned later, the Japanese Government also actively provided information to the British Minister and Acting Minister to Japan (see *infra* notes 27, 90 and corresponding text to *infra* notes 91, 93, 95, 97).

12 “Meiji 12 Nen 1 Gatsu 13 Nichi Eikoku Kōshi Raishō Gaimukyō tonō Taiwa Ryakki (Ryūkyūhan Ikken)” 明治 12 年 1 月 13 日 英国公使来省外務卿との対話略記 (琉球藩一件) [Abridged Dialogue between the British Minister and the Japanese Minister for Foreign Affairs on January 13, 1879 (On the Case of Ryūkyū Domain)] in *Ryūkyū Shobun Ge* 琉球処分・下 [Ryūkyū Disposition Part 2], Matsuda Michiyuki 松田道之, in *Ryūkyū Shozoku Mondai Kankei Shiryō* 琉球所属問題関係資料 [Ryūkyū Attribution Issue Related Documents] vol. 4, Yokoyama Manabu 横山学 (ed.) (Tokyo: Honpō Shoseki, 1980), 132–138. See Namihira Tsuneo 波平恒男, *Kindai Higashi Ajiaishi no Nakano Ryūkyū Heigō – Chūka Sekai Chitsujō kara Shokuminchi Teikoku Nihon e* 近代東アジア史のなかの琉球併合 – 中華世界秩序から植民地帝国日本へ [The Disposition of Ryūkyū in the History of Modern East Asia: From the Chinese World Order to the Colonial Empire of Japan] (Tokyo: Iwanami Shoten, 2014), 298–299. Parkes said in a note to Wade dated September 3, 1879 (FO881/4718/16(ii) (FO46/247, no. 161(ii))) that the consolation money stated in the provisions exchanged between Japan and Qing at the time of the Taiwan Expedition did not form the basis of attribution of Ryūkyū to Japan.

In a letter to the Foreign Secretary, the 3rd Marquess of Salisbury, dated August 1, 1879, Parkes pointed out that Ryūkyū had paid tribute to both Japan and China, had a national identity and autonomy as an independent nation, and was recently annexed by Japan.<sup>13</sup> In a memorandum prepared on July 6, 1879 attached to this letter, Ernest Mason Satow, a secretary at the British Legation in Japan, also provided an overview of the Ryūkyū Disposition from 1871 onwards, and pointed out that the fact that in October 1872, the Ministry of Foreign Affairs had jurisdiction over the Ryūkyū Domain when King Shōtai of the Ryūkyū Kingdom was made a vassal and said domain was established “seems to indicate that the [Ryūkyū] islands were not yet regarded as an integral part of the Japanese Empire.”<sup>14</sup> In a letter to the Foreign Secretary, the 3rd Marquess of Salisbury, dated September 18, 1879, too, Parkes criticized Japan’s claims of sovereignty, pointing out that Japan had not explained the reason it had permitted tributes from the Ryūkyū Kingdom to Qing.<sup>15</sup> In any case, he took a negative view of Japan’s claims. It is believed that, because he touched upon the dual affiliation and imperial tributes, Parkes seems to have assumed a traditional East Asian view of order.<sup>16</sup>

This critical stance towards Japan undergoes a reversal in a memorandum by Satow<sup>17</sup> (hereinafter “the Satow Memorandum”) that was attached to a letter<sup>18</sup> sent to the Foreign Secretary, the 3rd Marquess of Salisbury, by Acting British Minister to Japan John G. Kennedy, dated February 13, 1880. Kennedy, who sent the memorandum, viewed it in a positive light.<sup>19</sup> This memorandum

13 FO881/4718/5 (FO46/247, no. 140).

14 FO881/4718/5(iv) (FO46/247, no. 140(iv); Ian Nish (ed.), *British Documents on Foreign Affairs: Reports and Papers from the Foreign Office Confidential Print, Part 1, From the Mid-Nineteenth Century to the First World War, Series E, Asia, 1860–1914, vol. 2, Korea, the Ryūkyū Islands, and North-East Asia, 1875–1888* (Federick: University Publications of America, 1989) (hereinafter, *BDEA2*), 62–68). See also, Suzuki, *supra* note 5, 157.

15 FO881/4718/13 (FO46/247, no. 163).

16 For the concept of tribute and dual affiliation in the traditional East Asian view of the world order, see Motegi, *supra* note 7, 61–65; for the plurality of such views of order, see Arano Yasunori 荒野泰典, *Kinsei Nihon to Higashi Ajia* 近世日本と東アジア [Modern Japan and East Asia] (Tokyo: University of Tokyo Press, 1988), 29–65; Suzuki, *supra* note 5, 34–55; Hamamoto, *supra* note 3, 909–911; for “the basis of ambiguity in international relations” in East Asia, see Mitani Hiroshi 三谷博, *Nihonshi no Naka no ‘Fuhan’* 日本史のなかの「普遍」 [Searching for Generalities in Japanese History] (Tokyo: University of Tokyo Press, 2020), 196–198.

17 FO881/4718/50(i) (FO46/256, no. 26(i); *BDEA2*, *supra* note 14, 70–74).

18 FO881/4718/50 (FO46/256, no. 26; *BDEA2*, *supra* note 14, 69–70).

19 See text corresponding to *infra* note 22.

introduced the de facto dispute<sup>20</sup> over the Ryūkyū issue between Japan and Qing that played out in newspapers between November 1879 and February 1880 (newspapers debate between Japan and Qing) and supported Japan's claims concerning its exercise of sovereignty. Regarding China, the memorandum stated, "The country has never exercised any authority in any way over the [Ryūkyū] islands," and emphasized that it was not the case that Qing had claimed sovereignty over the Ryūkyū Kingdom in the first place.<sup>21</sup> It appears that the memorandum viewed the matter in terms of sovereignty and authority based on the modern international legal order perspective, rather than dual affiliation and imperial tributes based on the traditional East Asian view of order.

What are the implications of these changes in the British Legation in Japan? Can this mean that Britain's basis for assessing Sino-Japanese relations shifted from the traditional East Asian view of the world order to the view of order based on modern international law? Or should it be viewed as a change based on some more specific background? Regarding the Satow Memorandum, Kennedy pointed out that "Mr. Satow, after stating the views of each writer, proceeds to weigh the evidence, and pronounces in favour of the arguments adduced on behalf of Japan,"<sup>22</sup> but what, in the first place, was asserted in the "de facto dispute between Japan and China" that triggered the memorandum and what did Satow place importance on in reaching the above conclusion?

This chapter will first elucidate the scope of the Satow Memorandum, which has not received much attention to date, and, after organizing the arguments therein, shed light on how Satow summarized the views of each author and what exactly Satow focused on in arriving at his conclusion. Based on that, it will explore the background of this evaluation and touch upon the significance thereof.

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20 It was not the official opinion of both countries that was published in the newspapers. Nevertheless, since the articles were written by the government affiliates of each country, this was described as a "de facto dispute between Japan and Qing." See *infra* notes 23, 24, 26.

21 FO881/4718/50(i) (FO46/256, no. 26(i); *B DFA2*, *supra* note 14, 70–74).

22 FO881/4718/50 (FO46/256, no. 26; *B DFA2*, *supra* note 14, 69–70).

## 2 Scope of the Satow Memorandum and Debate on Newspapers between Japan and Qing

### 2.1 *Scope of the Satow Memorandum*

According to the Satow Memorandum and Kennedy's letter concerning it, the Satow Memorandum examined the debate that played out across an article entitled *Audi Alteram Partem* (*Listen to the Voices of Others*), which was believed to be representative of China's position, appearing in the *Japan Gazette* between November and December 1879,<sup>23</sup> and a rebuttal article<sup>24</sup> entitled *Rebuttal* published in *Tokyo Nichi Nichi Shimbum* from the end of January to the beginning of February 1880.<sup>25</sup> Although not mentioned in the Satow Memorandum and Kennedy's letter, the article itself published in *Japan Gazette* was intended to refute the "official position of the Japanese Government" published in the *Tokio Times* on October 11, 1879.<sup>26</sup> Therefore, arranged chronologically, there is

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- 23 Published in parts across November 29, 1879, December 6, 1879, December 20, 1879, and January 10, 1880. The author referred to "Audi Alteram Partem – A Critique, The Japan Gazette, 1879," in *The Demise of the Ryūkyū Kingdom: Western Accounts and Controversy*, Yamaguchi Eitetsu and Arakawa Yūkō (eds.) (Ginowan: Yōjushorin, 2002), 27–61 (hereinafter, "Audi Alteram Partem") as a summary of these. According to the Satow Memorandum and Kennedy's letters on this topic, the article is believed to have been written by an American interpreter (Dr. McCartee) working at the Chinese Legation in Japan.
- 24 Published in parts on January 28, 29, 31 and February 9, 1880. A rough draft written by Inoue Kowashi at the request of Itō Hirobumi remains ("Yokohama *Shimbum Bakuron Sōkō*" 横浜新聞駁論草稿 [Rebuttal Draft to the Article in a Newspaper Published in Yokohama], in *Inoue Kowashi den. Shiryō hen* no. 5 井上毅傳 史料編第5 [Life of Kowashi Inoue, Historical Materials, vol. 5], Inoue Kowashi Denki Hensan Iinkai 井上毅傳記編纂委員會 (eds.) (Tokyo: Kokugakuin University Library, 1975), 506–514). See Yamashita Shigekazu 山下重一, "Japan Gazette' Ronsetsu no Ryūkyū Shobun Hihan to Inoue Kowashi no Hanron" 『ジヤパン・ガゼット』論説の琉球処分批判と井上毅の反論 [Criticism of the Ryūkyū Disposition in the Japan Gazette Article and Kowashi Inoue's Counterargument], *Kokugakuin Hōgaku* 國學院法學, vol. 40, no. 1 (2002), 54. The same article is also included in Yamashita Shigekazu 山下重一, *Zoku Ryūkyū Okinawashi Kenkyū Josetsu* 続琉球・沖縄史研究序説 [Continued Introduction to Ryūkyū and Okinawan History Research] (Tokyo: Ochanomizu Shobō, 2004), 221–261 with "slight amendments" (266).
- 25 FO881/4718/50 (FO46/256, no. 26; BDEA2, *supra* note 14, 70); FO881/4718/50(i) (FO46/256, no. 26(i); BDEA2, *supra* note 14, 70–71).
- 26 "Audi Alteram Partem," *supra* note 23, 27. The article published in *Tokio Times* is included as "Japan and Ryūkyū, The Tokio Times, 1879" (hereinafter, "Japan and Ryūkyū") in Yamaguchi and Arakawa (eds.), *supra* note 23, 12–26. While the expression "the official statement of the Japanese Government" is seen in the article published in *Japan Gazette*, the article published in *Tokio Times* is in fact almost identical to *Memorandum upon the Claim of Japan to the Absolute and Undivided Sovereignty of the Riu Kiu Islands, with Reference to the Opposing Claims of the Government of China (July 1879)* (FO881/4718/20(ii)

first the view of the Japanese Government published in *Tokio Times*, then the rebuttal by the Qing Government (Chinese Legation in Japan) published in *Japan Gazette*, and then the Japanese Government's surrebuttal published in *Tokyo Nichi Nichi Shimbun*. It is unclear<sup>27</sup> whether Satow read the first article published in *Tokio Times*, but this chapter will also review it so as to understand the objections of the Qing side published in *Japan Gazette*, and set out Satow's assessment of the latter two articles.<sup>28</sup>

## 2.2 *Debate on Newspapers between Japan and Qing*

The views of the Japanese Government in *Tokio Times* consist of I. Ancient and Medieval History, II. Geographical Relations, III. Language, Religion, Race, and Customs, IV. Medieval and Early Modern History, and a section without a heading (Summary).<sup>29</sup> The Qing rebuttal published in *Japan Gazette* has a

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(FO46/248, no. 187(ii)) published by the Japanese Government (hereinafter, "Japanese Government memorandum"). The same memorandum is a translation of "Shina Seifu no Kōron ni Taishite Waga Nihon ni Ryūkyūto o Senryōsuru no Syuken Aru no Oboegaki" 支那政府ノ抗論ニ対シテ我日本ニ琉球島ヲ專領スルノ主權アルノ覚書 [Notes regarding sovereignty over the Ryūkyū Islands to Japan in response to the objection of the Chinese Government] in *Ryūkyū Shozoku Mondai* 琉球所属問題<sub>1</sub> [Ryūkyū Attribution Issue 1], Ministry of Foreign Affairs of Japan (ed.) in Yokoyama (ed.), *supra* note 12, vol. 8, 329–352, hereinafter "Japanese Government notes"), the contents of which are the same as those of the first review by the Japanese side dated July 16, 1879 (FO881/4718/13(ii)) (FO46/247, no. 163(ii)).

27 The aforementioned "Japanese Government memorandum" note 26, which is almost identical to the article, was passed from the Japanese Government (Minister of Home Affairs Itō Hirobumi) to the British Legation in Japan (Acting Minister Kennedy), (FO881/4718/20 (FO46/248, no. 187)), with Satow being in a position where he may have come across it.

28 For an examination of the abovementioned *Tokio Times* article, *Japan Gazette* article, and Inoue Kowashi's draft of the *Tokyo Nichi Nichi Shimbun* article, see Yamashita, *supra* note 24. The same work, as will be described later, suggested that "in terms of debate over historical facts, the author of the *Gazette* article has by far the stronger argument" (*ibid.*, 89). This chapter does not delve into "historical disputes," but rather focuses on Satow's assessment with regard to the debate. Meanwhile, Satow's assessment is also introduced in Zhang, *supra* note 10, 23. However, said article does not discuss in detail the debate in the news articles nor Satow's assessment thereof. This chapter, however, does focus on these points.

29 Here, it is described as a "summary," but as will be seen later, it was not simply a summary of the preceding assertions; rather, it also touched on the relationship between the assessment of Ryūkyū's dual affiliation, the Sino-Japanese Treaty of Amity, and the dispatch of troops to Taiwan. The volume of the summary in the *Tokio Times* article is comparable to the total of I to IV excluding the reference material section.

similar structure,<sup>30</sup> refuting the Japanese Government's views in detail.<sup>31</sup> In response, Japan's surrebuttal published in *Tokyo Nichi Nichi Shimbun* touches only upon I and IV and a part of the summary. Below, the author will summarize the claims made by both countries by theme. Note that the numbering of (1) to (15) below were added by the author to make it easier to understand the points of debate.

### 2.2.1 Ancient and Medieval History

In relation to ancient history, the *Tokio Times* article pointed out that (1) Ryūkyū was called “Minami-shima” (written with the same characters (南島) as Nantō below) or “Okinawa” and (2) there was a historical relationship between the islanders of Minami-shima and the Japanese Imperial Court.<sup>32</sup> Regarding medieval history, (3) the Ryūkyū King claimed to be a descendant of Minamoto no Tametomo, a direct descendant of the Japanese Imperial family.<sup>33</sup>

In response, the article published in *Japan Gazette* first pointed out that (1) the name “Ryūkyū” or “Okinawa” had been used since China discovered the islands in 608, and that “Nantō” (written with the same characters 南島 as Minami-shima above) means “southern islands,” which had been used to include all islands located south of Kyushu (including Macau and Luzon). On the other hand, (2) with regard to the relationship between the islanders of Minami-shima and the Japanese Imperial Court, which the Japanese side claimed, the article argued that Minami-shima referred to the present-day Ōsumi Islands (Yakushima, Tanegashima, etc.) and the Tokara Islands, not

30 I. (Reexamination of History), II. (Geographical Relationship), III. (Language, Religion, Race, Customs), IV. (Early Modern History), v. (Shimazu Iehisa's Ordinance), Summary. Parts I to IV comprises over 90% of the total, while the Summary makes up less than 10%.

31 The *Tokio Times* article, as laid out in Yamaguchi and Arakawa, *supra* note 23, comprises 60 lines for I, 16 lines for II, 43 lines for III, 58 lines for IV, plus 102 lines for reference materials (Shimazu Iehisa's Ordinance, Oath of Shou Ning, Oath of the Council of Three), and 187 lines for summary. The *Japan Gazette* article, following the same layout, comprises 321 lines for I, 34 lines for II, 286 lines for III, 296 lines for IV, 51 lines for v, and 94 lines for summary. The latter is 2.3 times as long as the former with the reference materials included; if reference materials are excluded for the former, the latter is about 3 times the volume of the former.

32 “Japan and Ryūkyū,” *supra* note 26, 12–13. There are records of rank conferment in 707, arrival of islanders from Minami-shima and other islands at the Japanese Imperial Court in 715, dispatch of the Dazai-shi (Chief of the Dazaifu local government office) to Minami-shima and erection of a stone monument with inscription of the island's name in 735, and the words “Minami-shima is under the jurisdiction of Dazaifu” in the *Engishiki* (a Japanese corpus of laws and regulations compiled in 927).

33 *Ibid.*, 13. The son of Minamoto no Tametomo (Sonton) named himself Shuntennō and became the first Ryūkyū king. The lineage ended for a time but was later revived.

Ryūkyū or Okinawa. Regarding medieval history, it also (3) rejected Japan's claim that the King of the Ryūkyū Kingdom was a descendant of Minamoto no Tametomo as nothing more than a myth, and claimed that he was descended from a prince of the Yuan Dynasty.<sup>34</sup>

In response to these objections from the Qing side, the “Rebuttal” first (1) examined in detail what Minami-shima refers to under the heading “Okinawa and Minami-shima Names,” and concluded that “Shikaki is the current Ishigaki, while Kumi is also known as Kume-yama,” and that Minami-shima “is without a doubt the name that collectively refers to present-day Ryūkyū and the Satsuma Islands.”<sup>35</sup> Next, (2) under the heading “Imperial Tributes of the Minami-shima Islands,” it emphasized that, regardless of whether Ryūkyū was discovered by the Chinese or given its name by the Chinese, the Ryūkyū people were not submissive to China during the Sui, Tang, Song, and Yuan dynasties, and that they had been making imperial tributes to Japan since that time.<sup>36</sup> Furthermore, (3) under the heading “Considerations of Ryūkyū as Descendants of Tametomo,” the Rebuttal asserted the validity of the legend of Minamoto no Tametomo while citing historical works, and refuted the Chinese claim associated with the Yuan Dynasty.<sup>37</sup>

#### 2.2.2 Geographical Relations As Well As Language, Religion, Race and Customs, etc.

(4) Each of the two countries' claims on geographical relations were brief.<sup>38</sup> (5) With regard to its claims regarding language, religion, race, customs, etc., Japan only made a simple note that each of them had a strong connection with Japan.<sup>39</sup> The Qing side refuted these issues in more detail, but also recognized that examining these points did not approach the “main issue.”<sup>40</sup> There was no refutation of this in the “Rebuttal.”

34 “Audi Alteram Partem,” *supra* note 23, 27–37.

35 “Bakugi Dai 1 Pen” 駁議第一編 [Rebuttal Part 1], *Tokyo Nichi Nichi Shimbun* 東京日日新聞, January 28, 1880. Kumi is understood to be present-day Kume-jima, and this understanding is mentioned in “Bakugi Dai 2 Hen” 駁議第二編 [Rebuttal Part 2], *Tokyo Nichi Nichi Shimbun* 東京日日新聞, January 29, 1880.

36 “Bakugi Dai 2 Hen” 駁議第二編 [Rebuttal Part 2], *Tokyo Nichi Nichi Shimbun* 東京日日新聞, January 29, 1880.

37 “Bakugi Dai 3 Pen” 駁議第三編 [Rebuttal Part 3], *Tokyo Nichi Nichi Shimbun* 東京日日新聞, January 31, 1880.

38 For Japan's claim, see “Japan and Ryūkyū,” *supra* note 26, 14. For China's claim, see “Audi Alteram Partem,” *supra* note 23, 37–38.

39 “Japan and Ryūkyū,” *supra* note 26, 14–15.

40 “Audi Alteram Partem,” *supra* note 23, 38–47. Early modern history, which will be reviewed next, is part of the “main issue” (*ibid.*, 47).

### 2.2.3 Medieval and Early Modern History

Japan's claims regarding medieval and early modern history focused on (6) the fact that in 1441 (the first year of Kakitsu) the Ryūkyū Islands were bestowed to Shimazu Tadakuni by Ashikaga Yoshinori, became a dependency (Kakitsu Dependency), and belonged to Satsuma since then. As part of this, Japan stated that (7) as punishment for the failure of the Ryūkyū King to pay tribute to Satsuma during the Sengoku Era, Tokugawa Ieyasu ordered Shimazu Iehisa to dispatch an expeditionary force to Ryūkyū (i.e., to conquer it) and that Ryūkyū belonged to Satsuma. It also pointed out that Shimazu Iehisa dispatched vassals to establish a tax collection system and issued a proclamation of 15 articles, and that Shōnei along with the Council of Three took an oath to obey the proclamation.<sup>41</sup>

Regarding these points, the Chinese side first pointed out that, on the one hand, regarding (6) the Kakitsu Dependency, some historical sources improperly equated Nantō with Ryūkyū, and, on the other hand, also that there was no mention of this matter in other historical sources or that it could not access the historical sources on which Japan relied. Additionally, (7) regarding the abovementioned order by Tokugawa Ieyasu to dispatch an expeditionary force to Ryūkyū, the Chinese side pointed out that Shimazu Tadatsune (Iehisa) asked Tokugawa Ieyasu for permission to dispatch military forces, Ryūkyū was invaded by Satsuma soldiers in 1609, and the Amami Islands were placed under Satsuma control. Meanwhile, it also pointed out that tribute to the Ming Dynasty began during this period. The Chinese side also argued that there were problems with Japan's translation of Shimazu Iehisa's proclamation, and that the oaths taken by Shōnei and the Council of Three were the product of barbaric times and did not constitute evidence of rule.<sup>42</sup>

In response to the point that the historical materials relied on by the Japanese side regarding the Kakitsu Dependency could not be accessed, the Rebuttal pointed out, under the heading (6) "Consideration of Ryūkyū Affiliation with Satsuma during the Time of the Ashikaga Clan," that this was an ancient record handed down by Satsuma. Developments after that were only very briefly touched upon.<sup>43</sup>

41 "Japan and Ryūkyū," *supra* note 26, 16–17. The proclamation and oath are included afterwards (*ibid.*, 17–21).

42 "Audi Alteram Partem," *supra* note 23, 51–58.

43 "Bakugi Dai 4 Pen" 駁議第四編 [Rebuttal Part 4], *Tokyo Nichi Nichi Shimbun* 東京日日新聞, February 5, 1880.

#### 2.2.4 Summary

Based on the above points, the article in *Tokio Times* stated that “there is no room to doubt the fact that Ryūkyū has always been a dependency of Japan,” and proceeded to point out that (8) the abolition of Ryūkyū and establishment of a prefecture was only a part of the administrative system arrangement following the Meiji Restoration and that (9) regarding the notion that Ryūkyū paid tribute to China’s dynasties, the latter had been deceived by the former. Furthermore, it stated that, (10) with regard to the claim that the disposition of Ryūkyū violated the Sino-Japanese Treaty of Amity, in light of the facts that had heretofore been stated, namely the submission of Ryūkyū to the military power of Japan and the fact that the rulers of Japan protected and ruled the Ryūkyū people and created laws and taxed them, the claim that Ryūkyū was Chinese territory “needs no argumentative refutation,” and the above historical description was sufficient. (11) In response to the claim that Ryūkyū belonged to both Japan and China, the article stated that the claim of “dual affiliation” was not common, and pointed out again that the Chinese side had been deceived. It pointed out that China had only given purely nominal protection to Ryūkyū, while Japan had exercised de facto sovereignty from time immemorial and had clarified its authority<sup>44</sup> by military force. The article emphasized that Japan conquered Ryūkyū, gave it its laws and a constitution, and bound its rulers. (12) The article also rejected the claim that Ryūkyū was a semi-independent country, noting that Japan had never granted such independence to Ryūkyū, and it pointed out that such claims were incompatible with the territorial ownership that the Sino-Japanese Articles of Amity was premised upon. In addition, touching upon recent developments, the article concluded the discussion by (13) pointing out that during the Taiwan Expedition, the right to dispatch military forces to punish the massacre of the people of Ryūkyū by local people was not contested and was clearly permitted by the Qing Government, and finally, (14) emphasizing the importance of friendly relations between Japan and Qing.<sup>45</sup>

Meanwhile, the article in *Japan Gazette* first strongly condemned the suggestion that (9) China had been deceived by Ryūkyū as a conspiracy by Satsuma. (11) It also refuted the claim that China was merely providing nominal protection to Ryūkyū by citing the tribute from Ryūkyū. Furthermore, it asserted that (15) (also related to (2)) “If there is something like a ‘right to discovery,’ ... that right belongs to China. If there is something like a right of conquest, ...

44 It is described as “sovereignty” in the Japanese Government notes (“Japanese Government notes” *supra* note 26, 347).

45 “Japan and Ryūkyū,” *supra* note 26, 21–26.

that right also belongs to China.” (10) The article rejected Japan’s claim that it created the laws of Ryūkyū on the grounds that no evidence thereof had been presented. (11) In response to the assertion that the claim of “dual affiliation” was not common, it pointed out that such a relationship was also mentioned in the historical documents of Japan, and (14) concluded the discussion by noting that it was unusual to issue such a refutation in a newspaper but emphasizing the need to nevertheless do so.<sup>46</sup>

In the “Rebuttal” published in response, what can be called a “summary” was very brief. It only quoted and affirmed a passage from Xie Zhaozhe’s *Wuzazu* that Ryūkyū was a small country that could not maintain its independence, that it was awarded official status by China but also obeyed Japan, and that it could be easily attacked by Japan because of its proximity but China could assist it from across the ocean.<sup>47</sup>

### 3 Assessment of the Debate on Newspapers between Japan and Qing

The next issue is how Satow assessed the debate on newspapers between Japan and Qing. Before considering this point, the author would like to go on a slight tangent and present an overview of the assessment of this debate by Yamashita Shigekazu, a contemporary historian. This will make the significance of Satow’s assessment clearer.

#### 3.1 *Assessment by Yamashita Shigekazu*

In an essay published in 2002, Yamashita Shigekazu examined the debate between Japan and Qing, and considered that “in terms of the debate over historical facts, the author of the *Gazette* article has by far the stronger argument.”<sup>48</sup> In reaching this conclusion, Yamashita, in addition to a preliminary consideration, examined the basic structure of the debate by dividing the whole into “ancient and medieval history,” “geography, language, religion, race, and customs,” and “early modern and modern history theory,” following the same basic structure as the debate. “Early modern and modern history” corresponds to the history and summary of the medieval and early modern periods in Section 2 of this chapter.

46 “Audi Alteram Partem,” *supra* note 23, 58–61.

47 “Bakugi Dai 4 Pen” 駁議第四編 [Rebuttal Part 4], *Tokyo Nichi Nichi Shimbun* 東京日日新聞, February 5, 1880.

48 Yamashita, *supra* note 24, 89. Also see *supra* note 28.

Regarding “ancient and medieval history,” Yamashita first summarized the *Japan Gazette* article and Inoue Kowashi’s rebuttal, and stated that the latter did not address at all the fact that the former “pointed out that tribute to the Imperial Court from some islands of Nantō does not imply Japan’s possession of the entirety of Ryūkyū” ((2) in Section 2.2 above). Moreover, he noted that “neither the ‘[Japanese Government] notes’<sup>49</sup> nor Inoue’s rebuttal<sup>50</sup> claimed in particular that payments of tribute from Ryūkyū in ancient Japan were a basis for Japan’s sovereignty over Ryūkyū; rather, they mainly emphasized the legend that King Shun of Ryūkyū was the son of Minamoto no Tametomo ((3) of the same section). He then stated that Inoue’s refute “must be considered to be extremely incomplete as a rebuttal,” and concluded that “at present, there are no historians who consider the legend around Tametomo to be historical fact.”<sup>51</sup>

Next, regarding “geography, language, religion, race, and customs” ((4) and (5) of the same section), Yamashita pointed out that, in response to the “[Japanese Government] notes,” which only “provide a very brief description” of these topics, the *Japan Gazette* article “provided a rebuttal from multiple angles, but Inoue Kowashi’s draft of the article did not respond to this at all.”<sup>52</sup> In this regard, Yamashita pointed out that in the background was “the dispute between the Chinese side, which insisted that the traditional tributary relationship with Ryūkyū was one to be persistently maintained, and the Japan side, which insisted that the tributary system was merely a formal and ceremonial relationship,” and that Inoue Kowashi, who was well aware of this, “deliberately did not delve into this issue, but emphasized only the substantive control of Ryūkyū since the conquest by Satsuma.”<sup>53</sup>

Finally, with regard to “early modern and modern history,” he first summarized the debate on the Kakitsu Dependency ((6) of the same section) and asserted that “from the current level of research, the Gazette’s article pointed out that the Kakitsu Dependency was not a historical fact, and that the Satsuma–Ryūkyū relationship had long been friendly and equal, which was far more plausible than Inoue’s rebuttal, which relied solely on the ancient records of Satsuma.”<sup>54</sup>

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49 See *supra* note 26.

50 This refers to “Yokohama Shimbun Rebuttal Draft” by Inoue Kowashi, *supra* note 24.

51 Yamashita, *supra* note 24, 65–70.

52 *Ibid.*, 72. This point is not mentioned in the “Rebuttal” published in *Tokyo Nichi Nichi Shimbun*.

53 *Ibid.*, 72–75.

54 *Ibid.*, 76–80.

Next, he pointed out that “the harshest criticism of the Japanese Government’s claim was actually in the part (regarding (5) of the same section) that Inoue did not answer,” and pointed out that the Chinese rebuttal contained “pointed findings” and “an extremely powerful rebuttal,” and that Inoue Kowashi’s draft “Rebuttal” “showed how inaccurate the Meiji Government leadership at the time was in its perception of the history and current state of Okinawa.”<sup>55</sup>

Based on these considerations, Yamashita concluded at the end of his paper that “it must be said that, in terms of the debate over historical facts, the author of the *Gazette* article has by far the stronger argument.”<sup>56</sup> Without the need to reaffirm all the points, it can be said that Yamashita viewed the debate between Japan and China as “a debate over historical facts.”

### 3.2 *Outline of the Satow Memorandum and Its Assessment*

What was Satow’s assessment of the debate between Japan and Qing, compared with that of the contemporary historian Yamashita Shigekazu? First, the author would like to review the Satow Memorandum and then consider its assessment.

#### 3.2.1 Overview of the Satow Memorandum and Summary by Satow

The Satow Memorandum was originally handwritten and spanned 31 pages.<sup>57</sup> Here, the author would like to refer to the printed version published in *BDA2* for ease of review.<sup>58</sup> In the memorandum, the summary of the article in *Japan Gazette* was very brief, while the introduction and summary of Japan’s claims in the *Tokyo Nichi Nichi Shimbun* were more than three times the length. The assessment thereof was of almost the same length as the latter.<sup>59</sup>

At the beginning, the memorandum introduced the *Japan Gazette* article and enumerated the following five points which the article’s author had aimed to make: (i) the Chinese origin of “Ryūkyū” was older than the Japanese origin of “Okinawa,” and that Nantō in ancient Japanese history books did not refer to

55 *Ibid.*, 80–86.

56 *Ibid.*, 89. Yamashita proceeded with his argument based on the premise that Inoue Kowashi’s draft was not published (*ibid.*, 86–93). However, as stated above, it was published in *Tokyo Nichi Nichi Shimbun* (see *supra* note 24).

57 FO46/256, no. 26(i).

58 *BDA2*, *supra* note 14, 70–74 (see *supra* note 18). The same notes span four pages in appearance.

59 The former was 28 lines, the latter was 97 lines. It is reasonable to assume that the difference was due to the latter being written in Japanese. The assessment section was 99 lines long.

the Ryūkyū Islands ((1) and (2) of Section 2.2); (ii) the ancestors of the Ryūkyū kings were not descendants of Minamoto no Tametomo, but a prince of the Yuan Dynasty ((3) of the same section), (iii) the language, religion, race, and customs of Ryūkyū were not very similar to those of Japan ((5) of the same section), (iv) the Kakitsu Dependency was not a historical fact ((6) of the same section); and (v) Japan's opposition to Ryūkyū's submission to China was not made until 1872 ((9) and (11) of the same section).<sup>60</sup>

Furthermore, the purpose of the article's author was to show that the "right to discovery" and the "right of conquest," if any, belonged to China ((15) of the same section), that China had exercised more than nominal protection of Ryūkyū ((11) of the same section), and that Japan's claim that it created the laws of Ryūkyū was not supported by evidence ((10) of the same section).<sup>61</sup>

Meanwhile, the part corresponding to (i) above covered most of the summary of Japan's claims, accounting for about two-thirds of the total. Next, Japan's rebuttal related to (ii) and (iv) was summarized, and the summary concluded by referring to a passage from Xie Zhaozhe's *Wuzazu*.<sup>62</sup> The summary generally reflected Japan's claims appropriately.

### 3.2.2 Assessment by the Satow Memorandum

Satow's assessment based on this summary followed the structure of (i) to (v) above.

First, regarding (i), Satow stated at the beginning of his assessment that the authors of the Japanese side, "is successful in proving that the islands belonging to the Loochoo group did in ancient times recognize the supremacy of Japan, and also that the latter country possessed some slight degree of authority in those islands as far as the erection of signposts goes." He proceeded to state that, considering the reference to Ishigaki Island in the "Rebuttal," it would not be unfair to think that the people of Ryūkyū had respect for the Japanese Imperial Court. On the other hand, however, the interactions between Ryūkyū and the Japanese Imperial Court did not last very long, and in medieval times, the people of Ryūkyū were able to maintain a more independent position. In contrast, the true authority of the Satsuma people over Ryūkyū seemed to have begun with their invasion in the early 17th century, when they annexed the five islands under the control of the Ryūkyū King.<sup>63</sup>

60 *BdFA2*, *supra* note 14, 70–71 (FO881/4718/50(i); FO46/256, no. 26(i)).

61 *Ibid.*, 71.

62 *Ibid.*, 71–72.

63 *Ibid.*, 72–73.

Next, regarding (ii), after summarizing the arguments of both Japan and China, Satow concluded, “But whether the actual King of Loochoo be descended from [Minamoto no Tametomo or a prince of the Yuan Dynasty] can be of little practical importance in the determination of the present dispute.”<sup>64</sup>

As for (iii) language, religion, race, and customs, Satow pointed out the closeness with Japan in a balanced manner, while considering the objections by Qing.<sup>65</sup>

(iv) With regard to doubts about the credibility of the assertions in the article in *Japan Gazette* on the Kakitsu Dependency, Satow found that the Qing side’s debate prevailed in this respect.<sup>66</sup>

As for (v), Satow pointed out, regarding the lack of any points of refute in the “Rebuttal,” that “none is possible [in terms of refute].”<sup>67</sup>

Based on his review of these individual discussions, Satow summarized the debate as follows:

It seems worth while to observe that the attitude of China in this question has been constantly misunderstood and misrepresented. She is frequently spoken of as laying a claim to sovereignty to Loochoo, and as disputing with Japan about proprietary rights. To exhibit the matter in this light is no doubt of great service to Japan, as the Chinese Government [has] never exercised any authority over the [Ryūkyū] islands. The real position [of China] is that the Loochooans, finding their autonomy threatened by Japan, ... turned to China and besought her to use her influence to preserve them from being deprived of their independence. The justification for China’s interference ... was the specific paternal relation, ... and China has simply supported their claim. The Loochooans, when ordered by Japan to break off their long-standing relations with China, refused to become guilty of what they considered would be base ingratitude [by severing ties], but offered to submit to incorporation in the Japanese Empire, if the Japanese Government would obtain by negotiation with that of China their release from the obligation.<sup>68</sup>

64 *Ibid.*, 73.

65 *Ibid.* On this note, it is recalled that Satow had published the discussion of “Note on Loochoo” in 1874 in *Transactions of the Asiatic Society of Japan*, vol. 1, 1–9 (the same study was published in Patrick Beillevoire (ed.), *Ryūkyū Studies Since 1854*, vol. 2 (London: Curzon Press, and Tokyo: Edition Synapse, 2002)).

66 *BDEA2*, *supra* note 14, 73 (FO881/4718/50(i); FO46/256, no. 26(i)).

67 *Ibid.*

68 *Ibid.*, 73–74. For Ryūkyū’s position, see Satow Memorandum dated July 6, 1879 (FO881/4718/5(iv); FO46/247, no. 140(iv); *BDEA2*, *supra* note 14, 66).

After summarizing the dispute as described above, Satow concluded the memorandum by stating that, in his opinion, the two countries would not resort to the use of force over Ryūkyū, and that “there is little doubt if left to themselves, [Japan and China] will effect an amicable arrangement of this question.”<sup>69</sup>

### 3.2.3 Key Aspects of the Assessment in the Satow Memorandum

The following points can be presented as the key aspects of Satow’s assessment.

First, he clearly stated the superiority of Japan’s claims concerning the issue of sovereignty over Ryūkyū.<sup>70</sup> This contrasts with the negative stance taken toward Japan’s claims by the British Legation in Japan mentioned in Section 1 above.

Second, one of the factors that led to this assessment can be said to be a somewhat indifferent stance toward the “debate over historical facts.” This is evident from the point about the debate over the ancestry of the Ryūkyū kings ((ii) above), whereby Satow denied its very significance, stating that it “can be of little practical importance in the determination of the present dispute.”

This stance can also be seen in (i) above regarding ancient and medieval history. It can be said that Satow supported Japan’s claims on the relationship between Ryūkyū and the Japanese Imperial Court in ancient times, but that itself did not lead to his assessment of Japan’s claim of sovereignty. The exchanges seen in ancient times did not continue through to the Middle Ages, especially the Sengoku Era, and Satow acknowledged that Ryūkyū was able to maintain a more independent position. On the other hand, about the Kakitsu Dependency ((iv) above), he considered the Qing side to have won the debate on this point, but that did not lead to his assessment of the overall claim by Qing. It can be said that Satow drew no conclusions from the debate over historical facts from ancient times and the Middle Ages.<sup>71</sup> Rather than starting from there, he focused on Satsuma’s rule over Ryūkyū since the early modern period, whereby Satsuma’s true authority over Ryūkyū began with the invasion in the early 17th century.

Third, in relation to the preceding point, it can be noted that, with regard to Japan’s claim of sovereignty, Satow emphasized the exercise of authority.

69 *B DFA2*, *supra* note 14, 74 (FO881/4718/50(i); FO46/256, no. 26(i)).

70 Satow stated, “To exhibit the matter in ... light [of sovereignty] is no doubt of great service to Japan.” (See text corresponding to *supra* note 68.) See text corresponding to *supra* note 22 for Kennedy’s evaluation of this point.

71 Regarding the dispute over language, religion, race and customs ((iii) above), while Satow noted closeness to Japan, that did not lead to his assessment of Japan’s claims (*B DFA2*, *supra* note 14, 73 (FO881/4718/50(i); FO46/256, no. 26(i))).

When emphasizing Satsuma's rule over Ryūkyū since the early modern period, he focused particularly on the exercise of authority.<sup>72</sup> In relation to ancient history, too, Satow pointed out that Japan had some slight degree of authority over the Ryūkyū Islands, as evidenced by its erection of a stone monument<sup>73</sup> ((i) above). Furthermore, at the end of the assessment, Satow pointed out that the Chinese Government had never exercised any authority over the Ryūkyū Islands, and in relation to this point, that China did not dispute sovereignty or proprietary rights over the Ryūkyū Islands in the first place.

Fourth, again related to the same point, it is considered that Satow, while having taken due account of the traditional East Asian view of the world order, "proclaimed the superiority"<sup>74</sup> of Japan's claims in terms of "asserting sovereignty." In the last part of the assessment, Satow pointed out that China and Ryūkyū maintained their traditional East Asian view of the world order, and that China did not make claims based on the view of the order under modern international law, such as "asserting sovereignty."

Section 1 of this chapter stated that Parkes' view of the attribution of Ryūkyū up to September 1879 was premised on a traditional East Asian view of the world order.<sup>75</sup> In contrast, Satow, in his memorandum, while considering not only the existence of such a view of order, but also the fact that China and Ryūkyū held said view, nevertheless "proclaimed the superiority"<sup>76</sup> of Japan's claims based on the criteria of "sovereignty," "proprietary rights," and "authority," or in other words, based on the order based on modern international law.

#### 4 Background to the Assessment by the Satow Memorandum

As discussed above, Satow's assessment of the issue of the attribution of Ryūkyū had several key aspects and it differed greatly from the assessment presented by the British Legation in Japan up to September 1879, including

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72 However, Satow did not go into the details of Satsuma's rule of Ryūkyū since the early modern period. As Yanagihara pointed out in *supra* note 2 ("Shioki, Fuyō, Zokkoku and Sovereignty"), 5, the positioning of Ryūkyū in the early modern period can be thought of as "a very ambiguous situation, when viewed from present perspectives, ..., which cannot be grasped from the perspective of modern law and modern international law." It seems that Satow also suggested a disconnect between the modern period and the Meiji Era in the memorandum created on July 6, 1879. (See text corresponding to *supra* note 14).

73 See *supra* note 32.

74 See *supra* note 70.

75 See text corresponding to *supra* note 16.

76 See *supra* note 70.

Satow's own assessment in a July 1879 memorandum, which was based on dual affiliation and imperial tributes. This assessment may have been influenced by the nature of the "de facto dispute between Japan and China." In the debate, however, Qing frequently developed its claims from the standpoint of the traditional East Asian view of the world order, while Japan generally did so from the standpoint of the order based on modern international law, and Satow can be thought to have made his assessment from the latter standpoint. If that was indeed the case, Satow's assessment, or his shift to such an assessment, may have been due to some other background factor.

As such a background factor, one might imagine that there was some ordinance from Britain that indicated or instructed a change in the basis of assessment, but the text of *Confidential Print: Correspondence respecting the LOOCHOO ISLANDS 1879–82* mentioned in *supra* note 11 did not contain any instructions or otherwise to that effect.<sup>77</sup> Said text also included exchanges between the Minister to Japan and the Minister to Qing, but even then, there was no exchange of views related to the basis for assessing Japan–Qing relations.

With that being the case, it is conceivable that the assessment in the Satow Memorandum or the shift to such an assessment was based on some specific factor within the British Legation in Japan, especially in close proximity to Satow. Several such factors are conceivable,<sup>78</sup> but actually it is rather difficult

77 Of the documents on which this booklet (FO881/4718) was based, the author has not been able to comprehensively examine the documents sent from Japan to the Legation in Japan (FO262) and those addressed to the Legation in Qing (FO228), and intends to address this in future works. As for items addressed to Japan from the Legation in Japan and the Legation in Qing (FO17 and FO46), the author has conducted a comprehensive examination of the items for the period covered by FO881/4718 and included all items that deemed to be important.

78 For example, one of the reasons could be the fact that Kennedy served as the Acting Minister while Minister Parkes was back in Britain in February 1880. (See Frederick Victor Dickens (Takanashi Kenkichi 高梨健吉 (trans.), *Pākusū Den – Nihon Chūzai no Hibi* パークス伝—日本駐在の日々 [The Life of Sir Harry Parkes: Minister Plenipotentiary to Japan]) (Tokyo: Heibonsha, 1984), 364.) However, it was not the case that any further letters critical of Japan were written upon Parkes' return to his post.

Another reason could have been that the danger of a war between Japan and Qing had been avoided between the end of 1879 and the beginning of 1880. In the letter to which the Satow Memorandum was attached, Kennedy showed agreement with Satow's view that there was almost no doubt that Japan and Qing would resolve this issue peacefully, and requested the Foreign Secretary to especially consider this point (FO881/4718/50 (FO46/256, no. 26; *BFA2*, *supra* note 14, 70)). At the time, the avoidance of war or armed conflict in the region was important for Britain from the standpoint of maintaining its trade with China. As such, it is conceivable that Britain's viewpoint changed from a time of crisis (or when one was perceived) and a time when the crisis had been averted.

to identify them. Nevertheless, as will be explained below, it can be said that this issue, which relates also to a shift in the view of order, came to be positioned within the framework of international dispute resolution procedures under the order based on modern international law, which was prompted by the involvement of former US President Grant, and that the British Legation in Japan was also aware of this development.

#### 4.1 *Ryūkyū Attribution Issue within International Dispute Resolution Procedures*

##### 4.1.1 Grant's Mediation and International Dispute Resolution Procedures

As mentioned in Section 1, after the “Ryūkyū Disposition” at the end of March 1879, Grant mediated the dispute settlement between the two countries at the request of the Qing side, almost at the same time as the exchange of claims by letter (inquiry and reply) that began in May between the Meiji and Qing Governments. When Grant visited China, the Qing Government requested a “public review” (公評),<sup>79</sup> but Grant, understanding this as meaning

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79 The meaning of 公評 (gōng píng) itself was a major source of debate. At this time, it had been used as a translation for “arbitration.” However, originally, “公評 had the meaning of impartially reaching a conclusion as well as holding public deliberations among a large number of people” (Hakoda Keiko 箱田恵子, “Shinmatu Chūgoku ni Okeru Chūsaisaibankan – 1860, 70 Nendai o Chūshin ni” 清末中国における仲裁裁判観 – 1860、70年代を中心に [The Understanding of Arbitration in Late Qing: Focusing on the Decades of the 1860s and 70s], *Kyōto Joshi Daigaku Daigakuin Bungaku Kenkyūka Kenkyūkiyō Shigakuhen* 京都女子大学大学院文学研究科研究紀要 史学編, vol. 17 (2018), 18). The latter definition would imply something other than arbitration. The words 公評 (public review) and 公評是非 (public judgment) also became problematic at the time of Taiwan Expedition. It was pointed out that Zongli Yamen used it to mean public deliberations by a large number of people, while Wade took it to mean arbitration (FO17/676, no. 222; Ian Nish (ed.), *British Documents on Foreign Affairs: Reports and Papers from the Foreign Office Confidential Print, Part 1, From the Mid-Nineteenth Century to the First World War, Series E, Asia, 1860–1914, vol. 21, Treaty Revision and Sino-Japanese Dispute over Taiwan, 1868–1876* (Federick, University Publications of America, 1989), 248; See Hakoda, *supra* note 79, 23–27; Ōkubo, *supra* note 9, 204–206). It has also been suggested that 公評 meant “an attempt to put pressure on Japan with the critical voices of other countries” (Hakoda, *supra* note 79, 26), and also, “clearly different from the peaceful dispute resolution in Western international law, a way of thinking deeply rooted in Chinese society traditionally as a method of resolving conflicts, where an observing third party (in this case, third-party countries) stated a judgement finding for or against without taking sufficient steps to hear the claims of both countries involved in the dispute” (Ōkubo, *supra* note 9, 206).

“arbitration,” refused the request and promised “good offices” or “mediation,”<sup>80</sup> which is also what Grant is considered to have indeed engaged in.

Grant subsequently sent a letter dated August 13, when he was in Japan, to Yixin (Prince Kung) and Iwakura Tomomi, proposing that commissioners from both sides be sent to negotiate directly, and that if an agreement could not be reached through negotiation, the matter should be referred to arbitration.<sup>81</sup> It is reasonable to assume that the commissioners referred to here means “commissioners employed for special objects, such as the settlement of frontiers, supervision of the execution of a treaty, etc.”<sup>82</sup> which is cited as one form of “agents of a state in its international relations” in Hall’s *International Law* published in 1880. In this way, Grant’s proposal was for a dispute resolution procedure<sup>83</sup> within the framework of international law.

Upon receipt of this, the Zongli Yamen (Office for the General Management of Affairs Concerning the Various Countries) replied in a letter to Foreign Minister Inoue Kaoru dated September 20 that Japan and China should follow Grant’s advice and send out members to negotiate the Ryūkyū issue.<sup>84</sup> The Japanese Government responded in a letter from Foreign Minister Inoue to the Zongli Yamen dated October 22 that it would accept the holding of negotiations.<sup>85</sup>

80 Hakoda, *supra* note 2, 5–8. See *supra* note 1 regarding “good offices” and “mediation.”

81 “August 13, 1879: To Prince Kung and Iwakura Tomomi,” in John Y. Simon (ed.), *The Papers of Ulysses S. Grant, vol. 29: October 1, 1878–September 30, 1880* (Carbondale: Southern Illinois University Press, 2008), 213–215. See Hakoda, *supra* note 2, 5–6.

82 Hall, *supra* note 1, 251.

83 See *supra* note 1.

84 “Ryūkyū Shozoku ni Kanshi Nisshin Ryōkoku Fungi Ikken’ 104 (1879 Nen) 9 Gatsu 20 Ka Shinkoku Sōri Kakkoku Jimu Ō Daijin yori Gaimushō Ate (Ryūkyū Anken Kaishō ni Kansuru Ken)” 「琉球所属に関し日清両国紛議一件」 104 (1879年) 9月 20日清国総理各国事務王大臣より外務省宛 (琉球案件会商に関する件) [Dispute between Japan and Qing regarding the affiliation of Ryūkyū 104, September 20 (1879) Zongli Yamen to the Ministry of Foreign Affairs (Regarding Ryūkyū affairs)], Ministry of Foreign Affairs of Japan (ed.), *Nihon Gaikō Bunsho* 日本外交文書 [Documents on Japanese Foreign Policy], vol. 12 (Tokyo: UN Association of Japan, 1949), 187–188. See Hakoda, *supra* note 2, 6.

85 “Ryūkyū Shozoku ni Kanshi Nisshin Ryōkoku Fungi Ikken’ 107 (1879 Nen) 10 Gatsu 22 Nichi Inoue Gaimukyō yori Shinkoku Sōri Kakkoku Jimu Ō Daijin Ate (Ryūkyū Anken Kaishō ni Kansuru Mōshide ni Taishi Kaitō no Ken)” 「琉球所属に関し日清両国紛議一件」 107 (1879年) 10月 22日井上外務卿より清国総理各国事務王大臣宛 (琉球案件会商に関する申出に対し回答の件) [Dispute between Japan and Qing regarding the affiliation of Ryūkyū 107, October 22 (1879) Minister for Foreign Affairs Inoue addressed to Zongli Yamen (Response to a request regarding Ryūkyū affairs)], *ibid.*, 200–201. See Hakoda, *supra* note 2, 6. See 5–6 and 11–16 of the same article for developments afterwards.

Thus, Grant's mediation is considered to have been positioned within the framework of international dispute resolution procedures under the order based on modern international law. Grant himself understood the Qing request within such a framework, undertook mediation rather than arbitration, and proposed direct negotiations by commissioners and an arbitration in the case that no agreement were to be reached by the negotiations. Japan also seems to have understood Grant's mediation within that framework. For Japan, whether it was mediation or an attempt at arbitration by Grant was a matter of great concern.<sup>86</sup> On the other hand, although it is not clear what the Qing Government specifically intended when it requested Grant to conduct a "public review,"<sup>87</sup> by accepting Grant's subsequent proposal, it is thought to have at least outwardly accepted the placement of the issue of the attribution of Ryūkyū within the framework of international dispute resolution procedures.

#### 4.1.2 Perception of the British Legation in Japan

Reflecting these developments, the British Legation in Japan also came to perceive that the issue of the attribution of Ryūkyū was positioned within the framework of international dispute resolution procedures.

Grant's actions were also mentioned in Parkes' September 9, 1879 letter to Wade,<sup>88</sup> where the word "mediation" is also found. Subsequently, the letter from Kennedy to the Foreign Secretary, the 3rd Marquess of Salisbury, dated October 31 of the same year made clear mention of the relationship with dispute resolution procedures, reporting, for example, that "both parties [have] agreed to appoint Commissioners with a 'view of coming to some settlement'" and that "the Chinese Government act upon the advice conveyed to them by General Grant, to whose mediation they had submitted the Loochoo dispute during the General's visit to China."<sup>89</sup> In the same letter, Kennedy also reported that he had received, from the Foreign Minister of the Japanese Government, copies of a letter from the Zongli Yamen to Foreign Minister Inoue dated September 20 and a letter from Foreign Minister Inoue to the Zongli Yamen dated October 22, and attached translations thereof.<sup>90</sup> As mentioned above,

86 For the Japanese Government's longstanding wariness about arbitration by Grant, see Hakoda, *supra* note 2, 7–8, 11–16.

87 See *supra* note 79 for the ambiguity of 公評.

88 FO881/4718/16(iii) (FO46/247, no. 161(iii)).

89 FO881/4718/19 (FO46/248, no. 194; *BFA2*, *supra* note 14, 26).

90 FO881/4718/19(i)(ii) (FO46/248, no. 194(i)(ii)). However, the former is dated September 22 and the latter is dated October 20. In addition, the Japanese Government passed important exchanges with Qing concerning this matter along to Britain, including the letter from the Qing Minister in Japan to Japanese Foreign Minister Terashima dated October 7, 1878,

it was in the exchange of these letters that both countries agreed to negotiate with commissioners.

In addition, a letter from Kennedy to the Foreign Secretary, the 3rd Marquess of Salisbury, dated December 19, 1879 stated that Foreign Minister Inoue, who had visited Kennedy the day before (18th), had told him that the rumor that the US Government offered to mediate the Ryūkyū issue was unfounded, and that Japan had no intention of referring the matter to another country. The letter communicated that, in any case, no offer of mediation or arbitration had been made to Japan.<sup>91</sup>

Furthermore, after the Satow Memorandum, the subject of this chapter, was written, Kennedy's letter to Salisbury dated February 26, 1880, reported on his meeting with Minister of Home Affairs Itō the previous day (25th). When Kennedy asked Itō about the letter by John Russell Young (who was accompanying Grant) published in *The Times* on December 19, 1879,<sup>92</sup> which Kennedy said provided more detailed information on the Ryūkyū question than previously published, Itō acknowledged that the letter was largely correct, and said, "Last summer General Grant was asked by the Chinese Government to arbitrate the Loochoo question. This office he declined, but promised his good offices with Japan. After hearing the Japanese case, ... [he] recommended the appointment of Commissioners on both sides."<sup>93</sup>

In this way, between September 1879 and the time when the Satow Memorandum was written in February 1880, the British Legation in Japan was aware that the Ryūkyū issue was being discussed within the framework of international dispute resolution procedures, partly due to information provided by the Japanese Government, and that the possibility of referral to arbitration had been mentioned in the process.

## 4.2 *Applicability of International Law*

### 4.2.1 Perception Concerning the Intent of Japan and Qing

Even if the Ryūkyū Attribution Issue is positioned within the framework of international dispute resolution procedures and the possibility of referral to arbitration is recognized, the parties to the dispute can designate an alternative standard by agreement, and international law may not necessarily be the

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the inquiry dated May 10, 1879, review dated July 16, 1879, and the inquiry dated August 22, 1879.

91 FO881/4718/38 (FO46/248, no. 205).

92 It is believed to be December 17, 1879 (see John Russell Young, "The Ryūkyū Question, *The Times*, 1879," in Yamaguchi and Arakawa (eds.), *supra* note 23, 75–79).

93 FO881/4718/51 (FO46/256, no. 36; *BFA2*, *supra* note 14, 29).

standard used for making a decision. In this case, however, there is evidence to suggest that Satow believed that both Japan and Qing wanted international law to be applied or that he recognized that international law could be applied between the two States.

First, in an inquiry to Foreign Minister Terashima dated August 22, 1879, the Zongli Yamen stated, “In these days, as the nations of the world are like the members of a family, and fixed rules of law are imposed for their obedience, some great and wise men would necessarily appear before us to dictate what is equity and justice.”<sup>94</sup> This letter to Terashima was translated by the Japanese Government and personally delivered to Kennedy by Itō on October 23 of the same year.<sup>95</sup>

Going slightly further back in time, a letter from Qing Minister to Japan He Ruzhang to Foreign Minister Terashima dated October 7, 1878, also condemned Japan’s disposition of Ryūkyū “in light of public law.”<sup>96</sup> A translation of this letter was also attached to a letter from Parkes to the Foreign Secretary, the 3rd Marquess of Salisbury dated August 1, 1879. It is clearly translated as “in the light ... of international law.”<sup>97</sup> Regardless of whether directly

94 “Ryūkyū Shozoku ni Kanshi Nisshin Ryōkoku Fungi Ikken’ 103 (1879 Nen) 8 Gatsu 22 Nichi Shinkoku Sōri Kakkoku Jimu Ō Daijin yori Shinkoku Chūtaisatsu Shishido Kōshi Ate (Ryūkyū Shozoku o Ronji Waga Haihan Chiken ni Kōgi Mōshide no Ken)” 「琉球所属に関し日清両国紛議一件」 103 (1879年) 8月 22日 清国総理各国事務王大臣より清国駐岱割穴戸公使宛 (琉球所属を論じ我廃藩置県に抗議申出の件) [Dispute between Japan and Qing regarding the attribution of Ryūkyū 103, August 22 (1879) the Zongli Yamen addressed to Minister Shishido in China (Discussing Ryūkyū’s attribution and protesting against the abolition of Ryūkyū’s feudal domains)], Ministry of Foreign Affairs of Japan (ed.), *supra* note 84, 187. The original text was “方今四海一家、公法具在、必有明白事理之人、出而主持公道。” For a translation, see FO881/4718/20, FO881/4718/20(iv) (FO46/248, no. 187, and no. 187(iv)).

95 FO881/4718/20, FO881/4718/20(iv) (FO46/248, no. 187, and no. 187(iv)).

96 “Ryūkyū Shozoku ni Kanshi Nisshin Ryōkoku Fungi Ikken’ 124 (1878 Nen) 10 Gatsu 7 Ka Shinkoku Kōshi yori Terashima Gaimukyō Ate (Ryūkyū wa Ganrai Shinkoku no Hanzoku Jichi no Kuni Naruni Naze Nihon wa Sono Shinkō o Sashitometaruka no Ken)” 「琉球所属に関し日清両国紛議一件」 124 (1878年) 10月 7日 清国公使より寺島外務卿宛 (琉球は元来清国の藩属自治の国なるに何故日本は其進貢を差止めたるか質問の件) [Dispute between Japan and Qing regarding the affiliation of Ryūkyū 124, October 7 (1878) From the Qing Minister to Foreign Minister Terashima (Regarding why Japan stopped the tribute from Ryūkyū which was originally a self-governing tributary state of Qing)], Ministry of Foreign Affairs of Japan (ed.), *Nihon Gaikō Bunsho* 日本外交文書 [Documents on Japanese Foreign Policy], vol. 11 (Tokyo: UN Association of Japan, 1950), 271. See Okamoto Takashi 岡本隆司, *Chūgoku no Tanjō* 中国の誕生 [The Birth of China] (Nagoya: Nagoya University Press, 2017), 90.

97 FO881/4718/5 and FO881/4718/5(i), (FO46/247, no. 140 and no. 140(i)).

or indirectly, it is reasonable to assume that Satow also encountered these letters.<sup>98</sup>

Thus, given that he encountered the letter of He Ruzhang dated October 7, 1878 and the inquiry of the Zongli Yamen dated August 22, 1879 or the translation thereof, there is at least some evidence to suggest that when Satow positioned the Ryūkyū Attribution Issue within the framework of international dispute resolution procedures, he sought international law as a standard, rather than the traditional East Asian view of the world order.

#### 4.2.2 Satow's Knowledge of International Law

Nevertheless, questions may arise as to whether Satow had the ability to make an assessment based on international law. If books on the subject had been referenced in the debate on newspapers between Japan and Qing, it is conceivable that his assessment would have been based on them, but they were not referenced in the debate. In addition, the Satow Memorandum did not refer to any books related to international law. The author intends to conduct a full-fledged examination of this point in future works but, for now, will provide below a sketch of the aspects of Satow's career that are of relevance to this point and explore the possibility that Satow used international law as a standard.

Satow graduated in 1861 with a degree from University College London, and although there is no record of him studying law or international law, he is believed to have begun studying law in 1875 during his administrative leave, attended lectures on Roman law at the University of Marburg in Germany in 1876, passed the British bar examination in 1883, and qualified as a barrister in 1887.<sup>99</sup>

98 In addition, regarding the debate within Qing on the use of international law in dealing with the Ryūkyū issue, see Hakoda, *supra* note 2, 4; Zhang Tian-en, *supra* note 10, 29–32; Nishizato, *supra* note 2, 301–305. In a meeting with Grant during his visit to China, Lee Hongzhang said that the disposition of Ryūkyū “would violate public law,” and that he urged attention to international law regarding the Ryūkyū issue (*ibid.* (Nishizato), 325; Okamoto, *supra* note 96, 92). The record of this meeting written by Young, who accompanied Grant, was published in the *New York Herald* (“Around the World: General Grant's Mediation between China and Japan,” in *New York Herald*, Aug. 16, 1879, 4), in which the words “international law” are used several times. It is conceivable that the British Legation in Japan was also aware of this information.

99 Ian C. Ruxton (ed.), *The Diaries and Letters of Sir Ernest Mason Satow (1843–1929): A Scholar-Diplomat in East Asia* (Lewiston, Queenston, Lampeter: The Edwin Mellen Press, 1998) 437 note 20, 109, 111, 153, 172. From the point of interest of this paper, it is worth noting that he started studying law in the late 1870s, but the significance of these matters will be left for future research.

In later years, Satow was also “appointed for ... British member of the Court of Arbitration, ... act[ed] as the second British Delegate to the Second Hague Peace Conference in 1907, ... received the honorary degree of D.C.L. from the university of Oxford and that of L.L.D. from the university of Cambridge ... and wrote various studies on international law and history.”<sup>100</sup> Satow’s catalogue of writings also lists more than 10 essays related to international law after 1910.<sup>101</sup>

Furthermore, Satow’s *A Guide to Diplomatic Practice* published in 1917 dealt with many issues in international law, with a focus on diplomatic law and the law of treaties.<sup>102</sup> In addition to listing several manuals of international law in Appendix I (List of Works Referred to),<sup>103</sup> it also featured a detailed list of works, primarily manuals, by British, American, French, German, Italian, Spanish, Dutch, Russian, Portuguese, Brazilian, and Spanish-speaking South American essayists, together with annotations, in Appendix II (International Law Literature for Diplomats).<sup>104</sup> In light of this, it can be assumed that Satow had a wealth of knowledge of international law at the time of its publication.

However, this does not necessarily indicate that Satow had a wealth of knowledge of international law in 1880. Moreover, the fact that Satow had begun studying law in the late 1870s suggests that he was in the process of acquiring a certain level of legal knowledge at the time of the memorandum, but the extent of this and the state of the intellectual environment<sup>105</sup> around Satow at that time must be examined in future works.

Here, the author would like to introduce a work that was very readily available to Satow and concerned a subject that was very close to him, as well as a manual of international law referenced therein.

The former work is *Is Aboriginal Formosa a part of the Chinese Empire?: An Unbiased Statement of the Question, with Eight Maps of Formosa*, which was

100 Harold W. V. Temperley, “Satow, Sir Earnest Mason (1843–1929),” in John R. H. Weaver (ed.), *The Dictionary of National Biography: 1929–1930* (Oxford: Oxford University Press, 1937), 748–749. See Ruxton, *supra* note 99, 349–351.

101 *Ibid.* See appendix (1) and 363 (“Published Works”).

102 Ernest Satow, *A Guide to Diplomatic Practice* (London: Longman, Green & Co., 1917).

103 *Ibid.*, vol. 2, 363–369.

104 *Ibid.*, 370–374.

105 For example, it is noted that Vattel’s work (Emer de Vattel, *Le droit des gens, ou principes de la loi naturelle, appliqués à la conduite & aux affaires des nations & des Souverains* (London: Apud Liberos Tutior, 1758)) was frequently referred to for diplomatic relations in the 19th century, particularly the first half of the century (Arthur Nussbaum, *A Concise History of the Law of Nations* (London: Macmillan, 1947), 161). Whether Satow referred to it or to other books related to international law should be the subject of future works.

authored by Charles Le Gendre and published in Yokohama in 1874.<sup>106</sup> Le Gendre was an American who constructed the logic that “aboriginal land is *kegai no chi* (land outside of enlightened rule) and is *terra nullius*” at the time of the Taiwan Expedition, providing the basis for the dispatch of Japan’s military forces.<sup>107</sup> In the same book, Le Gendre pointed out that “sovereignty of the state exists only when it is *de facto* exercised”<sup>108</sup> while referring to Bluntschli, and from this he derived the logic that the aboriginal land where China’s sovereignty was not exercised was *terra nullius*.

The latter work is one by Bluntschli referred to in the former. Le Gendre merely stated, “Mr. Bluntschli says [International Law, codified, page 165, §281,]” and gives no exact bibliographic information, but as far as the author knows, it is *Das moderne Völkerrecht der civilisirten Staten als Rechtsbuch dargestellt*,<sup>109</sup> published in 1868 by Johann Casper Bluntshli. In fact, page 166, §281 of the same book pointed out that “no state has any right to incorporate more territory, uninhabited or inhabited by other states, than she has the ability (Macht) to civilize or politically organize.”<sup>110</sup> The book is also listed in Appendix 11 (International Law Literature for Diplomats) of Satow’s *A Guide to Diplomatic Practice*, with the edition unspecified.<sup>111</sup>

These findings are consistent with Satow’s focus on sovereignty and authority, which he used as the basis for his assessment. It is not possible to clarify here whether Satow referred to these works, but the former was published also in Yokohama, and it can be said that such discussions occurred around Satow, who had been stationed in Japan since that time. Here, the author wishes to present this only as a hypothesis and to address this matter, including establishing Satow’s background and the intellectual environment around him in 1880, in future works.

106 Anonymous (Charles Le Gendre), *Is Aboriginal Formosa a Part of the Chinese Empire?: An Unbiased Statement of the Question, with Eight Maps of Formosa* (Shanghai, Hongkong and Yokohama: Lane, Crawford & Co.; Foochow: Hedge & Co.; Amoy: Wilson, Nichols & Co., 1874). For author, see Robert Eskildsen, “Ajia no Naka no Amerikajin” アジアの中のアメリカ人 [Americans in Asia], in *Meiji Ishin to Gaikō* 明治維新と外交 [Meiji Restoration and Diplomacy], Meiji Ishin Shigakukai 明治維新史学会 (ed.) (Tokyo: Yūshisha, 2017), 113.

107 See the works cited in note 9 above regarding the fact that Japan incorporated Le Gendre’s opinion in formulating this logic.

108 Anonymous (Le Gendre), *supra* note 106, 8.

109 Johann Casper Bluntschli, *Das moderne Völkerrecht der civilisirten Staten als Rechtsbuch dargestellt* (Munich: C. H. Beck, 1868), 166.

110 *Ibid.* Same as in the second edition published in 1872 (169), and the third edition published in 1878 (170).

111 Satow, *supra* note 102, vol. 2, 373.

## 5 Conclusion

The author has examined Ernest Satow's memorandum on the Ryūkyū Attribution Issue. As a result, it has become clear that Satow, having taken into consideration the *de facto* dispute between Japan and China, supported Japan's claims by focusing on the exercise of authority, without delving deeply into the significance of imperial tributes or the theory of dual affiliation within the historical debate. It can be said that this memorandum was based on the order under modern international law, rather than the traditional East Asian view of the world order such as imperial tributes and dual affiliation as seen in the prior views expressed by Parkes and Satow.

However, it cannot be said that the Satow Memorandum represented or reflected a shift in Britain's basis for assessing Sino-Japanese relations. Although the memorandum reflected Japan and Qing's position on the specific case of the Ryūkyū Attribution Issue, it concerned the debate on newspapers between Japan and Qing and was written by Satow in his position as a secretary of the British Legation in Japan, and no instructions from the British Government regarding a shift in the basis of assessment have been found to the best of the author's knowledge. Nor is it the case that the Satow Memorandum indicated that Qing recognized the application of international law in Sino-Japanese relations.<sup>112</sup>

On the other hand, it is thought that Satow, who had sufficient knowledge of the traditional East Asian view of the world order, wrote this memorandum against a backdrop of this issue coming to be positioned in the context of international dispute resolution procedures under the order based on modern international law, which was prompted by the involvement of former US President Grant, and the British Legation in Japan also being aware of this development. If that is indeed the case, it can be said that the fact that the assessment in the memorandum was made in accordance with the order based on modern international law, together with its background, offers a snapshot of the changing view of order in and related to East Asia.

As pointed out in Section 1 of this chapter, in the past, such changes in the view of order have been discussed in a way that connects several major points over time. While such macroscopic discussions are important, it is also

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<sup>112</sup> See the text corresponding to note 68 above. In addition, in the process of negotiating an agreement once reached between Japan and Qing regarding the resolution of this issue, the Qing side strongly desired that Ryūkyū remain its vassal state, and in that respect, it is thought that Qing maintained its traditional East Asian view of order (see the documents listed in note 2 above).

important to examine the process of change in greater details. The author hopes that this chapter represents one such attempt. In addition, the author intends to more concretely examine the flow of events from this issue to the Sino-Japanese War, as well as the changes after the Sino-Japanese War, in future works. Such an examination will surely contribute to a more complete study of the “acceptance of international law” in East Asia.<sup>113</sup>

Furthermore, the importance of examining the process of change more precisely seems to apply to historical examinations of international law in general. For certain concepts and institutions, there is room to look more closely at the process of change, at least from the standpoint of historical research. How such concepts and systems were understood at a particular time may also be important in relation to, for example, specific territorial disputes.<sup>114</sup>

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113 In this respect, Hakoda Keiko's research (*supra* note 2, note 79, and “Shinmatsu Chūgoku no Shimbun, Zasshi ni Miru Chūsai Saibankan” 清末中国の新聞・雑誌にみる仲裁裁判観 [Chinese Understanding of Arbitration Extracted from the Analysis of the Periodicals in Late Qing China], in *Shisō* 史窓, no. 78 (2021), 47–71) and Yanagihara's works (*supra* note 2 as well as “Nihon ni okeru Kindai Yōroppa Kokusaihō no Juyō” 日本における近代ヨーロッパ国際法の受容 [Reception of Modern European International Law in Japan], in *Kokusai Hōgaku no Shosō* 国際法学の諸相 [Aspects of International Law Studies] Etō Junichi 江藤淳一 (ed.) (Tokyo: Shinzansha, 2015), 47–64) are very important.

114 See 3.2.2 of Chapter 1 (Yanagihara) in this book. Similar issues of relevance to this chapter include how the theory of territorial titles was understood in 1880, when Satow created the memorandum.

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